

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1447

By: Representative Ray
By: Senator M. Johnson

For An Act To Be Entitled

AN ACT TO REQUIRE VOTER APPROVAL OF CERTAIN TAX
LEVIES; TO MAKE TECHNICAL CORRECTIONS; AND FOR OTHER
PURPOSES.

Subtitle

TO REQUIRE VOTER APPROVAL OF CERTAIN TAX
LEVIES; AND TO MAKE TECHNICAL
CORRECTIONS.

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

SECTION 1. Arkansas Code §§ 26-74-501 and 26-74-502 are amended to read as follows:

26-74-501. Levy of tax.

Any county ~~which that~~ does not levy a tax under § 14-20-112, ~~county gross receipts tax on hotels and restaurants,~~ and ~~where~~ in which there is not located a city ~~which that~~ levies a tax under § 26-75-602 or § 26-75-701, by either an ordinance of the county quorum court under § 26-74-502(a) or through petition ~~pursuant to § 26-74-502(a)~~ under § 26-74-502(b) may levy a tax in the amount necessary for the payment of bonds issued or indebtedness incurred by the county public facilities board for the purposes prescribed in this subchapter, but in no event to exceed two percent (2%) upon the gross receipts or gross proceeds from either or both of the following:

(1) (A) Gross receipts or gross proceeds from the renting, leasing, or ~~otherwise~~ furnishing of hotel, motel, or short-term condominium rental accommodations for sleeping, meeting, or party room facilities for



profit in such city, but such accommodations shall the county.

(B) Subdivision (1)(A) of this section does not include the rental or lease of such accommodations described in subdivision (1)(A) of this section for periods a period of thirty (30) days or more; and

(2)(A) Portions The portion of gross receipts or gross proceeds received from the sale of prepared food and beverages for on-premises or off-premises consumption by restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, and similar businesses as shall be defined in the levying ordinance, from the sale of prepared food and beverages for on-premises or off-premises consumption, but such.

(B) The tax levied under this section shall not apply to such the gross receipts or gross proceeds of fraternal organizations qualified under 26 U.S.C. § 501(c)(3), as it existed on January 1, 2021.

26-74-502. Voter approval of levy of tax – Petitions requesting an election.

(a)(1)(A) If a county quorum court enacts an ordinance levying a tax under § 26-74-501, the county quorum court shall submit the question of the levying of the tax to the electors at the next primary or general election.

(B) If the next primary or general election is less than seventy-five (75) days from the date the ordinance is enacted under subdivision (a)(1)(A) of this section, the election on the question of the levying of the tax shall be delayed until the following primary or general election, whichever occurs first.

(2) The tax shall be levied upon approval of a majority of the qualified electors voting on the question of the levying of the tax at the primary or general election.

(a)(b)(1)(A) If petitions are a petition is filed requesting an election for an initiated ordinance levying the tax authorized under this subchapter § 26-74-501, the county quorum court shall submit the question of the levying of the tax to the electors at the next primary or general election.

(B) If the next primary or general election is less than seventy-five (75) days from the date the petition is filed, the election for an initiated ordinance levying the tax authorized under § 26-74-501 shall be

delayed until the following primary or general election, whichever occurs first.

~~(2) The petitions must petition shall be signed by not less than five hundred (500) electors of the county. The election shall be held within one hundred twenty (120) days of the filing of the petitions.~~

(3) The tax shall be levied upon approval of a majority of the qualified electors voting on the issue question of the levying of the tax at the primary or general election.

~~(b) If petitions requesting a referendum election are filed, the quorum court levying a tax under this subchapter shall submit the question of the levying of the tax to the electors. The petitions must be signed by not less than five hundred (500) electors of the county and must be filed with the quorum court within thirty (30) days after the adoption of the ordinance levying the tax.~~

SECTION 2. Arkansas Code §§ 26-75-602 and 26-75-603 are amended to read as follows:

26-75-602. Gross receipts taxes authorized - Voter approval of levy of tax.

