

Arkansas Code of 1987

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Title 26

Taxation

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Title 26 Taxation

Subtitle 1. General Provisions

Subtitle 2. Administration Of State Taxes

Subtitle 3. Administration Of Local Taxes

Subtitle 4. Collection And Enforcement

Subtitle 5. State Taxes

Subtitle 6. Local Taxes

(CHAPTERS 1-33 IN VOLUME 26A; CHAPTERS 34-51 IN VOLUME 26B;
CHAPTERS 58-81 IN VOLUME 27B)

Subtitle 1. General Provisions

Chapter 1 General Provisions

Chapter 2 Penalties And Offenses Generally

Chapter 3 Property Subject To Taxation And Exemptions

Chapter 4 Tax Incentives

Chapter 5 Multistate Tax Compact

Chapters 6-15 [Reserved.]

Cross References. Road taxes, § 26-79-101 et seq.

School taxes, § 26-80-101 et seq.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Chapter 1 General Provisions

26-1-101. Definitions.

Cross References. Illegal exactions, Ark. Const., Art. 16, § 13.

Effective Dates. Acts 1869 (Adj. Sess.), No. 47, § 4: effective on passage.

Acts 1873, No. 124, § 200: effective on passage.

Acts 1879, No. 76, § 5: effective on passage.

Acts 1883, No. 114, § 226: effective on passage.

Acts 1917, No. 263, § 4: approved Mar. 17, 1917. Emergency declared.

Acts 1927, No. 129, § 38: approved Mar. 9, 1927. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1975, No. 928, § 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

26-1-101. Definitions.

As used in this act, unless the context otherwise requires:

(1) "Real property and lands" means not only the land itself, whether laid out in town lots or otherwise, with all things therein contained, but also all buildings, structures, improvements, and other fixtures of whatever kind thereon and all rights and privileges belonging or in anywise appertaining thereto;

(2) "Investment in bonds" means all moneys invested in bonds of whatever kind

or certificates of indebtedness commonly called scrip, whether issued by incorporated or unincorporated companies, towns, cities, townships, counties, states, or other corporations, held by persons residing in this state, either by themselves or by others for them, whether for themselves or as guardians, trustees, or agents;

(3) “Investment in stocks” means all moneys invested in public stocks of this or any other state or in any association, corporation, joint-stock company, or otherwise, the stock or capital of which is or may be divided into shares, which are transferable by each owner without the consent of the other partners or stockholders, for the taxation of which no special provision is made by this title, held by persons residing in this state, either for themselves or as guardians, trustees, or agents, or by others for them;

(4) “Oath” means oath or affirmation;

(5) “Person” means firm, company, or corporation;

(6) “Personal property” means:

(A) Every tangible thing being the subject of ownership, whether animate or inanimate, other than money and not forming a part of any parcel of real property as defined; and

(B) The capital stock, undivided profits, and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion, or interest in the stock, profits, or means, by whatsoever name it may be designated, inclusive of every share or portion, right, or interest, either legal or equitable, in and to every ship, vessel, or boat of whatsoever name and description used or designed to be used exclusively or partially in navigating any of the waters within or bordering on this state, whether the ship, vessel, or boat shall be within the jurisdiction of this state or elsewhere and whether it shall have been enrolled, registered, or licensed at any collector's office or within any collector's district of this state, or not;

(7) (A) “Money” means gold and silver coin, bank notes of solvent banks in actual possession, and every deposit which the person owning, holding in trust, or having the beneficial interest therein is entitled to withdraw in money on demand, within this state or elsewhere, provided it is subject to order.

(B) All citizens of this state shall, when they give to the assessor a list of their personal property, moneys, and credits, state under oath whether they have any deposits or balances on accounts, or otherwise, and the amount of the deposits, balance, or otherwise on account;

(8) “Credits” means the excess of the sum of all legal claims and demands, whether for money or other valuable things, or for labor or service due or to become due, to the person liable to pay taxes thereon, including deposits in banks or with persons in or out of this state, when added together, estimating every claim or demand at its true value in money, over and above the sum of legal bona fide debts owing by the person. In making up the sum of the debts owing, there shall be taken into account no obligation to any mutual insurance company; nor any unpaid subscription to the capital stock of any joint-stock company; nor any subscription for any religious, scientific, literary, or charitable purpose; nor any acknowledgment of any indebtedness, unless founded on some consideration actually received and believed at the time of making, the acknowledgment to be a full consideration therefor; nor any acknowledgment of debt made for the purpose of diminishing the amount of credits to be listed for taxation; nor any greater amount or portion of any liability as surety than the person required to make

the statement of the credits believes that the surety is in equity bound and will be compelled to pay or contribute;

(9) "Pensions" receivable from the United States or from any state, salaries or payments excepted, shall not mean annuities;

(10) "Town" or "city" means all cities or towns, incorporated or not incorporated, and all blocks or lots or parts thereof, assessed for taxation as such, whether they are situated in an incorporated city or town, or not.

History. Acts 1883, No. 114, §§ 1, 75, p. 199; C. & M. Dig., §§ 9792, 9939; Pope's Dig., §§ 13358, 13723; A.S.A. 1947, §§ 84-101, 84-102.

Meaning of "this act". Acts 1883, No. 114, codified as §§ 14-15-201, 14-15-505, 16-20-106, 16-92-113 — 16-92-115, 16-96-401, 21-6-305, 25-16-517, 26-1-101, 26-2-101, 26-2-103, 26-2-108, 26-3-201, 26-3-204, 26-3-301, 26-25-101 — 26-25-103, 26-25-105, 26-26-702 — 26-26-704, 26-26-714, 26-26-716, 26-26-717, 26-26-903 — 26-26-909, 26-26-914, 26-26-1001, 26-26-1102, 26-26-1107, 26-26-1202 — 26-26-1205, 26-26-1505, 26-28-101, 26-28-103 — 26-28-108, 26-28-110, 26-28-111, 26-34-101 — 26-34-103, 26-34-108, 26-35-201, 26-35-301 — 26-35-303, 26-35-401, 26-35-402, 26-35-503, 26-35-504, 26-35-603, 26-35-604, 26-35-901, 26-35-1001 — 26-35-1004, 26-36-202, 26-36-204, 26-36-206 — 26-36-209, 26-36-211, 26-37-106, 26-37-206, 26-37-208, 26-37-209, 26-37-305, 26-37-307, 26-38-106, 26-38-107, 26-39-204 — 26-39-221, 26-39-302 — 26-39-305, 26-39-403, 26-39-406, 26-39-501 — 26-39-509, 26-76-102 — 26-76-108, 26-76-201, and 26-76-202.

Case Notes

Person.

Real Property.

Town or City.

Person.

A domestic insurance company is a "person" required to assess its stock for taxation. *Dallas County v. Banks*, 87 Ark. 484, 113 S.W. 37 (1908); *Dallas County v. Home Fire Ins. Co.*, 97 Ark. 254, 133 S.W. 1113 (1911).

Real Property.

Buildings, machinery, and fixtures situated on leased lands and belonging to the lessee are taxable as real property. *Union Compress Co. v. State*, 64 Ark. 136, 41 S.W. 52 (1897).

Interest in oil and gas leases in another state must be deemed an interest in real property, and not taxable in this state. *Greene County v. Smith*, 148 Ark. 33, 228 S.W. 738 (1921).

Arkansas courts have adopted a three-part test to determine whether an item is a fixture: (1) whether the item is annexed to the realty; (2) whether the item is appropriate and adapted to the use or purpose of that part of the realty to which the item is connected; and (3) whether the party making annexation intended to make it permanent. *Rice v. Fas Fax Corp. (In re Hot Shots Burgers & Fries, Inc.)*, 169 B.R. 920 (Bankr. E.D. Ark. 1994).

Town or City.

Whether a community is incorporated or not is not the test as to whether it is town or city under this section. *Southeast Ark. Levee Dist. v. Turner*, 184 Ark. 1147, 45 S.W.2d 512 (1932).

Cited: *Ritchie Grocer Co. v. Texarkana*, 182 Ark. 137, 30 S.W.2d 213 (1930); *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

Chapter 2 Penalties And Offenses Generally

- 26-2-101. Violations by officials generally.
- 26-2-102. Violation of law or order of Public Service Commission.
- 26-2-103. Loaning or using public money by officials.
- 26-2-104. Violations in assessment or equalization generally.
- 26-2-105. Assessor failing or neglecting to make appraisals.
- 26-2-106. Failure to list and value property.
- 26-2-107. Disposition of property to avoid assessment.
- 26-2-108. Nonperformance of duty by county clerk, assessor, or collector.
- 26-2-109. Collector purchasing tax land.
- 26-2-110. Improper tax collecting.
- 26-2-111. Fraudulent statement of accounts by collecting officer.
- 26-2-112. Removal of county judge.
- 26-2-113. Prosecution by state.
- 26-2-114. Taxpayer suit to recover taxes lost by corruption in office.

Cross References. Illegal exactions, Ark. Const., Art. 16, § 13.

Effective Dates. Acts 1869 (Adj. Sess.), No. 47, § 4: effective on passage.

Acts 1873, No. 124, § 200: effective on passage.

Acts 1879, No. 76, § 5: effective on passage.

Acts 1883, No. 114, § 226: effective on passage.

Acts 1917, No. 263, § 4: approved Mar. 17, 1917. Emergency declared.

Acts 1927, No. 129, § 38: approved Mar. 9, 1927. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1975, No. 928, § 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

26-2-101. Violations by officials generally.

(a) A violation of any provision or failure to comply with any requirement of this act by any officer enumerated in this chapter shall be a violation and malfeasance in office.

(b) Upon conviction, the officer shall pay a fine of not more than five hundred dollars (\$500) and shall be removed from office.

History. Acts 1883, No. 114, § 224, p. 199; C. & M. Dig., § 10195; Pope's Dig., § 13978; A.S.A. 1947, § 84-1601; Acts 2005, No. 1994, § 160.

Amendments. The 2005 amendment inserted "a violation and" in the first sentence.

Meaning of "this act". Acts 1883, No. 114, codified as §§ 14-15-201, 14-15-505, 16-20-106, 16-92-113 — 16-92-115, 16-96-401, 21-6-305, 25-16-517, 26-1-101, 26-2-101, 26-2-103, 26-2-108, 26-3-201, 26-3-204, 26-3-301, 26-25-101 — 26-25-103, 26-25-105, 26-26-702 — 26-26-704, 26-26-714, 26-26-716, 26-26-717, 26-26-903 — 26-26-909, 26-26-914, 26-26-1001, 26-26-1102, 26-26-1107, 26-26-1202 — 26-26-1205, 26-26-1505, 26-28-101, 26-28-103 — 26-28-108, 26-28-110, 26-28-111, 26-34-101 — 26-34-103, 26-34-108, 26-35-201, 26-35-301 — 26-35-303, 26-35-401, 26-35-402, 26-35-503, 26-35-504, 26-35-603, 26-35-604, 26-35-901, 26-35-1001 — 26-35-1004, 26-36-202, 26-36-204, 26-36-206 — 26-36-209, 26-36-211, 26-37-106, 26-37-206, 26-37-208, 26-37-209, 26-37-305, 26-37-307, 26-38-106, 26-38-107, 26-39-204 — 26-39-221, 26-39-302 — 26-39-305, 26-39-403, 26-39-406, 26-39-501 — 26-39-509, 26-76-102 — 26-76-108, 26-76-201, and 26-76-202.

26-2-102. Violation of law or order of Public Service Commission.

(a) Whoever shall violate any provisions of a law which the Arkansas Public Service Commission is required to administer, neglects or refuses to perform any duty therein required for which a penalty has not otherwise been provided, or neglects or refuses to obey any lawful requirement or order made by the commission shall forfeit to the state as a penalty for each offense not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100). The penalty shall be recovered by proper action in the name of the state, and on collection, it shall be paid into the State Treasury to the credit of the General Revenue Fund.

(b) In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person, firm, company, copartnership, association, or corporation acting within the scope of his employment shall, in every case, be the act, omission, or failure of the person, firm, company, copartnership, association, or corporation.

History. Acts 1927, No. 129, § 34; Pope's Dig., § 2060; A.S.A. 1947, § 84-1602.

Cross References. Authority of Public Service Commission, § 26-24-102.

26-2-103. Loaning or using public money by officials.

If any county treasurer, collector, or sheriff loans any money belonging to the state or county, with or without interest, or uses it for his own purposes, he shall forfeit and pay for every such offense a sum not to exceed one thousand dollars (\$1,000) nor less than five hundred dollars (\$500), to be recovered in a civil action at the suit of the state, for the use of the state, county, city, town, or body politic.

History. Acts 1883, No. 114, § 205, p. 199; C. & M. Dig., § 10167; Pope's Dig., § 13949; A.S.A. 1947, § 84-1615.

26-2-104. Violations in assessment or equalization generally.

Whoever shall violate any provision of law intended to secure the assessment or equalization of property for which a penalty has not otherwise been provided or neglects or refuses to obey any lawful requirement or order made by the county equalization board shall be guilty of a violation and upon conviction shall be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100).

History. Acts 1929, No. 172, § 34; Pope's Dig., § 13675; A.S.A. 1947, § 84-1603; Acts 2005, No. 1994, § 161.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor."

26-2-105. Assessor failing or neglecting to make appraisals.

(a) Any assessor who shall knowingly or willfully fail or neglect to appraise all moneys, credits, investments in bonds or stocks, and all personal property of whatever description or kind and to appraise all the real estate and improvements thereon in the county for which he is assessor, according to the provisions of the revenue law for this state, shall be deemed guilty of a misdemeanor. Upon conviction, he shall:

(1) Forfeit all his pay as assessor;

- (2) Be forever disqualified from holding any office of profit or trust in this state;
 - (3) Be fined not exceeding one thousand dollars (\$1,000); and
 - (4) Be imprisoned in the penitentiary not to exceed one (1) year.
- (b) A conviction for a failure or neglect to do his duty as assessor shall in no way relieve him from the pains and penalties of perjury if he makes oath that he has made the assessment according to law.

History. Acts 1869 (Adj. Sess.), No. 47, §§ 1, 2, p. 101; C. & M. Dig., §§ 2817, 2818; Pope's Dig., §§ 3535, 3536; A.S.A. 1947, §§ 84-1604, 84-1605.

26-2-106. Failure to list and value property.

(a) (1) Any county assessor or any member of a board of equalization who shall knowingly and willfully fail or refuse to list and value any item of property subject to taxation, knowing that the item of property is subject to taxation and is not listed and valued for that year, or who shall fail or refuse to value any property at the percent of its market value as certified by the Arkansas Public Service Commission shall be subject to a penalty of five hundred dollars (\$500) for each offense, to be recovered by a civil action in the name of the state.

(2) Not exceeding twenty percent (20%) of these recoveries may be retained by the commission to pay the fee of the attorney for them and the other expenses of the litigation, with the remainder of the recovery to be deposited in the State Treasury to the credit of the General Revenue Fund.

(b) (1) Any suits under subsection (a) of this section shall be brought within one (1) year after the cause of action shall accrue and not thereafter.

(2) All actions may be brought in the county where the defendant resides, or in any adjoining county, and service of summons had on the defendant in the county of his residence.

(c) The powers granted in this section to the commission shall be cumulative to the powers heretofore granted to the commission.

History. Acts 1917, No. 263, §§ 2, 3, 4, p. 1359; C. & M. Dig., §§ 9922, 9923; Pope's Dig., §§ 13690, 13691; A.S.A. 1947, §§ 84-1606, 84-1607, 84-1607n.

Cross References. Determination of ratio of valuation, § 26-26-304.

26-2-107. Disposition of property to avoid assessment.

If any person, for the purpose of avoiding listing for the payment of taxes on any property subject to taxation, shall sell, give away, or otherwise dispose of the property, under or subject to any agreement expressed or implied or any understanding with the purchaser, donee, or recipient of the property that the property is to be reconveyed, restored, or redelivered to the person so disposing of the property, he or she shall be guilty of a violation and upon conviction be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).

History. Acts 1873, No. 124, § 137, p. 294; C. & M. Dig., § 10172; Pope's Dig., § 13954; A.S.A. 1947, § 84-1617; Acts 2005, No. 1994, § 162.

Amendments. The 2005 amendment inserted "or she" and "be guilty of a violation and."

26-2-108. Nonperformance of duty by county clerk, assessor, or collector.

Every clerk of the county court, assessor, or collector who in any case refuses or knowingly neglects to perform any duty enjoined on him by this title or who consents to or connives at any evasion of its provisions whereby any proceedings required in this act shall be prevented or hindered or where any property required to be listed for taxation or for the collection of taxes thereon or the valuation thereof is entered on the tax books or lists at less than the true value shall forfeit and pay to the state, for every neglect, refusal, connivance, or consent, not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), at the discretion of the court, to be recovered by an action in the name of the state before the circuit court of the proper county.

History. Acts 1883, No. 114, § 206, p. 199; C. & M. Dig., § 10168; Pope's Dig., § 13950; A.S.A. 1947, § 84-1608.

Meaning of “this act”. See note to § 26-2-101.

26-2-109. Collector purchasing tax land.

(a) No collector or his or her deputy, either directly or indirectly, shall be concerned in the purchase of any tract of land or town lot sold for the payment of taxes.

(b) A person violating this section shall be guilty of a violation and subject to a fine of five hundred dollars (\$500).

History. Rev. Stat., ch. 128, § 94; C. & M. Dig., § 10170; Pope's Dig., § 13952; A.S.A. 1947, § 84-1609; Acts 2005, No. 1994, § 163.

Amendments. The 2005 amendment, in the first sentence, inserted “or her” and deleted “under the penalty of five hundred dollars (\$500), to be recovered by indictment” from the end, and inserted the second sentence.

26-2-110. Improper tax collecting.

If any collector shall collect taxes not stated on the tax book or shall collect a greater amount than is therein stated, except as authorized by this act, he shall be guilty of a Class C felony.

History. Acts 1873, No. 124, § 83, p. 294; C. & M. Dig., § 10171; Pope's Dig., § 13953; Acts 1975, No. 928, § 26; A.S.A. 1947, § 84-1610.

Publisher's Notes. Acts 1975, No. 928, § 2, provided that, notwithstanding that all or part of a statute defining a criminal offense is amended or repealed by the act, the provisions so amended or repealed shall remain in force for the purpose of authorizing the prosecution, conviction, and punishment of a person committing an offense under the provisions prior to the effective date of the act.

Meaning of “this act”. Acts 1873, No. 124, codified as §§ 14-15-808, 26-2-110, and 26-2-107.

Case Notes

Cited: Tucker v. Holt, 343 Ark. 216, 33 S.W.3d 110 (2000).

26-2-111. Fraudulent statement of accounts by collecting officer.

Any sheriff, collector of revenues, constable, or other officer collecting moneys belonging to the State of Arkansas, or to any county therein, who fraudulently states his account for settlement and thereby deprives the State of Arkansas, or any county therein, of its just revenues; or any county clerk who keeps fraudulent accounts against the collector or against the county treasurer or makes fraudulent and false additions of the tax

books thereby concealing the true value of the same; or any county treasurer who keeps fraudulent accounts of the county revenues coming to his hands and, by any of these fraudulent acts, the State of Arkansas or any county therein is deprived of its just revenues, the officer so offending shall, upon conviction, be removed from office.

History. Acts 1879, No. 76, § 1, p. 107; C. & M. Dig., § 10197; Pope's Dig., § 13980; A.S.A. 1947, § 84-1611.

26-2-112. Removal of county judge.

Any county judge who willfully approves any false and fraudulent account made by the sheriff, collector, county clerk, treasurer, or other officer collecting or holding revenues belonging to the State of Arkansas, or to any county therein, or receives a bribe for doing an unlawful act shall, upon conviction, be removed from office.

History. Acts 1879, No. 76, § 2, p. 107; C. & M. Dig., § 10198; Pope's Dig., § 13981; A.S.A. 1947, § 84-1612.

26-2-113. Prosecution by state.

Nothing contained in this section and §§ 26-2-111, 26-2-112, and 26-2-114 shall preclude the State of Arkansas from prosecuting county officers or others for the acts complained of under any of the criminal laws of this state.

History. Acts 1879, No. 76, § 4, p. 107; C. & M. Dig., § 10203; Pope's Dig., § 13986; A.S.A. 1947, § 84-1614.

26-2-114. Taxpayer suit to recover taxes lost by corruption in office.

(a) If any taxpayer in any county in this state has knowledge of corruption in office whereby the State of Arkansas, or any county therein, has been deprived of its just revenues, he shall have the right, in his own name as a taxpayer, to institute legal proceedings against the officer, by a petition to the circuit judge sitting in equity, setting forth the facts and nature of the corrupt acts, together with exhibits and proofs, and the petition shall be verified by affidavit of the petitioner.

(b) Upon ten (10) days' notice to the defendant, the cause shall proceed as other causes. It shall be heard, tried, and determined at the first court after the petition has been filed if the required notice has been given.

(c) (1) The proceedings authorized by this section shall be summary. However, if it shall appear to the court that the ends of justice require it, a continuance may be granted to either party to the next term of the court, but not thereafter.

(2) The party to whom the continuance is granted shall be required to enter into additional bond, the amount to be fixed and the security to be approved by the court.

(d) (1) Upon the trial, if it shall appear that the official acts of the officer are corrupt and fraudulent and by those acts and doings he shall have defrauded the State of Arkansas, or any county therein, of its just revenues, then a decree shall be entered against him ousting him from his office and declaring it to be vacant, and for all moneys which he may have unlawfully detained.

(2) If, upon the hearing of the cause, it shall appear that the defendant is not guilty and has not committed the fraudulent acts complained of, and that the state and the county have not been deprived of their revenues as complained of by the petitioner, then a decree shall be entered according to the facts and, also, a decree shall be entered against

the petitioner and his securities for any sums of money which the defendant may have actually lost by reason of the proceeding.

(e) Before any such cause shall be heard, the petitioner shall enter into bond to the defendant with security, to be approved by the circuit judge, in a sufficient sum to pay any damage that the defendant might sustain by the proceedings.

History. Acts 1879, No. 76, § 3, p. 107; C. & M. Dig., §§ 10199-10202; Pope's Dig., §§ 13982-13985; A.S.A. 1947, § 84-1613.

Case Notes

Constitutionality.

Bond.

Equity Jurisdiction.

Constitutionality.

This section is unconstitutional as applied to chancery courts. *Gladish v. Lovewell*, 95 Ark. 618, 130 S.W. 579 (1910).

Bond.

Action of taxpayer to recover fees wrongfully paid to officer was brought under the provisions of Ark. Const., Art. 16, § 13, and not under this section, and therefore no bond was required. *Baker v. Allen*, 204 Ark. 818, 164 S.W.2d 1004 (1942).

Equity Jurisdiction.

Primary object of suit under this section being to oust collector from office, equity could not be given jurisdiction of such an action. *Gladish v. Lovewell*, 95 Ark. 618, 130 S.W. 579 (1910).

Suit against tax collector to account for taxes would not lie in equity in absence of allegation of proper officers to sue. *Gladish v. Lovewell*, 95 Ark. 618, 130 S.W. 579 (1910).

Although equity does not have jurisdiction of cases under this section, action of taxpayer to recover funds improperly withdrawn from county treasury was within the jurisdiction of a court of equity and should have been brought in the chancery court. *Grooms v. Bartlett*, 123 Ark. 255, 185 S.W. 282 (1916).

Chapter 3

Property Subject To Taxation And Exemptions

Subchapter 1 — General Provisions

Subchapter 2 — Taxable Property

Subchapter 3 — Exemptions from Taxation

Subchapter 1

— General Provisions

[Reserved]

Subchapter 2

— Taxable Property

26-3-201. Property subject to taxes generally.

26-3-202. Money.

26-3-203. Mobile homes and manufactured homes.

26-3-204. Federal lands sold by state.

26-3-205. Timber rights.

26-3-206. Property used for other than church purposes — Exemption.

Preambles. Acts 1895, No. 10 contained a preamble which read:

"Whereas, By an act of Congress, approved August 13, 1894, all circulating notes of national banking associations and United States legal tender notes, and all other notes and certificates of the United States payable on demand and circulating, or intended to circulate, as currency, and gold and silver or other coin, shall be subject to taxation as money on hand or on deposit under the laws of any State or Territory; therefore...."

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1895, No. 10, § 2: effective on passage.

Acts 1905, No. 146, § 2: effective on passage.

Acts 1981 (Ex. Sess.), No. 29, § 3: Dec. 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that some confusion has arisen regarding the present law relating to the assessment and taxation of mobile homes; that such law should be clarified as soon as possible to assure the efficient administration of the law and that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1040, § 7: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that many churches have engaged in the practice of investing in real and personal property, or have received donations of commercial or rental property which is not now assessed for ad valorem tax purposes and are not paying tax thereon as required by law, thereby depriving the local taxing units of thousand of dollars of much needed revenues; that under the Arkansas Constitution of 1874, Article 16, Sections 5 and 6, such property is not exempt from the provisions of the ad valorem property tax; that in many instances such churches do not report for Arkansas Income Tax purposes income derived from investments or profits derived from rental income or other commercial or business activities and do not pay taxes thereon; that this reduces the amount of revenues available for funding of State services; and that only by the immediate passage of this Act can this situation be remedied. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 869, § 5: Mar. 22, 1989. Emergency clause provided: "It is hereby found and determined that the present procedures pertaining to delinquent property taxes on mobile homes and manufactured homes are inadequate; that this act provides procedures to attach delinquent real property tax to the personal property tax of the owner of the mobile home or manufactured home; and that this act is immediately necessary to implement appropriate procedures applicable to delinquent property taxes on mobile homes and manufactured homes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 410, § 2: Feb. 23, 2001. Emergency clause provided: "It is found and determined by the General Assembly that Amendment 79 to the Arkansas Constitution was adopted by the voters of this state at the November General Election, 2000; that the amendment requires the General Assembly to provide a tax credit against the property taxes levied against homesteads in this state; that under present law, some mobile homes and manufactured homes are taxed as real property and some are not; that all mobile homes and manufactured homes should be taxed as real property and thereby allow the owners to receive the tax credit required by Amendment 79; that this act so provides; and that this act must go into effect immediately in order to coincide with Amendment 79. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

U.S. Code. The Securities Exchange Act of 1934, referred to in this section, is codified as 15 U.S.C. § 78(a) et seq.

Research References

ALR.

Sales, use, or privilege tax on sales of, or revenues from sales of advertising. 40 A.L.R.4th 1114.

Am. Jur. 71 Am. Jur. 2d, State Tax., § 191 et seq.

C.J.S. 84 C.J.S., Tax., § 57 et seq.

26-3-201. Property subject to taxes generally.

All property, whether real or personal, in this state; all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of persons residing therein; the property of corporations; and the property of all banks or banking companies and of all bankers and brokers shall be subject to taxation. Such property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, or the value thereof, shall be entered on the list of taxable property for that purpose.

History. Acts 1883, No. 114, § 2, p. 199; C. & M. Dig., § 9853; Pope's Dig., § 13597; A.S.A. 1947, § 84-201.

Cross References. Taxation of corporate property, Ark. Const., Art. 16, § 7.
Tax on timber and range lands, § 26-61-101 et seq.

Case Notes

In General.

Insolvent Banks.

Intangibles.

Personal Property.

Real Property.

Trust Arrangements.

In General.

It is the rule and not the exception that property shall be taxed. *Vandergrift v. Lowery*, 195 Ark. 257, 111 S.W.2d 510 (1937).

The right to impose taxes upon citizens and property for the support of the state government may be restricted by the Arkansas Constitution, but needs no clause to confer it. *Ouachita County v. Rumph*, 43 Ark. 525 (1884).

Insolvent Banks.

Property of insolvent bank continues subject to taxation notwithstanding bank's insolvency. *Brooks v. Randolph State Bank*, 188 Ark. 571, 66 S.W.2d 1071 (1934).

Intangibles.

Notes, bills of exchange, stocks, and securities of all kinds are property and subject to taxation. *Ouachita County v. Rumph*, 43 Ark. 525 (1884).

Corporate stock is subject to tax. *Dallas County v. Banks*, 87 Ark. 484, 113 S.W. 37 (1908).

Personal Property.

Personal property being used in this state, though owned by a foreign company, is subject to taxation. *Eoff v. Kennefick-Hammond Co.*, 80 Ark. 138, 96 S.W. 986 (1906).

Real Property.

A note given for land and the land itself are both subject to taxation, the note as property of the holder and the land as property of the purchaser. *Ouachita County v. Rumph*, 43 Ark. 525 (1884). Land held as private property is subject to taxation, though it does not appear upon the public surveys. *Buckner v. Sugg*, 79 Ark. 442, 96 S.W. 184 (1906).

Where owner of 60 feet of a certain lot sold part of it to a city, retaining ownership of only 51 feet thereof, subsequent assessment on the entire 60 feet and sale for nonpayment of taxes were void. *Kaplan v. Scherer*, 205 Ark. 554, 169 S.W.2d 660 (1943).

Trust Arrangements.

Where, under an instrument designated as a "declaration of trust," a trust estate was created for the purpose of acquiring oil and gas leases in a foreign state, the interest of the beneficiaries in leases so acquired was not subject to taxation in this state. *Greene County v. Smith*, 148 Ark. 33, 228 S.W. 738 (1921).

Cited: *Omega Tube & Conduit Corp. v. Maples*, 312 Ark. 489, 850 S.W.2d 317 (1993).

26-3-202. Money.

(a) All circulation notes of national banking associations, United States legal tender notes, all other notes and certificates of the United States payable on demand and circulating or intended to circulate, as currency, and gold, silver, or other coin held or owned by any citizen or resident of the State of Arkansas are made taxable for all state, county, school, and municipal purposes.

(b) Each person in the state required by law to list property shall make out and deliver to the assessor, verified by the property owner's oath or affirmation, a list of all moneys, certificates, and circulating notes described in this section in his possession or under his control on January 1 of each year, which he is required to list for taxation, either as holder or owner thereof, or as guardian, parent, husband, executor, administrator, receiver, accounting officer, partner, agent, or factor.

History. Acts 1895, No. 10, § 1, p. 15; C. & M. Dig., § 9857; Pope's Dig., § 13602; A.S.A. 1947, § 84-205.

26-3-203. Mobile homes and manufactured homes.

(a) Mobile homes and manufactured homes shall be deemed real property for the purpose of ad valorem property taxation.

(b) Real property taxes and any interest, penalties, or other charges on a mobile home on a leased site in a mobile home park or any other leased site, and any assessment or user fee chargeable to the owner of the mobile home and constituting a lien, shall be assessed and levied against the owner of the mobile home whose name appears on the certificate or other acceptable evidence of ownership, and shall be a lien on the mobile home or manufactured home only.

(c) When the property tax on mobile homes and manufactured homes which are now assessed as real property become delinquent, the delinquent real property tax shall be attached to the personal property tax of the owner of the mobile home or manufactured home and the collector shall not accept payment of the personal property taxes without collecting payment of the delinquent real property taxes at that time.

History. Acts 1981, No. 113, § 1; 1981 (Ex. Sess.), No. 29, § 1; A.S.A. 1947, §§ 84-215, 84-215.1; Acts 1989, No. 869, § 1; 2001, No. 410, § 1.

A.C.R.C. Notes. Acts 1989, No. 869, § 2, provided:

"All mobile homes and manufactured homes on the books of the Commissioner of State Lands on March 22, 1989 shall be certified back to the county which certified them to the Commissioner and shall not be sold by him."

Amendments. The 2001 amendment, in (a), redesignated the former (a)(1) as present (a), deleted "permanently affixed to a foundation on property which is owned or leased by the owner of the mobile home or manufactured home" preceding "shall be deemed" and deleted (a)(2).

Research References

ALR.

Classification, as real estate or personal property, of mobile homes or trailers for purposes of

state or local taxation. 7 A.L.R.4th 1016.

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-3-204. Federal lands sold by state.

(a) All tracts of land set apart for school or other purposes and donated to the state by the Congress of the United States for a specific purpose and sold under the authority of the laws of this state to any person shall be subject to taxation as other land in this state immediately after sale. These lands shall not be sold for taxes until the purchase money shall be fully paid, but shall be returned delinquent as other lands, and the personal property of the purchaser shall be subject to sale to pay the taxes thereon.

(b) Until the payment of taxes or the collection thereof from the personal property, these lands shall be continued on the tax books and the taxes of each year charged thereon and added to the tax and penalty due when they became delinquent until payment is made or the lands are resold by the proper officer or authority pursuant to the laws in force for the sale of these lands.

History. Acts 1883, No. 114, § 3, p. 199; C. & M. Dig., § 9854; Pope's Dig., § 13598; A.S.A. 1947, § 84-202.

Case Notes

Lands Purchased from United States.

Lands Purchased from United States.

Land purchased from the federal government is subject to taxes as soon as entry is made and the purchase price paid, although no patent is issued. *Diver v. Friedheim*, 43 Ark. 203 (1884); *Smith v. Hollis*, 46 Ark. 17 (1885); *Burcham v. Terry*, 55 Ark. 398, 18 S.W. 458 (1892).

26-3-205. Timber rights.

(a) All timber in this state which has been sold separately and apart from the land on which it stands shall be classed as personal property and shall be subject to taxation as such.

(b) Timber interests shall be assessed and the taxes collected thereon in the county where the timber is located.

History. Acts 1905, No. 146, § 1, p. 361; C. & M. Dig., § 9855; Pope's Dig., § 13599; A.S.A. 1947, § 84-204.

Cross References. Assessment of timber rights, § 26-26-1109.

Case Notes

Assessment.

Conveyance.

Assessment.

Standing timber, although the ownership thereof is severed from the ownership of the soil, is part of the land and, as such, subject to assessment. *Lewis v. Delinquent Lands*, 182 Ark. 838, 33 S.W.2d 379 (1930).

Conveyance.

A contract to convey standing timber is a contract to convey "an interest in land" notwithstanding this section. *Anderson-Tully Co. v. Gillett Lumber Co.*, 143 Ark. 97, 222 S.W. 362 (1920).

Where growing trees are conveyed, separating timber from the land so that the landowner and timber owner have separate estates, the growing trees become property subject to taxation apart from the land. *Southern Lumber Co. v. Arkansas Lumber Co.*, 176 Ark. 906, 4 S.W.2d 928 (1928).

Purchaser of timber from improvement districts must pay taxes when timber is assessed. *Little Red River Levee Dist. v. Moore*, 197 Ark. 945, 126 S.W.2d 605 (1939).

26-3-206. Property used for other than church purposes — Exemption.

(a) All real or personal property owned by any church and held for, or used for, commercial, business, rental, or investment purposes, or purposes other than church purposes, shall be listed for assessment. The ad valorem tax shall be paid thereon at the same rate and at the time and in the same manner provided by law for any other property owner.

(b) However, in the event any property is used partially for church purposes and partially for investments or other commercial or business purposes, the property shall be exempt from the ad valorem tax.

