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2 94th General Assembly

A Bill

3 Regular Session, 2023

HOUSE BILL 1027

4

5 By: Representative Ray

6 By: Senator M. Johnson

7

8

For An Act To Be Entitled

9

AN ACT TO REQUIRE VOTER APPROVAL OF CERTAIN TAX

10

LEVIES; TO MAKE TECHNICAL CORRECTIONS; TO DECLARE AN

11

EMERGENCY; AND FOR OTHER PURPOSES.

12

13

14

Subtitle

15

TO REQUIRE VOTER APPROVAL OF CERTAIN TAX

16

LEVIES; TO MAKE TECHNICAL CORRECTIONS;

17

AND TO DECLARE AN EMERGENCY.

18

19

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

21

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

24 26-74-501. Levy of tax.

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

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



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

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

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

12 (B) The tax levied under this section shall not apply to
13 ~~such~~ the gross receipts or gross proceeds of fraternal organizations
14 qualified under 26 U.S.C. § 501(c)(3), as it existed on January 1, 2023.

15
16 26-74-502. Voter approval of levy or increase of tax – Petitions
17 requesting an election.

18 (a)(1)(A) If a county quorum court enacts an ordinance levying or
19 increasing a tax under § 26-74-501, the county quorum court shall submit the
20 question of the levying or increase of the tax to the electors at the
21 earliest date permitted for a special election under § 7-11-205.

22 (B) If the earliest date permitted for a special election under § 7-11-205
23 is less than seventy-five (75) days from the date the ordinance is enacted
24 under subdivision (a)(1)(A) of this section, the election on the question of
25 the levying or increase of the tax shall be delayed until the next date
26 permitted for a special election under § 7-11-205.

27 (2) The tax shall be levied or increased upon approval of a
28 majority of the qualified electors voting on the question of the levying or
29 increase of the tax at the special election held under § 7-11-205.

30 ~~(a)(b)(1)(A)~~ If petitions are a petition signed by at least five
31 hundred (500) qualified electors in the county is filed requesting an
32 election for an initiated ordinance levying or increasing the tax authorized
33 under ~~this subchapter~~ § 26-74-501, the county quorum court shall submit the
34 question of the levying or increase of the tax to the electors at the
35 earliest date permitted for a special election under § 7-11-205.

36 (B) If the earliest date permitted for a special election

1 under § 7-11-205 is less than seventy-five (75) days from the date the
 2 petition is filed, the election for an initiated ordinance *levying or*
 3 *increasing* the tax authorized under § 26-74-501 shall be delayed until the
 4 *next date permitted for a special election under § 7-11-205.*

5 (2) The tax shall be *levied or increased* upon approval of a
 6 majority of the qualified electors voting on the *issue question of the*
 7 *levying or increase of the tax* at the *special election held under § 7-11-205.*

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

14
 15 SECTION 2. Arkansas Code §§ 26-75-602 and 26-75-603 are amended to
 16 read as follows:

17 26-75-602. Gross receipts taxes authorized – Voter approval of *levy or*
 18 *increase of tax.*

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

23 (2)(A) If the governing body enacts an ordinance *levying or*
 24 *increasing* a tax under this section, the governing body shall submit the
 25 question of the *levying or increase* of the tax to the electors at the
 26 *earliest date permitted for a special election under § 7-11-205.*

27 (B) If the *earliest date permitted for a special election*
 28 *under § 7-11-205 is less than seventy-five (75) days from the date the*
 29 *ordinance is enacted under this subsection, the election on the question of*
 30 *the levying or increase* of the tax shall be delayed until the *next date*
 31 *permitted for a special election under § 7-11-205.*

32 (3) The tax shall be *levied or increased* upon approval of a
 33 majority of the qualified electors voting on the question of the *levying or*
 34 *increase of the tax* at the *special election held under § 7-11-205.*

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

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

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

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

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

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

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

24 (B) The tax shall not apply to ~~such~~ the gross receipts or
25 gross proceeds of organizations qualified under 26 U.S.C. § 501(c)(3), as it
26 existed on January 1, 2023; and

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

29
30 26-75-603. Collection of tax.

31 ~~From the effective date of the levying ordinance, the tax so~~
32 ~~levied shall be paid by the persons, firms, and corporations liable therefor~~
33 A person liable for a tax levied under § 26-75-602 shall pay the tax, and
34 ~~shall be collected by~~ the advertising and promotion commission of the levying
35 city or ~~by~~ a designated agent of the commission shall collect the tax in the
36 same manner and at the same time as the tax levied by the Arkansas Gross

1 Receipts Act of 1941, § 26-52-101 et seq.

2 (b)(1)(A) The person paying the tax levied under § 26-75-602 shall
3 report and remit it upon forms provided by the commission and as directed by
4 the commission.

5 (B) The rules, forms of notice, assessment procedures, and
6 the enforcement and collection of the tax under the Arkansas Gross Receipts
7 Act of 1941, § 26-52-101 et seq., and the Arkansas Tax Procedure Act, § 26-
8 18-101 et seq., ~~so far as practicable shall be~~ are applicable with respect to
9 the enforcement and collection of the tax levied ~~pursuant to the authority of~~
10 ~~this subchapter~~ under § 26-75-602.