~~(a)(1) Any A~~ A city of the first class, city of the second class, or incorporated town by ordinance of the governing body thereof may levy a tax not to exceed three percent (3%) upon the gross receipts or gross proceeds identified in subsection (c) of this section.

(2)(A) If the governing body enacts an ordinance levying a tax under this section, the governing body shall submit the question of the levying of the tax to the electors at the next primary or general election.

(B) If the next primary or general election is less than seventy-five (75) days from the date the ordinance is enacted under this subsection, the election on the question of the levying of the tax shall be delayed until the following primary or general election, whichever occurs first.

(3) The tax shall be levied upon approval of a majority of the qualified electors voting on the question of the levying of the tax at the primary or general election.

~~(b)(1) Any A~~ A city of the first class in which ~~is located~~ a city park of one thousand (1,000) acres or more ~~in a like manner~~ is located may levy an

additional tax of one percent (1%) upon the gross receipts or gross proceeds identified in subsection (c) of this section.

(2) Revenues collected from ~~this~~ the additional tax authorized under subdivision (b)(1) of this section shall be used by the city parks and recreation department for the promotion and development of city parks and recreation areas.

(c) The tax authorized in this ~~subchapter~~ section shall be upon any one (1) or more of the following, as specified in the levying ordinance:

(1)(A) The gross receipts or gross proceeds from renting, leasing, or ~~otherwise~~ furnishing hotel, motel, house, cabin, bed and breakfast, campground, condominium, or other similar rental accommodations for sleeping, meeting, or party room facilities for profit in ~~such~~ the city or town, ~~but such accommodations shall.~~

(B) Subdivision (c)(1)(A) of this section does not include the rental or lease of ~~such~~ accommodations described in subdivision (c)(1)(A) of this section for ~~periods~~ a period of thirty (30) days or more;

(2)(A) The portion of the gross receipts or gross proceeds received from the sale of prepared food and beverages for on-premises or off-premises consumption by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, or similar businesses as shall be defined in the levying ordinance ~~from the sale of prepared food and beverages for on-premises or off-premises consumption, but such.~~

(B) The tax shall not apply to ~~such~~ the gross receipts or gross proceeds of organizations qualified under 26 U.S.C. § 501(c)(3), as it existed on January 1, 2021; and

(3) The admission price to a state park located within the municipal boundary of the city or town.

26-75-603. Collection of tax.

(a) ~~From the effective date of the levying ordinance, the tax so levied shall be paid by the persons, firms, and corporations liable therefor~~ A person liable for a tax levied under § 26-75-602 shall pay the tax, and shall be collected by the advertising and promotion commission of the levying city or by a designated agent of the commission shall collect the tax 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)(A) The person paying the tax levied under § 26-75-602 shall report and remit it upon forms provided by the commission and as directed by the commission.

(B) The rules, 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~~ are applicable with respect to the enforcement and collection of the tax levied ~~pursuant to the authority of this subchapter~~ under § 26-75-602.

(2)(A) However, the administration and enforcement of the tax levied under § 26-75-602 and all actions arising from the tax levied under § 26-75-602 shall be by and in the name of the commission through the proper commission officials or agents.

(B) The commission ~~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 enforce or collect the tax levied ~~pursuant to this subchapter~~ under § 26-75-602.

(c) The levying city ~~is authorized to~~ may adopt ordinances; ~~consistent~~

(1) Consistent with and in similar form to the Arkansas Tax Procedure Act, § 26-18-101 et seq., to enable the commission or ~~its~~ the commission's agent to enforce the tax levied under § 26-75-602 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; and~~

(2) That enable the commission to:

~~(1)~~(A)(i) Assess penalties and interest against taxpayers who fail to timely report or pay the tax levied under § 26-75-602.

(ii) 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.