History. Acts 1987, No. 1040, § 1.

Subchapter 3 — Exemptions from Taxation

26-3-301. Property exempt from taxes generally.

26-3-302. Intangible personalty.

26-3-303. Parsonages.

26-3-304. Textile mills.

26-3-305. Nonprofit waterworks.

26-3-306. Disabled veterans, surviving spouses, and minor dependent children.

26-3-307. [Transferred.]

26-3-308. Property owned by the State Highway Commission or the State Highway and Transportation Department.

26-3-309. [Transferred.]

26-3-310. [Transferred.]

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1929, No. 74, § 4: approved Mar. 2, 1929. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1953, No. 363, § 5: approved Mar. 28, 1953. Emergency clause provided: "This Act, being necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect, from and after its passage."

Acts 1975, No. 319, § 4: Mar. 5, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law exempts certain disabled veterans from the payment of all State taxes on the homestead and personal property owned by such disabled veteran but fails to provide a like exemption for the surviving spouse and surviving minor dependent children of such disabled veteran; that in many cases the surviving spouse and minor dependent children of a deceased disabled veteran are in even greater need of tax exemption for the homestead and personal property owned by the disabled veteran and left to such dependents than was the disabled veteran during his lifetime; that this Act is designed to extend the exemption to the surviving spouse and surviving minor dependent children of disabled veterans and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety

shall be in full force and effect from and after its passage and approval.”

Acts 1975 (Extended Sess., 1976), No. 1220, § 4: Feb. 12, 1976. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 196 and Act 319 of 1975 amend the same section of law and relate to the exemption of certain disabled veterans and their surviving spouses and minor dependent children from the payment of all State taxes on the homestead and personal property owned by such disabled veteran and by the surviving spouse and surviving minor dependent children of such disabled veteran; that since the two acts amended the same existing section of law and purported to restate the section in its entirety there has been considerable confusion regarding the effectiveness of the exemptions provided in said acts; and that this Act is immediately necessary to clarify the laws regarding such disabled veterans tax exemptions to avoid misunderstanding and hardship on such veterans and their surviving spouses and minor dependent children. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1977, No. 106, § 5: Feb. 8, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that Amendment No. 57 to the Arkansas Constitution, adopted by the people at the 1976 General Election authorizes the General Assembly to classify intangible personal property, to provide for the taxation of intangibles at a different level than tangible personal property, to provide for the taxation of intangibles on a basis other than ad valorem, or to exempt intangibles from ad valorem taxes; that it is in the best interests of the citizens and the political subdivisions of the State that intangibles be exempted from ad valorem taxes at least until a study can be made of the extent to which, if any, such intangibles should be taxed and the most appropriate manner for levying any such taxes; and that the assessment of real and personal property for ad valorem tax purposes commences very early in the calendar year and it is necessary that this Act be given effect immediately in order to avoid confusion in the assessment of personal property for ad valorem taxes during the calendar year 1977. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 332, § 3: Mar. 3, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that in some instances waterworks systems owned by nonprofit property owners associations are being subjected to ad valorem taxation in contravention of Article 16, Section 5 of the Arkansas Constitution of 1874, and that this legislation is necessary in order to clarify the exemption granted thereby. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 627, § 5: Apr. 4, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that County Assessors in various counties in Arkansas have assessed property belonging to public institutions of higher learning, state agencies, institutions, boards and commissions, and that county assessors are required by law to assess all real and personal property of their counties annually between the first Monday in January and the first day in August, and that an immediate need exists to clarify the status of property owned by public institutions of higher learning, State agencies, institutions, boards and commissions in order to prevent such property from being placed on the tax rolls by county assessors. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 1010, § 5: Apr. 14, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that because of the case Ricarte v. State, CR 86-31, a question has arisen over the validity of Act 1220 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 1040, § 7: Apr. 14, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that many churches have engaged in the practice of

investing in real and personal property, or have received donations of commercial or rental property which is not now assessed for ad valorem tax purposes and are not paying tax thereon as required by law, thereby depriving the local taxing units of thousand of dollars of much needed revenues; that under the Arkansas Constitution of 1874, Article 16, Sections 5 and 6, such property is not exempt from the provisions of the ad valorem property tax; that in many instances such churches do not report for Arkansas Income Tax purposes income derived from investments or profits derived from rental income or other commercial or business activities and do not pay taxes thereon; that this reduces the amount of revenues available for funding of State services; and that only by the immediate passage of this Act can this situation be remedied. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 414, § 2: July 1, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the Arkansas sales and use tax applies to the sale of adaptive medical equipment and disposable medical supplies; that this tax creates a financial hardship on those who must rely on these items to carry out the normal activities of their lives; and that this act is designed to remove this hardship. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and welfare, shall be in full force and effect from and after July 1, 1991.”

Acts 1991, No. 961, § 6: Mar. 29, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that in certain instances real estate taxes and other assessments have either not been collected or have been difficult to collect; that the provisions of this act are designed to alleviate such problems and that only by the immediate effectiveness of this act may such problems be solved and certain tax revenues and assessments be rightfully provided local taxing authorities. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 669, § 6: Mar. 17, 1995. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that county assessors in various counties in Arkansas have assessed public property which is available for use by persons or organizations for events which are not open to the general public; and that county assessors are required by law to assess all real and personal property in their counties annually between the first Monday in January and the first day in August, and that an immediate need exists to clarify the status of public property used by persons or organizations for events which are not open to the general public in order to prevent such property from being placed on the tax rolls by county assessors. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 2001, No. 1375, § 2: July 1, 2003.

Acts 2001, No. 1544, § 6: Apr. 12, 2001. Emergency clause provided: “It is found and determined by the General Assembly that in order to efficiently reimburse the counties for the homestead property tax credit, county assessors are required to recertify to the Chief Fiscal Officer the amount of real property reduction on or before June 30 of the year 2001 and every year thereafter. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also [sic] effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on

July 1, 2003.”
Acts 2007, No. 411, § 2: Jan. 1, 2007.

Research References

ALR.

Recovery of tax paid on exempt property. 25 A.L.R.4th 186.

Exemptions: religious societies or institutions. 28 A.L.R.4th 344.

Exemption of public golf courses from local property taxes. 41 A.L.R.4th 963.

Exemption of nonprofit theater or concert hall from local property taxation. 42 A.L.R.4th 614.

What are educational institutions or schools within state property tax exemption provisions. 34 A.L.R.4th 698.

Exemption from real property taxation of residential facilities maintained by hospital for patients, staff, or others. 61 A.L.R.4th 1105.

Am. Jur. 71 Am. Jur. 2d, State Tax., § 307 et seq.

Ark. L. Rev.

Property Tax Exemptions in Arkansas, 4 Ark. L. Rev. 433.

C.J.S. 84 C.J.S., Tax., § 215 et seq.

26-3-301. Property exempt from taxes generally.

All property described in this section, to the extent limited, shall be exempt from taxation:

(1) Public school buildings and buildings used exclusively for public worship and the grounds attached to these buildings necessary for the proper occupancy, use, and enjoyment of the buildings, not leased or otherwise used with a view to profit;

(2) All public institutions of higher learning and all buildings and grounds belonging to those institutions;

(3) All lands used exclusively as graveyards or grounds for burying the dead, except those held by any person, company, or corporation with a view to profit or for the purpose of speculation in the sale of the lands;

(4) All property, whether real or personal, belonging exclusively to this state, including property of state agencies, institutions, boards, or commissions, or the United States;

(5) All property, whether real or personal, belonging exclusively to any county of this state;

(6) All lands, houses, and other buildings belonging to any county, city, or town used exclusively for the accommodation of the poor;

(7) All buildings belonging to institutions of purely public charity, together with the land actually occupied by these institutions, not leased or otherwise used with a view to profit, and all moneys and credits appropriated solely to sustaining, and belonging exclusively to, these institutions;

(8) All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safekeeping of the fire engines and other implements used for the extinguishment of fires, and for the meeting of fire companies, whether belonging to any town or to any fire company organized in the town;

(9) All market houses, public squares, other public grounds, town and city houses or halls owned and used exclusively for public purposes, and all works, machinery, and fixtures belonging to any town and used exclusively for conveying water to the town;

(10) Public property which may be reserved for use by any person or organization, with or without a fee for such use, and is being used exclusively for public purposes, regardless of whether the event for which the property is reserved is open for

attendance or participation by the general public;

(11) All property owned by the Girls' 4-H house, Boys' 4-H house, and the Future Farmers of America houses when the houses are used for the sole purpose of occupancy and use and enjoyment by students on the property and not leased or otherwise used with a view to profit; and

(12) (A) Under the provisions of this section, all dedicated church property, including the church building used as a place of worship, buildings used for administrative or missional purposes, the land upon which the church buildings are located, all church parsonages, any church educational building operated in connection with the church, including a family life or activity center, a recreation center, a youth center, a church association building, a day care center, a kindergarten, or a private church school shall be exempt.

(B) However, in the event any property is used partially for church purposes and partially for investments or other commercial or business purposes, the property shall be exempt from the ad valorem tax.

History. Acts 1883, No. 114, § 7, p. 199; C. & M. Dig., § 9858; Pope's Dig., § 13603; Acts 1953, No. 252, § 1; A.S.A. 1947, § 84-206; Acts 1987, No. 627, §§ 1, 2; 1987, No. 1040, § 1; 1995, No. 669, § 1; 2005, No. 1281, § 1; 2007, No. 827, § 195.

A.C.R.C. Notes. Acts 1987, No. 627, § 3, provided that in the event that, on April 4, 1987, there existed any claim for real or personal property taxes based on the ownership of the property by a public institution of higher learning, or state agency, institution, board, or commission, the amounts shall be removed from the books of officials of the county in which the property is located and no claim shall be made for payment of the amounts.

Acts 1995, No. 669, § 2 provided:

"If there exists any claim for real or personal property taxes or improvement district assessments based on use of public property by persons or organizations for events which are not open to the general public at the effective date of this act, such amounts shall be removed from the books of officials in the county in which such property is located, and no claim shall be made for payment of said amounts."

Publisher's Notes. Acts 1947, No. 110, § 1, repealed all state ad valorem taxes effective December 31, 1947, save for the collection of those taxes already levied and delinquent on that date.

Amendments. The 1995 amendment added (9)(B); substituted "the Future Farmers of America houses" for "the FFA houses" in (10); and made stylistic changes.

The 2005 amendment rewrote (5).

The 2007 amendment substituted "Public school buildings and buildings" for "All public schoolhouses and houses" in (1).

Cross References. Exempting new manufacturing establishment from taxation, Ark. Const. Amend. 27.

Exemption of homesteads from certain state taxes, Ark. Const. Amend. 22.

Exemption of mines and manufactures from taxation, Ark. Const., Art. 10, § 3.

Other tax exemptions forbidden, Ark. Const., Art. 16, § 6.

State ad valorem tax prohibited, Ark. Const. Amend. 47.

Tax exemptions, Ark. Const., Art. 16, §§ 5, 16.

Case Notes

In General.

Adjacent Property.

Cemeteries.

Charities.

Churches.
Improvement Districts.
Municipalities.
Schools.

In General.

All property is subject to taxation except such as is specially exempted by the Arkansas Constitution, and nothing else is or can be made exempt. *Garland County v. Gaines*, 56 Ark. 227, 19 S.W. 602 (1892).

Adjacent Property.

The parking lot, connecting driveways, and landscaped areas surrounding a tax exempt church building, were also held to be exempt. *Phillips v. Mission Fellowship Baptist Church*, 59 Ark. App. 242, 955 S.W.2d 917 (1997).

Cemeteries.

When church building burned and members disbanded, only the portion used as a cemetery was exempt from taxation. *Burbridge v. Smyrna Baptist Church*, 212 Ark. 924, 209 S.W.2d 685 (1948).

A cemetery is exempt from taxation unless held for profit. *Ponder v. Richardson*, 213 Ark. 238, 210 S.W.2d 316 (1948).

Charities.

The fact that rents and revenues of certain real estate are devoted to purposes of public charity will not exempt such property from taxation, since it is only when the property itself is actually and directly used for charitable purposes that the law exempts it from taxation. *Brodie v. Fitzgerald*, 57 Ark. 445, 22 S.W. 29 (1893).

A hospital supported by contributions out of employees' wages and operated for the benefit of employees and persons injured on company property is not entitled to exemption as being an institution of public charity. *Missouri Pac. Hosp. Ass'n v. Pulaski County*, 211 Ark. 9, 199 S.W.2d 329 (1947).

Part of property for which rents were collected and which was not being directly and exclusively used for public charity was subjected to taxation, as the exemption is based upon the actual use of property rather than the use of its revenues. *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971).

Churches.

A vacant lot belonging to a church adjoining the lot on which the church stands is subject to taxation. *Pulaski County v. First Baptist Church*, 86 Ark. 205, 110 S.W. 1034 (1908).

Lands conveyed to a religious society are exempt from taxes in part only as to portion used for religious purposes. *Burbridge v. Smyrna Baptist Church*, 212 Ark. 924, 209 S.W.2d 685 (1948). Subdivision (11)(A) does not clearly embrace television towers or like structures with the degree of exactness and certainty required. *Agape Church, Inc. v. Pulaski County*, 307 Ark. 420, 821 S.W.2d 21 (1991).

A television tower is not a building, and the fact that a small incidental tower house was located on the property did not convert the land into a "building." *Agape Church, Inc. v. Pulaski County*, 307 Ark. 420, 821 S.W.2d 21 (1991).

Ownership is not a condition for tax-exempt status for churches; use is determinative of entitlement to a tax exemption. *Phillips v. Mission Fellowship Baptist Church*, 59 Ark. App. 242, 955 S.W.2d 917 (1997).

Improvement Districts.

Exempt property is considered in the organization of improvement district according to its value fixed by the assessment roll, since it is not exempt from such assessments. *Fry v. Poe*, 175 Ark. 375, 1 S.W.2d 29 (1927).

Municipalities.

Land purchased by a city for present use as a dumping ground and used as such for several months, though such use had been discontinued because the road to it had become impassable, was exempt from taxation. *Hudgins v. City of Hot Springs*, 168 Ark. 467, 270 S.W. 594 (1925). Before a city can successfully claim exemption from taxation, the property must have been used for a public purpose; contemplated future use is not sufficient. *City of Springdale v. Duncan*, 240

Ark. 716, 401 S.W.2d 747 (1966).

Schools.

The exemption as to school buildings applies to private schools as well as public schools. Phillips County v. Sister Estelle, 42 Ark. 536 (1884).

Lands of school district held for profit are taxable. Board of Improv. v. School Dist., 56 Ark. 354, 19 S.W. 969, 35 Am. St. Rep. 108 (Ark. 1892); School Dist. v. Howe, 62 Ark. 481, 37 S.W. 717 (1896).

Cited: Fordyce & McKee v. Woman's Christian Nat'l Library Ass'n, 79 Ark. 550, 96 S.W. 155 (1906).

26-3-302. Intangible personalty.

(a) All intangible personal property in this state shall be exempt from all ad valorem tax levies of counties, cities, and school districts in the state.

(b) The exemption provided in this section shall be applicable with respect to the assessment and taxation of intangible personal property on and after January 1, 1976, and no ad valorem taxes shall be assessed or collected on such property for any period after January 1, 1976.

History. Acts 1977, No. 106, §§ 1, 2; A.S.A. 1947, §§ 84-213, 84-214.

Cross References. Intangible personal property, Ark. Const. Amend. 57.

Case Notes

Construction With Other Laws.

Construction With Other Laws.

Under the principle that a specific statute controls over a general statute, §§ 26-26-1606 and 26-26-1611, which relate to utilities and which include tangible and intangible property for fixing value, control over this section, which provides that intangible personal property is exempt from all ad valorem tax levies. Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm'n, 342 Ark. 591, 29 S.W.3d 730 (2000).

Cited: Bunting v. Tedford, 261 Ark. 638, 550 S.W.2d 459 (1977).

26-3-303. Parsonages.

Parsonages owned by churches and used as homes for pastors shall be exempt from all taxes on real property, except improvement district taxes.

History. Acts 1945, No. 139, § 1; A.S.A. 1947, § 84-207.

26-3-304. Textile mills.

(a) No person, firm, or corporation shall be required to make or file with any assessor or taxing authority in this state any return, report, or assessment of any kind as to or against any capital invested in a textile mill in this state for the manufacture of cotton or other fiber goods in any manner for a period of seven (7) years, all such capital being exempted from the provisions of all general taxation and assessment statutes and laws in this state which would otherwise be applicable for the period of seven (7) years.

(b) No taxes shall be assessed, levied upon, or collected on property used exclusively in the business of manufacturing textile goods in a textile mill located in this state for a period of seven (7) years after the location of a mill in this state.

History. Acts 1929, No. 74, § 2; Pope's Dig., § 13586; A.S.A. 1947, § 84-208.

Publisher's Notes. The initial part of Acts 1929, No. 74, § 2, provided for the cancellation of any

assessment of textile mills since the adoption of Ark. Const. Amend. 12, and provided for a refund of any taxes paid to a collector, but not yet paid to the treasurer of the county, since the adoption of this constitutional amendment. Near the end of § 2 of the act there is also a provision for no assessment or levy of taxes on mills located in this state for a period of seven years after adoption of the amendment.

Cross References. Exempting new manufacturing establishment from taxation, Ark. Const. Amend. 27.

Exemption of mines and manufactures from taxation, Ark. Const., Art. 10, § 3.

Textile mills, tax exemption, Ark. Const. Amend. 12.

Case Notes

Applicability.

Limited Life Nonwoven Products.

Applicability.

Where on January 1, 1926, capital was already invested in a textile mill in the state, it became exempt from taxation under Ark. Const. Amend. 12. *Wilson v. Monticello Cotton Mills Co.*, 180 Ark. 1090, 24 S.W.2d 324 (1930).

Limited Life Nonwoven Products.

Limited life nonwoven products produced from rayon and polyester fibers entitled manufacturer to tax exemption provided for in Ark. Const. Amend. 12 and this section, since to restrict the meaning of fiber goods to the products in existence in 1926 when the amendment was passed would require giving the words an extraordinary usage rather than the ordinary and natural meaning the law requires. *Casey v. Scott Paper Co.*, 272 Ark. 312, 613 S.W.2d 821 (1981).

26-3-305. Nonprofit waterworks.

Waterworks systems owned by nonprofit property owners associations are public property used for public purposes and therefore exempt from ad valorem taxation.

History. Acts 1983, No. 332, § 1; A.S.A. 1947, § 84-216.

Cross References. Property taxed according to value, Ark. Const., Art. 16, § 5.

26-3-306. Disabled veterans, surviving spouses, and minor dependent children.

(a) (1) (A) (i) A disabled veteran who has been awarded special monthly compensation by the Department of Veterans Affairs for the loss of, or the loss of use of, one (1) or more limbs, for total blindness in one (1) or both eyes, or for service-connected one hundred percent (100%) total and permanent disability shall be exempt from payment of all state taxes on the homestead and personal property owned by the disabled veteran.

(ii) (a) In the event that the disabled veteran sells his or her home, the exemption shall be prorated to the date of sale so that the disabled veteran shall owe no tax for the portion of the year he or she claimed the home as a homestead, and the purchaser shall be liable only for taxes relating to the balance of the year.

(b) Upon request by the disabled veteran, the county collector shall make such record entries as may be necessary to effect the proration.

(B) (i) Upon the death of the disabled veteran, the surviving spouse and minor dependent children of the disabled veteran shall be exempt from payment of all state taxes on the homestead and personal property owned by the surviving spouse and minor dependent children of the deceased disabled veteran.

(ii) The surviving spouse and minor dependent children of a member of the United States armed forces who was killed while within the scope of his

or her military duties, who died while within the scope of his or her military duties, or who is missing in action and the surviving spouse and minor dependent children of a veteran who died from service-connected causes, as certified by the department, shall also be exempt from payment of all state taxes on the homestead and personal property owned by the surviving spouse and minor dependent children.

(iii) (a) The surviving spouse shall be entitled to the exemption provided for in this section so long as the surviving spouse remains unmarried.

(b) The surviving spouse's exemptions provided for in this section are reinstated upon the termination of the surviving spouse's subsequent marriage.

(iv) A surviving spouse of a member of the United States armed forces who died while on active duty shall be eligible for reinstatement of the homestead and personal property tax exemption upon termination of a subsequent marriage and until the surviving spouse remarries.

(v) The exemption provided in this section for surviving minor dependent children shall be available to the surviving children during their minority.

(2) As used in this section, "personal property" means only those items of tangible personal property used for other than a commercial or business purpose.

(b) (1) (A) A disabled veteran eligible for the exemption provided for in this section and desiring to claim an exemption shall furnish to the county collector a letter from the department verifying the fact that the disabled veteran is in receipt of special monthly compensation for the loss of or the loss of use of one (1) or more limbs, total blindness in one (1) or both eyes, or for service-connected one hundred percent (100%) total and permanent disability.

(B) (i) A surviving spouse or minor dependent child of a deceased disabled veteran desiring to claim the exemption provided in this section shall furnish the county collector a letter from the department verifying the fact that the deceased disabled veteran was at the time of death entitled to receive a special monthly compensation for the loss of or the loss of use of one (1) or more limbs, total blindness in one (1) or both eyes, or for service-connected one hundred percent (100%) total and permanent disability.

(ii) In addition to the requirements in subdivision (b)(1)(B)(i) of this section, the surviving spouse or minor dependent child of the deceased disabled veteran shall furnish the county collector with an affidavit signed by the surviving spouse or minor dependent child stating that the surviving spouse or minor dependent child is a surviving spouse or minor dependent child of the named deceased disabled veteran.

(2) (A) The surviving spouse or minor dependent children of a member of the United States armed forces who was killed while within the scope of his or her military duties, who died while within the scope of his or her military duties, or who is missing in action, or a surviving spouse or minor dependent children of a veteran who died of service-connected causes, as certified by the department, desiring to claim the exemption provided in this section shall furnish the county collector a letter from the department certifying the fact that such a member of the United States armed forces is missing in action, was killed while within the scope of his or her military duties, or died while within the scope of his or her military duties or that the veteran died from service-connected causes and the surviving spouse is or would be entitled to department benefits in the form of death indemnity compensation if the surviving spouse were otherwise

eligible to receive the department benefits.

(B) In addition, the surviving spouse or minor dependent child shall furnish the county collector with an affidavit signed by the surviving spouse or minor dependent child or the surviving spouse or minor dependent child's guardian stating that the surviving spouse or minor dependent child is a surviving spouse or minor dependent child of the member of the United States armed forces who is missing in action, who was killed while within the scope of his or her military duties, or who died while within the scope of his or her military duties or is the surviving spouse or minor dependent child of a veteran who died of service-connected causes as certified by the department.

(c) Only a disabled veteran and a surviving spouse and minor dependent child of a disabled veteran who are citizens and residents of the State of Arkansas shall be eligible for the exemption provided in this section.

(d) Any person evading or violating any provision of this section or attempting to secure benefits under this section to which he or she is not entitled shall be guilty of a violation and upon conviction shall be fined in any sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(e) A person claiming the property tax exemption authorized by this section shall not be entitled to claim the property tax credit authorized in § 26-26-1118.

History. Acts 1953, No. 363, §§ 1-4; 1975, No. 196, §§ 1, 2; 1975, No. 319, §§ 1-3; 1975 (Extended Sess., 1976), No. 1220, §§ 1-3; 1977, No. 47, §§ 1, 2; A.S.A. 1947, §§ 84-209 — 84-212; reen. Acts 1987, No. 1010, §§ 1-3; Acts 1989, No. 354, § 1; 2001, No. 361, § 1; 2001, No. 1544, § 1; 2005, No. 1994, § 164; 2007, No. 411, § 1.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 1010, §§ 1-3. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Effective Dates. Acts 2007, No. 411, § 2, provided: "Effective Date. This act is effective on and after January 1, 2007."

Amendments. The 2001 amendment, by No. 361, redesignated the former (a)(1)(A) as present (a)(1)(A)(i) and (a)(1)(A)(ii); inserted "or her" in (a)(1)(A)(ii) and (a)(1)(B)(ii); substituted "armed forces" for "Armed Forces" in (a)(1)(B)(ii); redesignated the former (a)(1)(B)(ii) as present (a)(1)(B)(ii), (a)(1)(B)(iii), and (a)(1)(B)(v); inserted (a)(1)(B)(iv); and made minor stylistic changes. The 2001 amendment, by No. 1544, added (e).

The 2005 amendment, in (d), substituted "violation" for "misdemeanor" and deleted "and such costs as are provided by law in misdemeanor offenses" from the end; and made gender neutral changes throughout.

The 2007 amendment added the (a)(1)(B)(iii)(a) designation and added (a)(1)(B)(iii)(b).

Research References

U. Ark. Little Rock L.J.

Survey of Arkansas Law, Taxation, 1 U. Ark. Little Rock L.J. 258.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

Case Notes

Claiming Exemption.

Claiming Exemption.

Taxes voluntarily paid are not recoverable; where taxpayer voluntarily paid his taxes for the years 1980 through 1986, and claimed no exemption under subdivision (b)(1)(A) for any one of those years, he was not entitled to a refund. *Rutherford v. Barnes*, 312 Ark. 177, 847 S.W.2d 689 (1993).

26-3-307. [Transferred.]

A.C.R.C. Notes. This section, concerning adaptive medical equipment and disposable medical supplies, has been renumbered by Acts 2003, No. 1473, § 64 as § 26-52-433 and § 26-53-141.

26-3-308. Property owned by the State Highway Commission or the State Highway and Transportation Department.

(a) It is hereby found and determined by the Seventy-Eighth General Assembly that all property owned by the Arkansas State Highway Commission or the Arkansas State Highway and Transportation Department is public property used exclusively for public purposes.

(b) Since neither the commission nor the department pursuant to Arkansas Constitution, Article 16, § 5, are required to pay real or personal property taxes on real estate and tangible personal property owned by that commission or department, likewise, notwithstanding any provision of law to the contrary, the commission and department shall not be required to pay any improvement district assessments that may be assessed against the commission or department as a result of such ownership.

History. Acts 1991, No. 961, § 2.

Research References

ALR.

Mining exemption to sales or use tax. 47 A.L.R.4th 1229.

26-3-309. [Transferred.]

A.C.R.C. Notes. This section, concerning fire protection equipment and emergency equipment, has been renumbered by Acts 2003, No. 1473, § 65 as § 26-52-434 and § 26-53-142.

26-3-310. [Transferred.]

A.C.R.C. Notes. This section, concerning wall and floor tile manufacturers, has been renumbered by Acts 2003, No. 1473, § 66 as § 26-52-435 and § 26-53-143.

**Chapter 4
Tax Incentives**

Subchapter 1 — General Provisions

Subchapter 2 — Motion Pictures

Cross References. Tax exemptions for certain industries, § 15-4-207.

**Subchapter 1
— General Provisions**

[Reserved]

Subchapter 2

— Motion Pictures

- 26-4-201. Title.
- 26-4-202. Purpose.
- 26-4-203. Definitions.
- 26-4-204. Penalties.
- 26-4-205. Registration.
- 26-4-206. Tax incentive.
- 26-4-207. Expiration date.
- 26-4-208. Application for incentive.
- 26-4-209. Disbursement of benefit.
- 26-4-210. Audit.
- 26-4-211. [Repealed.]
- 26-4-212. Rules and regulations.
- 26-4-213. Disclaimer by state.

Cross References. Financial incentive for the production of motion pictures, § 15-4-2001 et seq.

Effective Dates. Acts 1983, No. 276, § 16: Feb. 25, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that the incentive afforded by this Act to the motion picture industry can serve to stimulate the economy of the area in which filming is done; and that the incentive has a multiplier effect, in terms of economic development, in the locality of the filming and statewide; and that tax revenues generated by the activities of motion picture filming more than offset the revenue lost through the incentive provided by this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 1032, § 3: Apr. 14, 1987. Emergency clause provided: “It is hereby found and determined by the Seventy-Sixth General Assembly that restriction in the law requiring the motion picture production company to maintain a checking account, prior to and following its stay in Arkansas, is unnecessary and an undue hardship for those companies seeking to take advantage of the Motion Picture Incentive Act of 1983. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 989, § 6: Apr. 8, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that the changes made by this Act will further attract the motion picture industry into the State of Arkansas; that filming in Arkansas contributes to the economic betterment of the State; and that the sooner this Act goes into effect the sooner we will be able to attract more motion picture filming within the State. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2009, No. 816, § 4: July 31, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas the incentives afforded by this Act to the digital content industry can serve to stimulate the economy of the area in which production and postproduction is performed; and that the incentives have a multiplier effect, in terms of economic development, in the locality of the production and statewide; and that tax revenues generated by the activities of digital content production and postproduction more than offset the revenue lost through the incentives provided by this act. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

26-4-201. Title.

This subchapter may be referred to and cited as the “Motion Picture Incentive Act of 1983”.

History. Acts 1983, No. 276, § 1; A.S.A. 1947, § 84-4801.

26-4-202. Purpose.

It is found and determined that:

(1) Arkansas' natural beauty and diverse topography provides a variety of excellent settings from which the motion picture industry might choose a location for filming a motion picture or television program;

(2) Several successful motion pictures have been filmed in Arkansas, due to the unique qualities of the state in terms of natural settings, availability of labor, materials, climate, and hospitality of its people;

(3) The motion picture industry brings with it a much-needed infusion of capital into areas of the state which may be economically depressed;

(4) The multiplier effect of the infusion of capital resulting from the filming of a motion picture or television program serves to stimulate economic activity beyond that immediately apparent on the film set;

(5) Due to the distance of Arkansas from the film industry center on the West Coast and due to this period of economic depression, it is necessary to provide financial incentives to the film industry in order that Arkansas might compete with other states for filming locations; and

(6) Since a significant portion of the cost of a motion picture production will not be eligible for a tax incentive due to the fact that portions of the production are carried out in another state, this subchapter may also serve as an inducement for the motion picture industry to locate operations within the State of Arkansas in order to take advantage of the tax incentive afforded by this subchapter.

History. Acts 1983, No. 276, § 2; A.S.A. 1947, § 84-4802.

26-4-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Revenue Division” means the Revenue Division of the Arkansas Department of Finance and Administration;

(2) “Motion picture production company” means a company engaged in the business of producing motion pictures intended for a theatrical release or for television viewing;

(3) “Motion Picture Office” means the division of the Arkansas Economic Development Commission charged with the responsibility of promoting and assisting the motion picture industry in Arkansas;

(4) “Resident” means natural person and includes for the purpose of determining eligibility for the tax incentive provided by this subchapter any person domiciled in the State of Arkansas and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than six (6) months of the taxable year within the state;

(5) “Financial institution” means any bank or savings and loan in the state which

carries Federal Deposit Insurance Corporation (FDIC) or Federal Savings and Loan Insurance Corporation (FSLIC) insurance.

History. Acts 1983, No. 276, § 3; A.S.A. 1947, § 84-4803; Acts 1997, No. 540, § 53.

Amendments. The 1997 amendment substituted “Arkansas Economic Development Commission” for “Arkansas Industrial Development Commission” in (3).

26-4-204. Penalties.

(a) Any motion picture production company failing to comply with § 26-4-205 may be enjoined from engaging in the business of producing motion pictures in the State of Arkansas by any court of competent jurisdiction until the requirements of that section are met.

(b) Any person, business, or motion picture production company exploiting or attempting to exploit the tax incentive afforded by this subchapter shall be subject to penalty in accordance with applicable state or federal law.

(c) Any motion picture production company attempting to abuse the intent of this subchapter shall be denied any tax incentive to which it would otherwise be entitled and shall be prohibited from applying for any future tax incentive afforded by this subchapter.

History. Acts 1983, No. 276, § 9; A.S.A. 1947, § 84-4809.

26-4-205. Registration.

Each motion picture production company which plans to film any scenes within the borders of the State of Arkansas shall register with the Motion Picture Office prior to the commencement of filming.

History. Acts 1983, No. 276, § 4; A.S.A. 1947, § 84-4804.

26-4-206. Tax incentive.

Any motion picture production company which expends in excess of one million dollars (\$1,000,000) in connection with the filming or production of one (1) or more motion pictures in the State of Arkansas within a twelve-month period or which expends in excess of five hundred thousand dollars (\$500,000) in connection with the filming or production of one (1) motion picture in this state within a six-month period shall, upon making application therefor and meeting other requirements prescribed in this subchapter, be entitled to a tax incentive benefit of five percent (5%) of the funds so expended in Arkansas in connection with the filming or production of a motion picture.

History. Acts 1983, No. 276, § 5; 1985, No. 895, § 1; A.S.A. 1947, § 84-4805; Acts 1991, No. 989, § 1.

Case Notes

Cited: *Bosworth v. Pledger*, 305 Ark. 598, 810 S.W.2d 918 (1991).

26-4-207. Expiration date.

The opportunity for a tax incentive provided by § 26-4-206 shall expire on June 30, 1993.

History. Acts 1983, No. 276, § 12; A.S.A. 1947, § 84-4812.

26-4-208. Application for incentive.

(a) Any motion picture production company that intends to film all or parts of a motion picture in Arkansas and desires to take advantage of the tax incentive provided for in this subchapter shall provide an estimate of total expenditures to be made in Arkansas in connection with the filming or production of the motion picture. The estimate of expenditures shall be filed with the Motion Picture Office prior to the commencement of filming in Arkansas.

(b) At the time the motion picture production company provides the estimate of expenditures to the office, it shall also designate a member or representative of the motion picture production company to work with the office and the Revenue Division on the reporting of expenditures and other information necessary to take advantage of the tax incentive afforded by this subchapter.

(c) Within two (2) weeks after principal photography begins, the motion picture production company shall begin filing weekly expenditure reports. Failure to file weekly expenditure reports may result in a delay in the disbursement of the tax incentive benefit as provided in § 26-4-209. The weekly expenditure report shall be filed in accordance with, but not limited to, the following provisions:

(1) In order to be eligible for the tax incentive provided for by this subchapter, payments shall be made from a checking account from any Arkansas financial institution;

(2) Direct cash payments by the production company to Arkansas vendors, businesses, or citizens hired as cast or crew which are accompanied by receipts shall be allowed if the sum of the cash payments does not exceed forty percent (40%) of the total verifiable expenditures;

(3) Per diem expenditures by the cast or crew for lodging when accompanied by receipts shall be eligible expenditures;

(4) Expenditure reports shall include, but are not limited to, check identification number, date of payment, name of payee, address of payee, amount paid, name of financial institution, and other such information as may be deemed necessary by the Revenue Division to insure compliance with this subchapter;

(5) Payments for salaries or wages are limited to Arkansas residents who filed an Arkansas income tax return in the previous tax year; and

(6) Payments for penalties or fines, payments to nonprofit organizations, and payments to federal and state entities that do not pay state taxes are to be excluded.

