

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

HOUSE BILL 1986

By: Representative Bennett

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS CONCERNING MUNICIPAL
ADVERTISING AND PROMOTION TAXES AND COMMISSIONS; TO
ALLOW A CITY TO LEVY AN ADVERTISING AND PROMOTION TAX
WITHOUT CREATING A COMMISSION IN CERTAIN
CIRCUMSTANCES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAWS CONCERNING MUNICIPAL
ADVERTISING AND PROMOTION TAXES AND
COMMISSIONS; AND TO ALLOW A CITY TO LEVY
AN ADVERTISING AND PROMOTION TAX WITHOUT
CREATING A COMMISSION IN CERTAIN
CIRCUMSTANCES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 26-75-603 is amended to read as follows:

26-75-603. Collection of tax.

(a)(1) From Except as provided in subdivision (a)(2) of this section,
from the effective date of the levying ordinance, the tax ~~se~~ levied shall be
paid by the persons, firms, and corporations liable therefor and shall be
collected by the advertising and promotion commission of the levying city or
by a designated agent of the commission in the same manner and at the same
time as the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-
101 et seq.

(2) If a city does not create an advertising and promotion
commission, then the tax shall be collected by the city that passed the



levying ordinance in the same manner and at the same time as the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(b)(1) The person paying the tax shall report and remit it upon forms provided by the commission or city and as directed by the commission or city. The rules, regulations, forms of notice, assessment procedures, and the enforcement and collection of the tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Tax Procedure Act, § 26-18-101 et seq., so far as practicable shall be applicable with respect to the enforcement and collection of the tax levied ~~pursuant to the authority of~~ under this subchapter.

(2) However, the administration ~~and~~ enforcement, and all actions shall be by and in the name of the commission or city through the proper ~~commission~~ officials or agents. The commission or city ~~shall have the authority to~~ may sue and be sued in its name.

(3) The Department of Finance and Administration shall ~~have no authority to~~ not enforce or collect the tax levied ~~pursuant to~~ under this subchapter.

(c) The levying city ~~is authorized to~~ may adopt ordinances consistent with and in similar form to the Arkansas Tax Procedure Act, § 26-18-101 et seq., to enable the commission ~~or~~ its agent, or the city to enforce the tax through examination of records, notices of proposed and final assessment, and administrative hearings on proposed assessments. The levying city is also authorized to adopt ordinances ~~which~~ that enable the commission or city to:

(1) Assess penalties and interest against taxpayers who fail to timely report or pay the tax. The penalty is equal to five percent (5%) of the unpaid tax amount per month not to exceed a total assessment of thirty-five percent (35%) of the unpaid tax. Simple interest on unpaid taxes shall be assessed at the rate of ten percent (10%) per annum;

(2) Assess unpaid or unreported tax within three (3) years of the date the tax is due;

(3) Provide for judicial relief from proposed assessments in accordance with subsection (d) of this section; and

(4) Issue certificates of indebtedness in accordance with subdivision (c)(3) of this section.

(d)(1) Within thirty (30) days of the issuance of the notice and demand for payment of a deficiency in tax established by a final

determination of the hearing officer, a taxpayer may seek judicial relief from the final determination by either:

(A) Paying under protest the amount of the deficiency, plus penalty and interest determined by the commission or city to be due, and filing a suit to recover that amount within one (1) year from the date of payment under protest; or

(B)(i) Filing with the commission or city a bond in double the amount of the tax deficiency due and by filing suit within thirty (30) days thereafter to stay the effect of the commission's or city's determination.

(ii) The bond shall be subject to the condition that the taxpayer shall file suit within thirty (30) days after filing the bond, shall faithfully and diligently prosecute the suit to a final determination, and shall pay any deficiency found by the court to be due and any court costs assessed against the taxpayer.

(iii) A taxpayer's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by this subsection, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs.

(2) The method provided in this section is the exclusive method for seeking relief from a written decision of the commission or city establishing a deficiency in tax. ~~No~~ An injunction shall not issue to stay proceedings for assessment or collection of this tax.

(e)(1) If a taxpayer does not timely and properly pursue the taxpayer's remedies seeking relief from a decision of the commission or city and a final assessment is made against the taxpayer, or if the taxpayer fails to pay the deficiency assessed upon notice and demand, then the commission or city as soon as practicable thereafter shall issue to the circuit clerk of the county where the taxpayer's business is located a certificate of indebtedness certifying that the person named therein is indebted to the commission or city for the amount of the tax established by the commission or city as due.

(2) The circuit clerk shall enter immediately upon the circuit court judgment docket:

- (A) The name of the delinquent taxpayer;
- (B) The amount certified as being due;

(C) The name of the tax; and

(D) The date of entry upon the judgment docket.

(3) The entry of the certificate of indebtedness shall have the same force and effect as the entry of a judgment rendered by the circuit court. This entry shall constitute the commission's or city's lien upon the title of any real and personal property of the taxpayer in the county where the certificate of indebtedness is recorded.

(4) The certificate of indebtedness authorized by this subsection shall continue in force for ten (10) years from the date of recording and shall automatically expire after the ten-year period has run. Actions on the lien on the certificate of indebtedness shall be commenced within ten (10) years after the date of recording of the certificate, and not afterward.

(5) The commission or city shall have all remedies and may take all proceedings for the collection of the tax which may be taken for the recovery of a judgment at law.

(f) ~~The provisions of subsections~~ Subsections (d) and (e) of this section shall be effective only when the levying city adopts an ordinance ~~which~~ that specifically provides that these provisions shall be utilized by the commission or city in enforcing the tax.

SECTION 2. The introductory language of Arkansas Code § 26-75-605(a), concerning advertising and promotion commissions, is amended to read as follows:

(a) ~~Any~~ Except as provided in subsection (e) of this section, a municipality levying a tax ~~pursuant to~~ under this subchapter shall create by ordinance a municipal advertising and promotion commission, to be composed of seven (7) members, as follows:

SECTION 3. Arkansas Code § 26-75-605, concerning advertising and promotion commissions, is amended to add an additional subsection to read as follows:

(e) If the electors of a municipality levy a gross receipts tax under this subchapter and dedicate the tax as stated in § 26-75-604(b), then the municipality may, but is not required to, create by ordinance an advertising and promotion commission composed of members as otherwise required under this

section.