(iii) Simple interest on unpaid taxes shall be assessed at the rate of ten percent (10%) per annum;

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

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

~~(4)(D)~~ Issue certificates of indebtedness in accordance with subdivision ~~(e)(3)(c)(2)(C)~~ 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 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 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 determination.~~

(ii) The bond shall be subject to the condition that the taxpayer shall ~~file:~~

(a) File suit within thirty (30) days after filing the bond, to stay the effect of the commission's determination; shall faithfully

(b) Faithfully and diligently prosecute the suit to a final determination,; and shall pay

(c) 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)(A) The ~~method~~ methods provided in this section ~~is~~ are the exclusive ~~method~~ methods for seeking relief from a written decision of the commission establishing a deficiency in tax.

~~(B) No injunction shall issue~~ A court shall not issue an injunction to stay proceedings for assessment or collection of ~~this~~ the tax levied under § 26-75-602.

(e)(1) If a taxpayer does not timely and properly pursue the taxpayer's remedies seeking relief from a decision of the commission 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 as soon as practicable thereafter shall issue to the circuit clerk of the county ~~where in which~~ the taxpayer's business is located a certificate of indebtedness certifying that the person named ~~therein~~ in the certificate of indebtedness is indebted to the commission for the amount of the tax established by the commission 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~~
(A) Has the same force and effect as the entry of a judgment rendered by the circuit court; ~~and~~

(B) This entry shall constitute Constitutes the commission's lien upon the title of any real and personal property of the taxpayer in the county ~~where in which~~ the certificate of indebtedness is recorded.

(4)(A) 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.

(B) 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 ~~shall have~~ has all remedies and may take all proceedings for the collection of the tax ~~which~~ levied under § 26-75-602 that 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~~ are effective only when the levying city adopts and the voters approve an ordinance ~~which~~ under § 26-75-602 that specifically provides that ~~these provisions shall be utilized by~~ the commission shall utilize subsections (d) and (e) of this section in enforcing the tax levied under § 26-75-602.

SECTION 3. Arkansas Code § 26-75-701(b), concerning the sales tax authorized on hotels and restaurants, is amended to read as follows:

(b)(1) ~~Any~~ A tourist attraction with total gross receipts of seven hundred fifty thousand dollars (\$750,000) or more that has a portion of the real property on which the attraction is located that abuts and adjoins a city may petition the adjoining city to be included without annexation in the levy and collection of the tax ~~set forth~~ authorized in subsection (a) of this section.

(2) Upon receipt of the petition, the governing body may pass an ordinance ~~effective on or after January 1, 2000,~~ levying the tax ~~set forth~~ authorized in this section on the petitioning area at the same rate as that of the adjoining city.

(3) The adjoining city ~~shall have no~~ does not have authority over the petitioning tourist attraction except as provided in this section.

(4) As used in this section, "tourist attraction" means:

- (A) A cultural or historical site;
- (B) A recreational or entertainment facility;
- (C) An area of natural phenomena or scenic beauty;
- (D) A theme park;
- (E) An amusement or entertainment park;
- (F) An indoor or outdoor play or music show;
- (G) A botanical garden; or
- (H) A cultural or educational center.

SECTION 4. Arkansas Code § 26-75-702 is amended to read as follows:

26-75-702. Election required.

(a)(1) ~~The~~ If a governing body of a city enacts an ordinance levying a tax under § 26-75-701, the governing body ~~of a city~~ levying the tax ~~authorized in this subchapter~~ shall submit the question of levying ~~such a~~ the tax to the electors of the city, ~~if petitions signed by not less than five hundred (500) qualified electors of the city requesting an election are filed with the governing body of the city within thirty (30) days after the adoption of the ordinance levying the tax~~ at the next primary or general election.

(2) If the next primary or general election is less than seventy-five (75) days from the date the ordinance is enacted under this

subsection, the election on the question of the levying of the tax shall be delayed until the following primary or general election, whichever occurs first.

(b) A tax levied under § 26-75-701 shall be levied upon approval of a majority of the qualified electors voting on the question of the levying of the tax at the primary or general election.

SECTION 5. DO NOT CODIFY. Applicability.

This act applies to ordinances levying taxes subject to this act that are enacted on or after the effective date of this act.