(d) The twelve-month period during which expenditures may qualify for the tax incentive provided by this subchapter begins on the date of the earliest expenditure reported.

(e) Upon completion of filming or production in Arkansas, the motion picture production company shall file an application for the tax incentive afforded by this subchapter. The application shall include a final expenditure report giving a total amount of expenditures which were made in the state in connection with the filming or production of a motion picture and which comply with the provisions of this subchapter. The motion picture production company shall provide documentation for expenditures in accordance with regulations promulgated by the Revenue Division.

(f) Applications for the tax incentive provided by this subchapter shall be accepted only from those motion picture production companies which report expenditures in the state in excess of one million dollars (\$1,000,000) in connection with the filming or production of one (1) or more motion pictures in the state within a twelve-month period or five

hundred thousand dollars (\$500,000) in connection with the filming or production of one (1) motion picture in the state within a six-month period.

(g) (1) When a motion picture production company hires a payroll service company to handle the payroll of a production, the payroll payments otherwise allowable under § 26-4-201 et seq. shall be allowed as eligible expenditures if:

(A) Payments made by the motion picture production company to the payroll service company are paid through an Arkansas financial institution account; and

(B) The payroll checks issued by the payroll service company are drawn on a bank or other entity which is outside the State of Arkansas, and the out-of-state bank or other entity guarantees payment of the checks at an Arkansas financial institution;

(2) When a motion picture production company hires a food catering service company which is outside the State of Arkansas, payments otherwise allowable under § 26-4-201 et seq., which are made by the out-of-state food catering service to food businesses located in Arkansas, shall be allowed as eligible expenditures if actual receipts or copies of invoices from the food businesses located in Arkansas are filed with the weekly expenditure reports and payments made by the motion picture production company to the out-of-state food catering service company are paid through an Arkansas financial institution account; and

(3) Preproduction and postproduction expenses, which otherwise qualify, may be made from a checking account from a financial institution located outside of Arkansas.

History. Acts 1983, No. 276, § 6; 1985, No. 895, §§ 2-4; A.S.A. 1947, § 84-4806; Acts 1987, No. 1032, § 1; 1991, No. 989, § 2.

26-4-209. Disbursement of benefit.

(a) The Revenue Division, upon receipt of an application for a tax incentive, shall:

(1) Calculate the total expenditures of the motion picture production company for which there are documented receipts for funds expended in the state;

(2) Calculate the tax incentive benefit to which the applicant is entitled; and

(3) Certify it to the Chief Fiscal Officer of the state. The division shall certify to the Chief Fiscal Officer of the state the amount to be remitted to the motion picture production company within sixty (60) days of the final expenditure report.

(b) The Chief Fiscal Officer of the state shall remit the five percent (5%) tax incentive benefit to the motion picture production company within ten (10) working days of the receipt of the certification of the amount thereof from the Revenue Division. The benefit shall be paid from any available funds appropriated for miscellaneous tax refunds by the General Assembly.

History. Acts 1983, No. 276, § 7; A.S.A. 1947, § 84-4807.

26-4-210. Audit.

The Revenue Division may require that reported expenditures and the application for a tax incentive from the motion picture production company be subjected to an audit by Revenue Division auditors to verify expenditures.

History. Acts 1983, No. 276, § 11; A.S.A. 1947, § 84-4811.

26-4-211. [Repealed.]

Publisher's Notes. This section, concerning the Motion Picture Office Fund, was repealed by Acts 2009, No. 816, § 3. The section was derived from Acts 1983, No. 276, § 8; A.S.A. 1947, § 84-4808.

26-4-212. Rules and regulations.

The Revenue Division shall promulgate appropriate rules and regulations to carry out the intent and purposes of this subchapter and to prevent abuse.

History. Acts 1983, No. 276, § 13; A.S.A. 1947, § 84-4813.

26-4-213. Disclaimer by state.

The State of Arkansas reserves the right to refuse the use of Arkansas' name in the credits of any motion picture filmed or produced in the state.

History. Acts 1983, No. 276, § 10; A.S.A. 1947, § 84-4810.

Chapter 5 Multistate Tax Compact

26-5-101. Multistate Tax Compact.

26-5-102. Election to report tax on basis of volume percentage.

26-5-103. State representative.

26-5-104. Advisory committee.

26-5-105. Local government committee.

26-5-106. Legal counsel.

26-5-107. Interstate audit procedures.

26-5-108. Authorized forms.

Publisher's Notes. Acts 1967, No. 410, § 7, provided that "nothing in this act shall be deemed to amend, repeal, or modify any of the provisions of the Income Tax Act of 1929 (Acts 1929, No. 118), or laws amendatory thereto, or the provisions of the Uniform Division of Income For Tax Purpose Act (Acts 1961, No. 413), or laws amendatory thereto, or any of the other tax laws of this state, it being the intent of this act that, by the enactment of the Multistate Tax Compact, the General Assembly has established an option, as authorized in this compact, whereby a multistate taxpayer may elect to report and pay taxes in accordance with the existing tax laws of this state or in accordance with the terms of the compact, as the taxpayer may elect."

Effective Dates. Acts 1967, No. 410, § 9: Jan. 1, 1968.

Acts 1968 (1st Ex. Sess.), No. 59, § 3: Feb. 27, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Multistate Tax Commission is now meeting regularly and formulating policies; that, as the law now stands, the Commissioner of Revenues may only designate as his alternate either the Director of the Income Tax Division or the Director of the Sales Tax Division or the Assistant State Revenue Commissioner; that, at times, it is impossible for any of these three persons to attend the Multistate Tax Commission meetings; that, in order to give the Commissioner of Revenues a wider latitude in designating his alternate, this Act should become effective immediately. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 401, § 50: Jan. 1, 1980.

Acts 1989, No. 395, § 6: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the provisions of Arkansas Code of 1987 Annotated § 26-53-101 et seq. do not specifically provide for allowance to be given to persons for similar taxes paid in other states; that the proper and effective administration of the compensating (use) tax will be greatly enhanced by the provisions of a reciprocal tax credit given

by the State of Arkansas to purchasers who have previously paid a compensating tax in another state, provided that such other state offers the same tax credit to Arkansas purchasers for tangible personal property brought into the other state; that this act is immediately necessary in order to eliminate the possibility that Arkansas taxpayers will be subject to undue multiple taxation by other states due to the failure of the states' taxing authorities to equate the Arkansas Gross Receipts Tax to sales tax for purposes of allowing a reciprocal sales tax credit; that this act is also necessary to lessen the administrative burdens on taxpayers whose monthly gross receipts tax liability is relatively small in amount. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 682, § 3: effective for tax years beginning on or after January 1, 1995.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Case Notes

Constitutionality.
Interstate Carriers.

Constitutionality.

The multistate tax compact does not impermissibly enhance state power at the expense of federal authority, and therefore the congressional approval requirements of U.S. Const., Art. 1, § 10, cl. 3, are inapplicable and the compact is valid without such approval; moreover, instances of unlawful enforcement of the compact, while they might amount to violations of U.S. Const. Amend. 14, are irrelevant to the facial validity of the compact. *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452, 98 S. Ct. 799, 54 L. Ed. 2d 682 (1978).

Interstate Carriers.

Where interstate air freight carrier would be given tax credit by another state under this compact, carrier was not subjected to double taxation because of imposition of compensating tax on aircraft brought to this state for extensive modifications before entering carrier's interstate operations. *Skelton v. Federal Express Corp.*, 259 Ark. 127, 531 S.W.2d 941 (1976) (decision under prior law).

26-5-101. Multistate Tax Compact.

The "Multistate Tax Compact" is enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

MULTISTATE TAX COMPACT

ARTICLE I Purposes

The purposes of this compact are to:

- 1.** Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;
- 2.** Promote uniformity or compatibility in significant components of tax systems;
- 3.** Facilitate taxpayer convenience and compliance in the filing of

tax returns and in other phases of tax administration;

4. Avoid duplicative taxation.

ARTICLE II Definitions

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;
2. "Subdivision" means any governmental unit or special district of a state;
3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity in more than one state;
4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one (1) or more forms of which expenses are not specifically and directly related to particular transactions;
5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety;
6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax on income tax;
7. "Sales tax" imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles;
8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax;
9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV, and V of this compact shall apply only to the taxes specifically designated therein, and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

ARTICLE III Elements of Income Tax Laws

Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two (2) or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax. Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of one hundred thousand dollars (\$100,000) may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The Multistate Tax Commission, not more than once in five years, may adjust the one hundred thousand dollar (\$100,000) figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the one hundred thousand dollar (\$100,000) figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph. Coverage.

3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV Division of Income

1. As used in this Article, unless the context otherwise requires:
 - (a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operation;
 - (b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;
 - (c) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;
 - (d) [Repealed.]
 - (e) "Nonbusiness income" means all income other than business

income;

(f) “Public utility” means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency;

(g) “Sales” means all gross receipts of the taxpayer not allocated under paragraphs of this article;

(h) “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

(i) “This state” means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this article, the taxpayer may elect to allocate and apportion his entire net income as provided in this article.

3. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this article.

5.

(a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the

state in which the property was located at the time the rental or royalty payer obtained possession.

6.

(a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8.

(a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent copyright is utilized by the payer in the state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus double the sales factor, and the denominator of which is four (4).

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total

amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

- (a) The individual's service is performed entirely within the state;
- (b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
- (c) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

- (a) The property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or
- (b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States Government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

- (a) The income-producing activity is performed in this state; or
- (b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (a) Separate accounting;
- (b) The exclusion of any one (1) or more of the factors;
- (c) The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V Elements of Sales and Use Tax Laws

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any

use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision. For purposes of applying this credit by other states to Arkansas residents, the term “gross receipts tax” as applied to Arkansas residents by Title 26, Chapter 52 of this Code, shall be synonymous with the term “sales tax” as used by the state applying such credit.

Exemption Certificates, Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI The Commission

Organization and Management.

1.

(a) The Multistate Tax Commission is hereby established. It shall be composed of one (1) “member” from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one (1) such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one (1) vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable. Committees.

2.

(a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven (7) members, including the chairman, vice-chairman, treasurer and four (4) other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.
Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes;

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging

the simplification and improvement of state and local tax law and administration;

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws;

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.
Finance.

4.

(a) The commission shall submit to the Governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth ($1/10$) in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, and sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1(i) of this article; provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII Uniform Regulations and Forms

1. Whenever any two (2) or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock

tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one (1) public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII Interstate Audits

1. This article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident, provided that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this

paragraph apply only to courts in a state that has adopted this article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states for subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX Arbitration

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two (2) or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one (1) person selected by the taxpayer, one (1) by the agency or agencies involved, and one (1) member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two (2) persons selected for the board in the manner provided

by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

ARTICLE X Entry Into Force and Withdrawal

1. This compact shall enter into force when enacted into law by any seven (7) states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI Effect on Other Laws and Jurisdiction

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII 9 may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History. Acts 1967, No. 410, § 1; A.S.A. 1947, § 84-4101; Acts 1989, No. 395, § 1; 1989, No. 494, §§ 2, 4; 1995, No. 682, § 1.

Amendments. The 1995 amendment substituted “plus double the sales factor, and the denominator of which is four” for “plus the sales factor, and the denominator of which is three” in paragraph 9 of Article IV.

Effective Dates. Acts 1995, No. 682, § 3: effective for tax years beginning on or after January 1, 1995.

Research References

Ark. L. Rev.

Case Note, Pledger v. Illinois Tool Works, Inc.: Arkansas Belatedly Recognizes the Unitary Business Principle as a Limitation of Its Power to Tax Capital Gains of Nondomiciliary Corporations, 45 Ark. L. Rev. 597.

Case Notes

Cited: Pledger v. Brunner & Lay, Inc., 308 Ark. 512, 825 S.W.2d 599 (1992).

26-5-102. Election to report tax on basis of volume percentage.

(a) Every taxpayer required to file an income tax return pursuant to provisions of the Arkansas Income Tax Act, § 26-51-101 et seq., whose only activity within this state consists of sales and does not include owning or renting real estate or tangible personal property in this state and whose dollar volume of gross sales made during the last year within the State of Arkansas or its subdivisions, as the case may be, is not in excess of one hundred thousand dollars (\$100,000) may elect to report any tax due the State of Arkansas on the basis of a percentage of this volume, and the Director of the Department of Finance and Administration is authorized to adopt rates which are calculated to produce a tax thereon which reasonably approximates the tax otherwise due under the laws of this state from these taxpayers.

(b) In the event the Multistate Tax Commission shall adjust the one hundred thousand dollar (\$100,000) figure provided in this section in the manner authorized in the Multistate Tax Compact, § 26-5-101, the adjusted figure shall replace the one hundred thousand dollar (\$100,000) figure provided in this section.

History. Acts 1967, No. 410, § 2; A.S.A. 1947, § 84-4102.

26-5-103. State representative.

The Director of the Department of Finance and Administration of the State of Arkansas shall represent this state on the Multistate Tax Commission. The director may, with the approval of the Governor, designate an alternate to serve on the commission in his place if there is on file with the commission written notification of the designation and the identity of the alternate.

History. Acts 1967, No. 410, § 3; 1968 (1st Ex. Sess.), No. 59, § 1; A.S.A. 1947, § 84-4103.

26-5-104. Advisory committee.

(a) There is established a Multistate Tax Compact Advisory Committee of this state composed of:

(1) The member of the Multistate Tax Commission representing this state or any alternate designated by him;

(2) The Attorney General or his designee;

(3) Two (2) members of the Senate appointed by the President Pro Tempore of the Senate; and

(4) Two (2) members of the House of Representatives appointed by the Speaker thereof.

(b) The chairman of the advisory committee shall be the member of the commission representing this state.

(c) (1) The committee shall meet on the call of its chairman or at the request of a majority of its members, but, in any event, it shall meet not less than one (1) time each year.

(2) The committee may consider any and all matters relating to recommendations of the commission and the activities of the members in representing this state on it.

History. Acts 1967, No. 410, § 5; A.S.A. 1947, § 84-4105; Acts 1995, No. 1160, § 14.

Amendments. The 1995 amendment substituted “one (1) time each year” for “three (3) times in each year” in (c)(1).

26-5-105. Local government committee.

(a) The Governor, after consultation with representatives of local governments, may appoint a committee of three (3) persons who are representative of subdivisions of this state affected, or likely to be affected, by the Multistate Tax Compact, § 26-5-101.

(b) The member representing this state on the Multistate Tax Commission, or any alternate designated by him to serve on the commission, shall consult regularly with these appointees, if they are named, in accordance with Article VI 1(b) of the compact.

History. Acts 1967, No. 410, § 4; A.S.A. 1947, § 84-4104.

26-5-106. Legal counsel.

The chief attorney of the Revenue Division is designated as counsel to represent this state at meetings of the Multistate Tax Commission. However, the Director of the Department of Finance and Administration may request the Attorney General of this state to attend meetings of the commission or to designate one (1) of his assistant attorneys general to attend commission meetings.

History. Acts 1967, No. 410, § 4; A.S.A. 1947, § 84-4104.

26-5-107. Interstate audit procedures.

The provisions of Article VIII of the Multistate Tax Compact, § 26-5-101, pertaining to interstate audits, shall not be applicable to this state unless the Director of the Department of Finance and Administration shall, with the approval of the Governor, determine that compliance with the interstate audits procedures would be in the better interest of this state and shall notify the commission of this fact in writing.

History. Acts 1967, No. 410, § 6; 1979, No. 401, § 46; A.S.A. 1947, § 84-4106.

26-5-108. Authorized forms.

The Director of the Department of Finance and Administration is authorized to adopt and use forms promulgated by the Multistate Tax Commission pursuant to Article VII of the Multistate Tax Compact, § 26-5-101.

History. Acts 1967, No. 410, § 6; 1979, No. 401, § 46; A.S.A. 1947, § 84-4106.

Chapters 6-15

[Reserved.]

[Reserved]

Subtitle 2.
Administration Of State Taxes

Chapter 16 General Provisions
Chapter 17 Revenue Division
Chapter 18 State Tax Procedure Generally
Chapter 19 Electronic Funds
Chapter 20 Uniform Sales and Use Tax Administration Act
Chapter 21 Streamlined Sales Tax Administrative Act
Chapter 22 [Reserved]

Chapter 16
General Provisions

[Reserved]

Chapter 17
Revenue Division

Subchapter 1 — General Provisions
Subchapter 2 — Staff Personnel
Subchapter 3 — Powers and Duties
Subchapter 4 — Reciprocal Pacts and Agreements
Subchapter 5 — Collection of Revenues

Research References

ALR.

Estoppel of state or local government in tax matters. 21 A.L.R.4th 573.

Subchapter 1
— General Provisions

[Reserved]

Subchapter 2
— Staff Personnel

26-17-201. Authority to employ.
26-17-202. Attorneys.
26-17-203. Field auditors.
26-17-204. Bond.

Effective Dates. Acts 1935, No. 131, § 5: approved Mar. 19, 1935. Emergency clause provided: "It is hereby declared that certain defects in the law defining the duties of the Commissioner of Revenues of the State of Arkansas should be immediately corrected so that all litigation wherein the State of Arkansas is a party at interest can be more properly prosecuted; that this Act is

essential to the immediate preservation of the public health, peace and safety; an emergency is hereby declared and this Act shall take effect and be in full force and effect from and after its passage.”

26-17-201. Authority to employ.

The Director of the Department of Finance and Administration shall employ such clerical and legal assistants as he may deem necessary for the proper function of the Revenue Division.

History. Acts 1935, No. 131, § 3; Pope's Dig., § 13355; A.S.A. 1947, § 84-1721.

26-17-202. Attorneys.

(a) The Director of the Department of Finance and Administration shall employ one (1) or more attorneys for the Revenue Division of the Department of Finance and Administration if he or she deems it necessary and if a saving of money can be had by employing one (1) or more attorneys for the division.

(b) Each division attorney may maintain and defend the interests of the division in matters before:

- (1) Administrative bodies;
- (2) Arkansas trial courts;
- (3) The Court of Appeals;
- (4) The Supreme Court;
- (5) The United States Supreme Court; and
- (6) All other federal courts.

History. Acts 1935, No. 131, § 3; Pope's Dig., § 13355; A.S.A. 1947, § 84-1721; Acts 2001, No. 456, § 1.

Amendments. The 2001 amendment, in (a), deleted the second sentence, and in the former first sentence, deleted “by and with the approval of the Governor,” and substituted “one (1) or more attorneys” for “an attorney”; and added (b).

Cross References. Suits by the Department of Finance and Administration, § 26-17-304.

26-17-203. Field auditors.

It shall be the duty of the Director of the Department of Finance and Administration in selecting field auditors to be employed by the Revenue Division to require that the applicants meet the following qualifications:

(1) That he is a college graduate with a degree in accounting, business, or related field with a minimum of twenty-four (24) hours of accounting. Accounting experience may be substituted for part or all of the basic requirement;

(2) That he is of good moral character and bears a good reputation for honesty and trustworthiness;

(3) That he is in a good state of physical health that will enable him to properly discharge his duties;

(4) That he has a valid Arkansas driver's license and is in good standing with the Arkansas Office of Driver Services.

History. Acts 1949, No. 154, § 1; 1979, No. 485, § 1; A.S.A. 1947, § 84-1728.

26-17-204. Bond.

All deputy commissioners and other employees of the Revenue Division collecting or handling funds shall be placed under bond, premium on which shall be paid by the state upon vouchers issued by the Director of the Department of Finance and Administration payable out of funds appropriated for that purpose.

History. Acts 1935, No. 234, § 5; Pope's Dig., § 13349; A.S.A. 1947, § 84-1714.

A.C.R.C. Notes. The operation of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The section may again become effective upon cessation of coverage under that program. See § 21-2-703.

Subchapter 3 — Powers and Duties

26-17-301. Performance required.

26-17-302. Motor vehicle license fees.

26-17-303. Petroleum products.

26-17-304. Suits and other proceedings.

Effective Dates. Acts 1933, No. 12, § 11: approved Feb. 3, 1933. Emergency clause provided: "As this act affects the operation of the state government, and will effect economies that are absolutely necessary for the proper functioning of the government, an emergency is hereby declared, and this act shall take effect and be in force from and after its passage."

Acts 1935, No. 131, § 5: approved Mar. 19, 1935. Emergency clause provided: "It is hereby declared that certain defects in the law defining the duties of the Commissioner of Revenues of the State of Arkansas should be immediately corrected so that all litigation wherein the State of Arkansas is a party at interest can be more properly prosecuted; that this Act is essential to the immediate preservation of the public health, peace and safety; an emergency is hereby declared and this Act shall take effect and be in full force and effect from and after its passage."

26-17-301. Performance required.

All of the employees of the Revenue Division shall perform such duties and respond to such directions as the Director of the Department of Finance and Administration from time to time may enjoin.

History. Acts 1935, No. 234, § 3; Pope's Dig., § 13347; A.S.A. 1947, § 84-1712.

26-17-302. Motor vehicle license fees.

The Director of the Department of Finance and Administration shall collect the motor vehicle license fees prescribed by law, and he is empowered to make and enforce the necessary rules and regulations to insure those collections.

History. Acts 1933, No. 94, § 1; Pope's Dig., § 13357; A.S.A. 1947, § 84-1707.

Case Notes

Repeal of Prior Law.

Repeal of Prior Law.

Acts 1929, No. 65, §§ 29-33, charging the sheriff with the collection of the motor vehicle tax, was impliedly repealed by this section. *Curlin v. Watson*, 187 Ark. 685, 61 S.W.2d 701 (1933).

26-17-303. Petroleum products.

Inspection of petroleum oils and products required to be made by law shall devolve on the Director of the Department of Finance and Administration who shall collect the fees therefor provided by law.

History. Acts 1933, No. 12, § 5; Pope's Dig., § 13356; A.S.A. 1947, § 84-1706.

Cross References. Inspection of oil products, § 15-74-401 et seq.

26-17-304. Suits and other proceedings.

(a) (1) (A) The Director of the Department of Finance and Administration may:

(i) Institute and prosecute in his or her name as such all suits and other proceedings necessary for the collection of any taxes or fees collectible by him or her and which have become delinquent; and

(ii) Defend all suits and other proceedings concerning taxes, fees, or licenses administered by the director.

(B) All suits and proceedings instituted by the director or defended by the director that concern taxes, fees, or licenses administered by the Revenue Division of the Department of Finance and Administration may be maintained or defended by an attorney authorized to represent the interests of the division pursuant to § 26-17-202.

(2) No deposits of advance cost shall be required of the director in any suit or proceedings, nor shall he or she be required to give bond for cost, indemnity, or stay as a condition to the institution of any suit or proceedings or to the issuance, service, or execution of any process in any suit or proceedings or ancillary to any suit or proceedings or to the appeal from any adverse action.

(b) (1) The director shall not be required to advance or pay any court costs to any court clerk for the institution or prosecution of any suit filed in his or her official capacity.

(2) No bond shall be required of the director in obtaining restraining orders, injunctions, or any other cases in which a bond is required to be made by a litigant, including supersedeas bond upon appeal.

History. Acts 1935, No. 131, § 2; 1935, No. 234, § 8; Pope's Dig., §§ 13352, 13354; A.S.A. 1947, §§ 84-1718, 84-1720; Acts 2001, No. 456, § 2.

Amendments. The 2001 amendment, in (a), inserted "or her" and "or she" throughout; redesignated former (a)(1) as present (a)(1)(A), inserted "or fees," inserted the language following "delinquent," added (a)(1)(B); inserted "to" preceding "the appeal" in (a)(2); and made minor stylistic changes.

Subchapter 4

— Reciprocal Pacts and Agreements

26-17-401. Penalty.

26-17-402. Authority to enter agreements.

26-17-403. Powers and duties.

26-17-404. Violations.

Effective Dates. Acts 1949, No. 144, § 6: Feb. 23, 1949. Emergency clause provided: "Because of the doubtful authority heretofore possessed by agents of the Revenue Department, many tax violations may not be properly prosecuted; and this Act, being necessary to provide better enforcement of tax laws, is therefore necessary for preservation of the public peace, health and

safety, an emergency is hereby declared and this Act shall be and remain in full force and effect from and after its passage and approval.”

26-17-401. Penalty.

(a) Any person, firm, or corporation found guilty of violating provisions of this subchapter and any person, firm, or corporation that shall willfully evade or willfully fail to pay any Arkansas tax except ad valorem taxes on real estate as provided by law shall be guilty of a misdemeanor.

(b) (1) Any person convicted shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than five thousand dollars (\$5,000).

(2) Any person, firm, or corporation so convicted shall, as a part of the penalty of the conviction, pay to the state a sum equal to three (3) times the amount of taxes avoided.

(3) Any person or company official so convicted shall be punished by imprisonment in the county jail for a period of not to exceed six (6) months.

(c) Each transaction shall constitute a separate offense.

History. Acts 1949, No. 144, § 4; A.S.A. 1947, § 84-1734.

26-17-402. Authority to enter agreements.

The Director of the Department of Finance and Administration is authorized and empowered, on behalf of the State of Arkansas, to enter into reciprocal pacts and agreements with other states and with the government of the United States for the exchange of information and copies of public and private records, documents, books, and all other matters relative to taxes in which any state may be interested if the state or United States government is a party to such an agreement or pact.

History. Acts 1949, No. 144, § 1; A.S.A. 1947, § 84-1731.

26-17-403. Powers and duties.

The Director of the Department of Finance and Administration and his agents are authorized and empowered to perform the duties necessary to comply with any pact or agreement with any other state or with the government of the United States as provided:

(1) Upon request of any state or government of the United States that is a party to a reciprocal pact or agreement with the State of Arkansas, the director and his agents are empowered to furnish such information from public or private records as may be requested by a state;

(2) The director and his agents in the performance of these duties are empowered to require any person, firm, or corporation to make records available to the director for examination and copying. These records shall be available to the director or his agents at all reasonable times;

(3) The director and his agents are empowered to question any person with reference to any matter involving Arkansas taxes or the taxes of any state or government of the United States with which the State of Arkansas may be a party to a pact or agreement for exchange of tax information if the state or government of the United States shall request assistance of the State of Arkansas in obtaining information. The director and his agents are empowered to take depositions or written sworn statements in the performance of these duties. All persons, firms, or corporations shall, upon demand of the

director or his agents, supply full and accurate information. That information shall not be used against the person, firm, or corporation supplying the information in any grand jury investigation, indictment, or trial of any person, firm, or corporation involving violation of tax laws, it being the intent of this provision to comply fully with constitutional rights guaranteed to defendants which permit defendants to refrain from giving information or testimony against themselves;

(4) The director and his agents shall not be empowered to make arrests of persons in Arkansas charged with violating tax laws of other states, unless those persons shall have been charged in the courts of other states with such offenses and notices thereof, together with a certified copy of the charges, shall have been transmitted to the director. Any person so arrested shall be permitted to maintain all rights relative to extradition of prisoners.

History. Acts 1949, No. 144, § 2; A.S.A. 1947, § 84-1732.

26-17-404. Violations.

Any Arkansas person, firm, or corporation that willfully aids or willfully abets a person, firm, or corporation in the violations of any tax laws in any state with which Arkansas shall have entered an agreement or pact, as provided in this subchapter, shall be guilty of violating provisions of this subchapter and shall be punished as provided in this subchapter.

History. Acts 1949, No. 144, § 3; A.S.A. 1947, § 84-1733.

Subchapter 5 — Collection of Revenues

26-17-501. Penalty.

26-17-502. Duty to remit revenues.

26-17-503. Daily remittance.

26-17-504. Deposits and collections.

Effective Dates. Acts 1925, No. 88, § 24: effective on passage.

Acts 1927, No. 115, § 18: approved Mar. 5, 1927. Emergency clause provided: "It is ascertained and hereby declared that the increasing number of fires in this State is a menace to the public welfare; that the necessity for a more rigid enforcement of the Insurance Laws and the prevention of fires is so urgent that the immediate operation of this Act is essential for the protection of the public safety; an emergency, therefore, is declared to exist, and this Act shall take effect and be in force and effect from and after its passage."

26-17-501. Penalty.

(a) If the Director of the Department of Finance and Administration, or any of his deputies or assistants shall collect or receive any tax, revenue, or funds by virtue of his official duties or position and shall neglect or fail to turn them over to the State Treasurer within ten (10) days after the tax, revenue, or funds shall have come into his hands or possession, the offender shall be deemed guilty of a felony and be punished by confinement in the state penitentiary for a period of not less than one (1) year and not more than five (5) years.

(b) The director shall be liable upon his official bond for all funds not turned into the

State Treasurer within ten (10) days after they may come into the hands of the director or any of his deputies or assistants.

History. Acts 1925, No. 88, § 16; 1927, No. 115, § 15; Pope's Dig., §§ 7629, 13343; A.S.A. 1947, § 84-1715.

26-17-502. Duty to remit revenues.

The Director of the Department of Finance and Administration shall turn over to the State Treasurer all revenues that may come into his possession or into the possession of any of his deputies, promptly on the day the funds reach his office unless received after the office of the State Treasurer shall have closed for the day, in which event the funds shall be turned over to the State Treasurer on the first day the State Treasurer's office is open after the funds are received at the office of the director.

History. Acts 1925, No. 88, § 16; 1927, No. 115, § 15; Pope's Dig., §§ 7629, 13343; A.S.A. 1947, § 84-1715.

26-17-503. Daily remittance.

All collectors and field inspectors shall daily report and remit to the Director of the Department of Finance and Administration all collections made by them.

History. Acts 1935, No. 234, § 5; Pope's Dig., § 13349; A.S.A. 1947, § 84-1714.

26-17-504. Deposits and collections.

(a) The Director of the Department of Finance and Administration shall make daily deposits in the State Treasury of all moneys and checks collected by him.

(b) The State Treasurer shall promptly return to the director all checks which for any reason were not paid, and it shall be the duty of the director to collect all such checks.

History. Acts 1935, No. 234, § 6; Pope's Dig., § 13350; A.S.A. 1947, § 84-1716.

Chapter 18

State Tax Procedure Generally

Subchapter 1 — General Provisions

Subchapter 2 — Penalties and Offenses

Subchapter 3 — Administration Generally

Subchapter 4 — Assessments

Subchapter 5 — Liability and Payment

Subchapter 6 — Licenses, Permits, and Registrations

Subchapter 7 — Enforcement

Subchapter 8 — Taxpayer Bill of Rights

Subchapter 9 — Taxpayer Assistance

Subchapter 10 — Business Closure

A.C.R.C. Notes. References to "this chapter" in subchapters 1-8 may not apply to subchapter 9 which was enacted subsequently.

Acts 1997, No. 1001, § 1, provided:

"This Act shall be known as and may be cited as the 'Arkansas Tax Penalty Amnesty Act of 1997'."

Acts 1997, No. 1001, § 2, provided:

"For the purposes of this Act, the following terms shall have the meanings ascribed to them in this Section:

"(a) 'Commissioner' means the Commissioner of Revenues, Department of Finance and Administration, State of Arkansas or his authorized agent.

"(b) 'Taxpayer' means any natural person, corporation or other entity subject to or liable for any State tax.

"(c) 'State Tax' means any tax, including any local tax, or any fee for a license, permit, or registration which is payable to, collected by or administered by the Division of Revenues, Department of Finance and Administration, State of Arkansas, except those taxes or fees specifically excluded from Arkansas Code § 26-18-101 et seq.

"(d) 'Account Receivable' means an amount of State tax, penalty or interest which has been recorded as due and entered in the account records of the Commissioner, or which the taxpayer should reasonably expect to become due as a direct or indirect result of any pending or completed audit or investigation which the taxpayer knows is being conducted by any governmental taxing authority (federal, state or local).

"(e) 'Voluntary Payment' means payment of any State tax which was required to be reported prior to January 1, 1997, which was not reported prior to the effective date of this Act, and which is not an Account Receivable. Provided, however, that 'Voluntary Payment' shall not include payment of any State tax with respect to which a taxpayer is under criminal investigation, charge or prosecution. Provided, further, that 'Voluntary Payment' shall not include payment of any State tax with respect to which the Commissioner has sent notice of proposed assessment to the taxpayer pursuant to Arkansas Code § 26-18-101 et seq."

Acts 1997, No. 1001, § 3, provided:

"The Commissioner shall administer a tax penalty amnesty program for taxpayers who make voluntary payment of State taxes during the period September 1, 1997 through November 30, 1997. Amnesty tax forms shall be developed and prescribed by the Commissioner and shall provide for specification by the taxpayer of the voluntary payment for which amnesty is being sought."

Acts 1997, No. 1001, § 4, provided:

"Upon written application by any taxpayer and voluntary payment by such taxpayer of all State taxes due from such taxpayer to the State of Arkansas, plus the interest due, such taxpayer shall not be subject to criminal prosecution nor shall any penalties be assessed with respect to the voluntary payment. Amnesty shall be granted only to taxpayers who apply for amnesty during the period September 1, 1997 through November 30, 1997 and who make payment of the tax due and the amount of interest due, as computed by the Commissioner, in not less than 12 months from the filing of the amnesty tax form and all other applicable tax forms. Failure to pay all State tax and interest due shall invalidate any amnesty granted pursuant to this Act."

Acts 1997, No. 1001, § 5, provided:

"The Commissioner is authorized to publicize the tax penalty amnesty program by means of any medium available to further public awareness of and participation in the program."

Acts 2003 (2nd Ex. Sess.), No. 70, § 1, provided:

"As used in this act:

"(1) 'Account receivable' means:

"(A) An amount of state tax, penalty, or interest which has been recorded as due and entered in the account records of the Director of the Department of Finance and Administration; or

"(B) An amount the taxpayer expects to become due as a direct or indirect result of any pending or completed audit or investigation the taxpayer knows is being conducted by any federal, state, or local governmental taxing authority;

"(2) 'State tax' means any tax, including local taxes, or any fee for a license, permit, or registration that is payable to, collected by, or administered by the Department of Finance and Administration except any taxes or fees specifically excluded from the Arkansas Tax Procedure Act, § 26-18-101 et seq.;

"(3) 'Taxpayer' means any natural person, corporation, or other entity subject to or liable for any state tax;

"(4) (A) 'Voluntary payment' means a payment of any state tax that:

- “(i) Was required to be reported before January 1, 2003;
- “(ii) Was not reported before the effective date of this act; and
- “(iii) Is not an account receivable.

“(B) ‘Voluntary payment’ does not include:

- “(i) Payment of any state tax with respect to which a taxpayer is under criminal investigation, charge, or prosecution; or
- “(ii) Payment of any state tax for which the Director of the Department of Finance and Administration has issued a notice of proposed assessment to the taxpayer under the Arkansas Tax Procedure Act, § 26-18-101 et seq.”

Acts 2003 (2nd Ex. Sess.), No. 70, § 2, provided:

“The Director of the Department of Finance and Administration shall administer a state tax penalty and interest amnesty program for taxpayers who make a voluntary payment of state taxes during the period of July 1, 2004, through December 31, 2004.”