11 (2)(A) However, the administration, ~~and~~ enforcement of the tax
12 levied under § 26-75-602, and all actions arising from the tax levied under §
13 26-75-602 shall be by and in the name of the commission through the proper
14 commission officials or agents.

15 (B) The commission ~~shall have the authority to~~ may sue and
16 be sued in its name.

17 (3) The Department of Finance and Administration shall have no
18 authority to enforce or collect the tax levied ~~pursuant to this subchapter~~
19 under § 26-75-602.

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

21 (1) Consistent with and in similar form to the Arkansas Tax
22 Procedure Act, § 26-18-101 et seq., to enable the commission or ~~its~~ the
23 commission's agent to enforce the tax levied under § 26-75-602 through
24 examination of records, notices of proposed and final assessment, and
25 administrative hearings on proposed assessments. ~~The levying city is also~~
26 ~~authorized to adopt ordinances which; and~~

27 (2) That enable the commission to:

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

30 (ii) The penalty is equal to five percent (5%) of
31 the unpaid tax amount per month not to exceed a total assessment of thirty-
32 five percent (35%) of the unpaid tax.

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

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

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

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

5 (d)(1) Within thirty (30) days of the issuance of the notice and
6 demand for payment of a deficiency in tax established by a final
7 determination of the hearing officer, a taxpayer may seek judicial relief
8 from the final determination by either:

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

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

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

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

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

23 (c) Pay any deficiency found by the court to
24 be due and any court costs assessed against the taxpayer.

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

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

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

35 (e)(1) If a taxpayer does not timely and properly pursue the
36 taxpayer's remedies seeking relief from a decision of the commission and a

1 final assessment is made against the taxpayer, or if the taxpayer fails to
2 pay the deficiency assessed upon notice and demand, then the commission as
3 soon as practicable thereafter shall issue to the circuit clerk of the county
4 ~~where in which~~ the taxpayer's business is located a certificate of
5 indebtedness certifying that the person named ~~therein~~ in the certificate of
6 indebtedness is indebted to the commission for the amount of the tax
7 established by the commission as due.

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

10 (A) The name of the delinquent taxpayer;

11 (B) The amount certified as being due;

12 (C) The name of the tax; and

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

14 (3) The entry of the certificate of indebtedness: ~~shall have~~

15 (A) Has the same force and effect as the entry of a
16 judgment rendered by the circuit court-; and

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

21 (4) (A) The certificate of indebtedness authorized by this
22 subsection shall continue in force for ten (10) years from the date of
23 recording and shall automatically expire after the ten-year period has run.

24 (B) Actions on the lien on the certificate of indebtedness
25 shall be commenced within ten (10) years after the date of recording of the
26 certificate, ~~and not afterward.~~

27 (5) The commission ~~shall have~~ has all remedies and may take all
28 proceedings for the collection of the tax ~~which~~ levied under § 26-75-602 that
29 may be taken for the recovery of a judgment at law.

30 (f) ~~The provisions of subsections~~ Subsections (d) and (e) of this
31 section ~~shall be~~ are effective only when the levying city adopts and the
32 voters approve an ordinance ~~which~~ under § 26-75-602 that specifically
33 provides that ~~these provisions shall be utilized by~~ the commission shall
34 utilize subsections (d) and (e) of this section in enforcing the tax levied
35 under § 26-75-602.

36

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

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

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

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

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

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

24
25 SECTION 4. Arkansas Code § 26-75-702 is amended to read as follows:

26 26-75-702. Election required.

27 (a)(1) ~~The~~ If a governing body of a city enacts an ordinance levying
28 or increasing a tax under § 26-75-701, the governing body of a city levying
29 or increasing the tax authorized in this subchapter shall submit the question
30 of levying or increasing such a the tax to the electors of the city, if
31 petitions signed by not less than five hundred (500) qualified electors of
32 the city requesting an election are filed with the governing body of the city
33 within thirty (30) days after the adoption of the ordinance levying the tax
34 at the earliest date permitted for a special election under § 7-11-205.

35 (2) If the earliest date permitted for a special election under
36 § 7-11-205 is less than seventy-five (75) days from the date the ordinance is

1 enacted under this subsection, the election on the question of the levying or
2 increase of the tax shall be delayed until the next date permitted for a
3 special election under § 7-11-205.

4 (b) A tax levied or increased under § 26-75-701 shall be levied or
5 increased under § 26-75-701 shall be levied upon approval of a majority of
6 the qualified electors voting on the question of the levying of the tax at
7 the special election held under § 7-11-205.

8
9 SECTION 5. DO NOT CODIFY. Applicability.

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

12
13 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
14 General Assembly of the State of Arkansas that Arkansans suffer from a higher
15 state and local tax burden than any state in the southeastern region of the
16 United States; that Arkansans are economically burdened by having the third
17 highest combined state and local sales tax rate in the entire country; and
18 that this act is immediately necessary because delaying the implementation of
19 this act would result in even more economic distress on the citizens of
20 Arkansans. Therefore, an emergency is declared to exist, and this act being
21 immediately necessary for the preservation of the public peace, health, and
22 safety shall become effective on:

23 (1) The date of its approval by the Governor;

24 (2) If the bill is neither approved nor vetoed by the Governor,
25 the expiration of the period of time during which the Governor may veto the
26 bill; or

27 (3) If the bill is vetoed by the Governor and the veto is
28 overridden, the date the last house overrides the veto.

29
30 /s/Ray
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