

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

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 1203

By: Representative Holcomb

For An Act To Be Entitled

AN ACT TO ALLOW A BUSINESS ENGAGED IN THE BUSINESS OF RENTING HEAVY EQUIPMENT PROPERTY TO COLLECT A RECOVERY FEE FROM CERTAIN CONSUMERS; TO REQUIRE THAT MONEYS COLLECTED AS A RECOVERY FEE BE USED TO PAY AD VALOREM TAXES ON TANGIBLE PERSONAL PROPERTY; TO PROVIDE THAT EXCESS RECOVERY FEES BE CONSIDERED UNCLAIMED PROPERTY; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE FOR A RECOVERY FEE ON THE RENTAL OF HEAVY EQUIPMENT PROPERTY; AND TO REQUIRE THAT MONEYS COLLECTED AS A RECOVERY FEE BE USED TO PAY AD VALOREM TAXES ON TANGIBLE PERSONAL PROPERTY.

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

SECTION 1. Arkansas Code Title 4, Chapter 70, Subchapter 1, is amended to add an additional section to read as follows:

4-70-104. Heavy equipment rental recovery fee.

(a) As used in this section:

(1) "Heavy equipment property" means personal property owned by a business classified within sectors 532310 or 532412 of the North American Industry Classification System, as in effect on January 1, 2017; and

(2) "Rental charge" means the total charge for the rental of heavy equipment property, excluding any separately itemized costs representing charges for related nonrental items, including without



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limitation pickup and delivery, fuel, or a damage waiver.

(b) Except as provided in subsection (c) of this section, a person in the business of renting heavy equipment property in this state may include in a rental agreement or on a rental invoice a recovery fee of one and twenty-five hundredths percent (1.25%) of the rental charge for the rental of an item of heavy equipment property to a customer located in the state.

(c) The recovery fee provided for in this section shall:

(1) Not be collected on a rental of heavy equipment property to the United States or this state, including without limitation a county, city, town, agency, board, commission, or institution of this state; and

(2) Be exempt from state and local sales and use taxes.

(d)(1) A business that collects a recovery fee as provided in this section shall:

(A) Account for and hold the recovery fees separately from all other business receipts; and

(B) Use the amount of the recovery fee collected under this section solely to pay ad valorem taxes levied on the business's tangible personal property located in this state.

(2) Money collected as a recovery fee under this section that exceeds the ad valorem taxes payable on the tangible personal property of the business for the year may be used to pay the ad valorem taxes levied on the property for the assessment year in which it is collected and up to two (2) years following the assessment year in which the recovery fee is collected.

(3) Any moneys collected as recovery fees that remain in the business's account after the deadline to pay property taxes for the second assessment year following the assessment year in which the recovery fees were collected shall be:

(A) Presumed abandoned; and

(B) Paid to the Auditor of State and treated as unclaimed property under § 18-28-201 et seq.

(e) This section does not exempt heavy equipment property from ad valorem taxes.

SECTION 2. Arkansas Code § 18-28-201(2), concerning the definitions to be used in relation to unclaimed property, is amended to read as follows:

(2)(A) "Apparent owner" means a person whose name appears on the

records of a holder as the person entitled to property held, issued, or owing by the holder.

(B) "Apparent owner" does not include a person who paid an excess recovery fee for purposes of determining ownership of the excess recovery fee only.

SECTION 3. Arkansas Code § 18-28-201(11), concerning the definitions to be used in relation to unclaimed property, is amended to read as follows:

(11)(A) "Owner" means a person who has a legal or equitable interest in property subject to this subchapter or the person's legal representative.

~~(B) The term "Owner"~~ includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(C) "Owner" does not include a person who paid an excess recovery fee for purposes of determining ownership of the excess recovery fee only.

SECTION 4. Arkansas Code § 18-28-201, concerning the definitions to be used in relation to unclaimed property, is amended to add an additional subdivision to read as follows:

(17) "Excess recovery fee" means a recovery fee collected under § 4-70-104 that exceeds the ad valorem taxes payable on the business's tangible personal property over the three-year period specified in § 4-70-104(d)(2).