Acts 2003 (2nd Ex. Sess.), No. 70, § 3, provided:

“The Director of the Department of Finance and Administration shall develop amnesty tax forms to be completed and filed by the taxpayer.”

Acts 2003 (2nd Ex. Sess.), No. 70, § 4, provided:

“(a) Upon written application and voluntary payment by the taxpayer of all state taxes due, the taxpayer shall not be subject to any further collection activity for the state taxes under this act.

“(b) Amnesty will be granted only to taxpayers who:

“(1) Apply for amnesty during the period of July 1, 2004, through September 30, 2004;

“(2) Submit all applicable tax forms during the period of July 1, 2004, through September 30, 2004; and

“(3) Pay the tax due as computed by the Director of the Department of Finance and Administration, in not less than three (3) months from the filing date of the amnesty tax form.

“(c) Failure to pay all other state taxes not eligible for amnesty when due will invalidate the amnesty granted under this act.”

Acts 2003 (2nd Ex. Sess.), No. 70, § 5, provided:

“The Director of the Department of Finance and Administration may publicize the tax amnesty program by any medium available to further public awareness of and participation in the program.”

Acts 2003 (2nd Ex. Sess.), No. 70, § 6 is codified at § 19-6-493.

Effective Dates. Acts 1979, No. 401, § 50: Jan. 1, 1980.

Research References

ALR.

Estoppel of state or local government in tax matters. 21 A.L.R.4th 573.

Recovery of tax paid on exempt property. 25 A.L.R.4th 186.

Case Notes

Cited: Land O’Frost, Inc. v. Pledger, 308 Ark. 208, 823 S.W.2d 887 (1992); Pledger v. Arkla, Inc., 309 Ark. 10, 827 S.W.2d 126 (1992).

Subchapter 1 — General Provisions

26-18-101. Title.

26-18-102. Purpose.

26-18-103. Construction.

26-18-104. Definitions.

26-18-105. Date of performance.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided:

“The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as

much as possible, the opportunity to secure an objective review of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3) the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the 'divisible tax theory' applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state."

Effective Dates. Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2003 (2nd Ex. Sess.), No. 46, § 2, provided: "This act becomes effective on July 1, 2004."

Acts 2009, No. 360, § 4: July 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that many businesses required to report and remit Arkansas gross receipts taxes as well as employee withholding taxes often discontinue payment of withholding taxes when faced with the possible closure of the business for failure to report and remit the gross receipts taxes; that business faced with the potential closure for failure to remit gross receipts taxes will often avoid closure by paying the delinquent gross receipts or compensating use tax with the withholding tax collected from employees of the business; and that this act is necessary to stop the loss of the withholding tax. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009."

Case Notes

Constitutionality.

Constitutionality.

The Tax Procedure Act is not unconstitutional because it fails to require that the state give taxpayers actual notice of the entire appeals procedure for protesting and appealing tax assessments. *Ross v. Martin*, 800 F.2d 808 (8th Cir. 1986).

26-18-101. Title.

This chapter shall be known and may be cited as the "Arkansas Tax Procedure Act".

History. Acts 1979, No. 401, § 1; A.S.A. 1947, § 84-4701.

Publisher's Notes. Acts 1987, No. 382, § 2, provided that the purpose of this act is to make technical amendments to the Income Tax Act of 1929, Acts 1929, No. 118, as amended and to the Arkansas Tax Procedure Act, Acts 1979, No. 401, as amended, to make the Arkansas income tax and the tax procedure statutes conform to several recent amendments to their counterparts in the federal income tax statutes, to eliminate procedural problems that have arisen since the enactment of these acts, and for other purposes.

Case Notes

Cited: *Ragland v. Pittman Garden Ctr., Inc.*, 299 Ark. 293, 772 S.W.2d 331 (1989).

26-18-102. Purpose.

The purpose of this chapter is to provide, as far as possible, uniform procedures and remedies with respect to all state taxes except the following:

(1) Certificates of Title — Registration — Anti Theft Provision, § 27-14-101 et seq.;

(2) Motor Vehicle License and Fees, §§ 26-55-101 and 27-14-305, § 27-14-501

et seq., and § 27-15-401 et seq.[repealed];

(3) Operator and Chauffeur License, § 27-16-101 et seq.;

(4) Traffic on Highways — Definition — General Provision, §§ 27-49-102, 27-49-104 — 27-49-112, and 27-49-201 et seq.;

(5) Racing Commission — Horse Racing, the Arkansas Horse Racing Law, §§ 23-110-101 et seq.;

(6) Dog Races, the Arkansas Greyhound Racing Law, § 23-111-101 et seq.;

(7) Boxing and Wrestling Exhibitions, §§ 17-22-201 — 17-22-205 and 17-22-301 et seq.; and

(8) Ad valorem taxes collected pursuant to § 26-26-1614.

History. Acts 1979, No. 401, § 2; A.S.A. 1947, § 84-4702; Acts 2003, No. 831, § 1.

A.C.R.C. Notes. Former § 27-15-401 et seq. referred to in subdivision (2) of this section, concerning special license plates for disabled veterans, was repealed by Acts 2005, No. 2202, § 2.

Publisher's Notes. The references to the code sections in Title 17 have been updated to reflect the 1995 realphabetization of the chapters in that title.

Amendments. The 2003 amendment added (8), and made related changes.

Case Notes

Cited: Owens v. State, 354 Ark. 644, 128 S.W.3d 445 (2003).

26-18-103. Construction.

Unless otherwise expressly provided in any state law hereafter enacted, the provisions of this chapter are to be read in pari materia with all other state laws, and in the event of conflict with any state law, this chapter shall control.

History. Acts 1979, No. 401, § 2; A.S.A. 1947, § 84-4702.

26-18-104. Definitions.

As used in this chapter:

(1) “Assessment” means the determination and imposition of the amount of any state tax due and owing, whether made on a return filed by a taxpayer or by the Director of the Department of Finance and Administration on audit or otherwise;

(2) “Corporation” means an organization, other than a partnership, defined as follows:

(A) Created or organized under the laws of Arkansas; or

(B) Qualified to do or doing business in Arkansas, whether or not for profit, in a corporate or organized capacity, by virtue of creation or organization under the laws of the United States or some state, territory, district, or of a foreign country;

(C) Associations, joint-stock companies, insurance companies, including surety and bond companies;

(D) Unless otherwise expressly stated, common law or statutory trusts;

(E) All other business organizations or entities which are organized for profit when the business is conducted by a trustee, or when the interest or ownership in the business is evidenced by a certificate, declaration of trust, or other written instrument; and

(F) National banking associations, state banks, and trust companies, state or national savings and loan associations, or building and loan associations;

(3) "Decision of the director" means any order, ruling, finding, regulation, or action taken by the director in the administration and enforcement of any state tax law;

(4) "Director" means the Director of the Department of Finance and Administration, State of Arkansas, or the Administrative Assistant for Revenue, or his or her authorized agent;

(5) "Excise tax" means any state tax other than an individual, corporate, or fiduciary income tax;

(6) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any other person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate;

(7) "Individual" means a natural person;

(8) "Noncompliant taxpayer" means any taxpayer who has failed to:

(A) File two (2) returns during any consecutive twenty-four-month period for:

(i) Gross receipts or compensating use tax; or

(ii) State income tax withholding for employees; or

(B) Pay the tax reported on the tax return or determined by the Department of Finance and Administration to be due for any two (2) months during any consecutive twenty-four-month period for:

(i) Gross receipts or compensating use tax; or

(ii) State income tax withholding for employees;

(9) "Overpayment" means the amount of any state tax paid in excess of the amount required to be paid under the particular state tax law in question;

(10) (A) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate or classed as a corporation within the provisions of this chapter.

(B) "Partner" includes a member of a syndicate, group, pool, joint venture, or organization;

(11) (A) "Person" means an individual, trust, estate, fiduciary, firm, partnership, limited liability company, or corporation.

(B) "Person" shall include:

(i) The directors, officers, agents, and employees of any person;

(ii) Beneficiaries, members, managers, and partners; and

(iii) Any county or municipal subdivision of the state;

(12) (A) "Return" means any tax or information return, report, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of any state tax law which is filed with the director by, on behalf of, or with respect to any person, and any amendment or supplement to a tax or information return, report, declaration of estimated tax, or claim for refund, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(B) "Return" does not include:

(i) An application for any motor vehicle registration or license or any operator's or chauffeur's license;

(ii) A list showing the issuance of any motor vehicle registration or license or any operator's or chauffeur's license; or

(iii) Any information relating to any motor vehicle registration or license or any operator's or chauffeur's license;

(13) "State tax" means any tax, or any fee for a license, permit, or registration which is payable to, collected by, or administered by the Revenue Division, Department of Finance and Administration, State of Arkansas;

(14) "State tax law" means this chapter and any other law of the State of Arkansas which levies, imposes, or relates procedurally or otherwise to any state tax;

(15) "Tax deficiency" or "deficiency" means the amount by which the tax imposed by any state tax exceeds the excess of the sum of:

(A) The amount shown as the tax by the taxpayer on his or her return if a return was made by the taxpayer; plus

(B) The amounts previously assessed or collected without assessment as a deficiency;

(16) "Taxpayer" means:

(A) Any person subject to or liable for any state tax;

(B) Any person required to file a return, to pay, or to withhold and remit any tax required by the provisions of any state tax law;

(C) Any person required to obtain a license or a permit or to keep any records under any state tax law; or

(D) Any person who files a return and pays a reported tax without regard to whether he or she was required to file the return;

(17) (A) "Tax return preparer" means any person who prepares for compensation, or who employs one (1) or more persons to prepare for compensation, any state tax return or claim for refund.

(B) For purposes of this subdivision (17), the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of the return or claim for refund; and

(18) "Underpayment" means the difference between the state tax paid and the amount required to be paid under the particular state tax law in question.

History. Acts 1979, No. 401, § 3; A.S.A. 1947, § 84-4703; Acts 1993, No. 332, § 3; 1995, No. 1160, § 16; 2003, No. 1718, § 1; 2003 (2nd Ex. Sess.), No. 46, § 1; 2009, No. 360, § 1.

Amendments. The 1993 amendment, in (2), substituted "Revenue" for "Revenues," deleted "Department of Finance and Administration, State of Arkansas" following "Revenue," and inserted a comma following "Arkansas."

The 1995 amendment rewrote (10).

The 2003 amendment deleted "the provisions of" after "under" in (14)(C); and added (14)(D) and made related changes.

The 2003 (2nd Ex. Sess.) amendment inserted present (9) and redesignated the remaining subdivisions accordingly.

The 2009 amendment, in (8), deleted "gross receipts or compensating use tax" following "two (2)" in (8)(A), inserted (8)(A)(i) and (ii), deleted "gross receipts or use" following "Pay the" in (8)(B), inserted (8)(B)(i) and (ii), and made related changes.

Case Notes

Construction.

Taxpayer.

Construction.

An estimated tax return is a tax return within the meaning of subdivision (11). *Dixie Furn. Co. v. Ragland*, 300 Ark. 69, 776 S.W.2d 357 (1989).

Taxpayer.

Trial court did not err in denying car manufacturer a refund or deduction of the pro rata portion of gross receipts tax related to bad debts arising out of the sale and financing of motor vehicles as the car manufacturer was not a “taxpayer” for the purposes of the Arkansas Bad Debt Statute, § 26-52-309. *DaimlerChrysler Servs. N. Am., LLC v. Weiss*, 360 Ark. 188, 200 S.W.3d 405 (2004). **Cited:** *Ragland v. Alpha Aviation, Inc.*, 285 Ark. 182, 686 S.W.2d 391 (1985); *Acxiom Corp. v. Leathers*, 331 Ark. 205, 961 S.W.2d 735 (1998); *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003); *Weiss v. Am. Honda Fin. Corp.*, 360 Ark. 208, 200 S.W.3d 381 (2004).

26-18-105. Date of performance.

(a) (1) If any return, claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date under any state tax law is, after that period or date, delivered by the United States mail to the director, the date of the United States postmark stamped on the cover of the return, claim, statement, or other document shall be deemed to be the date of delivery.

(2) Only the postmark of the United States Postal Service, rather than those of private postage meters, shall qualify for the provisions of this section.

(b) When the last day prescribed under the authority of state tax laws for performing any act or instituting any suit falls on Saturday, Sunday, or a legal holiday, the performance of the act shall be considered timely if it is performed on the next succeeding business day which is not a Saturday, Sunday, or legal holiday.

History. Acts 1979, No. 401, § 27; A.S.A. 1947, § 84-4727.

Case Notes

Cited: *Farmers Coop. v. State*, 282 Ark. 434, 669 S.W.2d 440 (1984).

Subchapter 2 — Penalties and Offenses

- 26-18-201. Attempt to evade or defeat tax.
- 26-18-202. Failure to pay or file return.
- 26-18-203. False or fraudulent reports, etc.
- 26-18-204. False answers to questions or affidavits.
- 26-18-205. Failure to obey summons.
- 26-18-206. Conduct of business without license.
- 26-18-207. Continuance of business after forfeiture of bond.
- 26-18-208. Additional penalties and tax.
- 26-18-209. Evading or defeating tax — Accomplice liability.
- 26-18-210. Prosecutions — Where permitted.
- 26-18-211. Failure to correct noncompliance after notification.
- 26-18-212. Failure to file a return after notification.

A.C.R.C. Notes. Acts 1987, No. 502, §§ 1-6, provided as follows:

“**SECTION 1.** This act shall be known as and may be cited as the ‘Arkansas Tax Penalty Amnesty Act’.

“**SECTION 2.** For the purposes of this act, the following terms shall have the meanings ascribed to them in this section:

“(a) ‘Commissioner’ means the Commissioner of Revenues, Department of Finance and

Administration, State of Arkansas or his authorized agent.

“(b) ‘Taxpayer’ means any natural person, corporation or other entity subject to or liable for any state tax.

“(c) ‘State tax’ means any tax, including any local tax, or any fee for a license, permit, or registration which is payable to, collected by or administered by the Division of Revenues, Department of Finance and Administration, State of Arkansas, except those taxes or fees specifically excluded from Act 401 of 1979, as amended [A.C.A. § 26-18-101 et seq.].

“(d) ‘Account receivable’ means an amount of state tax, penalty or interest which has been recorded as due and entered in the account records of the commissioner, or which the taxpayer should reasonably expect to become due as a direct or indirect result of any pending or completed audit or investigation which the taxpayer knows is being conducted by any governmental taxing authority (federal, state or local).

“(e) ‘Voluntary payment’ means payment of any state tax which was required to be reported prior to February 1, 1987, which was not reported prior to the effective date of this act, and which is not an account receivable. Provided, however, that ‘voluntary payment’ shall not include payment of any state tax with respect to which a taxpayer is under criminal investigation, charge or prosecution. Provided, further, that ‘Voluntary Payment’ shall not include payment of any state tax with respect to which the commissioner has sent notice of proposed assessment to the taxpayer pursuant to Section 18 of Act 401 of 1979.

“**SECTION 3.** The commissioner shall administer a tax penalty amnesty program for taxpayers who make voluntary payment of state taxes during the period September 1, 1987 through November 30, 1987. Amnesty tax forms shall be developed and prescribed by the commissioner and shall provide for specification by the taxpayer of the voluntary payment for which amnesty is being sought.

“**SECTION 4.** Upon written application by any taxpayer and voluntary payment by such taxpayer of all state taxes due from such taxpayer to the State of Arkansas, plus the interest due, such taxpayer shall not be subject to criminal prosecution nor shall any penalties be assessed with respect to the voluntary payment. Amnesty shall be granted only to taxpayers who apply for amnesty during the period September 1, 1987 through November 30, 1987 and who make payment of the tax due and the amount of interest due, as computed by the commissioner, in not less than 12 months from the filing of the amnesty tax form and all other applicable tax forms. Failure to pay all state tax and interest due shall invalidate any amnesty granted pursuant to this act.

“**SECTION 5.** Nothing in this act shall be construed to prohibit the commissioner from examining forms filed pursuant to this act or assessing additional tax, penalty and interest due after such forms are filed.

“**SECTION 6. (a)** The commissioner is authorized to publicize the tax penalty amnesty program by means of any medium available to further public awareness of and participation in the program.

“(b) For the duration of the period during which the amnesty program is conducted, the commissioner is authorized to employ twenty (20) additional employees to aid in the administration of said program. The commissioner is further authorized to receive and expend additional sums totaling fifty thousand dollars (\$50,000.00) to implement the provisions of and the items authorized by this act.”

References to “this chapter” in subchapters 1 through 7 and to “this subchapter” in §§ 26-18-201 — 26-18-210 may not apply to §§ 26-18-211 and 26-18-212 which were enacted subsequently.

Cross References. Fines, § 5-4-201.

Imprisonment, § 5-4-401.

Effective Dates. Acts 1981, No. 914, § 9: Dec. 31, 1980. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain provisions of the State's income tax laws that have counterparts in the Federal income tax laws do not coincide with recent amendments to the Federal income tax laws; that clarification needs to be made to provisions of the Arkansas Tax Procedure Act (Act 401 of 1979) with regard to the statute of limitations on assessments, the judicial review of contested assessments and the automatic assertion of the 10% negligence penalty (as apparently approved by the Supreme Court in its decision in *Great Lakes Chemical Co. v. Wooten*, 266 Ark. 511, 514 (1979) which decision was

rendered after the adoption by the General Assembly of Act 401 of 1979, but before the effective date of that Act); and that this Act is immediately necessary to make the Arkansas income tax law conform with the Federal income tax law, to clarify any possible question as to the applicability of the Statute of Limitations on assessment and judicial review of contested assessments, and to stop the automatic assessment of the 10% negligence penalty on any deficiency in tax determined by the Commissioner. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all periods beginning after December 31, 1980.”

Acts 1987, No. 502, § 16: Apr. 1, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State of Arkansas is in great need of additional general revenues and that providing a tax penalty amnesty program will result in a substantial addition to the generation of such much needed general revenues. It is further found and determined that certain criminal and civil penalties provided for in the Arkansas Tax Procedure Act must be made more severe to effectuate the collection of taxes owed under the laws of this State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 3, § 14: May 1, 1991. Emergency clause provided: “It is hereby found and determined that the State of Arkansas is lacking adequate funds to provide for the education of its citizens and for other essential services: that increased funds must be raised to adequately provide for those needs; that certain persons are assisting taxpayers in evading or defeating the payment or collection of lawfully imposed state taxes depriving the state of needed revenues and that this act is designed to provide the necessary revenues to the state sufficient to meet these needs. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective on and after May 1, 1991.”

Acts 1991, No. 688, § 10: Mar. 21, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that some taxpayers are not properly completing and timely filing tax returns; that these failures create an administrative burden upon the Department of Finance and Administration; and that this act is designed to impose a fifty dollar (\$50) penalty for failure to timely file returns, even if no tax is due, or if returns are not properly completed.

Therefore, an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 815, § 3; effective for all income years beginning on and after January 1, 1991.

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Research References

ALR.

What constitutes “reasonable cause” under state statutes imposing penalty on taxpayer for failure to file timely return unless such failure was due to reasonable cause. 29 A.L.R.4th 413.

Am. Jur. 72 Am. Jur. 2d, State Tax., § 856 et seq.

C.J.S. 85 C.J.S., Tax., § 1021 et seq.

26-18-201. Attempt to evade or defeat tax.

(a) Any taxpayer who willfully attempts to evade or defeat the payment of any tax, penalty, or interest due under any state tax law shall be guilty of a Class C felony.

(b) Any person who willfully assists a taxpayer in evading or defeating the payment of any tax, penalty, or interest due under any state tax law shall be guilty of a Class C felony.

History. Acts 1979, No. 401, § 36; A.S.A. 1947, § 84-4736; Acts 1987, No. 502, § 8; 1991, No. 3, § 9.

Case Notes

Lesser Included Offenses.
Statute of Limitations.

Lesser Included Offenses.

Operation of a vehicle without a valid license plate in violation of § 27-14-304 is not a lesser included offense of willfully attempting to evade or defeat the payment of tax, in violation of subsection (a) of this section, and failure to pay tax, in violation of § 26-18-202; it is possible to commit the greater offenses without committing the offense of operating a vehicle without a license plate, and the lesser charge requires proof of an additional element not required under the greater offenses. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

Statute of Limitations.

Where defendant was charged with willfully attempting to evade or defeat the payment of tax, in violation of subsection (a) of this section, and was convicted of failure to pay tax, in violation of § 26-18-202, the six-year statute of limitations under § 26-18-306(j) was applicable rather than the more general three-year limitations period under § 5-1-109(b)(2); section 26-18-306(j) specifically provides a six-year limitations period for prosecutions for any of the various criminal offenses arising under the provisions of any state tax law, and it is a well-settled principle of law that a general statute does not apply when a specific one governs the subject matter. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

Cited: *McCuen v. State*, 328 Ark. 46, 941 S.W.2d 397 (1997); *Davis v. State*, 94 Ark. App. 240, 228 S.W.3d 529 (2006).

26-18-202. Failure to pay or file return.

Any person required under any state tax law to pay over any tax or file any return who willfully fails to pay over the tax or file a return shall be guilty of a Class D felony.

History. Acts 1979, No. 401, § 40; A.S.A. 1947, § 84-4740; Acts 1987, No. 502, § 12.

Case Notes

Applicability.
Lesser Included Offenses.
Statute of Limitations.

Applicability.

Defendant's conduct in failing to pay use taxes on a motor home fell within the provisions of this section; defendant was not accused of having violated a provision of the vehicle registration laws, and the taxes required under § 26-53-126 are not exempt from the tax evasion laws. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

Lesser Included Offenses.

Operation of a vehicle without a valid license plate in violation of § 27-14-304 is not a lesser included offense of willfully attempting to evade or defeat the payment of tax, in violation of § 26-18-201(a), and failure to pay tax, in violation of this section; it is possible to commit the greater offenses without committing the offense of operating a vehicle without a license plate, and the lesser charge requires proof of an additional element not required under the greater offenses. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

Statute of Limitations.

Where defendant was charged with willfully attempting to evade or defeat the payment of tax, in violation of § 26-18-201(a), and was convicted of failure to pay tax, in violation of this section, the six-year statute of limitations under § 26-18-306(j) was applicable rather than the more general three-year limitations period under § 5-1-109(b)(2); section 26-18-306(j) specifically provides a six-year limitations period for prosecutions for any of the various criminal offenses arising under the provisions of any state tax law, and it is a well-settled principle of law that a general statute does not apply when a specific one governs the subject matter. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

26-18-203. False or fraudulent reports, etc.

Any taxpayer required to make, render, sign, or verify any report, return, statement, claim, application, or other instrument required by this subchapter or by any state tax law who, with intent to defeat or evade the assessment or levy of the tax or to obtain any permit or license, makes a false or fraudulent return, statement, report, claim, invoice, application, or other instrument, or any tax return preparer or other person who aids or abets another in filing a false or fraudulent report or statement, is guilty of a Class D felony.

History. Acts 1979, No. 401, § 37; A.S.A. 1947, § 84-4737; Acts 1987, No. 502, § 9.

Case Notes

Errors.

Fraud.

Errors.

The Arkansas tax laws provided ample opportunity for a taxpayer to establish the error of any tax assessment. *Stuart v. Department of Fin. & Admin.*, 598 F.2d 1115 (8th Cir. 1979) (decision under prior law).

Fraud.

A private common law action for fraud does not exist to collect taxes. *Highland Sch. Dist. v. Travenol Labs., Inc.*, 291 Ark. 563, 726 S.W.2d 670 (1987).

26-18-204. False answers to questions or affidavits.

Any taxpayer or other person who knowingly makes a false answer to any question which may be asked him by the director concerning the business, property, assets, or effects of the taxpayer or person, or the valuation thereof, or the income or profits therefrom, or who makes or presents any false affidavit concerning any list, schedule, statement, report, or return, or for any other purpose, filed with the director or required to be filed by any state tax law, shall be guilty of a Class D felony.

History. Acts 1979, No. 401, § 39; A.S.A. 1947, § 84-4739; Acts 1987, No. 502, § 11.

26-18-205. Failure to obey summons.

Any person who, being summoned to appear to testify or to produce and permit the examination of any books, records, or papers, neglects to appear or to produce the papers shall be guilty of a Class D felony.

History. Acts 1979, No. 401, § 38; A.S.A. 1947, § 84-4738; Acts 1987, No. 502, § 10.

26-18-206. Conduct of business without license.

Any person required to obtain a license or permit by any state tax law which the director is required to enforce who shall, without obtaining the license or permit, conduct business or carry on activities required to be licensed is guilty of a Class A misdemeanor. Each day of conducting business or activities is a separate violation.

History. Acts 1979, No. 401, § 34; A.S.A. 1947, § 84-4734.

Research References

U. Ark. Little Rock L.J.

Tyler, *Survey of Business Law*, 3 U. Ark. Little Rock L.J. 149.

26-18-207. Continuance of business after forfeiture of bond.

Any person who, after the forfeiture by the director of any bond posted by him, continues or attempts to continue in the business or activities for which the bond was required to be posted, without having the bond reinstated or without making a new bond, is guilty of a Class D felony. Each day of continuing or conducting business or activities is a separate violation.

History. Acts 1979, No. 401, § 35; A.S.A. 1947, § 84-4735; Acts 1987, No. 502, § 7.

26-18-208. Additional penalties and tax.

In addition to the criminal penalties provided by this chapter, if a taxpayer shall fail to comply with certain provisions of this chapter, then the following penalties and additions to tax shall be applicable:

(1) In the case of a taxpayer's failure to file any return required by any state tax law on or before the date prescribed determined with regard to any extension of time for filing the return, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be added to the amount required to be shown as tax on the return five percent (5%) of the amount of the tax if the failure is not more than one (1) month, with an additional five percent (5%) for each additional month or fraction of a month during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate;

(2) (A) In case of a failure to pay the amount shown as tax on any return required to be filed under any state tax law, except an individual income tax return, on or before the date prescribed for payment of the tax, unless it is shown that the failure to pay is due to reasonable cause and not to willful neglect, there shall be added to the amount shown as tax on the return five percent (5%) of the amount of the tax if the failure is for not more than one (1) month, with an additional five percent (5%) for each additional month or fraction of a month during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate;

(B) In case of failure to pay the amount shown as tax on any individual income tax return required to be filed, on or before the date prescribed for payment of the tax, unless it is shown that the failure to pay is due to reasonable cause and not to willful neglect, there shall be added to the amount shown as tax on the return one percent (1%) of the amount of the tax if the failure is for not more than one (1) month, with an additional one percent (1%) for each additional month or fraction of a month during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate;

(3) (A) (i) If any penalty is assessed under subdivision (1) of this section, then no penalty shall be assessed under subdivision (2)(A) of this section.

(ii) If any penalty is assessed under subdivision (2)(A) of this section, then no penalty shall be assessed under subdivision (1) of this section;

(B) With respect to any individual income tax return, the amount of the addition under subdivision (1) of this section shall be increased by the amount of the addition under subdivision (2)(B) of this section for any month or fraction of a month to which an addition to tax applies under both subdivision (1) and (2)(B) of this section, not to exceed thirty-five percent (35%) in the aggregate;

(4) (A) If any part of a deficiency in taxes is determined to be due to negligence or intentional disregard of rules and regulations promulgated under the authority of this

subchapter or any state tax law, then the Director of the Department of Finance and Administration shall add a penalty of ten percent (10%) of the total amount of the deficiency in addition to any interest provided by law.

(B) However, if any penalty is assessed under subdivisions (1)-(3) of this section, then no penalty shall be assessed under subdivision (4)(A) of this section;

(5) (A) (i) If any part of any deficiency of any state tax required to be shown on a return is determined to be due to fraud, there shall be added to the tax an amount equal to fifty percent (50%) of the deficiency in addition to any interest provided by law.

(B) If any penalty is assessed under subdivision (5)(A) of this section, then no penalty shall be assessed under subdivisions (1)-(4) of this section;

(6) (A) (i) If a taxpayer fails to make a declaration of estimated tax and pay on any quarterly due date the equivalent to at least ninety percent (90%) of the amount actually due, there shall be added a penalty of ten percent (10%) per annum to the amount of the underestimate.

(ii) The ten percent (10%) per annum penalty shall be applied on a quarterly basis.

(iii) A taxpayer who has an uneven income may compute the ten percent (10%) penalty on an annualized basis.

(B) The penalty provided in this subdivision (6) for failure to make correct payments of estimated income tax shall not be applied to the following exceptions:

(i) No penalty shall be imposed for a tax year if the tax shown on the return for such tax year is one thousand dollars (\$1,000) or less;

(ii) A taxpayer whose income from farming for the income year can reasonably be expected to amount to at least two-thirds (2/3) of the total gross income from all sources for the income year, may file such declaration and pay the estimated tax on or before the fifteenth day of the second month after the close of the income year, or in lieu of filing any declaration, may file an income tax return and pay the tax on or before the fifteenth day of the third month after the close of the income year;

(iii) The penalty provided in this subdivision (6) shall not be applicable when the original amount of estimated tax is the same amount shown to be due by the return of the taxpayer for the preceding income year when such return showing a liability for tax was filed by the taxpayer for the preceding income year of twelve (12) months;

(iv) In lieu of filing the fourth quarter installment, the taxpayer may file an income tax return and pay the tax on or before January 31, or on the last day of the first month after the close of the income year;

(v) No penalty shall be imposed for a tax year if:

(a) The preceding tax year was a tax year of twelve (12) months;

(b) The taxpayer did not have a tax liability for the preceding tax year; and

(c) The taxpayer was a resident of Arkansas throughout the preceding tax year;

(vi) No penalty shall be imposed with respect to any underpayment to the extent that the director determines that by reasons of casualty,

disaster, or other unusual circumstances the imposition of such penalty would be against equity and good conscience; and

(vii) No penalty shall be imposed with respect to any underestimate or underpayment if the director determines that:

(a) In the year for which such estimated payment was required to be made or in the tax year preceding such tax year, the taxpayer:

(1) Retired after having attained sixty-two (62) years of age; or

(2) Became disabled; and

(b) Such underpayment was due to reasonable cause and not to willful neglect;

(7) In addition to any other penalty provided by law, there shall be assessed a penalty of five hundred dollars (\$500) if any taxpayer:

(A) Files what purports to be a return, but the purported return does not contain information on which the substantial correctness of the return may be judged, and the conduct is due to a position which is frivolous or an effort to delay or impede the administration of any state tax law;

(B) Files what purports to be a return, but the purported return contains information that on its face indicates that the return is substantially incorrect, and the conduct is due to a position which is frivolous or an effort to delay or impede the administration of any state tax law; or

(C) Asserts or relies upon any grounds in defense or avoidance of a proposed assessment of tax, penalty, or interest, and the conduct is due to a position which is frivolous or an effort to delay or impede the administration of any state tax law;

(8) All penalties or additions to tax and interest imposed by any state tax law are assessable and collectible by the director as a part of the tax due and owing;

(9) (A) If any person makes payment to the director for any taxes, licenses, or fees imposed by any laws of this state by means of a check, draft, order, electronic funds transfer, or any other form of presentment involving the transmission of account information for the payment of money upon any bank, person, firm, or corporation having insufficient funds in or on deposit with the bank, person, firm, or corporation for the payment of the check, draft, order, electronic funds transfer, or any other form of presentment, the director may impose a penalty of ten percent (10%) of the face amount of the check, draft, order, electronic funds transfer, or any other form of presentment or twenty dollars (\$20.00), whichever is greater, against the maker or drawer of the check, draft, order, electronic funds transfer, or any other form of presentment.

(B) This subdivision (9) shall not apply if the person establishes to the satisfaction of the director that he or she tendered the check, draft, order, electronic funds transfer, or any other form of presentment in good faith and with reasonable cause to believe it would be duly paid.

History. Acts 1979, No. 401, § 41; 1981, No. 914, § 6; A.S.A. 1947, § 84-4741; Acts 1987, No. 502, § 13; 1989, No. 826, § 14; 1991, No. 815, §§ 1, 2; 1997, No. 702, § 1; 1999, No. 1126, § 7; 2003, No. 1084, § 1.

Publisher's Notes. Acts 1989, No. 826, § 1, provided that this act shall be known and may be cited as the "Arkansas Income Tax Technical Revenue Act of 1989."

Acts 1989, No. 826, § 36, provided that the provisions of that act shall be in full force and effect

for all income years beginning on or after January 1, 1989.

Acts 1991, No. 815, § 3, provided:

“The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991.”

Amendments. The 1997 amendment substituted “twenty dollars (\$20.00)” for “ten dollars (\$10.00)” in (9).

The 1999 amendment substituted “one thousand dollars (\$1,000)” for “two hundred fifty dollars (\$250)” in (6)(B)(i).

The 2003 amendment added the subdivision designations in (9); in (9)(A), substituted “order, electronic funds ... of money upon” for “or order drawn on,” “having insufficient funds ... form of presentment” for “without having been paid in full” and inserted “electronic funds transfer, or any other form of presentment” following “order” in two places; and, in (9)(B), inserted “(9)” and “electronic funds transfer, or any other form of presentment”; and made gender neutral changes.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Research References

U. Ark. Little Rock L.J.

Legislative Survey, Taxation, 4 U. Ark. Little Rock L.J. 609.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Electronic Funds Transfer Payments, 26 U. Ark. Little Rock L. Rev. 497.

Case Notes

Factual Determinations.

Penalties.

Factual Determinations.

Although subdivision (3) (now subdivision (4)) may require a factual determination of negligence or intentional disregard before imposing a penalty of 10%, prior to the 1981 amendment, this subdivision imposed an automatic penalty. *Little Rock Mun. Water Works v. Ragland*, 279 Ark. 324, 651 S.W.2d 78 (1983).

Penalties.

Where transactions are not subject to assessment, no penalty should be imposed. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Failure to file estimated tax return resulted in deficiency upon which penalty could be assessed even though basic tax due was paid upon filing of annual return. *Dixie Furn. Co. v. Ragland*, 300 Ark. 69, 776 S.W.2d 357 (1989).

Cited: *Kansas City S. Ry. v. Pledger*, 301 Ark. 564, 785 S.W.2d 462 (1990); *Martin v. Couey Chrysler Plymouth, Inc.*, 308 Ark. 325, 824 S.W.2d 832 (1992).

26-18-209. Evading or defeating tax — Accomplice liability.

Any person who assists a taxpayer in evading or defeating the payment of any state tax shall be liable for a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over to the Director of the Department of Finance and Administration.

History. Acts 1991, No. 3, § 10.

26-18-210. Prosecutions — Where permitted.

Prosecution of any criminal offense provided for in this subchapter may be in the county wherein the taxpayer resides, has an established place of business, or in Pulaski County.

History. Acts 1991, No. 3, § 10.

