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4

A Bill

HOUSE BILL 1986

5 By: Representative Bennett
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For An Act To Be Entitled

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

15 TO AMEND THE LAWS CONCERNING MUNICIPAL
16 ADVERTISING AND PROMOTION TAXES AND
17 COMMISSIONS; AND TO ALLOW A CITY TO LEVY
18 AN ADVERTISING AND PROMOTION TAX WITHOUT
19 CREATING A COMMISSION IN CERTAIN
20 CIRCUMSTANCES.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. Arkansas Code § 26-75-603 is amended to read as follows:
27 26-75-603. Collection of tax.

28 (a)(1) ~~From~~ Except as provided in subdivision (a)(2) of this section,
29 from the effective date of the levying ordinance, the tax ~~se~~ levied shall be
30 paid by the persons, firms, and corporations liable therefor and shall be
31 collected by the advertising and promotion commission of the levying city or
32 by a designated agent of the commission in the same manner and at the same
33 time as the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-
34 101 et seq.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (A) The name of the delinquent taxpayer;

36 (B) The amount certified as being due;

1 (C) The name of the tax; and

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

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

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

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

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

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

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

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

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

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