SECTION 5. Arkansas Code § 18-28-202(a)(6), concerning presumptions of abandonment with respect to unclaimed property, is amended to read as follows:

(6) Money or credits owed to a customer as a result of a retail business transaction, other than an excess recovery fee, three (3) years after the obligation accrued;

SECTION 6. Arkansas Code § 18-28-202(a), concerning presumptions of abandonment with respect to unclaimed property, is amended to add an additional subdivision to read as follows:

(16) An excess recovery fee, three (3) years after payment of the ad valorem taxes assessed for the tax year in which the recovery fee was collected.

SECTION 7. Arkansas Code § 18-28-204, concerning rules for taking custody of unclaimed property, is amended to add an additional subdivision to read as follows:

(8) With respect to an excess recovery fee, the heavy equipment property is rented in this state.

SECTION 8. Arkansas Code § 18-28-205 is amended to read as follows:
18-28-205. Dormancy charge.

A Except with respect to an excess recovery fee, a holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

SECTION 9. Arkansas Code § 18-28-207(b), concerning a holder's duty to report abandoned property, is amended to read as follows:

(b) The report must be verified and must contain:

- (1) a description of the property;
- (2) except with respect to a traveler's check or a money order, or an excess recovery fee, the name, if known, and last known address, if any, and the ~~social security~~ Social Security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars (\$50.00) or more;
- (3) an aggregated amount of items valued under fifty dollars (\$50.00) each;
- (4) in the case of an amount of fifty dollars (\$50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;
- (5) in the case of property held in a safe deposit box or other

safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator, and any amounts owing to the holder;

(6) the date, if any, on which the property became payable, demandable, or returnable, and, except with respect to an excess recovery fee, the date of the last transaction with the apparent owner with respect to the property; ~~and~~

(7) other information that the administrator by rule prescribes as necessary for the administration of this subchapter; and

(8) the aggregated amount of excess recovery fees held by a business beyond the three-year period specified in § 4-70-104(d)(3).

SECTION 10. Arkansas Code § 18-28-207(e), concerning a holder's duty to report abandoned property, is amended to read as follows:

(e) ~~The~~ Except with respect to an excess recovery fee, the holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred twenty (120) days or less than sixty (60) days before filing the report, stating that the holder is in possession of property subject to this subchapter, if:

(1) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(2) the claim of the apparent owner is not barred by a statute of limitations; and

(3) the value of the property is fifty dollars (\$50.00) or more.

SECTION 11. Arkansas Code § 18-28-207(g), concerning a holder's duty to report abandoned property, is amended to read as follows:

(g) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (e) of this section or that the property presumed abandoned is an excess recovery fee that is exempt from the notice requirement of subsection (e) of this section.

SECTION 12. Arkansas Code § 18-28-209 is amended to read as follows:
18-28-209. Notice and publication of lists of abandoned property.

(a) The administrator shall publish a notice not later than November

30 of the year next following the year in which abandoned property has been paid or delivered to the administrator. The notice must be published in a newspaper of general circulation in each county of this state. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the potential owners of the unclaimed property. The advertisement shall contain:

(1) A statement explaining that the property the administrator is holding is presumed to be abandoned and has been taken into the protective custody of the administrator;

(2)(A) A statement explaining that additional information concerning the property may be obtained by consulting one (1) or more of the following:

(i) The Internet address of the administrator's official website;

(ii) The telephone number for the administrator's office; and

(iii) Posting of a notice at the county courthouse.

(B) A statement under this subdivision (a)(2) shall include the:

(i) Internet address of the administrator's official website; and

(ii) Telephone number for the administrator's office; and

(3) A statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

(b) An excess recovery fee reported, paid, or delivered under this subchapter is exempt from the requirements of this section.

SECTION 13. EFFECTIVE DATE. This act is effective for assessment years beginning on or after January 1, 2017.