26-18-211. Failure to correct noncompliance after notification.

If a taxpayer has been previously advised that he has failed to comply with the provisions of the Arkansas Code or the rules and regulations as promulgated by the Director of the Department of Finance and Administration by his failure to include all of the information required to be shown on the return or the inclusion of incorrect information and he continues to disregard those provisions, there shall be assessed a penalty of fifty dollars (\$50.00) per return, unless the failure is due to reasonable cause and not due to willful neglect.

History. Acts 1991, No. 688, § 5.

A.C.R.C. Notes. References to “this chapter” in subchapters 1 through 7 and to “this subchapter” in §§ 26-18-201 — 26-18-210 may not apply to §§ 26-18-211 and 26-18-212 which were enacted subsequently.

26-18-212. Failure to file a return after notification.

If a taxpayer has previously been advised that he has not complied with the provisions of §§ 26-51-804(a), 26-51-908(g)(2), 26-52-501(a), 26-53-125(a)(1), 26-55-229(b), or 26-56-106(a), because he has not filed a return or notified the Director of the Department of Finance and Administration that he is no longer required to file a return, even though no tax is due, and he continues to disregard those provisions, there shall be assessed a penalty of fifty dollars (\$50.00) per return, unless the failure is due to reasonable cause and not due to willful neglect.

History. Acts 1991, No. 688, § 6; 1993, No. 621, § 1.

A.C.R.C. Notes. References to “this chapter” in subchapters 1 through 7 and to “this subchapter” in §§ 26-18-201 — 26-18-210 may not apply to §§ 26-18-211 and 26-18-212 which were enacted subsequently.

Amendments. The 1993 amendment inserted “26-51-804(a)” following “26-52-501(a).”

Subchapter 3 — Administration Generally

- 26-18-301. Duties of Director of the Department of Finance and Administration.
- 26-18-302. Preservation of records and copies.
- 26-18-303. Records confidential and privileged — Exceptions.
- 26-18-304. Bonds.
- 26-18-305. Examinations and investigations.
- 26-18-306. Time limitations for assessments, collection, refunds, and prosecution.
- 26-18-307. Notice requirements.
- 26-18-308. Disposition of revenues.
- 26-18-309. Defense of director in civil suits.
- 26-18-310. Director's authority.
- 26-18-311. Electronic tax administration policy.
- 26-18-312. Signatures on electronic forms.
- 26-18-313. Standard of proof for exemptions, deductions, and credits.

Publisher's Notes. Pursuant to Acts 1971, No. 38, § 5, the Department of Revenue, created by Acts 1925, No. 88, as amended by Acts 1927, No. 115, and Acts 1953, No. 293, and its functions, powers, and duties were transferred by a type 2 transfer to the Department of Finance and

Administration.

Effective Dates. Acts 1981, No. 914, § 9: Dec. 31, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the State's income tax laws that have counterparts in the Federal income tax laws do not coincide with recent amendments to the Federal income tax laws; that clarification needs to be made to provisions of the Arkansas Tax Procedure Act (Act 401 of 1979) with regard to the statute of limitations on assessments, the judicial review of contested assessments and the automatic assertion of the 10% negligence penalty (as apparently approved by the Supreme Court in its decision in *Great Lakes Chemical Co. v. Wooten*, 266 Ark. 511, 514 (1979) which decision was rendered after the adoption by the General Assembly of Act 401 of 1979, but before the effective date of that Act); and that this Act is immediately necessary to make the Arkansas income tax law conform with the Federal income tax law, to clarify any possible question as to the applicability of the Statute of Limitations on assessment and judicial review of contested assessments, and to stop the automatic assessment of the 10% negligence penalty on any deficiency in tax determined by the Commissioner. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all periods beginning after December 31, 1980."

Acts 1983, No. 673, § 4: Mar. 22, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Student Loan Authority and the Student Loan Guarantee Foundation of Arkansas are charged with collecting student loan indebtedness and that in some cases those agencies are unable to locate persons who fail to make payment of their student loans; that all reasonable assistance should be given those agencies in locating persons who fail to repay student loans as agreed; that this Act is designed to aid those agencies in locating such persons by authorizing the Commissioner of Revenues to disclose to those agencies information concerning the last known address and/or last known employer of such persons. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 694, § 4: Mar. 23, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the law regarding confidentiality of tax information needs to be modified in order to provide an exchange of information between the Revenue Commissioner and other State government agencies to ensure that vendors receiving payments have been issued sales tax permits, and that this Act is immediately necessary to provide such exchange of information. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 382, § 34: Mar. 24, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the federal government has recently made major changes in the federal income tax law; that for simplicity of administration and equity various provisions of the federal law should be adopted for Arkansas Income Tax purposes; and that for the effective administration of this Act, the Act should become effective immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 678, § 2: Jan. 1, 1992.

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1018, § 6: Apr. 12, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Public Institutions of Higher Education are charged with collecting student indebtedness and that in some cases those institutions are unable to locate persons who fail to make payment of their student indebtedness; that all reasonable assistance should be given those agencies in locating persons who fail to pay or

repay student tuition, fees, loans, and other student indebtedness; that this act is designed to aid those institutions in locating such persons by authorizing the Commissioner of Revenues to disclose to those agencies information concerning the last known address and/or last known employer of such persons. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 951, § 34: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Acts 1997, No. 951, § 38: March 31, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2001, No. 1368, § 6: Apr. 5, 2001. Emergency clause provided: “It is found and determined by the General Assembly that lack of compliance with state and local tax laws reduces the available revenues to fund the public schools and other essential state services, and that this act is designed and intended to ensure that adequate funding is available for those programs and to ensure full compliance with the tax laws of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 214, § 2: Feb. 26, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that revenue available for the support of necessary state services has declined during the last twelve months as a result of the nationwide economic slowdown; that without reducing the administrative expenses of the Department of Finance and Administration, some state services will be reduced or eliminated; and that this bill will reduce administrative expenses associated with certified mail in order to avoid the reduction in necessary services. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2003, No. 860, § 16: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the flow of development capital funds into and within the state has been and continues to be, insufficient to support the growth of businesses and infrastructure development; that as a result of the lack of available capital sources, the state has suffered economic losses because of the inability to compete with other states in providing capital resources for business and infrastructure development; that this legislation will stimulate the flow of private capital and long-term loan funds that are vital to the sound financing of businesses and will encourage growth, expansion, and modernization through the reinstatement of tax credits; that unless an adequate program to encourage private capital

investment is undertaken, the state will suffer further irreparable loss as a result of the continued inability to support business and infrastructure development, and from the lost opportunities for economic expansion. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be effective on July 1, 2003.” Acts 2007, No. 865, § 3: Apr. 3, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act concerns the disclosure of certain information in corporate franchise tax reports; that the release of this information to the public at large is harmful to the report’s filer; and that this act should become effective as soon as possible to prevent this harm. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.” Acts 2009, No. 238, § 2: Feb. 25, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that federal law currently extends the statute of limitations to request a federal income tax refund to allow an individual who receives military retirement benefits that are subject to federal income tax and is later determined to be eligible for service connected disability benefits that are not subject to federal income tax to claim a refund of the tax paid on the benefits that are retroactively determined to be excluded from income. There is no comparable extension of the statute of limitations in state law, and a veteran is unable to receive a state income tax refund on the same benefits for which the veteran is able to receive a federal income tax refund. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 360, § 4: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that many businesses required to report and remit Arkansas gross receipts taxes as well as employee withholding taxes often discontinue payment of withholding taxes when faced with the possible closure of the business for failure to report and remit the gross receipts taxes; that business faced with the potential closure for failure to remit gross receipts taxes will often avoid closure by paying the delinquent gross receipts or compensating use tax with the withholding tax collected from employees of the business; and that this act is necessary to stop the loss of the withholding tax. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009.”

Acts 2009, No. 755, § 3: July 31, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that many manufacturers and other businesses have found that it is substantially more difficult to prove they are entitled to a tax exemption, deduction, or credit in Arkansas than in most other states based on the court interpretation that the taxpayer must present facts that establish their right to a tax exemption, deduction, or credit “beyond a reasonable doubt” and “to doubt is to deny” exemptions; that the standard of proof for the taxpayer to prove an exemption, deduction, or credit should be changed to clear and convincing evidence, and that in trials de novo or appeals within the judicial system, no presumption of correctness should attach to positions of taxing authorities at the administrative level. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Research References

U. Ark. Little Rock L.J.

Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 U. Ark. Little Rock L.J. 279.

26-18-301. Duties of Director of the Department of Finance and Administration.

(a) The Director of the Department of Finance and Administration shall:

(1) Administer and enforce the provisions of every state tax law and when necessary shall promulgate and enforce the rules and regulations;

(2) Audit and properly determine and compute the state tax payable by any taxpayer subject to taxation under any state tax law;

(3) Assess and collect any state tax; and

(4) Administer and enforce all state tax laws.

(b) The director shall make available at cost to the general public all rules and regulations promulgated by the director.

(c) The director shall provide forms, schedules, and returns for all state tax laws.

(d) The director may accept electronic or digital signatures as binding, valid signatures on all reports, forms, or schedules required to be filed by state law.

History. Acts 1979, No. 401, § 4; A.S.A. 1947, § 84-4704; Acts 1999, No. 1132, § 2.

Amendments. The 1999 amendment added (d); and made stylistic changes.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

26-18-302. Preservation of records and copies.

(a) (1) The director shall keep and permanently preserve the original of all official rules, regulations, decisions, and orders and the effective date thereof.

(2) (A) A copy of a rule, regulation, decision, or order made by the director in the administration of any state tax law may be authenticated under his official seal.

(B) An authenticated copy is admissible in any court in this state under § 16-46-101.

(C) The director may charge a reasonable fee, not to exceed five dollars (\$5.00), to cover the cost of authentication.

(D) Under no circumstances shall the director furnish copies of records which may by law be prohibited from being made public.

(b) (1) The director may microfilm any returns, reports, records, or documents received or issued by him in the administration of any state tax law.

(2) The microfilm records shall be properly indexed for easy retrieval, and one (1) copy shall be placed in a fireproof vault.

(3) These records are admissible as evidence in any court in this state under § 16-46-101 and shall have the same weight and force as the original thereof.

(c) If the director determines that a method for the reproduction of records is more practicable than the use of microfilm, he may use that method.

History. Acts 1979, No. 401, § 5; A.S.A. 1947, § 84-4705.

26-18-303. Records confidential and privileged — Exceptions.

(a) (1) The Director of the Department of Finance and Administration is the official custodian of all records and files required by any state tax law to be filed with the director and is required to take all steps necessary to maintain their confidentiality.

(2) (A) (i) Except as otherwise provided by this chapter, the records and files of the director concerning the administration of any state tax law are confidential and

privileged.

(ii) These records and files and any information obtained from these records or files or from any examination or inspection of the premises or property of any taxpayer shall not be divulged or disclosed by the director or any other person who may have obtained these records and files.

(B) It is the specific intent of this chapter that all tax returns, audit reports, and information pertaining to any tax returns, whether filed by individuals, corporations, partnerships, or fiduciaries, shall not be subject to the provisions of the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) The provisions against disclosures shall not apply to the following:

(1) Publication of statistics by the director classified to prevent the identification of a particular taxpayer;

(2) Use of the information in records filed under any state tax law by the director when conducting any audit or investigation of any taxpayer in regard to any state tax;

(3) (A) Disclosure of information to the Attorney General of this state, any prosecuting attorney, or any other individual who is empowered by law to prosecute criminal and civil violations of any state tax law when the director initiates the investigation.

(B) If the prosecution is initiated by the Attorney General or a prosecuting attorney, the director shall not disclose any information unless required by subpoena issued by a circuit court.

(C) Information may be introduced as evidence by the Attorney General, a prosecuting attorney, or other individual so empowered when the individual is prosecuting any civil or criminal violation of state tax law;

(4) Disclosure compelled by any Arkansas circuit court, the Supreme Court, the Court of Appeals, or by any federal court of information involved in any case or controversy before that court;

(5) Disclosure by the taxpayer or the taxpayer's authorized agent or by the director, at the taxpayer's request, of any information which the director has concerning that taxpayer;

(6) Disclosure by the director, at the director's discretion, of information from the records of any state tax law to comparable officials of any other state or the United States who are charged with the administration of a similar tax;

(7) Disclosure of motor vehicle titling and registration information, all licenses and permits issued to owners and operators of coin-operated amusement machines pursuant to §§ 26-57-402, 26-57-408 — 26-57-421, and 26-77-303, and tax records, files, and other information relating to sales of aviation fuel at airports and other aviation fuel outlets;

(8) Disclosure of information other than income tax information at an administrative hearing held regarding the issuance, cancellation, revocation, or suspension of licenses or permits issued by the director or any other state agency or department;

(9) (A) Disclosure to the Arkansas Student Loan Authority, the Department of Higher Education, the Student Loan Guarantee Foundation of Arkansas, or any Arkansas public institution of higher education of the last known address or whereabouts or the last known employer of any person from whom these agencies are charged with collecting a

student loan or other student indebtedness.

(B) In providing such information, the director shall not allow the Arkansas Student Loan Authority, the Student Loan Guarantee Foundation of Arkansas, the Department of Higher Education, or any Arkansas public institution of higher education to examine the tax return;

(10) (A) In order to ensure proper payment to vendors by all agencies of state government or by county governments or city governments, information about the receipt or nonreceipt of sales tax permits by vendors must be made available by the director upon request by these agencies of state government or by county governments or city governments.

(B) Therefore, notwithstanding any provision of this chapter or any other law to the contrary, in instances when state agencies, boards, commissions, and other branches of state government or county governments or city governments identify to the director the identity of vendors receiving payments and ask the director whether these vendors have been issued sales tax permits, the director shall answer these inquiries;

(11) Disclosure of the name of any taxpayer and the amount of any tax credit, tax rebate, tax discount, or commission for the collection of a tax received by such taxpayer from the following tax incentive provisions:

- (A) Discount for prompt payment, § 26-52-503;
- (B) Economic Investment Tax Credit Act, § 26-52-701 et seq.;
- (C) Steel Mill Tax Incentives, §§ 26-52-901 — 26-52-903;
- (D) Motor fuel shrinkage allowance, § 26-55-230(a)(1)(F);
- (E) Commission for sale of stamps for cigarettes and the collection of cigarette taxes, § 26-57-236(f), as amended by Acts 1997, No. 1337;
- (F) Motion Picture Incentive Act of 1983, § 26-4-201 et seq.;
- (G) Credit on severance tax of oil producer, § 26-58-204;
- (H) Credit on severance tax of gas producer, § 26-58-205;
- (I) Refund of motor fuel tax by municipal buses, § 26-55-401 et seq.;
- (J) Refund of distillate special fuel tax to interstate users, §§ 26-56-214 and 26-56-215;

(K) Credit against severance tax for the discovery of a commercial oil pool, § 15-72-706;

- (L) Native wines — Subsidies, § 3-5-1001 et seq.;
- (M) Native wines — Incentive grants, § 3-5-901 et seq.;
- (N) Native wines export incentives, § 3-5-607 [repeled];
- (O) Consolidated Incentive Act of 2003, § 15-4-2701 et seq.; and
- (P) (i) Any other tax incentive program enacted after January 1, 1991, that provides a tax credit, tax rebate, tax discount, or commission for the collection of a tax, with the exception of any benefits under the income tax laws of this state.

(ii) However, information that is subject to disclosure under the provisions of this subdivision (b)(11) shall not be disclosed if such information would give an advantage to competitors or bidders or if such information is exempt from disclosure under any other provision of law that exempts specified information from disclosure under any such law;

(12) Disclosure of the lists required by:

- (A) Section 3-2-205(e)(4), reporting to the Alcoholic Beverage Control

Division of the Department of Finance and Administration and the Alcoholic Beverage Control Board those taxpayers who hold a permit to sell alcoholic beverages and who are delinquent in state taxes; and

(B) Section 26-57-257(q)(2), reporting to the Arkansas Tobacco Control Board those taxpayers who hold a permit to sell tobacco products and cigarettes and who are delinquent in state taxes;

(13) Disclosure to the Tax Division of the Arkansas Public Service Commission of information contained in motor fuel tax records necessary to assess motor carrier companies for ad valorem taxation;

(14) (A) Disclosure of the following information from corporate franchise tax reports:

(i) The name and address of the corporation;

(ii) The name of the corporation's president, vice president, secretary, treasurer, and controller;

(iii) The total authorized capital stock with par value;

(iv) The total issued and outstanding capital stock with par value;

and

(v) The state of incorporation.

(B) In the case of a franchise tax report filed by an organization formed under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., the confidentiality provision of subsection (a) of this section shall apply to the names of members of the organization, except those designated in the organization's franchise tax report as a manager, president, vice president, secretary, treasurer, or controller of the organization, unless the organization has no registered agent for service of process, in which case the confidentiality provisions of subsection (a) of this section shall not apply;

(15) Disclosure compelled by a subpoena issued by a state or federal prosecutor or grand jury or other state or federal entity with subpoena power;

(16) (A) Disclosure to county assessors of information that may affect personal property tax assessments, including information obtained during the course of audits or investigations concerning motor vehicles, boats, trailers, airplanes, or other items of personal property that may be subject to assessment in that county.

(B) This information may be released only following completion of an audit or investigation by the director and following a determination by the director that there is a strong possibility the taxpayer has failed to properly assess the taxpayer's personal property in the county.

(C) In providing this information, the director shall not allow the county assessors to examine any tax returns or audit records;

(17) Disclosure to a capital development company organized under the Arkansas Capital Development Company Act, § 15-4-1001 et seq., of the name and tax identification number of and amount of any tax credit received by a taxpayer as a result of the purchase of an equity interest in a capital development company;

(18) (A) For the purpose of the timely and accurate collection of local sales and use tax and state income tax withholding for employees, disclosure of the name and address of a taxpayer that has failed three (3) times within any consecutive twenty-four-month period to either report or remit state or local gross receipts or compensating use tax or state income tax withholding for employees and has been served with a business

closure order under § 26-18-1001 et seq.

(B) Disclosure shall be made by posting weekly on the website maintained by the Department of Finance and Administration the business name, business address, and city and county in which the business is located as it appears on the sales tax permit or the state income tax withholding for employees registration of each taxpayer identified in subdivision (b)(18)(A) of this section.

(C) The information posted on the website for a taxpayer shall remain on the website until that taxpayer is no longer subject to the business closure provisions of § 26-18-1001 et seq.;

(19) (A) Disclosure to the Arkansas Economic Development Commission of any information requested regarding a tax incentive program that provides a tax credit, tax rebate, tax discount, or other economic incentive that is jointly administered by the Arkansas Economic Development Commission and the Department of Finance and Administration.

(B) Any information received by the Arkansas Economic Development Commission under this section shall remain confidential and is not subject to disclosure except in accordance with this section;

(20) Disclosure to the office of a standing chapter 13 bankruptcy trustee, upon the request of the trustee, whether or not a taxpayer filed a state tax return for all taxable periods ending during the four-year period ending on the date of the filing of a petition for relief under Chapter 13 of Title 11 of the United States Code; and

(21) (A) To perform audit and compliance duties, disclosure to the Department of Workforce Services of withholding tax information reported by companies doing business in Arkansas, including without limitation taxpayer names, taxpayer addresses, tax identification numbers, and tax withholding information.

(B) Information received by the Department of Workforce Services under this section shall remain confidential and is not subject to disclosure except in accordance with this section.

(c) The provisions of this section shall be strictly interpreted and shall not permit any other disclosure of tax information concerning a taxpayer, whether the taxpayer is an individual, a corporation, a partnership, or a fiduciary, that is contained in the records and files of the director relating to income tax or any other state tax administered under this chapter.

(d) (1) Any person who knowingly discloses information in violation of a provision of this section shall be guilty of a Class A misdemeanor.

(2) An employee of the state who is convicted of violating a provision of this section shall be discharged from employment in addition to any fine or imprisonment.

(e) Any person who knowingly obtains or attempts to obtain any of the confidential and privileged records and files of the director who is not so permitted by law is guilty of a Class A misdemeanor.

(f) The director shall report all violations of this section to the appropriate prosecuting attorney in this state.

(g) (1) The director shall promulgate such regulations as are necessary to establish a reasonable procedure for making requests for and release of information under subdivision (b)(11) of this section, for allowing a taxpayer reasonable notice in advance of the release of the requested information, for a period of time up to seven (7) days from

the date a request for information is made to provide notice and make necessary determinations, and to provide the methods by which the director shall determine if the information requested is subject to disclosure under Arkansas law.

(2) The provisions of this section shall solely govern the release of information under subdivision (b)(11) of this section and the release of information shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(h) (1) Upon the request of a county government or a city government, the director shall provide a list of vendors within the requesting county or city who hold permits issued pursuant to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(2) Requests made pursuant to this subsection must be made in writing by an official of the county government or city government prior to August 1 of the calendar year for which the list is requested.

(3) Lists provided pursuant to the provisions of this subsection will be made available following October 1 of the year requested and will be compiled from the list of all valid sales tax permit holders within the requesting county or city as of September 1 of the year requested.

(4) (A) A reasonable fee based upon the number of permit holders within the requesting city or county may be charged for the permit search made and reported to the requesting county or city government.

(B) Fees collected under the provisions of this subsection shall be deposited into the State Central Services Fund to be treated as a refund of expenditures to reimburse the Department of Finance and Administration for the costs of providing the requested information.

(i) (1) The director may disclose information from a return filed by a person, partnership, corporation, trust, or estate to any of the parties who signed the return:

(A) Who is the administrator, executor, or trustee of the estate filing the return;

(B) Who was a member of the partnership filing the return during any part of the period covered by the return;

(C) Who is a trustee or beneficiary of the trust filing the return;

(D) Who is an officer or bona fide shareholder of record owning one percent (1%) or more of the outstanding stock of the corporation filing the return;

(E) Who was a shareholder during any part of the period covered by the return filed by a Subchapter S corporation;

(F) Who was a member of the partnership during any part of the period covered by the partnership return; or

(G) Who is the attorney in fact duly authorized in writing by any of the persons described in subdivisions (i)(1)(A)-(F) of this section.

(2) The director may also disclose all information concerning the collection activity related to a tax return to any party who signed the return.

(3) The director shall promulgate such regulations as are necessary to establish a reasonable procedure for making requests for and for the release of information under this section.

History. Acts 1979, No. 401, § 6; 1981, No. 854, § 1; 1983, No. 673, § 2; 1983, No. 694, §§ 1, 2; 1985, No. 694, § 1; A.S.A. 1947, §§ 84-4706 — 84-4706.2; Acts 1987, No. 382, §§ 29, 30; 1991, No. 400, §§ 1, 2; 1993, No. 403, § 21; 1993, No. 1018, § 2; 1993, No.

1159, § 1; 1995, No. 1276, §§ 1, 2, 3; 1997, No. 1039, § 1; 1999, No. 1126, § 13; 1999, No. 1277, § 9; 1999, No. 1598, § 1; 2001, No. 565, § 1; 2001, No. 1368, § 1; 2003, No. 860, § 10; 2005, No. 1294, § 1; 2007, No. 437, § 1; 2007, No. 827, § 196; 2007, No. 865, § 1; 2009, No. 272, § 1; 2009, No. 360, § 2; 2009, No. 504, § 2; 2009, No. 655, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-303, the preposition “of” could not be inserted following the word “Commission” in (b)(13).

Section 3-5-607, concerning tax incentives for export of local wines, referred to in subdivision (a)(11)(N) of this section, was repealed by Acts 2007, No. 668, § 5.

Publisher's Notes. Acts 1987, No. 382, § 1, provided that this act shall be known and may be cited as the “Income Tax Act of 1987.”

Acts 1987, No. 382, § 2, provided that the purpose of this act is to make technical amendments to the Income Tax Act of 1929, Acts 1929, No. 118, as amended, and to the Arkansas Tax Procedure Act, Acts 1979, No. 401, as amended, to make the Arkansas income tax and tax procedure statutes conform to several recent amendments to their counterparts in the federal income statutes, to eliminate procedural problems that have arisen since the enactment of these acts, and for other purposes.

Acts 1987, No. 382, § 32(e), provided that all other laws and parts of laws in conflict with this act are repealed for income years beginning on and after January 1, 1987.

Acts 1987, No. 382, § 33, provided that, except as provided in § 26-18-303(a)(2)(B) and (c), regarding confidentiality of tax returns and other tax information, which shall apply retroactively to any pending suit, action, or prosecution, administrative or judicial, for which no final judgment has been rendered by a court of competent jurisdiction and all future suits, actions, and prosecutions, the provisions of this act shall apply to income years beginning on and after January 1, 1987.

The Arkansas Enterprise Zone Act of 1989, §§ 15-4-801 — 15-4-814, referred to in this section, expired June 30, 1995, pursuant to former § 15-4-814. Sections 26-55-301 — 26-55-321, referred to in this section, were repealed by Acts 1995, No. 777, § 9.

Amendments. The 1993 amendment by No. 403 substituted “case or controversy” for “case of controversy” in (b)(4).

The 1993 amendment by No. 1018, in both the first and second sentences of (b)(9), inserted “the State Department of Higher Education” and inserted “or any Arkansas public institution of higher education”; and in the first sentence of (b)(9), deleted “Arkansas” preceding “Student Loan Authority.”

The 1993 amendment by No. 1159, in (b)(7), deleted “and” preceding and following “26-77-303” and added “and tax ... outlets” at the end.

The 1995 amendment inserted “or by county governments or city governments” three times in (b)(10); and added (b)(12) and (h).

The 1997 amendment added (b)(13).

The 1999 amendment by No. 1126 added (i).

The 1999 amendment by No. 1277 added (b)(15); and made stylistic changes.

The 1999 amendment by No. 1598 deleted (b)(11)(E) and (b)(11)(J) and redesignated the remaining subdivisions accordingly; substituted “26-57-421, and 26-77-303” for “26-57-421, 26-77-303, 26-57-303 - 26-57-306, 26-57-311, and 26-57-313” in (b)(7); added (b)(14); and made stylistic changes.

The 2001 amendment, by No. 565, substituted “or the Supreme Court or by any federal court” for “the Arkansas Supreme Court, or any United States federal court” in (b)(4); added (b)(16); and made gender neutral changes and minor stylistic changes throughout.

The 2001 amendment, by No. 1368, in (b)(12), substituted “lists” for “list” in the introductory language; redesignated former (b)(12) as present (b)(12)(A), inserted “Section” and added “and” to the end; and added (b)(12)(B).

The 2003 amendment added (b)(17) and made related changes.

The 2005 amendment added (b)(18) and made related changes.

The 2007 amendment by No. 437 deleted “and 15-4-1101 et seq.” following “26-52-903” in (b)(11)(C); added (b)(11)(O) and redesignated the remaining subdivision accordingly; added (b)(19); and made minor punctuation and stylistic changes.

The 2007 amendment by No. 827 inserted “the Court of Appeals” in (b)(4), and made related changes.

The 2007 amendment by No. 865 redesignated former (b)(14) as present (b)(14)(A) and redesignated the remaining subdivisions accordingly; and added (b)(14)(B).

The 2009 amendment by No. 272 inserted (b)(20) and made related and minor stylistic changes.

The 2009 amendment by No. 360 inserted “and state income tax withholding for employees” or similar language in two places in (18)(A), inserted “or the state income tax withholding for employees registration” in (18)(B), and made a minor stylistic change.

The 2009 amendment by No. 504 inserted (b)(20) (now (b)(21)) and made related and minor stylistic changes.

The 2009 amendment by No. 655 substituted “§ 26-57-236(f)” for “§ 26-57-236(g), as amended by Acts 1997, No. 434” in (b)(11)(E).

Cross References. Confidentiality exemption, § 26-36-319.

Penalties for Class A misdemeanors, §§ 5-4-201, 5-4-401.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Research References

Ark. L. Rev.

Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

Case Notes

Construction.

Implied Repeal.

Inspection and Copying.

Motor Fuel Tax Records.

Tobacco Stamp Sales.

Construction.

The language in subdivision (b)(11)(Q) of this section is not ambiguous and thus must be given its plain and ordinary meaning as written. *Leathers v. W.S. Compton Co.*, 316 Ark. 10, 870 S.W.2d 710 (1994).

The phrase “advantage to competitors” in subdivision (b)(11)(Q) of this section means “any advantage” as it is simply not otherwise limited. *Leathers v. W.S. Compton Co.*, 316 Ark. 10, 870 S.W.2d 710 (1994).

The commissioner has interpreted subdivision (b)(11)(Q) of this section in Revenue Regulation 1991-7, which is entitled “Disclosable Tax Information”; it states that the information will not be released unless the taxpayer shows release of the information would result in substantial harm to the taxpayer's competitive position. *Leathers v. W.S. Compton Co.*, 316 Ark. 10, 870 S.W.2d 710 (1994).

Legal opinions rendered in tax cases under 006-05-009 Ark. Code R. § GR-75(B) are subject to disclosure to a company because they are “otherwise kept” public records under § 25-19-103(5)(A); however, any and all identifying facts and information have to be fully redacted under § 25-19-105(f)(1)–(3). Moreover, the legal opinions are not confidential because subdivision (a)(1) of this section does not cover 006-05-009 Ark. Code R. § GR-75(B); state law does not require that the opinions be kept by or filed with the Director of the Arkansas Department of Finance and Administration. *Ryan & Co. v. Weiss*, 371 Ark. 43, 263 S.W.3d 489 (2007).

Implied Repeal.

Section 26-55-249 is impliedly repealed by this section. *Snyder v. Martin*, 305 Ark. 128, 806 S.W.2d 358 (1991).

Inspection and Copying.

Subsection (a) limits the applicability of the Freedom of Information Act to individual tax returns; therefore, the records of motor fuel taxpayers, except those of individuals, are not excluded from inspection and copying. *Ragland v. Yeorgan*, 288 Ark. 81, 702 S.W.2d 23 (1986).

Motor Fuel Tax Records.

Ark. Const., Art. 19, § 12 does not require public access to corporate motor fuel tax records that

include the monthly "shrinkage allowance" given to motor fuel distributors, and thus this section's prohibition of such disclosure is constitutionally permissible. *Snyder v. Martin*, 305 Ark. 128, 806 S.W.2d 358 (1991).

Tobacco Stamp Sales.

The chancellor properly held that, because it would confer "advantage" upon a competitor, the release of "stamp deputy allowance" information was precluded by subdivision (b)(11)(Q) of this section and thus should be enjoined. *Leathers v. W.S. Compton Co.*, 316 Ark. 10, 870 S.W.2d 710 (1994).

26-18-304. Bonds.

(a) Any bond required by any state tax law shall be subject to the approval of the director as to form, sufficiency, value, amount, stability, and other features necessary to provide a guarantee of payment of the tax due the state under this chapter.

(b) Where a bond is required for the purpose of insuring any state tax law, and written notice of termination is required before the bond can be terminated, the party issuing the bond cannot be required to provide the written notice of termination more than sixty (60) days prior to the date the bond is to be terminated.

(c) The length of time required for the notice of termination shall be calculated from the date of receipt of the notice of termination, rather than the date of mailing.

(d) The term bond shall mean any bond, letter of credit, or assignment of a certificate of deposit.

History. Acts 1979, No. 401, § 32; A.S.A. 1947, § 84-4732; 1991, No. 678, § 1.

Publisher's Notes. Acts 1991, No. 678, § 2, provided that the act "shall become effective on January 1, 1992."

26-18-305. Examinations and investigations.

(a) (1) (A) In the administration of any state tax law, the Director of the Department of Finance and Administration, for the purpose of determining the accuracy of a return or fixing any liability under any state tax law, may make an examination or investigation of the place of business, the tangible personal property, equipment, and facilities, and the books, records, papers, vouchers, accounts, and documents of any taxpayer or other person.

(B) Every taxpayer or other person and his or her agents and employees shall exhibit to the director these places and items and facilitate any examination or investigation.

(2) (A) The director may employ proper and reasonable audit methods as he or she deems necessary, including the use of sampling.

(B) If sampling is to be employed as an audit method, the taxpayer's consent to the sampling technique must be obtained at the commencement of the audit.

(b) No taxpayer shall be subjected to unnecessary examination or investigations, and only one (1) inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the director, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

(c) (1) When conducting an investigation or an audit of any taxpayer, the director may, in his or her discretion, examine the records and files of any person, except when privileged by law, any other business, institution, financial institution, the records of any state agency, agency of the United States Government, or agency of any other state when

permitted by agreement or reciprocity.

(2) (A) The director may compel production of these records by summons.

(B) The summons may be served directly by the director.

(d) In the administration of any state tax law, the director may:

(1) Administer oaths, conduct hearings, and compel by summons the attendance of witnesses, testimony, and the production of any books, records, papers, or other data of any person or taxpayer; or

(2) (A) Examine under oath any person regarding the business of any taxpayer concerning any matter incident to the administration of any state tax law.

(B) (i) The fees of witnesses required by the director to attend any hearing shall be the same as those allowed to the witnesses appearing before circuit courts of this state.

(ii) The fees shall be paid in the manner provided for the payment of other expenses incident to the administration of any state tax law.

(e) (1) The investigation may extend to any person that the director determines has access to information which may be relevant to the examination or investigation.

(2) When any summons requiring the production of records as described in subsection (c) of this section is served on a third-party recordkeeper, written notice of the summons shall be mailed to the taxpayer that his or her records are being summoned, at least fourteen (14) days prior to the date fixed in the summons as the day for the examination of the records.

(3) Notice to the taxpayer required by this section is sufficient if it is mailed by certified mail to the last address on record with the director.

(f) When the director has the power to issue a summons for his or her own investigative or auditing purposes, then the director shall honor any reasonable request by any taxpayer to issue a summons on the taxpayer's behalf.

(g) (1) The director or the taxpayer may apply to the circuit court of the county of the taxpayer's residence, place of business, or county where the summons can be served as with any other case at law for any order compelling the production of the summoned records.

(2) Failure to comply with the order of the court for the production of records may be punished by the court as for contempt.

(h) (1) The cost of producing records of a third party required by a summons shall be borne by the taxpayer if he or she requests the summons to be issued.

(2) (A) If the director initiates the summons for third-party records, the director shall bear the reasonable cost of producing the records.

(B) The director may later assess the cost against any delinquent or deficient taxpayer as determined by the records.

(i) (1) The director may examine the books, records, and other documents of transportation companies, agencies, firms, or persons that conduct business by truck, rail, water, airplane, or otherwise in order to determine any sales or use tax due on out-of-state purchases and to determine which dealers are importing or shipping articles of tangible personal property and are liable for any state tax.

(2) If the transportation company, agency, firm, or person refuses to allow an examination of its books, records, and other documents, the director may petition the appropriate circuit court to require the transportation company, agency, firm, or person to

show cause as to why its books, records, and other documents should not be examined and why a bond should not be required in an amount not to exceed two thousand dollars (\$2,000) for a period of not more than one (1) year to guarantee compliance with the provisions of this section.

(3) Refusal to permit the director to examine books, records, and other documents pursuant to this section is a Class C misdemeanor.

History. Acts 1979, No. 401, § 14; A.S.A. 1947, § 84-4714; Acts 1995, No. 650, § 1; 1999, No. 1277, § 11.

Amendments. The 1995 amendment added (i).

The 1999 amendment added the last sentence in (a); and made stylistic changes.

26-18-306. Time limitations for assessments, collection, refunds, and prosecution.

(a) (1) Except as otherwise provided in this chapter, no assessment of any tax levied under the state tax law shall be made after the expiration of three (3) years from the date the return was required to be filed or the date the return was filed, whichever period expires later.

(2) The Director of the Department of Finance and Administration shall not begin court proceedings after the expiration of the three-year period unless there has been a previous assessment for the collection of the tax.

(b) (1) Notwithstanding the provisions of subsection (a) of this section, if the amount of taxable income or taxable estate for a taxpayer for any year, as returned to the United States Department of the Treasury, is changed and corrected by the Commissioner of Internal Revenue or any officer of the United States of competent authority, the taxpayer, within ninety (90) days from the receipt of the notice and demand for payment by the Internal Revenue Service, must report to the director the corrected federal tax, taxable income, or taxable estate for the taxable period covered by the change on an amended Arkansas income tax return.

(2) (A) If there is any additional state tax due from the taxpayer because of the correction by the Internal Revenue Service, any additional state tax resulting from the issues that are included in the correction must be assessed by the director within one (1) year of the filing of the amended Arkansas income tax return by the taxpayer.

(B) However, in the instance of a taxpayer who fails to notify the director of the correction as required by this subsection, no assessment of additional state tax due from the taxpayer because of the correction by the Internal Revenue Service shall be made by the director after the expiration of eight (8) years from the date the return was required to be filed or the date the return was filed, whichever period expires later.

(C) If the assessment made by the Internal Revenue Service is appealed by the taxpayer, the director shall have three (3) years from the date of the final Internal Revenue Service assessment or date of payment of the federal assessment by the taxpayer, whichever of the two (2) periods expires later, in which to make an assessment.

(3) (A) Notwithstanding the provisions of subsection (i) of this section, if the correction by the Internal Revenue Service results in an overpayment of state income tax for the taxable year for which the correction is made, the taxpayer may receive a refund of the overpaid income tax for that year resulting from the issues that are included in the correction upon the filing of the amended return within ninety (90) days from receipt of

the notice from the Internal Revenue Service.

(B) A refund shall not be paid if the amended return is filed on or after the ninety-first day following receipt of the notice from the Internal Revenue Service unless the amended return is filed within three (3) years from the time the original return was filed or two (2) years from the time the income tax due on the original return was paid, whichever of the periods expires later.

(4) A change or correction to taxable income made by the Internal Revenue Service that results in additional state income tax due from the taxpayer does not entitle the director to issue an assessment unless fewer than three (3) years have elapsed from the date the original return for the year not included in the notice was required to be filed or the date the original return was filed, whichever of the periods expires later, for:

(A) A tax year that is not included in the notice of change or correction;

or

(B) An issue that is not included in the notice of change or correction.

(5) A change or correction to taxable income made by the Internal Revenue Service that results in a refund to the taxpayer does not entitle the taxpayer to receive a refund unless fewer than three (3) years have elapsed from the date the original return for the tax year not included in the notice was filed or fewer than two (2) years have elapsed from the time that income tax due on the original return was paid, whichever of the periods expires later, for:

(A) A tax year that is not included within the notice of change or correction; or

(B) An issue that is not included in the notice of change or correction.

(c) Upon written agreement of the director and the taxpayer, the time within which the director may make a final assessment, as provided by § 26-18-401, may be extended to a date mutually agreed upon in the written agreement.

(d) (1) When, before the expiration of the time prescribed for the assessment of the tax or of extensions of the time prescribed for the assessment of the tax consented to in writing, both the director and the taxpayer have consented in writing to an assessment after that time, then the tax may be assessed at any time prior to the expiration of the time agreed upon.

(2) When the time to file a claim for a refund has not expired at the time the extension agreement is entered into, the agreement shall automatically extend the period in which a refund may be allowed or a claim for a refund may be filed to the final date agreed to in the agreement, plus sixty (60) days.

(e) If a taxpayer understates a state tax due by an amount equal to or greater than twenty-five percent (25%) in any return or report or in the case of an income tax, if the taxpayer underreports net taxable income by twenty-five percent (25%) or more, the director may assess the tax due or begin an action in court for the collection of the tax due at any time prior to the expiration of six (6) years after the return was required to be filed or the date the return was filed, whichever period expires later.

(f) In the case of a fraudulent return or failure to file a report or return required under any state tax law, the director may compute, determine, and assess the estimated amount of tax due from any information in his or her possession or may begin an action in court for the collection of the tax without assessment, at any time.

(g) Whenever a taxpayer requests an extension of time for filing any return required by

any state tax law, the limitation of time for assessing any tax shall be extended for a like period.

(h) When the assessment of any tax imposed by any state law has been made within the period of limitation properly applicable to the assessment, the tax may be collected by levy or proceeding in court, but only if the levy is made or the proceeding is begun within ten (10) years after the date of the assessment of the tax.

(i) (1) (A) An amended return or verified claim for credit or refund of an overpayment of any state tax shall be filed by the taxpayer within three (3) years from the time the return was filed or two (2) years from the time the tax was paid, whichever of the periods expires later.

(B) The provisions of subdivision (i)(1)(A) of this section shall not apply to a tax paid as a result of an audit or proposed assessment.

(2) Any taxpayer who fails to file a return, underreports his or her income by twenty-five percent (25%) or more, or fails to notify the director of any change or correction by the Internal Revenue Service in the taxpayer's taxable income shall not be entitled to file an amended return or verified claim for credit or refund after the expiration of three (3) years from the date the original return or notification of change was originally due.

(j) No person shall be prosecuted, tried, or punished for any of the various criminal offenses arising under the provisions of any state tax law unless the indictment of the person is instituted within six (6) years after the commission of the offense.

(k) (1) In the case of an individual, the running of the periods specified for filing an amended return or verified claim for credit or refund shall be suspended during any period of the individual's life in which the individual is financially disabled.

(2) (A) An individual is financially disabled if the individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

(B) An individual shall not be considered to have a physical or mental impairment unless proof of the existence of the impairment is furnished in a form and in a manner as the director may require.

(3) An individual shall not be treated as financially disabled during any period that the individual's spouse or any other person is authorized to act on behalf of the individual in financial matters.

(l) (1) The limitation periods in subsection (i) of this section to file a claim for credit or refund of an overpayment of state tax do not apply to a taxpayer who is a veteran if the:

(A) Overpayment of state tax claimed resulted from the:

(i) Reduction of uniformed service retired pay computed under 10 U.S.C. § 1046 or 1047, as in effect on January 1, 2009; or

(ii) Waiver of retired pay under 38 U.S.C. § 5305, as in effect on January 1, 2009; and

(B) Reduction of the uniformed service retired pay or waiver of retired pay provided in subdivision (l)(1)(A) of this section is the result of an award of compensation under a determination by the Secretary of Veterans Affairs that part or all of the payments to the taxpayer are payments made for a service-connected disability that are not included in gross income under 26 U.S.C. § 104, as in effect on January 1, 2009.

(2) An amended return or verified claim for credit or refund of an overpayment of state tax described in subdivision (l)(1) of this section shall be filed by the taxpayer within one (1) year of the date of the determination described in subdivision (l)(1)(B) of this section or February 25, 2009, whichever occurs later.

(3) A credit or refund for an overpayment of state tax shall not be allowed under this subsection for any tax year which began before January 1, 2001.

History. Acts 1979, No. 401, § 15; 1981, No. 914, § 4; A.S.A. 1947, § 84-4715; Acts 1989, No. 826, § 15; 1991, No. 685, § 6; 1993, No. 785, § 1; 1997, No. 951, § 27; 1999, No. 1126, § 1; 1999, No. 1277, § 10; 2003, No. 1718, § 2; 2007, No. 218, § 9; 2009, No. 238, § 1; 2009, No. 373, § 1.

Publisher's Notes. Acts 1989, No. 826, § 1, provided that this act shall be known and may be cited as the "Arkansas Income Tax Technical Revenue Act of 1989".

Acts 1989, No. 826, § 36, provided that the provisions of that act shall be in full force and effect for all income years beginning on or after January 1, 1989.

Acts 1991, No. 685, § 11, provided:

"The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991."

Amendments. The 1993 amendment deleted "or as long as the statute of limitations for assessment is still open to the director" from the end of (i)(1); and added (i)(2).

The 1997 amendment added "on an amended Arkansas income tax return" at the end of (b)(1); and substituted "amended Arkansas income tax return" for "notice" in the first sentence of (b)(2).

The 1999 amendment by No. 1126 added (k), and made stylistic changes.

The 1999 amendment by No. 1277 rewrote (e).

The 2003 amendment redesignated former (i)(1) as present (i)(1)(A) and deleted "for which the taxpayer is required to file a return" after "any state"; and added (i)(1)(B).

The 2007 amendment substituted "ninety (90) days" for "thirty (30) days" in (b)(1).

The 2009 amendment by No. 238 added (l).

The 2009 amendment by No. 373, in (b), inserted "resulting from the issues that are included in the correction" in (b)(2)(A), and added (b)(3) through (b)(5).

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2009, No. 373, § 2, provided: "Section 1 of this act is effective for tax years beginning on or after January 1, 2009."

Research References

ALR.

Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund. 1 A.L.R.6th 1.

Ark. L. Rev.

Case Note, Pledger v. Illinois Tool Works, Inc.: Arkansas Belatedly Recognizes the Unitary Business Principle as a Limitation of Its Power to Tax Capital Gains of Nondomiciliary Corporations, 45 Ark. L. Rev. 597.

U. Ark. Little Rock L.J.

Legislative Survey, Taxation, 4 U. Ark. Little Rock L.J. 609.

Case Notes

Applicability.

Extensions.

Tolling of Limitations.

Applicability.

Subdivision (i)(1) of this section does not supply the standard for determining whether an Enterprise Zone Act (see § 15-4-1701 et seq.) refund claim is timely filed. *Acxiom Corp. v. Leathers*, 331 Ark. 205, 961 S.W.2d 735 (1998).

Where defendant was charged with willfully attempting to evade or defeat the payment of tax, in violation of § 26-18-201(a), and was convicted of failure to pay tax, in violation of § 26-18-202, the six-year statute of limitations under subsection (j) was applicable rather than the more general three-year limitations period under § 5-1-109(b)(2); subsection (j) specifically provides a six-year limitations period for prosecutions for any of the various criminal offenses arising under the provisions of any state tax law, and it is a well-settled principle of law that a general statute does not apply when a specific one governs the subject matter. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

Extensions.

The extension of the statute of limitations from three years to six years under subsection (e) for taxpayers who understate their tax liability by more than 25% does not apply to use taxes that became delinquent before this provision was effective on January 1, 1980. *Ragland v. Travenol Labs., Inc.*, 286 Ark. 33, 689 S.W.2d 349 (1985).

Tolling of Limitations.

A proposed tax assessment under § 26-18-403, if contested, will toll subsection (a), which limits the time in which an assessment can be made to three years. *Ragland v. Alpha Aviation, Inc.*, 285 Ark. 182, 686 S.W.2d 391 (1985).

Cited: *Mason v. State*, 285 Ark. 479, 688 S.W.2d 299 (1985); *Jones v. Ragland*, 293 Ark. 320, 737 S.W.2d 641 (1987).

26-18-307. Notice requirements.

(a) (1) The Director of the Department of Finance and Administration shall give a taxpayer notice of any assessment, demand, decision, or hearing before the director which directly involves that taxpayer.

(2) (A) All notices required to be given by the director to a taxpayer shall be either served by personal service or sent by regular mail to the taxpayer's last address on record with the particular tax section of the Revenue Division of the Department of Finance and Administration in question.

(B) Service of the notice by mail is presumptively complete upon mailing, and the director may take any action permitted by any state tax law.

(3) All notices of final assessment under § 26-18-401 shall be sent by regular mail.

(b) (1) When giving notice to the director, the taxpayer shall give notice either by mail or by personal service on the director.

(2) The notice the taxpayer gives shall be effective when postmarked or, in case of personal service, when so served.

(c) By written agreement, the director and any taxpayer may provide for any other reasonable means of giving notice.

(d) All notices shall be in writing.

History. Acts 1979, No. 401, § 33; A.S.A. 1947, § 84-4733; Acts 2003, No. 214, § 1.

Amendments. The 2003 amendment, in (a)(1), substituted "Director of ... Administration" for "director"; in (a)(2), inserted "regular" preceding "mail" and substituted "Service of ... mailing" for "If this mail is returned unclaimed or refused then proper notice shall have been served and given"; and, in (a)(3), substituted "regular mail" for "certified mail, return receipt requested."

26-18-308. Disposition of revenues.

All taxes, interest, penalties, and court costs received by the director under any state tax law, unless otherwise specified in this chapter, shall be deposited in the manner stated in the applicable state tax law. Where this chapter is the governing authority for the

collection of interest, penalties, and court costs, the amounts collected are general revenues and shall be so deposited to the credit of the State Apportionment Fund and allocated as provided by the Revenue Stabilization Law of Arkansas, § 19-5-101 et seq.

History. Acts 1979, No. 401, § 43; A.S.A. 1947, § 84-4743.

26-18-309. Defense of director in civil suits.

When the director is a defendant in a civil suit which seeks to recover damages from him personally resulting from any action taken by the director in his official capacity, the Attorney General of this state shall provide the defense for the director.

History. Acts 1979, No. 401, § 44; A.S.A. 1947, § 84-4744.

26-18-310. Director's authority.

(a) The Director of the Department of Finance and Administration may accept payment of any state or local tax or fee by credit card when he or she determines that credit card payments are administratively feasible.

(b) The director may enter into contracts with credit card companies and may pay fees normally charged by those companies for allowing the use of their credit cards as authorized by this section.

History. Acts 1999, No. 1132, § 1.

26-18-311. Electronic tax administration policy.

(a) (1) The Director of the Department of Finance and Administration may promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.

(2) It is the policy of the Department of Finance and Administration that:

(A) Paperless filing should be the preferred and most convenient means of filing state tax and information returns; and

(B) The department should cooperate with and encourage the private sector by encouraging competition to increase electronic filing of such returns.

(b) The director shall establish a plan to eliminate barriers, provide incentives, and use competitive market forces to increase electronic filing gradually over the next ten (10) years while maintaining existing processing times for paper returns.

History. Acts 1999, No. 1126, § 2.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

26-18-312. Signatures on electronic forms.

(a) The Director of the Department of Finance and Administration shall develop procedures for the acceptance of signatures on state tax returns or reports in digital or other electronic form.

(b) Until such time as such procedures are in place, the director may:

(1) Waive the requirement of a signature for a particular type or class of return, declaration, statement, or other document required or permitted to be made in writing under state tax laws and regulations; or

(2) Provide for alternative methods of signing or subscribing a particular type or

class of return, declaration, statement, or other document required or permitted to be made in writing under state tax laws and regulations.

History. Acts 1999, No. 1126, § 3.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

26-18-313. Standard of proof for exemptions, deductions, and credits.

The standard of proof for a taxpayer to establish facts to support a claim for an exemption, deduction, or credit is clear and convincing evidence.

History. Acts 2009, No. 755, § 1.

Subchapter 4 — Assessments

26-18-401. Assessment and collection of taxes generally.

26-18-402. Jeopardy assessment.

26-18-403. Proposed assessments.

26-18-404. Taxpayer relief.

26-18-405. Hearing on proposed assessments.

26-18-406. Judicial relief.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided:

"The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to secure an objective review of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3) the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the 'divisible tax theory' applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state."

Cross References. Assessment of taxes generally, § 26-26-101 et seq.

Collection of taxes generally, § 26-34-101 et seq.

Effective Dates. Acts 1981, No. 914, § 9: Dec. 31, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the State's income tax laws that have counterparts in the Federal income tax laws do not coincide with recent amendments to the Federal income tax laws; that clarification needs to be made to provisions of the Arkansas Tax procedure Act (Act 401 of 1979) with regard to the statute of limitations on assessments, the judicial review of contested assessments and the automatic assertion of the 10% negligence penalty (as apparently approved by the Supreme Court in its decision in *Great Lakes Chemical Co. v. Wooten*, 266 Ark. 511, 514 (1979) which decision was rendered after the adoption by the General Assembly of Act 401 of 1979, but before the effective date of that Act); and that this Act is immediately necessary to make the Arkansas income tax law conform with the Federal income tax law, to clarify any possible question as to the applicability of the Statute of Limitations on assessment and judicial review of contested assessments, and to stop the automatic assessment of the 10% negligence penalty on any deficiency in tax determined by the Commissioner. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all periods beginning after December 31, 1980."

Acts 1997, No. 1139, § 14: July 1, 1997. Emergency clause provided: "It is found and determined

by the General Assembly of the State of Arkansas that the taxpayers' procedural rights to pursue an objective judicial review in challenging a state tax assessment are, in some instances, being unfairly denied to Arkansas taxpayers who have legitimate disputes with the Arkansas Department of Finance and Administration. It is therefore held that the provisions of this act, are needed to cure this problem for state taxpayers. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on and after July 1, 1997."

Acts 2009, No. 755, § 3: July 31, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that many manufacturers and other businesses have found that it is substantially more difficult to prove they are entitled to a tax exemption, deduction, or credit in Arkansas than in most other states based on the court interpretation that the taxpayer must present facts that establish their right to a tax exemption, deduction, or credit "beyond a reasonable doubt" and "to doubt is to deny" exemptions; that the standard of proof for the taxpayer to prove an exemption, deduction, or credit should be changed to clear and convincing evidence, and that in trials de novo or appeals within the judicial system, no presumption of correctness should attach to positions of taxing authorities at the administrative level. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 704 et seq.

C.J.S. 84 C.J.S., Tax., § 390 et seq.

U. Ark. Little Rock L.J.

Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 U. Ark. Little Rock L.J. 279.

26-18-401. Assessment and collection of taxes generally.

(a) (1) The Director of the Department of Finance and Administration shall make the inquiries, determinations, and assessments of all state taxes, including interest, additions to taxes, and assessable penalties, imposed by all state tax laws.

(2) The proposed assessment shall be made by recording the liability of the taxpayer in the office of the director in accordance with rules or regulations prescribed by the director.

(3) Upon request of the taxpayer, the director shall furnish the taxpayer a copy of the record of the assessment.

(b) (1) The director shall collect all taxes imposed by any state tax law.

(2) (A) (i) The director shall issue a final assessment to each taxpayer liable for the unpaid tax.

(ii) The final assessment shall state the amount of the assessment and demand payment within ten (10) days of the assessment.

(iii) The final assessment shall not be issued before the expiration of time for the taxpayer to request an administrative hearing under § 26-18-404.

(B) If the taxpayer has requested administrative relief under § 26-18-404 the final assessment shall be issued according to § 26-18-405.

(C) (i) If the taxpayer has paid the assessment before the time for the issuance of the final assessment, no final assessment shall be issued.

(ii) The taxpayer may seek to recover the payment of the assessment only if §§ 26-18-403 or 26-18-406 applies.

(3) Upon receipt of the final assessment from the director, the person liable for

the tax shall pay the stated amount including any interest, additions to tax, and assessable penalties at the place and time stated in the final assessment.

History. Acts 1979, No. 401, § 12; A.S.A. 1947, § 84-4712; Acts 2003, No. 1718, §§ 3-5.

Amendments. The 2003 amendment inserted “proposed” in (a)(2); rewrote (b)(2); and substituted “the final assessment” for “notice and demand” twice in (b)(3).

Case Notes

Business Transfers.
Limitations of Action.
Reassessments.
Venue.

Business Transfers.

State held not to waive right to enforce claim for tax deficiencies of former owner discovered after transfer of business to new owner. Commissioner of Revenues v. Belote, 226 Ark. 295, 289 S.W.2d 665 (1956) (decision under prior law).

Limitations of Action.

Where record did not disclose what particular months alleged unpaid taxes were charged against in situation where some of the months of the year in question might be barred and some months not, entire total for year could have been incurred in months not barred and plea of statute of limitations as to entire year was without merit. Scurlock v. Yarbrough, 224 Ark. 113, 271 S.W.2d 916 (1954) (decision under prior law).

Where taxpayers failed to file their protests on additional sales and individual tax assessments imposed against them by the Department of Finance and Administration until after more than a year had passed since said assessments were paid, dismissal of their complaint was warranted. Mac v. Weiss, 360 Ark. 384, 201 S.W.3d 897 (2005).

Reassessments.

Reassessment and collection of taxes precluded in view of statute preventing proceedings for reassessment except for actual fraud. McCarroll v. Hollis & Co., 201 Ark. 931, 148 S.W.2d 167 (1941) (decision under prior law).

Venue.

Where defense to state's claim for unpaid sales taxes was three year statute of limitations and not “no tax due,” venue of suit to enjoin levy of execution was in Pulaski Chancery Court and not in county in which certificate of indebtedness of record had been placed. Scurlock v. Yarbrough, 224 Ark. 113, 271 S.W.2d 916 (1954) (decision under prior law).

Former statute governing penalties for tax report violations did not require that the failure to report be deemed to be an action committed in part at the taxpayer's residence; accordingly, where a taxpayer was required by law to file a return in a county other than that of his residence, prosecution for failure to file had to be brought in the county of filing, not the county of residence. Taylor v. Partain, 267 Ark. 476, 591 S.W.2d 653 (1980) (decision under prior law).

Cited: Ragland v. Alpha Aviation, Inc., 285 Ark. 182, 686 S.W.2d 391 (1985).

26-18-402. Jeopardy assessment.

(a) Regardless of the date on which a return or payment is due or a taxable period of a taxpayer closes, the director shall declare the taxable period of any state tax terminated for that person and shall issue a jeopardy assessment and assess the tax from any information in his possession, notify the taxpayer, and demand immediate payment if the director believes that:

(1) The tax liability of any person who has a bond on file with the director to indemnify the state for the payment of any state tax is in excess of the amount of the

bond;

(2) A taxpayer intends to depart from the state, to remove his property therefrom, or to conceal himself or any of his property therein;

(3) A taxpayer intends to discontinue business without making adequate provisions for payment of all state tax; or

(4) A taxpayer intends to do any other act tending to prejudice, jeopardize, or render wholly or partially ineffectual proceedings to compute, assess, or collect any state tax.

(b) (1) Within five (5) days after the date on which a notice and demand for payment is made under subsection (a) of this section, the director shall provide the taxpayer with a written statement of the information upon which the director relies in making such assessment.

(2) If the taxpayer fails or refuses to pay the tax upon demand of the director or requests a hearing before the director within five (5) business days after the day the taxpayer is furnished the written statement described in subdivision (1) of this subsection, the tax shall become delinquent and the director shall proceed to issue a certificate of indebtedness.

(c) When the taxpayer requests a hearing, the director shall hold the hearing within five (5) business days of receipt of the request. After a hearing, the director shall determine whether the making of the assessment under subsection (a) of this section is reasonable under the circumstances and shall render his decision. The taxpayer has three (3) days after the receipt of the director's decision either to pay the tax and applicable penalty and interest due or to protest the decision of the director as provided by § 26-18-406(a) prior to the director's issuing a certificate of indebtedness.

(d) Whenever the director issues a jeopardy assessment, he shall have the burden of proving the reasonableness of the assessment.

History. Acts 1979, No. 401, § 13; A.S.A. 1947, § 84-4713; Acts 1989, No. 590, §§ 4, 5.

Case Notes

Cited: Martin v. Couey Chrysler Plymouth, Inc., 308 Ark. 325, 824 S.W.2d 832 (1992).

26-18-403. Proposed assessments.

(a) (1) If any taxpayer fails to file any return as required by any state tax law, the director, from any information in his possession or obtainable by him, may determine the correct amount of tax for the taxable period. If a return has been filed, the director shall examine the return and make any audit or investigation that he considers necessary.

(2) When no return has been filed and the director determines that there is a tax due for the taxable period or when a return has been filed and the director determines that the tax disclosed by the return is less than the tax disclosed by his examination, the director shall propose the assessment of additional tax plus penalties, as the case may be, and shall give notice of the proposed assessment to the taxpayer. The notice shall explain the basis for the proposed assessment and shall state that a final assessment, as provided by § 26-18-401, will be made if the taxpayer does not protest such proposed assessment as provided by § 26-18-404. The taxpayer does not have to protest the proposed assessment to later be entitled to exercise the right to seek a judicial review of the assessment, pursuant to the provisions of § 26-18-406.

(b) Any demand for additional payment of a state tax which is made as the result of a verification of a mathematical error on the return shall not be deemed to be a proposed assessment under the provisions of this section and shall not be subject to the hearing or appeal provisions of this chapter.

History. Acts 1979, No. 401, § 18; A.S.A. 1947, § 84-4718; Acts 1997, No. 1139, § 1.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided:

"The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to secure an objective review of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3) the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the 'divisible tax theory' applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state."

Amendments. The 1997 amendment added the last sentence in (a)(2).

Case Notes

Due Process.

Tolling of Limitations.

Due Process.

The state did not deprive the taxpayers of property without due process by filing a certificate of indebtedness, where the state obtained a tax lien only after giving the taxpayers several notices and an opportunity to be heard. *Ross v. Martin*, 800 F.2d 808 (8th Cir. 1986).

Tolling of Limitations.

A proposed tax assessment under this section, if contested, will toll subsection (a) of § 26-18-306, which limits the time in which an assessment can be made to three years. *Ragland v. Alpha Aviation, Inc.*, 285 Ark. 182, 686 S.W.2d 391 (1985).

26-18-404. Taxpayer relief.

(a) Any taxpayer who wishes to seek administrative relief from any proposed assessment of taxes or from a denial of a claim for refund by the Director of the Department of Finance and Administration shall follow the procedure provided by this section.

(b) (1) A taxpayer may at his or her option either request the director to consider his or her request for relief solely upon written documents furnished by the taxpayer or upon the written documents and any evidence produced by the taxpayer at a hearing.

(2) A taxpayer who requests the director to render his or her decision based on written documents is not entitled by law to any other administrative hearing prior to the director's rendering of his or her decision and, if necessary, the issuing of a final assessment and demand for payment or issuing of a certificate of indebtedness.

(c) (1) Within sixty (60) days after service of notice of the proposed assessment or denial of a claim for refund, the taxpayer may file with the director a written protest under oath, signed by the taxpayer or the taxpayer's authorized agent, setting forth the taxpayer's reasons for opposing the proposed assessment or the denial of a claim for refund.

(2) No administrative relief will be available to a taxpayer who fails to protest or to a taxpayer who fails to request an extension of time to protest a proposed assessment of tax or denial of a claim for refund within the sixty (60) days following the service of

notice of the proposed assessment or denial of a claim for refund.

(d) The director may, in his or her discretion, extend the time for filing a protest for any period of time not to exceed an additional ninety-day period.

History. Acts 1979, No. 401, § 19; A.S.A. 1947, § 84-4719; Acts 1997, No. 1139, §§ 2, 3; 1999, No. 1277, §§ 1, 2; 2007, No. 212, § 1.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided:

"The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to secure an objective review of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3) the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the 'divisible tax theory' applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state."

Amendments. The 1997 amendment, in (a), inserted "administrative" preceding "relief" and inserted "or proposed notice of disallowance of a claim for refund"; and, in (c), substituted "or proposed notice of claim disallowance" for "or action" and added "or the proposed notice of claim disallowance" to the end.

The 1999 amendment substituted "a denial" for "proposed notice of disallowance" preceding "of a claim" in (a); and substituted "denial of a claim for refund" for "proposed notice of claim disallowance" twice in (c); and made stylistic changes.

The 2007 amendment added the (c)(1) designation and added (c)(2); and in (c)(1), substituted "sixty (60) days" for "thirty (30) days," "the taxpayer" for "himself or herself," and "the taxpayer's" for "his or her."

Case Notes

Appeals.

Appeals.

This chapter requires a particular type of protest in order to initiate the administrative review procedures outlined in this section and § 26-18-405, which involve contesting proposed assessments, while paying the final assessment under protest is required by § 26-18-406(a)(1) in order to preserve the taxpayer's right to judicial review. *Hercules, Inc. v. Pledger*, 319 Ark. 702, 894 S.W.2d 576 (1995).

Cited: *Ragland v. Alpha Aviation, Inc.*, 285 Ark. 182, 686 S.W.2d 391 (1985); *Ross v. Martin*, 800 F.2d 808 (8th Cir. 1986); *Ragland v. General Tire & Rubber Co.*, 297 Ark. 394, 763 S.W.2d 70 (1989).

26-18-405. Hearing on proposed assessments.

(a) (1) The Director of the Department of Finance and Administration shall appoint a hearing officer to review all written protests submitted by taxpayers, hold all hearings, and make written findings as to the applicability of the proposed assessment or the denial of the claim for refund.

(2) Decisions of the hearing officer shall be final unless revised by the director.

(3) The hearings on written and oral protests and determinations made by the hearing officer shall not be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) The director may appoint one (1) or more hearing officers, but the persons occupying these appointments shall not contemporaneously with the holding of these appointments

have any other administrative duties within the Revenue Division of the Department of Finance and Administration.

(c) The actual hearing on the written protest shall be held in any city in which the division maintains a Field Audit District Office or in such other city as the director shall, in his or her discretion, designate.

(d) (1) The hearing officer shall set the time and place for hearing on the written protests and shall give the taxpayer reasonable notice of the hearing.

(2) At the hearing, the taxpayer may be represented by an authorized representative and may present evidence in support of his or her position.

(3) After the hearing, the hearing officer shall render his or her decision in writing and shall serve copies upon both the taxpayer and the section or division of the Department of Finance and Administration which proposed the assessment or the denial of the claim for refund.

(4) (A) (i) If the proposed assessment or denial of a claim for refund is sustained, in whole or part, the taxpayer or legal counsel for the director may request in writing, within twenty (20) days of the mailing of the decision, that the director revise the decision of the hearing officer. No request for revision will be considered unless it is received by the director within twenty (20) days of the mailing of the hearing decision.

(ii) Either the taxpayer or legal counsel for the director must provide a copy of any written request for revision to the other.

(B) If the director refuses to make a revision or if the taxpayer or legal counsel for the director does not make a request for revision, then the director will send either:

(i) A final assessment to the taxpayer, as provided by § 26-18-401, that is made upon the final determination of the hearing officer that sustained a proposed assessment of tax; or

(ii) A notice in writing to both the taxpayer and legal counsel for the director, if a revision was requested, of his or her decision not to revise a decision that resulted in no tax due, including the denial of a claim for refund.

(C) (i) If the director revises the decision of the hearing officer, the director shall send the final decision of the director to the taxpayer and to the legal counsel for the director.

(ii) A notice of final assessment shall be made upon the decision of the director if the director's decision sustained a proposed assessment of tax.

(iii) No further notice will be issued for a final decision of the director that results in no tax due, including the denial of a claim for refund.

(D) A taxpayer may not request revision of a decision issued by the director under this subdivision (d)(4).

(e) A taxpayer may seek relief from the final decision of the hearing officer or the director on a final assessment of a tax deficiency or a notice of denial of a claim for refund by following the procedure set forth in § 26-18-406.

(f) (1) In addition to the hearing procedures set out in subsections (a)-(e) of this section, the director may hold administrative hearings by telephone, video conference, or other electronic means if the director determines that conducting the hearing in such a manner:

(A) Is in the best interest of the taxpayer and the department;

(B) Is agreed to by both parties;

- (C) Is not fiscally unsound or administratively burdensome; and
- (D) Adequately protects the confidentiality of the taxpayer's information.

(2) The director may contract with third parties for all services necessary to conduct hearings by telephone, video, or other electronic means.

(3) Any person who enters into a contract with the director to provide services necessary to conduct hearings by telephone, video, or other electronic means shall be subject to the requirements of this chapter providing for the confidentiality of all taxpayer records.

History. Acts 1979, No. 401, § 20; A.S.A. 1947, § 84-4720; Acts 1993, No. 332, § 4; 1995, No. 655, § 1; 1997, No. 1139, §§ 4-6; 1999, No. 1277, §§ 3-5; 2007, No. 212, § 2.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided:

“The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to secure an objective review of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3) the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the ‘divisible tax theory’ applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state.”

Amendments. The 1993 amendment inserted (d)(4)(C).

The 1995 amendment added (f).

The 1997 amendment inserted “or the proposed notice of claim disallowance” in (a)(1); added “or the proposed notice of claim of disallowance” to the end of (d)(3); inserted “or proposed notice of claim disallowance” in (d)(4)(A); inserted “or a final notice of claim disallowance, as provided by § 26-18-507” in (d)(4)(B) and the first sentence in (d)(4)(C); inserted “or allowing any part of a claim for refund” in the second sentence (d)(4)(C); and inserted “or a final notice of claim disallowance” in (e).

The 1999 amendment substituted “denial of the claim for refund” for “proposed notice of claim disallowance” in (a)(1); substituted “denial of the claim for refund” for “proposed notice of claim of disallowance” in (d)(3); substituted “denial of a claim for refund” for “proposed notice of claim disallowance” in (d)(4); deleted “or a final notice of claim disallowance, as provided by § 26-18-507” following “§ 26-18-401” in (d)(4)(B) and (d)(4)(C); added the last sentence in (d)(4)(B); deleted “or allowing any part of a claim for refund” following “any portion of an assessment” in (d)(4)(C); added (d)(4)(D); substituted “or a notice of denial of a claim for refund” for “or a notice of claim disallowance” in (e); and made stylistic changes.

The 2007 amendment rewrote (d)(4).

Case Notes

Appeals.

Source of Relief.

Tolling of Limitations.

Appeals.

This chapter requires a particular type of protest in order to initiate the administrative review procedures outlined in this section and § 26-18-404, which involve contesting proposed assessments, while paying the final assessment under protest is required by § 26-18-406(a)(1) in order to preserve the taxpayer's right to judicial review. *Hercules, Inc. v. Pledger*, 319 Ark. 702, 894 S.W.2d 576 (1995).

Source of Relief.

When the legality of the underlying tax act is not in issue, but only the correctness of the person assessed, the taxpayer does not have a cause of action for an illegal exaction, but the taxpayer's

relief is that which is provided by this section and § 26-18-406. *Cook v. State*, 312 Ark. 438, 850 S.W.2d 309 (1993).

Tolling of Limitations.

A proposed tax assessment under § 26-18-403, if contested, will toll subsection (a) of § 26-18-306, which limits the time in which an assessment can be made to three years. *Ragland v. Alpha Aviation, Inc.*, 285 Ark. 182, 686 S.W.2d 391 (1985).

Cited: *Ross v. Martin*, 800 F.2d 808 (8th Cir. 1986); *Taber v. Pledger*, 302 Ark. 484, 791 S.W.2d 361 (Ark. 1990); *Little Rock Cleaning Sys. v. Weiss*, 326 Ark. 1007, 935 S.W.2d 268 (1996); *Mac v. Weiss*, 360 Ark. 384, 201 S.W.3d 897 (2005).

26-18-406. Judicial relief.

(a) After the issuance and service on the taxpayer of the final assessment of a deficiency in tax that is not protested by the taxpayer under § 26-18-403 or a final determination of the hearing officer or the Director of the Department of Finance and Administration under § 26-18-405, a taxpayer may seek judicial relief from the final determination or assessment by:

(1) (A) Paying the entire amount of state tax due for any taxable period or periods covered by the final assessment within one (1) year of the date of the final assessment and filing suit to recover that amount within one (1) year of the date of payment.

(B) The director may proceed with collection activities including the filing of a certificate of indebtedness as authorized under § 26-18-701 within thirty (30) days of the issuance of the final assessment for any assessed but unpaid state taxes, penalties, or interest owed by the taxpayer for other taxable periods covered by the final assessment while the suit for refund is being pursued by the taxpayer for other taxable periods covered by the final assessment;

(2) (A) Filing with the director a bond in double the amount of the tax deficiency due within thirty (30) days of the issuance and service on the taxpayer of the final assessment and by filing suit within thirty (30) days thereafter to stay the effect of the director's determination.

(B) The bond shall be subject to the conditions that the taxpayer shall:

(i) File suit within thirty (30) days after filing the bond;

(ii) Faithfully and diligently prosecute the suit to a final

determination; and

(iii) Pay any deficiency found by the court to be due and pay any court cost assessed against him or her.

(C) A taxpayer's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by subdivision (a)(2)(B) of this section, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs; or

(3) Filing suit to recover assessed tax, penalty, and interest paid prior to the time for issuance of the final assessment within one (1) year of the date of the final determination of the hearing officer or the director under § 26-18-405.

(b) A taxpayer may seek judicial relief from a final determination denying a claim for refund by filing suit to recover the amount claimed within one (1) year from the mailing of the denial of the director under § 26-18-507, or a final determination of the hearing officer or the director under § 26-18-405, whichever is later.

(c) (1) Jurisdiction for a suit to contest a determination of the director under this section

shall be in the Pulaski County Circuit Court or the circuit court of the county in which the taxpayer resides or has his or her principal place of business, where the matter shall be tried de novo.

(2) An appeal will lie from the circuit court to the Supreme Court, as in other cases provided by law.

(3) A presumption of correctness or weight of authority will not attach to a determination of the director in a trial de novo or an appeal under this section.

(d) (1) The methods provided in this section shall be the sole alternative methods for seeking relief from a written decision of the director establishing a deficiency in tax or disallowing a claim for refund.

(2) No injunction shall issue to stay proceedings for assessment or collection of any taxes levied under any state tax law.

(e) (1) In any court proceeding under this section, the prevailing party may be awarded a judgment for court costs.

(2) A judgment of court costs entered by the court in favor of either party shall be treated, for purposes of this chapter, in the same manner as an overpayment or deficiency of tax, except that no interest or penalty shall be allowed or assessed with respect to any judgment for court costs.

(f) If a taxpayer pays the tax, penalty, and interest assessed under § 26-18-403 and does not request administrative relief according to § 26-18-404, then:

(1) The taxpayer may seek judicial relief from the assessment only if the taxpayer files suit in circuit court within one (1) year from the date of payment of the assessment; and

(2) The provisions of § 26-18-507 shall not apply to the payments.

History. Acts 1979, No. 401, §§ 21, 22; 1981, No. 914, § 5; A.S.A. 1947, §§ 84-4721, 84-4722; Acts 1997, No. 1139, § 7; 1999, No. 1277, § 6; 2003, No. 1718, §§ 6-8; 2009, No. 755, § 2.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided:

"The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to secure an objective review of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3) the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the 'divisible tax theory' applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state."

Amendments. The 1997 amendment rewrote the section.

The 1999 amendment rewrote (b).

The 2003 amendment, in (a), substituted "final assessment" for "notice and demand for payment," "director of the Department of Finance and Administration" for "director" and "or assessment by" for "by either," and deleted "established by an audit determination" following "deficiency in tax"; inserted the subdivision designations in (a)(1); substituted "final assessment" for "notice and demand for payment" in (a)(2)(A); substituted "subdivision (a)(2)(B)" for "subsection (a)" in (a)(2)(C); added (a)(3); substituted "chancery" with "circuit" twice in (c)(1) and once in (c)(2); deleted "Arkansas" before "Supreme Court" in (c)(2); added (f); and made stylistic and gender neutral changes throughout.

The 2009 amendment inserted (c)(3)

Research References

U. Ark. Little Rock L.J.

Tyler, Survey of Business Law, 3 U. Ark. Little Rock L.J. 149.

Legislative Survey, Taxation, 4 U. Ark. Little Rock L.J. 609.

Case Notes

Appeals.
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Appeals.

Appeal to chancery court automatically superseded certificate of indebtedness. Hardin v. Norsworthy, 204 Ark. 943, 165 S.W.2d 609 (1942) (decision under prior law).

State had right of appeal from injunction restraining circuit clerk from issuing writ of execution on certificate of indebtedness. Hardin v. Norsworthy, 204 Ark. 943, 165 S.W.2d 609 (1942) (decision under prior law).

This chapter requires a particular type of protest in order to initiate the administrative review procedures outlined in §§ 26-18-404 and 26-18-405, which involve contesting proposed assessments, while paying the final assessment under protest is required by subdivision (a)(1) of this section in order to preserve the taxpayer's right to judicial review. Hercules, Inc. v. Pledger, 319 Ark. 702, 894 S.W.2d 576 (1995).

Burden of Proof.

Where taxpayer was not claiming an exemption from tax, but rather was claiming that a tax could not be levied upon it, the Department of Finance and Administration had the burden of proving the propriety of the tax, and all doubts and ambiguities had to be resolved in favor of the taxpayer. Pledger v. Troll Book Clubs, Inc., 316 Ark. 195, 871 S.W.2d 389 (1994).

Certificates of Indebtedness.

Where payment had been made and taxpayer sued to recover overcharge, certificate of indebtedness had performed its function and there was no lien. Hardin v. Gautney, 204 Ark. 723, 164 S.W.2d 427 (1942) (decision under prior law).

Issuance of certificate of indebtedness within 30-day period allowing merchant to appeal to chancery court was proper, since tax amount fixed should have been paid and an action brought for refund of any excess shown to have been collected. Hardin v. Norsworthy, 204 Ark. 943, 165 S.W.2d 609 (1942) (decision under prior law).

Proceeding for issuance of certificate of indebtedness held not a common law action wherein trial by jury was guaranteed, and right to jury trial was not accorded by statute. Hardin v. Norsworthy, 204 Ark. 943, 165 S.W.2d 609 (1942) (decision under prior law).

Regularity of signature to certificate of indebtedness could not be raised for the first time in the Supreme Court. Cook v. Hickenbottom, 212 Ark. 768, 207 S.W.2d 721 (1948) (decision under prior law).

Where merchant did not refute claim of tax indebtedness, filing of certificate of indebtedness became a mandate, and a lien attached from time certificate was entered. Hardin v. Norsworthy, 204 Ark. 943, 165 S.W.2d 609 (1942) (decision under prior law).

Claim Upheld.

Claim for refund survived a motion to dismiss under ARCP 12(b)(6). Little Rock Cleaning Sys. v.

Weiss, 326 Ark. 1007, 935 S.W.2d 268 (1996).

Exclusivity.

The fact that § 26-18-405(e) states that a “taxpayer may seek relief” under this section takes nothing away from the clarity of the exclusivity language of this section. Nor does the fact that the second sentence of subsection (d) states that there shall be no injunctive relief against assessment or collection. It gives the taxpayer the exclusive method of challenge. *Taber v. Pledger*, 302 Ark. 484, 791 S.W.2d 361 (Ark. 1990).

Injunctions.

Interdiction against injunction could only have reference to taxes lawfully assessed and to lawful methods used in collection of taxes. *Hardin v. Gautney*, 204 Ark. 723, 164 S.W.2d 427 (1942) (decision under prior law).

Evidence that merchant was misled into thinking another hearing would be accorded was insufficient to justify granting of injunction restraining issuance of writ of execution on certificate of indebtedness. *Hardin v. Norsworthy*, 204 Ark. 943, 165 S.W.2d 609 (1942) (decision under prior law).

One had 30 days from filing of certificate of indebtedness in which to bring injunction proceedings in county where certificate was filed where person alleged that no part of tax amount claimed was owing. *Scurlock v. Little*, 224 Ark. 109, 271 S.W.2d 914 (1954) (decision under prior law).

Legislative Intent.

In enacting this section, the General Assembly had in mind at least two reasons for requiring a taxpayer to designate specifically any payment as being under protest when seeking judicial review of a final deficiency assessment: first, subsection (c) mandates that all taxes and penalties paid under protest are to be held by the director in an escrow account denominated the “Tax Protest Fund Account,” and that refunds are to be made from this account; second, a taxpayer who has protested and pursued an earlier administrative review of a proposed assessment under § 28-18-404 may reasonably decide not to pursue further adjustments of the assessment or judicial review of the final determination. *Hercules, Inc. v. Pledger*, 319 Ark. 702, 894 S.W.2d 576 (1995).

Notice of Deficiency.

Purchaser of business who was issued a permit was entitled to notice of deficiency, and notice to former owner mailed six months after sale was insufficient. *Thompson v. Chadwick*, 221 Ark. 720, 255 S.W.2d 687 (1953) (decision under prior law).

Paying Under Protest.

Protest is commonly understood to mean a formal disapproval or objection issued by a concerned party. *Hercules, Inc. v. Pledger*, 319 Ark. 702, 894 S.W.2d 576 (1995).

While a payment which is not made under protest is deposited into general revenues and becomes available for immediate use by the state, a payment made under protest only becomes available for the state’s use after the taxpayer fails to file suit within the one year period or after judicial determination that the deficiency assessment was valid. *Hercules, Inc. v. Pledger*, 319 Ark. 702, 894 S.W.2d 576 (1995).

Relief Precluded.

General Assembly has right to designate a period within which one alleged to owe state on tax will be required to make his defense. *Hardin v. Gautney*, 204 Ark. 723, 164 S.W.2d 427 (1942) (decision under prior law).

Limitation of 30 days applied with equal force to litigant who sought relief in his county of residence where right to assess any tax was challenged and to litigant who only questioned amount of tax that had been legally assessed, some part of which was due. *Hardin v. Gautney*, 204 Ark. 723, 164 S.W.2d 427 (1942) (decision under prior law).

Where tax was collected by mercantile establishment from its customers, it could not thereafter question the applicability of the tax to particular sales in order either to retain tax money for itself or to recover it from state, since such action would constitute unjust enrichment. *Cook v. Sears-Roebuck & Co.*, 212 Ark. 308, 206 S.W.2d 20 (1947) (decision under prior law).

Taxpayer who was given due notice of filing certificate of indebtedness could not wait six months after filing of certificate and issuance of first execution and then question validity of tax assessed against him. *Cook v. Hickenbottom*, 212 Ark. 768, 207 S.W.2d 721 (1948) (decision under prior law).

Wife estopped to assert her claim against tax lien where she allowed husband to use her money. *Cook v. Pranger*, 215 Ark. 2, 219 S.W.2d 420 (1949) (decision under prior law).

Imposition of unpaid withholding taxes, interest, and penalties against employers was proper; there was no error in failing to give the employers additional credit for taxes certain employees claimed they had paid where (1) the Arkansas Department of Finance and Administration's records did not show that the employees had paid their taxes and (2) the employers were not entitled to any credit under § 26-51-916 because they had not shown reasonable cause for failing to withhold and remit taxes. *Morris v. Ark. Dep't of Fin. & Admin.*, 82 Ark. App. 124, 112 S.W.3d 378 (2003).

Where taxpayers failed to file their protests on additional sales and individual tax assessments imposed against them by the Department of Finance and Administration until after more than a year had passed since said assessments were paid, dismissal of their complaint was warranted. *Mac v. Weiss*, 360 Ark. 384, 201 S.W.3d 897 (2005).

Source of Relief.

When the legality of the underlying tax act is not in issue, but only the correctness of the person assessed, the taxpayer does not have a cause of action for an illegal exaction, but the taxpayer's relief is that which is provided by § 26-18-405 and this section. *Cook v. State*, 312 Ark. 438, 850 S.W.2d 309 (1993).

Venue.

If controversy went only to proposition that transaction was not taxable or, if taxable, person assessed was not person charged by law with payment, such issue was determinable by chancery court of county where it was sought to compel collection, that is, where the certificate, prima facie, created a lien. *Hardin v. Gautney*, 204 Ark. 723, 164 S.W.2d 427 (1942) (decision under prior law).

If issue in controversy related only to amount of valid tax to be paid, the General Assembly could require payment as a condition precedent to the right to litigate as to any alleged overcharge and since fund was then transmitted to Little Rock, legislature could fix venue in Pulaski County.

Hardin v. Gautney, 204 Ark. 723, 164 S.W.2d 427 (1942) (decision under prior law).

Where taxpayer's defense to state's claim for unpaid sales taxes was the three year statute of limitations and he did not claim "no tax due," venue of his suit to enjoin levy of execution was in Pulaski Chancery Court and not in county in which certificate of indebtedness of record had been placed against him. *Scurlock v. Yarbrough*, 224 Ark. 113, 271 S.W.2d 916 (1954) (decision under prior law).

It was only where the taxpayer claimed "no tax due" that he would invoke the venue of his county of residence to bring action to enjoin levy of execution of unpaid sales taxes; in other cases, taxpayer had to pay amount claimed and proceed in Pulaski Chancery Court to recover overcharge. *Scurlock v. Yarbrough*, 224 Ark. 113, 271 S.W.2d 916 (1954) (decision under prior law).

Plaintiff could not obtain jurisdiction by an injunction suit in court of his residence until certificate of indebtedness was filed in that court. *Scurlock v. Hardscrabble Country Club*, 224 Ark. 629, 275 S.W.2d 638 (1955) (decision under prior law).

Cited: *Ragland v. K-Mart Corp.*, 274 Ark. 297, 624 S.W.2d 430 (1981); *Little Rock Mun. Water Works v. Ragland*, 279 Ark. 324, 651 S.W.2d 78 (1983); *Burlington N. R. Co. v. Ragland*, 280 Ark. 182, 655 S.W.2d 437 (1983); *Ross v. Martin*, 800 F.2d 808 (8th Cir. 1986); *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 703 S.W.2d 449 (1986); *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992); *Martin v. Couey Chrysler Plymouth, Inc.*, 308 Ark. 325, 824 S.W.2d 832 (1992); *Leathers v. A & B Dirt Movers, Inc.*, 311 Ark. 320, 844 S.W.2d 314 (1992); *Pledger v. Worthen Bank & Trust Co.*, 319 Ark. 155, 889 S.W.2d 732 (1994); *Arkansas Glass Container Corp. v. Pledger*, 320 Ark. 10, 894 S.W.2d 599 (1995); *Weiss v. Best Enters., Inc.*, 323 Ark. 712, 917 S.W.2d 543 (1996); *Boral Gypsum, Inc. v. Leathers*, 325 Ark. 272, 924 S.W.2d 805 (1996); *Baker Refrigeration Sys. v. Weiss*, 360 Ark. 388, 201 S.W.3d 900 (2005).

Subchapter 5

— Liability and Payment

- 26-18-501. Liability for tax payment generally.
- 26-18-502. Transferee liability.
- 26-18-503. Remittance of taxes.
- 26-18-504. Final accounts of fiduciaries.
- 26-18-505. Extension of time for filing returns.
- 26-18-506. Preservation of records by taxpayers.
- 26-18-507. Claims for refunds of overpayments.
- 26-18-508. Interest on deficiencies and overpayments.

Cross References. Rules and regulations governing set-off of debts owed to the state, § 26-36-320.

Effective Dates. Acts 1981, No. 403, § 3: Jan. 1, 1982.

Acts 1983, No. 379, § 27: Dec. 31, 1982. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the State's income and estate tax laws that have counterparts in the Federal tax laws do not coincide with recent amendments and changes to the Federal tax laws; and that this Act is immediately necessary to make the Arkansas tax laws conform with the Federal tax laws to clarify any possible question of confusion caused by such differences. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all income years after, or estate tax return filing dates coming after, December 31, 1982."

Acts 1989, No. 910, § 6: Mar. 23, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the estates of certain Arkansas citizens are in urgent need of being able to elect to defer the payment of their state estate tax for the same period of time and in the same manner now provided by 26 U.S.C. § 6166, for up to a fifteen (15) year period at a four percent (4%) interest rate; that the adoption of this act is designed to alleviate the need for forced sale of family farms and closely held family businesses for the purpose of paying state estate tax; and that there should be conformity on this issue between federal and state estate tax law, which conformity does not now exist. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval, and that the estates of any Arkansas citizens which are entitled to file a deferral election, pursuant to the provisions of 26 U.S.C. § 6166 of the federal tax laws, shall be entitled to have such federal election treated as a timely election to defer the payment of the proportionate part of the Arkansas state estate taxes for the same period of time."

Acts 1991, No. 685, § 11: Jan. 1, 1991.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1139, § 14: July 1, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the taxpayers' procedural rights to pursue an objective judicial review in challenging a state tax assessment are, in some instances, being unfairly denied to Arkansas taxpayers who have legitimate disputes with the Arkansas Department of Finance and Administration. It is therefore held that the provisions of this act, are needed to cure this problem for state taxpayers. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on and after July 1, 1997."

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2007, No. 369, § 4: effective for tax years beginning on or after January 1, 2007.

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 834 et seq.
C.J.S. 84 C.J.S., Tax., § 607 et seq.

26-18-501. Liability for tax payment generally.

- (a) The liability for the payment of taxes imposed under any state tax law is on the taxpayer or person as identified by the particular state tax law.
- (b) Any person required to collect, truthfully account for, and pay over any state tax who willfully fails to collect the tax, or truthfully account and pay over the tax, or willfully attempts in any manner to evade or defeat any tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.
- (c) The term “person,” as used in this section, includes an officer, director, or employee of a corporation, a partner or employee of a partnership, or a member, manager, or employee of a limited liability company, who, as an officer, director, employee, partner, member, or manager is under a duty to perform the act in respect to which the violation occurs.
- (d) This section shall not apply to the payment of corporate income taxes.

History. Acts 1979, No. 401, § 7; A.S.A. 1947, § 84-4707; Acts 1995, No. 1160, § 24.

Amendments. The 1995 amendment rewrote (c).

Case Notes

Cited: Martin v. Couey Chrysler Plymouth, Inc., 308 Ark. 325, 824 S.W.2d 832 (1992).

26-18-502. Transferee liability.

- (a) The liability, at law or in equity, of the transferee of property of any person liable for any tax imposed by a law of the State of Arkansas shall be the same as that of the transferor and may be assessed and collected from the transferee in the same manner and subject to the same provisions as the transferor.
- (b) The period of limitation for assessment of any liability of a transferee or a fiduciary shall be within one (1) year after the expiration of the period of limitation for assessment against the transferor.
- (c) As used in this section, unless the context otherwise requires, “transferee” includes the donee, heir, legatee, devisee, and distributee and, with respect to estate tax, also includes any person who is personally liable for any part of the tax.

History. Acts 1979, No. 401, § 42; A.S.A. 1947, § 84-4742.

26-18-503. Remittance of taxes.

- (a) When a return of tax is required to be filed, the person required to make the return shall, without assessment or notice and demand from the director, pay the tax to the director at the time and place fixed for filing the return, determined without regard to any extension of time for filing the return.
- (b) All remittances required to be paid under any state tax law shall be made payable to the Department of Finance and Administration by bank draft, check, cashier's check, money order, or money. The director shall issue a receipt, if requested, to the taxpayer for every cash payment. No remittance, other than cash, is a final discharge of liability due the director until it has been paid in cash.

History. Acts 1979, No. 401, § 9; A.S.A. 1947, § 84-4709.

26-18-504. Final accounts of fiduciaries.

(a) No final account of any fiduciary shall be allowed by a probate court of the state unless the account shows, and the court finds, that all taxes imposed by any state tax law which are due have been paid and that all taxes which may become due are secured by bond, security deposit, or otherwise. To the extent that a tax certificate of the director shows payment, it shall be conclusive.

(b) For the purpose of facilitating the settlement and distribution of the estates held by fiduciaries, the director may agree upon the amount of taxes due, or to become due, from the fiduciaries under the provisions of any state tax law, and payment in accordance with the agreement shall be in full satisfaction of all taxes to which the agreement relates.

History. Acts 1979, No. 401, § 30; A.S.A. 1947, § 84-4730.

26-18-505. Extension of time for filing returns.

(a) (1) Upon written request and for good cause, the director may grant a reasonable extension of time to file any return required under any state tax law.

(2) The director shall keep a record of every extension granted with the reason the extension was granted.

(3) Except for a corporation income tax return as provided in § 26-51-807(c), the time for filing any return shall not be extended more than one hundred eighty (180) days.

(4) The Director of the Department of Finance and Administration may promulgate regulations to grant automatic extensions of time to file income tax returns and information returns without the taxpayer being required to submit a written application for the extension of time to file.

(b) When an extension of time to file is granted, the taxpayer may file a tentative return on or before the original due date showing the estimated amount of tax due for the period covered by the return and may pay the estimated tax or the first installment at the same time.

(c) (1) No interest shall be accrued or assessed against any sums paid on or before the original due date.

(2) Any state tax not paid when due because the director granted an extension of time for payment shall bear interest at the rate of ten percent (10%) per annum from the date originally due until paid.

(d) (1) For purposes of granting an extension of time for filing a return under this section, "good cause" includes, but is not limited to:

(A) An instance in which the taxpayer is determined for federal tax purposes to be affected by a presidentially declared disaster under the provisions of section 7508A of the Internal Revenue Code of 1986, as in effect on January 1, 1999; and

(B) An instance in which the taxpayer is determined to be affected by a disaster emergency as declared by the Governor under § 12-75-107.

(2) In the event that an extension of time for filing a return is granted to a taxpayer affected by a presidentially declared disaster or a disaster emergency declared by the Governor, no interest or penalty shall accrue for the extension period granted by the director.

History. Acts 1979, No. 401, § 10; 1981, No. 403, § 2; 1983, No. 379, § 22; A.S.A.

1947, § 84-4710; Acts 1991, No. 685, § 8; 1999, No. 1126, § 4; 2005, No. 686, § 1; 2007, No. 369, § 1.

Publisher's Notes. Acts 1991, No. 685, § 11, provided:

"The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991."

Amendments. The 1999 amendment added (d); and made stylistic changes.

The 2005 amendment substituted "the extension was granted" for "therefor" in (a)(2); substituted "one hundred twenty (120)" for "ninety (90)" in (a)(3)(A); and substituted "sixty-day" for "ninety-day" in (a)(3)(B).

The 2007 amendment deleted the subsection designation (a)(3)(A); in present (a)(3), substituted "Except for a corporation income tax return as provided in § 26-51-807(c), the" for "The" and substituted "eighty (180)" for "twenty (120)"; and deleted former (a)(3)(B).

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2007, No. 369, § 4, provided: "This act shall be effective for tax years beginning on or after January 1, 2007."

26-18-506. Preservation of records by taxpayers.

(a) It is the duty of every taxpayer required to make a return of any tax due under any state tax law to keep and preserve suitable records as are necessary to determine the amount of tax due or to prove the accuracy of any return.

(b) Unless otherwise provided by law, the taxpayer is required to keep and maintain all records within the State of Arkansas and for at least six (6) years after a return was filed. These records are subject to examination by the director at any reasonable time.

(c) When the records required by this section are kept outside the State of Arkansas in the usual course of business, they shall be produced within the state within fifteen (15) days after receipt of demand by the director. If the taxpayer determines it is impractical, then the taxpayer may request, and the director may grant, permission to have the records audited wherever they may be.

(d) When a taxpayer fails to preserve and maintain the records required by any state tax law, the director may, in his discretion, make an estimated assessment based upon information available to him as to the amount of tax due by the taxpayer. The burden of proof of refuting this estimated assessment is upon the taxpayer.

History. Acts 1979, No. 401, § 11; A.S.A. 1947, § 84-4711.

Case Notes

Burden of Proof.
Evidence.

Burden of Proof.

Where taxpayer's records showed transactions were leases but taxpayer did not maintain the required records, the burden of refuting the assessment was upon the taxpayer. *Weiss v. Best Enters., Inc.*, 323 Ark. 712, 917 S.W.2d 543 (1996).

Evidence.

Evidence insufficient to refute the reasonableness of the estimated assessments; however, evidence insufficient to support finding as to the amount of gross sales. *Jones v. Ragland*, 293 Ark. 320, 737 S.W.2d 641 (1987).

Absent adequate additional documentation or testimony from the parties involved, the gross receipts tax would be levied against the taxpayer on transactions involving both sales and

services and the taxpayer had the burden of refuting the reasonableness of the estimated tax assessments. *Leathers v. A & B Dirt Movers, Inc.*, 311 Ark. 320, 844 S.W.2d 314 (1992).

26-18-507. Claims for refunds of overpayments.

(a) (1) Any taxpayer who has paid any state tax to the State of Arkansas in excess of the taxes lawfully due, subject to the requirements of this chapter, shall be refunded the overpayment of the tax determined by the Director of the Department of Finance and Administration to be erroneously paid upon the filing of an amended return or a verified claim for refund.

(2) This subsection does not include an action based on Arkansas Constitution, Article 16, § 13.

(b) The claim shall specify:

(1) The name of the taxpayer;

(2) The time when and the period for which the tax was paid;

(3) The nature and kind of tax paid;

(4) The amount of the tax which the taxpayer claimed was erroneously paid;

(5) The grounds upon which a refund is claimed; and

(6) Any other information relative to the payment as may be prescribed by the director.

(c) The director shall determine what amount of refund, if any, is due as soon as practicable after a claim has been filed, but in no event shall the taxpayer be entitled to file a suit for refund under § 26-18-406, until at least six (6) months have elapsed from the date of the filing of the claim for refund, or the director has issued a notice of denial of a claim for refund.

(d) Notwithstanding any provisions of the law to the contrary, a taxpayer who acts only as an agent of the state in the collection of any state tax shall be entitled to claim a credit or refund of such tax only if the taxpayer establishes that he or she has:

(1) Borne the tax in question;

(2) Repaid the amount of the tax to the person from whom he or she collected it;

or

(3) Obtained the consent of the person to the allowance of the credit or refund.

(e) (1) (A) The director shall make a written determination and give notice to the taxpayer concerning whether or not a refund is due.

(B) If a refund is due, the director shall certify that the claim is to be paid to the taxpayer as provided by law or credited against taxes due or to become due.

(2) (A) If the director's determination is to disallow the claim for refund, in whole or in part, then the director shall forthwith issue a written decision giving notice to the taxpayer of the denial of the claim for refund.

(B) The taxpayer may seek administrative review and relief from the director's decision to deny a claim for refund by protesting as provided in §§ 26-18-404 and 26-18-405.

(3) The taxpayer may seek judicial relief under the provisions of § 26-18-406 from:

(A) A notice of a denial of a claim for refund issued by the director; or

(B) The director's failure to issue a written decision after the claim for refund has been filed for six (6) months.

(f) (1) This section shall not apply to taxes paid as a result of an audit or proposed assessment.

(2) Taxes paid as a result of an audit or proposed assessment may not be recovered unless § 26-18-406 applies.

History. Acts 1979, No. 401, § 26; 1983, No. 379, § 24; A.S.A. 1947, § 84-4726; Acts 1997, No. 1139, §§ 8, 9; 1999, No. 1277, §§ 7, 8; 1999, No. 1373, § 1; 2003, No. 1718, § 9.

A.C.R.C. Notes. Acts 1997, No. 1139, § 10, provided:

“The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, to clarify its intent that taxpayers involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to secure an objective review of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3) the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the ‘divisible tax theory’ applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state.”

Amendments. The 1997 amendment, in (c), substituted “§ 26-18-406” for “subsection (e) of this section” and added “or the director has issued a final notice of claim disallowance”; and rewrote (e).

The 1999 amendment by No. 1277 substituted “issued a notice of denial of a claim for refund” for “issued a final notice of claim disallowance” in (c); substituted “denial of the claim for refund” for “proposed disallowance of the claim for refund” in (e)(2)(A); rewrote (e)(2)(B); deleted (e)(2)(C); and substituted “a notice of a denial of a claim for refund” for “a final notice of claim disallowance” in (e)(3)(A); and made stylistic changes.

The 1999 amendment by No. 1373, in (a), deleted “through error of fact, computation, or mistake of law” following “State of Arkansas” and added the last sentence; and made stylistic changes.

The 2003 amendment added (f).

Research References

ALR.

Voluntary payment doctrine as bar to recovery of payment of generally unlawful tax. 1 A.L.R.6th 229.

Construction and operation of statutory time limit for filing claim for state tax refund. 14 A.L.R.6th 119.

Ark. L. Rev.

Case Note, Pledger v. Illinois Tool Works, Inc.: Arkansas Belatedly Recognizes the Unitary Business Principle as a Limitation of Its Power to Tax Capital Gains of Nondomiciliary Corporations, 45 Ark. L. Rev. 597.

Nichols, Civil Procedure — The End of the Class Action in Multi-Taxpayer Litigation Seeking Refunds of State Taxes, ACW Inc. v. Weiss, 29 Ark. 302, 947 S.W.2d 770 (1997), 21 UALR L.R. 151.

Case Notes

Applicability.

Class Action.

Applicability.

This section deals with a taxpayer's overpayment through “error of fact, computation, or mistake of law,” and does not apply to payment made under protest. Taber v. Pledger, 302 Ark. 484, 791 S.W.2d 361 (Ark. 1990).

Where a taxpayer challenges a tax statute as patently unconstitutional, rather than unconstitutional in its application, she is not required to file a refund claim for the State to waive sovereign immunity. Carson v. Weiss, 333 Ark. 561, 972 S.W.2d 933 (1998), appeal dismissed,

sub nom. Fisher v. Chavers, 351 Ark. 318, 92 S.W.3d 30 (2002).

Where a taxpayer did not appeal a final assessment, but instead filed a verified claim for refund and for abatement, the suit was not timely; further, the plain language demonstrated that this section applied only to those cases where a taxpayer had erroneously or mistakenly overpaid taxes, and not where a taxpayer paid the amount assessed deliberately in order to challenge a final assessment of additional taxes following an audit. Baker Refrigeration Sys. v. Weiss, 360 Ark. 388, 201 S.W.3d 900 (2005).

Class Action.

There must be full compliance with subdivision (e)(2)(A) before sovereign immunity is waived; therefore, where only one taxpayer has claimed a refund, no taxpayer class action can be certified. State, Dep't of Fin. & Admin. v. Staton, 325 Ark. 341, 942 S.W.2d 804 (1996); State, Dep't of Fin. & Admin. v. Tedder, 326 Ark. 495, 932 S.W.2d 755 (1996).

In action by taxpayers for refunds, chancellor lacked authority to certify as members of class taxpayers who had not filed refund claims, because sovereign immunity was waived only for plaintiffs who had followed the procedure outlined in this section. ACW, Inc. v. Weiss, 329 Ark. 302, 947 S.W.2d 770 (1997).

Cited: Pledger v. Ethyl Corp., 299 Ark. 100, 771 S.W.2d 24 (1989); Pledger v. Bosnick, 306 Ark. 45, 811 S.W.2d 286 (1991); Baker Refrigeration Sys. v. Weiss, 360 Ark. 388, 201 S.W.3d 900 (2005).

26-18-508. Interest on deficiencies and overpayments.

Interest shall be collected on tax deficiencies and paid on overpayments as follows:

(1) A tax levied under any state tax law which is not paid when due is delinquent. Interest at the rate of ten percent (10%) per annum shall be collected on the total tax deficiency from the date the return for the tax was due to be filed until the date of payment;

(2) Interest on a tax deficiency shall be assessed at the same time as the tax deficiency. The tax deficiency together with the interest shall be paid upon notice and demand by the Director of the Department of Finance and Administration;

(3) When any overpayment has been made by a taxpayer, the overpayment shall be refunded together with interest at the rate of ten percent (10%) per annum;

(4) Interest on overpayments shall be paid from the date the return for the tax was due to be filed or the date the return is filed, whichever occurs later, until a date, to be determined by the director, preceding the date of the refund warrant by not more than thirty (30) days, whether or not the warrant is accepted by the taxpayer;

(5) No interest shall be allowed on an overpayment of tax that is refunded by the director within ninety (90) days after the last date provided for filing the return for the tax including any extension of time for filing the return, or ninety (90) days after the date the return is filed, whichever occurs later; and

(6) (A) In lieu of the amount of interest otherwise provided by this section, when an election to defer the payment of estate tax is made pursuant to the provisions of § 26-59-113(c), then the amount of interest on the deferred portion of the estate tax qualifying for the election shall be at the rate of four percent (4%) per annum on the balance of the payments due under the installment deferral election.

(B) However, the four percent (4%) interest rate shall only apply to the "4-percent portion" as that term is defined in 26 U.S.C. § 6601(j)(2), as it existed on January 1, 1989.

(C) The interest rate on the estate tax exceeding the "4-percent portion" shall be at the rate specified in subdivision (1) of this section.

History. Acts 1979, No. 401, § 8; 1983, No. 379, § 21; A.S.A. 1947, § 84-4708; Acts 1989, No. 910, § 3; 2005, No. 262, § 1; 2007, No. 827, § 197.

A.C.R.C. Notes. Acts 1989, No. 910, § 1, provided:

“It is hereby found and determined that it has been the policy of the General Assembly to attempt to conform federal and Arkansas tax laws, as much as possible, so as to eliminate confusion and complexity in the administration of Arkansas state tax laws, and to provide Arkansas citizens with the same treatment for state taxes as they receive for federal taxes. Federal tax law now provides a special installment deferral for the payment of federal estate taxes for certain qualifying assets (generally family farms and closely held businesses) of a decedent's estate that are inherited by the members of the decedent's family. This special installment deferral provision, of up to fifteen (15) years at a four percent (4%) interest rate, has been enacted by Congress to encourage the continued ownership of family farms and closely held family businesses, rather than forcing the sale or heavy mortgaging of the assets of such businesses to immediately pay estate taxes. Arkansas estate tax law does not now contain similar provisions. Arkansas law now requires a much quicker payment of Arkansas estate taxes on assets of a decedent's estate comprising family farms and closely held family businesses. The General Assembly finds and determines that the estates of Arkansas decedents that are entitled to claim the special deferral payment of federal estate taxes, at a four percent (4%) interest rate, should also be entitled to those same privileges for the payment of Arkansas Estate Tax.”

Amendments. The 2005 amendment inserted “or the date the return is filed, whichever occurs later” in (4); and rewrote (5).

The 2007 amendment substituted “as it existed on January 1, 1989” for “(Supp. 1988),” and made a related change.

Research References

U. Ark. Little Rock L.J.

Tyler, Survey of Business Law, 3 U. Ark. Little Rock L.J. 149.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Subchapter 6 **— Licenses, Permits, and Registrations**

26-18-601. Cancellation or refusal of license or permit.

26-18-602. Judicial review of cancellation decision.

26-18-601. Cancellation or refusal of license or permit.

(a) The director may cancel or refuse to issue, extend, or reinstate any license, permit, or registration under any state tax law to any person or taxpayer who has within the last three (3) years:

(1) Failed to observe or fulfill the conditions upon which the license or permit was issued; or

(2) Failed to pay any delinquent tax or penalty.

(b) (1) When the director determines, in his sole discretion, that an emergency situation exists and that the public welfare and safety are endangered, he may issue an order temporarily suspending a license, permit, or registration pending a hearing before him on the subject of the cancellation of the license, permit, or registration.

(2) The director shall give notice of the temporary suspension at the same time that he gives notice of his intention to cancel or to refuse to issue, extend, or reinstate any license, permit, or duplicate copy thereof, as provided by this section.

(3) The director shall as soon as practicable, but in any event within three (3) days after the request of the taxpayer, hold a hearing on whether the temporary

suspension should be made permanent.

(4) The temporary suspension shall be made permanent without a hearing unless the taxpayer requests a hearing within twenty (20) days of receipt of notice of the temporary suspension.

(c) Except as set out in subsection (b) of this section, before the director may cancel or refuse to issue, extend, or reinstate any license, permit, or registration, he shall give notice of his proposed action, and the owner or applicant shall have twenty (20) days after receipt of the director's decision to request a hearing.

(d) (1) When a license, permit, or registration is cancelled by the director, all accrued fees, taxes, and penalties, even though not due and payable at the time of cancellation under the state tax law imposing and levying the tax, shall become due concurrently with the cancellation of the license, permit, or registration.

(2) The licensee or permittee shall within five (5) business days of cancellation make a report to the director covering the period not previously covered by reports filed by that person and ending with the date of the cancellation and shall pay all accrued fees, taxes, and penalties at the time the report is made.

(3) Violation of this subsection is a Class C misdemeanor.

(e) (1) The affected taxpayer may seek relief from the decision of the director cancelling a license, permit, or registration by requesting a hearing, pursuant to subsections (b) and (c) of this section, by filing a written protest of the action with the hearing officer appointed by the director, pursuant to § 26-18-405, and the hearing officer shall hold all hearings requested pursuant to this section.

(2) The hearing officer shall issue a written decision on all hearings which shall be final unless revised by the director.

(3) The hearings and determinations of the hearing officer shall not be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) (A) A taxpayer may request a revision by the director of the hearing officer's determination which is adverse to him within twenty (20) days of the date of the mailing of the hearing officer's decision.

(B) If the director refuses to make a revision, or if the taxpayer does not request a revision, then the affected taxpayer may seek relief from the hearing officer's decision or the final revision determination by the director by following the method provided in § 26-18-602.

(f) Violations of this section shall be punished as provided in § 26-18-206. The director may seek to enjoin any violation of any state tax law the director is charged to enforce.

History. Acts 1979, No. 401, § 16; 1983, No. 379, § 23; A.S.A. 1947, § 84-4716.

Research References

U. Ark. Little Rock L.J.

Tyler, Survey of Business Law, 3 U. Ark. Little Rock L.J. 149.

26-18-602. Judicial review of cancellation decision.

(a) (1) The affected taxpayer may seek relief from the decision of the director, rendered after a hearing, cancelling a license, permit, or registration.

(2) The taxpayer's petition seeking an order to stay the effect of the director's decision shall be filed within thirty (30) days after receipt of notice of that decision by the taxpayer with the Pulaski County Circuit Court or the circuit court of the county in which

the taxpayer resides or has his or her principal place of business, where the matter shall be tried de novo.

(b) (1) Relief from the decision of the director cancelling a license, permit, or registration may be taken only as provided in this section.

(2) (A) To stay the effect of the director's decision, the person or taxpayer shall file a bond not to exceed twenty-five thousand dollars (\$25,000) with and in an amount fixed by the director, payable to the State of Arkansas.

(B) The bond shall be conditioned upon:

(i) The faithful and diligent prosecution of the appeal by the taxpayer to a final determination; and

(ii) The immediate compliance of the taxpayer with the director's decision if the director's decision is not enjoined by the circuit court or upon appeal is upheld by the Supreme Court.

(3) The director may, in his or her discretion, refuse to stay the effect of his or her decision and permit a bond to be posted when he or she determines in his or her sole discretion that the public safety and welfare would be endangered by the stay.

(c) The venue for all actions seeking relief from a decision of the director concerning the cancellation of or refusal of the issuance of a license or permit shall be the Pulaski County Circuit Court or the circuit court of the county in which the taxpayer resides or has his or her principal place of business.

History. Acts 1979, No. 401, § 17; A.S.A. 1947, § 84-4717.

Subchapter 7 — Enforcement

26-18-701. Issuance of certificates of indebtedness and execution.

26-18-702. Injunction proceedings.

26-18-703. Appointment of receivers.

26-18-704. Proceedings against localities.

26-18-705. Settlement or compromise of liability controversies.

26-18-706. Release of property from lien.

26-18-707. Extension of comity.

26-18-708. Spousal relief.

Cross References. Collection and enforcement generally, § 26-34-101 et seq.

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 866 et seq.

C.J.S. 84 C.J.S., Tax., § 640 et seq.

U. Ark. Little Rock L.J.

Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 U. Ark. Little Rock L.J. 279.

26-18-701. Issuance of certificates of indebtedness and execution.

(a) (1) (A) If a taxpayer does not timely and properly pursue his or her remedies seeking relief from a decision of the Director of the Department of Finance and Administration 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 director shall, as soon as practicable thereafter, issue to the circuit clerk of any county of the state a

certificate of indebtedness certifying that the person named in the certificate of indebtedness is indebted to the state for the amount of the tax established by the director as due.

(B) (i) If a taxpayer has a delinquent tax liability to the State of Arkansas of less than one thousand dollars (\$1,000), the director may enter into an agreement with the taxpayer to allow the taxpayer to pay the delinquency in installments.

(ii) The director may choose not to issue a certificate of indebtedness during the period of the installment agreement if he or she determines that it is in the best interest of the state.

(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) (A) (i) 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.

(ii) This entry shall constitute the state's lien upon the title of any real and personal property of the taxpayer in the county where the certificate of indebtedness is recorded.

(B) This lien is:

(i) In addition to any other lien existing in favor of the state to secure payment of taxes, applicable interest, penalties, and costs, including any costs the circuit clerk is entitled to receive as provided by law for either the filing or the release of this lien; and

(ii) Superior to:

(a) Other liens of any type or character attaching to the property after the date of entry of the certificate of indebtedness on the judgment docket; and

(b) All claims of unsecured creditors.

(C) (i) 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.

(ii) An action 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.

(iii) The director shall not be required to file a release on a lien which has expired and the provisions of § 26-18-808 dealing with failure to release liens are not applicable to this section.

(iv) The provisions of this subsection are applicable to both liens already on file and all future filings of liens.

(b) (1) After entry of the certificate of indebtedness, the circuit clerk shall issue a writ of execution directed to the director, authorizing the director to levy upon and against all real and personal property of the taxpayer.

(2) The director 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.

(3) The writ of execution shall be issued, served, and executed in the same manner as provided for in the issuance and service of executions rendered by the circuit courts of this state, except the director shall act in the place of the county sheriffs.

(4) The director shall have this authority for all liens either presently filed or filed after the passage of this act.

(c) (1) Nothing in this chapter shall preclude the director from resorting to any other means provided by law for collecting delinquent taxes.

(2) The issuance of a certificate of indebtedness, entry by the circuit clerk, and levy of execution as provided in this section shall not constitute an election of remedies with respect to the collection of the tax.

(3) The taxes, interest, penalties, and fees, including any costs the circuit clerk is entitled to receive as provided by law in these matters, imposed or levied by any state tax law, when due, may be collected in the same way as a personal debt of the taxpayer.

(4) In the name of the state, the director may sue to the same effect and extent as for the enforcement of a right of action for debt.

(5) All provisional remedies available in these actions are available to the State of Arkansas in the enforcement of the payment of any state tax.

(d) (1) (A) In addition to the remedies provided in subsections (b) and (c) of this section, the director may direct the circuit clerk to issue a writ of execution directed to the sheriff of any county authorizing the sheriff to levy upon and against all real and personal property of the taxpayer.

(B) The writ of execution shall be issued, served, and executed in the same manner as provided for in the issuance and service of executions rendered by the circuit courts of this state.

(2) (A) The circuit clerk and sheriff shall be entitled to receive the same fees provided by law in these matters.

(B) These fees shall be collected from the taxpayer by either the director or the sheriff in addition to the tax, penalties, and interest included in the certificate of indebtedness.

(C) If the sheriff is unable after diligent effort to collect the tax, interest, penalties, and costs, the director may pay such fees as are properly shown to be due to the clerk and sheriff.

(e) The director may contract with persons inside or outside the state to help the director collect delinquencies of resident or nonresident taxpayers.

History. Acts 1979, No. 401, § 23; A.S.A. 1947, § 84-4723; Acts 1989, No. 590, § 3; 1993, No. 1236, § 1; 2003, No. 1085, §§ 1, 2.

Publisher's Notes. In reference to the term "date of passage of this act," Acts 1979, No. 401 was signed by the Governor on March 14, 1979, and became effective on January 1, 1980.

Amendments. The 1993 amendment inserted (a)(1)(B).

The 2003 amendment added the subdivision designations in (a)(3)(B); inserted "including any costs ... release of this lien" in (a)(3)(B)(i); and, in (c)(3), deleted "fees" following "taxes" and inserted "and fees, ... in these matters" and made related and stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev.

Annual Survey of Caselaw: Tax Law, 27 U. Ark. Little Rock L. Rev. 751.

Case Notes

Assessments.
Authority to Sue.
Corporations.
Filing of Lien.
Judgments.

Assessments.

When person paid taxes on yearly assessment made on property, state could not recover further taxes where merely a mistake had been made in assessing the property too low, and a review by courts was permitted only when assessors proceeded on wrong basis of valuation in omitting some property or element of value or in adopting wrong basis of estimating value. State ex rel. Norwood v. Kansas City & M. Ry. & Bridge Co., 106 Ark. 248, 153 S.W. 614 (1913) (decision under prior law).

Authority to Sue.

Former statute that authorized tax commission to "direct" and "approve" suits against corporations for collection of back taxes was repealed by implication by so much of a subsequent statute as authorized the attorney general to bring action therefor. State ex rel. Attorney Gen. v. Standard Oil Co., 179 Ark. 280, 16 S.W.2d 581 (1929) (decision under prior law).

Demurrer to complaint should have been sustained where complaint did not contain allegation that attorney general had been directed by tax commission to bring suit. State ex rel. Att'y Gen. v. Republic Mining & Mfg. Co., 185 Ark. 1119, 52 S.W.2d 43 (1932) (decision under prior law).

Former statute authorizing the attorney general to bring suits to recover overdue taxes due from corporations had been impliedly repealed as to delinquent severance taxes, the collection of which was conferred on the commissioner of revenues by Acts 1933, No. 82 (superseded by § 26-17-304), and Acts 1935, No. 131 (repealed). Wiseman v. Arkansas-Louisiana Pipe Line Co., 191 Ark. 195, 85 S.W.2d 703 (Ark. 1935) (decision under prior law).

Corporations.

Former statute gave state right to recover back taxes on a corporation's personal property by personal judgment against the corporation which owned it at the time it was either omitted from taxation or was grossly undervalued, and where it had gone into the hands of a subsequent purchaser, the purchaser could be made a party and the state's lien enforced. State ex rel. Attorney Gen. v. Chicago Mill & Lumber Corp., 184 Ark. 1011, 45 S.W.2d 26 (1931) (decision under prior law).

A personal judgment could not be rendered against a corporation for back taxes due on property during the period another corporation had owned it, though both corporations had the same stockholders and directors. State ex rel. Attorney Gen. v. Chicago Mill & Lumber Corp., 184 Ark. 1011, 45 S.W.2d 26 (1931) (decision under prior law).

A foreign corporation doing business in state could be sued in the county of its principal office for back taxes on property during the years it owned the property. State ex rel. Attorney Gen. v. Chicago Mill & Lumber Corp., 184 Ark. 1011, 45 S.W.2d 26 (1931) (decision under prior law).

A foreign corporation which had withdrawn from state and was not doing business in state could not be sued for back taxes. State ex rel. Attorney Gen. v. Chicago Mill & Lumber Corp., 184 Ark. 1011, 45 S.W.2d 26 (1931) (decision under prior law).

Filing of Lien.

Because 11 U.S.C.S. § 522(c)(2)(B) applied only to a properly filed lien, and because the creditor state taxing authority had filed its lien in the wrong county, the lien did not attach to the debtor's property under subdivision (a)(3)(A) of this section, and thus, was avoidable in the debtor's bankruptcy under 11 U.S.C.S. § 506(d) as an unsecured lien. Roper v. Barclay, 286 B.R. 693 (Bankr. E.D. Ark. Oct. 19, 2002), aff'd, 294 B.R. 301 (B.A.P. 8th Cir. 2003).

Judgments.

Former statute authorized a personal judgment when property was of such a character that payment could not otherwise be enforced; however, where only land was involved, court was merely authorized to find in decree the amount of taxes due and declare the amount to be a lien on the lands and order each tract sold for back taxes unless paid within three months after decree. White River Lumber Co. v. State, 175 Ark. 956, 2 S.W.2d 25 (1928), aff'd, 279 U.S. 692, 49 S. Ct. 457 (1929) (decision under prior law).

Cited: Martin v. Couey Chrysler Plymouth, Inc., 308 Ark. 325, 824 S.W.2d 832 (1992).

26-18-702. Injunction proceedings.

(a) When a return required under any state tax law has not been filed or does not furnish all the information required by the Director of the Department of Finance and Administration or when the taxes imposed by any state tax law have not been paid or when any required license or permit has not been secured, the director, in the name of the State of Arkansas, may institute any necessary action or proceeding in the Pulaski County Circuit Court to enjoin the person or taxpayer from continuing operations until the report or return has been filed, required licenses or permits secured, or taxes paid as required.

(b) The injunction shall be issued without a bond being required from the state.

History. Acts 1979, No. 401, § 28; A.S.A. 1947, § 84-4728.

26-18-703. Appointment of receivers.

At the director's request, the court shall appoint a receiver to manage the property of the taxpayer upon a proper showing by the director that the claim of the state of any state tax is in danger of being lost or rendered uncollectible because of mismanagement, dissipation, or concealment of the property by the taxpayer.

History. Acts 1979, No. 401, § 28; A.S.A. 1947, § 84-4728.

26-18-704. Proceedings against localities.

When a county, city, town, or other political subdivision of the state fails or refuses to pay any tax due under any state tax law, the procedure for collecting the tax shall be the same as for any other taxpayer.

History. Acts 1979, No. 401, § 29; A.S.A. 1947, § 84-4729.

26-18-705. Settlement or compromise of liability controversies.

(a) The director may enter into an agreement to compound, settle, or compromise any controversy relating to a state tax or any admitted or established tax liability as to any tax collectible under any state law when:

(1) The controversy is over the amount of tax due; or

(2) The inability to pay results from the insolvency of the taxpayer.

(b) The director may waive or remit the interest or penalty, or any portion of the interest or penalty, ordinarily accruing because of a taxpayer's failure to pay a state tax within the statutory period allowed for its payment:

(1) If the taxpayer's failure to pay the tax is satisfactorily explained to the director;

(2) If the failure results from a mistake by the taxpayer of either the law or the facts subjecting him or her to such tax; or

(3) If the inability to pay the interest or penalty results from the insolvency or bankruptcy of the taxpayer.

(c) (1) In settling or compromising any controversy relating to the liability of a person for any state tax for any taxable period, the director may enter into a written closing agreement concerning the liability.

(2) When the closing agreement is signed by the director, it shall be final and

conclusive, and except upon a showing of fraud or misrepresentation of a material fact, no additional assessment or collection shall be made by the director, and the taxpayer shall not institute any judicial proceeding to recover such liabilities as agreed to in the closing agreement.

(d) The Director of the Department of Finance and Administration shall promulgate rules and regulations establishing guidelines for determining whether a proposed offer in compromise is adequate and is acceptable to resolve a tax dispute.

History. Acts 1979, No. 401, § 24; A.S.A. 1947, § 84-4724; Acts 1999, No. 1126, § 5.

Amendments. The 1999 amendment added (d).

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

26-18-706. Release of property from lien.

(a) Upon written application by any person, the Director of the Department of Finance and Administration may release affected property from the lien imposed by any assessment, order, judgment, or certificate of indebtedness obtained by or from any levy made by the director if:

(1) Either full payment is made to the director of the sum he or she considers adequate consideration for the release, including any costs the circuit clerk is entitled to receive as provided by law in these matters; or

(2) Adequate security deposit is made with the director to secure the payment of the debt evidenced by the lien, including any costs the circuit clerk is entitled to receive as provided by law in these matters.

(b) When the director determines that his or her assessment, certificate of indebtedness, or judgment is clouding the title of property because of an error in the description of properties or similarity in names, the director may issue a release without the payment of any consideration or any costs the circuit clerk is entitled to receive, as provided by law in these matters.

(c) The director's release shall be given under his or her seal and filed in the office of the circuit clerk in the county in which the lien is filed, or it shall be recorded in any office in which conveyances of real estate may be recorded.

History. Acts 1979, No. 401, § 25; A.S.A. 1947, § 84-4725; Acts 2003, No. 1085, § 3.

Amendments. The 2003 amendment, in (a), substituted "Director of the Department of Finance and Administration" for "director," "affected" for "any" and "the director" for "him"; inserted "including any ... in these matters" in (a)(1) and (a)(2); in (b), inserted "or any costs ... in these matters"; and made gender neutral changes throughout the section.

26-18-707. Extension of comity.

The courts of this state shall recognize and enforce liability for taxes lawfully imposed by other states which extend a like comity to this state.

History. Acts 1979, No. 401, § 31; A.S.A. 1947, § 84-4731.

26-18-708. Spousal relief.

(a) If a return required under any state tax law has been filed by a husband and wife and the amount of tax due on the return was understated by either the omission of an amount

properly includable in the return or by erroneous deductions or credits attributable to one (1) spouse, upon written request, the Director of the Department of Finance and Administration may relieve the other spouse of liability for any tax, penalty, or interest attributable to the understatement of tax for that return.

(b) In determining whether to grant the relief set out in subsection (a) of this section, the director may take into consideration the following factors:

(1) Whether the spouse making the request for relief has significantly benefited, either directly or indirectly, from the understatement of tax;

(2) Whether the spouse making the request for relief knew or had reason to know of the understatement of tax; and

(3) Any other fact or circumstance which would make it inequitable to hold the spouse making the request for relief liable for the deficiency resulting from the understatement of tax.

(c) As used in subdivision (b)(2) of this section, “reason to know” means whether a reasonably prudent person would have known that an understatement was made.

(d) As used in subsection (a) of this section, “attributable to one (1) spouse” means that the understatement on the return was the result of the actions taken or information supplied by that spouse.

History. Acts 1999, No. 1126, § 6.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Subchapter 8 **— Taxpayer Bill of Rights**

26-18-801. Title.

26-18-802. Disclosure of rights of taxpayer.

26-18-803. Procedures involving taxpayer interviews.

26-18-804. Abatement of penalty or addition to tax due to erroneous written advice by director — Limitations.

26-18-805. Basis for evaluation of employees.

26-18-806. Content of tax due, deficiency, and other notices.

26-18-807. Agreements for payment of tax liability in installments.

26-18-808. Civil damages for failure to release lien.

26-18-809. Civil damages for certain unauthorized collection actions.

26-18-810. Disclosure or use of information by preparers of returns.

26-18-811. Administrative appeal of liens.

26-18-812. Regulations.

Publisher's Notes. Acts 1989, No. 590, § 2 provided that §§ 26-18-801 — 26-18-812 shall be effective for income years beginning on or after January 1, 1989.

Research References

ALR.

Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation. 9 A.L.R.4th 428.

Propriety of class action in state courts to recover taxes. 10 A.L.R.4th 655.

Estoppel of state or local government in tax matters. 21 A.L.R.4th 573.

Recovery of tax paid on exempt property. 25 A.L.R.4th 186.

What constitutes personal matters exempt from disclosure by invasion of privacy exemption under state Freedom of Information Act. 26 A.L.R.4th 666.
Allowance of attorneys' fees in mandamus proceedings. 34 A.L.R.4th 457.
Validity, construction and application of state laws imposing tax or license fee on possession, sale, or the like, of illegal narcotics. 12 A.L.R.5th 89.

Case Notes

Cited: Hercules, Inc. v. Pledger, 319 Ark. 702, 894 S.W.2d 576 (1995).

26-18-801. Title.

This subchapter may be cited as the "Taxpayer Bill of Rights".

History. Acts 1989, No. 590, § 1.

26-18-802. Disclosure of rights of taxpayer.

(a) The Director of the Department of Finance and Administration shall, as soon as practicable, but not later than one hundred eighty (180) days after July 3, 1989, prepare a statement which sets forth in simple and nontechnical terms:

- (1) The rights of a taxpayer and the obligations of the director during an audit;
- (2) The procedure by which a taxpayer may appeal any adverse decision of the director, including administrative and judicial appeals;
- (3) The procedures for prosecuting refund claims and for filing of taxpayer complaints; and
- (4) The procedures which the director may use in enforcing the state's revenue laws, including assessment, estimated assessment, jeopardy assessment, and the filing and enforcement of liens.

(b) The statement prepared in accordance with subsection (a) of this section shall be distributed by the director to a taxpayer:

- (1) When a proposed assessment of any state tax is made against the taxpayer or when the taxpayer is contacted by the director for an examination of the taxpayer's records, whichever is earlier;
- (2) When requested by the taxpayer; and
- (3) At any time the director deems it appropriate.

(c) The director shall take such actions as the director deems necessary to ensure that such distribution does not result in multiple statements being sent to any one (1) taxpayer.

History. Acts 1989, No. 590, § 1.

Case Notes

Penalty.

Penalty.

This section has no sanctions or penalties provided for when the Department of Finance & Administration fails to prepare and distribute taxpayer statements on the various matters provided in this section. Hercules, Inc. v. Pledger, 319 Ark. 702, 894 S.W.2d 576 (1995).

26-18-803. Procedures involving taxpayer interviews.

(a) **Recording of Interviews.**

(1) **Recording by Taxpayer.** Any agent of the director in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio

recording of such interview at the taxpayer's expense and with the taxpayer's equipment.

(2) Recording by Director. An agent of the director may make an audio recording of any interview described in subdivision (1) of this subsection if such agent:

(A) Informs the taxpayer of such recording prior to the interview; and

(B) Upon request of the taxpayer, provides the taxpayer with a copy of such recording, but only if the taxpayer provides reimbursement for the cost of the reproduction of such copy.

(b) Safeguards.

(1) Explanations of Processes. An agent of the director, before or at an initial interview, shall provide to the taxpayer:

(A) In the case of an in-person interview with the taxpayer relating to the determination of any tax, an explanation of the audit process and the taxpayer's rights under such process; or

(B) In the case of an in-person interview with the taxpayer relating to the collection of any tax, an explanation of the collection process and the taxpayer's rights under such process.

(2) Right of Consultation. If the taxpayer clearly states to an agent of the director at any time during any interview, other than during an interview initiated by an administrative summons issued under § 26-18-305, that the taxpayer wishes to consult with an attorney, certified public accountant, or any other person permitted to represent the taxpayer before the director, then such agent shall suspend such interview regardless of whether the taxpayer may have answered one or more questions. However, the taxpayer may be requested to sign a waiver extending the time the director has for making a final assessment as provided by § 26-18-401. If the taxpayer refuses to sign such a waiver, the taxpayer may be subject to an estimated assessment by the director.

(c) Representatives Holding Power of Attorney.

(1) Any attorney, certified public accountant, or any other person, permitted to represent the taxpayer before the director who is not disbarred or suspended from practice may be authorized by such taxpayer to represent the taxpayer in any interview described in subsection (a) of this section.

(2) An agent of the director may not require a taxpayer to accompany the representative in the absence of an administrative summons issued to the taxpayer under § 26-18-305.

(3) Such agent, with the consent of the immediate supervisor of such agent, may notify the taxpayer directly that such agent believes such representative is responsible for unreasonable delay or hindrance of an examination or investigation of the taxpayer.

(d) Section Not to Apply to Certain Investigations. This section shall not apply to criminal investigations or investigations relating to the integrity of any agent of the director.

History. Acts 1989, No. 590, § 1.

26-18-804. Abatement of penalty or addition to tax due to erroneous written advice by director — Limitations.

(a) In General. The director shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an agent of the director acting in such agent's official capacity.

(b) Limitations. The provisions of subsection (a) of this section shall apply only if:

(1) The written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer; and

(2) The portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

History. Acts 1989, No. 590, § 1.

26-18-805. Basis for evaluation of employees.

The director shall not use records of tax collection results to:

(1) Evaluate employees directly involved in collection activities, and their immediate supervisors; or

(2) Impose or suggest production quotas or goals with respect to employees directly involved in collection activities, and their immediate supervisors.

History. Acts 1989, No. 590, § 1.

26-18-806. Content of tax due, deficiency, and other notices.

(a) General Rule.

(1) Any notice to which this section applies shall describe the basis for, and identify the amounts (if any) of, the tax due, interest, additional amounts, additions to the tax, and assessable penalties included in such notice.

(2) An inadequate description under this subsection shall not invalidate such notice.

(b) Notice to Which Section Applies. This section shall apply to:

(1) Any notice to be given by the director described in § 26-18-307;

(2) Any notice generated out of any information return matching program; and

(3) The first letter of the proposed deficiency which allows the taxpayer an opportunity for administrative review under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1989, No. 590, § 1.

26-18-807. Agreements for payment of tax liability in installments.

(a) Authorization of Agreements. The director is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax in installment payments, if the director determines that such agreement will facilitate collection of such liability.

(b) Extent to Which Agreements Remain in Effect.

(1) **In General.** Except as otherwise provided in this subsection, any agreement entered into by the director under subsection (a) of this section shall remain in effect for the term of the agreement.

(2) **Inadequate Information or Jeopardy.** The director may terminate any agreement entered into by the director under subsection (a) of this section if the following conditions apply:

(A) Information which the taxpayer provided to the director prior to the date such agreement was entered into was inaccurate or incomplete; or

(B) The director believes that collection of any tax to which an agreement under this section relates is in jeopardy.

(3) Subsequent Change in Financial Conditions.

(A) In General. If the director makes a determination that the financial condition of a taxpayer with whom the director has entered into an agreement under subsection (a) of this section has significantly changed, the director may alter, modify, or terminate such agreement.

(B) Notice. Action may be taken by the director under subdivision (A) of this subdivision only if:

(i) Notice of such determination is provided to the taxpayer no later than thirty (30) days prior to the date of such action; and

(ii) Such notice includes the reasons why the director believes a significant change in the financial condition of the taxpayer has occurred.

(4) Failure to Pay an Installment or any Other Tax Liability When Due or to Provide Requested Financial Information. The director may alter, modify, or terminate an agreement entered into by the director under subsection (a) of this section in the case of the failure of the taxpayer to:

(A) Pay any installment at the time such installment payment is due under such agreement;

(B) Pay any other tax liability at the time such liability is due; or

(C) Provide a financial condition update as requested by the director.

History. Acts 1989, No. 590, § 1.

26-18-808. Civil damages for failure to release lien.

(a) In General. If any employee of the director knowingly, or by reason of negligence, fails to release a lien under § 26-18-706 or § 26-18-811 on property of the taxpayer, such taxpayer may bring a civil action for damages against the director in court.

(b) Damages. In any action brought under subsection (a) of this section, upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of the following:

(1) Actual, direct, economic damages sustained by the plaintiff which, but for the action of the defendant, would not have been sustained; plus

(2) The costs of the action.

(c) Limitations.

(1) Requirement that Administrative Remedies Be Exhausted. A judgment for damages shall not be awarded under subsection (b) of this section, unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Department of Finance and Administration, Revenue Division.

(2) Mitigation of Damages. The amount of damages awarded under subdivision (b)(1) of this section shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) Period for Bringing Action. Notwithstanding any other provision of the law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within two (2) years after the date the right of action accrues.

(d) Notice of Failure to Release Lien. The director shall by regulation prescribe reasonable procedures for a taxpayer to notify the director of the failure to release a lien on property of the taxpayer.

History. Acts 1989, No. 590, § 1.

26-18-809. Civil damages for certain unauthorized collection actions.

(a) In General. If, in connection with any collection of state tax with respect to a taxpayer, any employee of the Department of Finance and Administration, Revenue Division, recklessly or intentionally disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the director. Except as provided in § 26-18-808, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) Damages. In any action brought under subsection (a) of this section, upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of ten thousand dollars (\$10,000) or the sum of:

- (1) Actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional actions of the officer or employee; and
- (2) The costs of the action.

(c) Limitations.

(1) Requirement that Administrative Remedies Be Exhausted. A judgment for damages shall not be awarded under subsection (b) of this section unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Department of Finance and Administration, Revenue Division.

(2) Mitigation of Damages. The amount of damages awarded under subdivision (b)(1) of this section shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) Period for Bringing Action. Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within two (2) years after the date the right of action accrues.

(d) Damages for Frivolous or Groundless Claims. Whenever it appears to the court that the taxpayer's position in proceedings before the court instituted or maintained by such taxpayer under this section, is frivolous or groundless, then damages in an amount not in excess of ten thousand dollars (\$10,000) shall be awarded to the Department of Finance and Administration by the court in the court's decision. Damages so awarded shall be assessed at the same time as the decision and shall be paid upon notice and demand from the director.

History. Acts 1989, No. 590, § 1.

Case Notes

Cited: Leathers v. A & B Dirt Movers, Inc., 311 Ark. 320, 844 S.W.2d 314 (1992).

26-18-810. Disclosure or use of information by preparers of returns.

(a) Imposition of Penalty. If any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of tax administered under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or when any person who, for compensation prepares any such return for any other person, and who:

- (1) Discloses any information furnished to him for, or in connection with, the preparation of any such return; or

(2) Uses any such information for any purpose other than to prepare, or assist in preparing, any such return, shall pay a penalty of two hundred fifty dollars (\$250) for each such disclosure or use, but the total amount imposed under this subsection on such a person for any calendar year shall not exceed ten thousand dollars (\$10,000).

(b) Subsection (a) of this section shall not apply to a disclosure of information if such disclosure is made either:

(1) Pursuant to any other provision of this subchapter; or

(2) Pursuant to an order of a court; or

(3) For quality or peer reviews, which are conducted under the auspices of the American Institute of Certified Public Accountants or the Securities and Exchange Commission.

(c) Subsection (a) of this section shall be in addition to the provisions of § 26-18-303.

History. Acts 1989, No. 590, § 1; 1991, No. 998, § 1.

Publisher's Notes. Acts 1991, No. 998, § 6 provided:

"The director shall promulgate regulations necessary to implement that act no later than January 1, 1992."

26-18-811. Administrative appeal of liens.

(a) **In General.** In such form and at such time as the director shall prescribe by regulation, any person shall be allowed to appeal to the director after the filing of a notice of a lien under this subchapter on the property or the rights to property of such person, for a release of such lien alleging an error in the filing of the notice of such lien.

(b) **Certification of Release.** If the director determines that the filing of the notice of any lien was erroneous, the director shall expeditiously, and, to the extent practicable, within fourteen (14) days after such determination, issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous.

History. Acts 1989, No. 590, § 1.

26-18-812. Regulations.

The director shall prescribe the regulations necessary to fully implement this subchapter within one hundred eighty (180) days after July 3, 1989.

History. Acts 1989, No. 590, § 1.

Subchapter 9 — Taxpayer Assistance

26-18-901. Office of Problems Resolution and Tax Information.

26-18-902. Tax Advisory Council.

26-18-903. Employee evaluation criteria.

26-18-904. Collection activity — Erroneous action — Claim for damages.

A.C.R.C. Notes. References to "this chapter" in subchapters 1 — 8 may not apply to this subchapter which was enacted subsequently.

Publisher's Notes. Acts 1991, No. 998, § 6 provided that "the director shall promulgate regulations necessary to implement that act no later than January 1, 1992."

26-18-901. Office of Problems Resolution and Tax Information.

(a) The Director of the Department of Finance and Administration shall request the General Assembly to appropriate funds and create positions for an Office of Problems Resolution and Tax Information, which shall resolve taxpayer problems directly and provide information to taxpayers concerning tax law. This office shall report directly to the Administrative Assistant of Revenues.

(b) The Director of the Department of Finance and Administration shall have the authority to establish the duties of the Office of Problems Resolution and Tax Information. The office shall give highest priority to reviewing taxpayer problems and taking prompt and appropriate action to resolve problems and respond to taxpayers.

History. Acts 1991, No. 998, § 2.

26-18-902. Tax Advisory Council.

(a) The Director of the Department of Finance and Administration shall establish a Tax Advisory Council consisting of representatives of the Arkansas Bar Association, the Arkansas Society of Certified Public Accountants, the Arkansas Society of Public Accountants, the Office of Problems Resolution and Tax Information, other taxpayer-oriented groups, and other representatives of the Revenue Division of the Department of Finance and Administration.

(b) The Tax Advisory Council shall meet annually to discuss tax law changes, compliance problems, and other related matters, and it shall study methods to expedite claims for refunds, protests, appeals, and cases which take an inordinate amount of time to complete.

(c) The Tax Advisory Council will develop and submit a report to the chairmen of the Revenue and Taxation Committees of the House of Representatives and Senate.

History. Acts 1991, No. 998, § 3.

26-18-903. Employee evaluation criteria.

The Director of the Department of Finance and Administration shall develop employee evaluation criteria requiring compliance with the Taxpayer Bill of Rights, § 26-18-801 et seq., and quality taxpayer assistance, which shall be included in the annual evaluation of each employee whose job responsibilities include taxpayer contact.

History. Acts 1991, No. 998, § 4.

26-18-904. Collection activity — Erroneous action — Claim for damages.

(a) A claim may be filed with the Department of Finance and Administration for any actual damages sustained as a result of any erroneous action taken in a collection activity. Each claimant applying for reimbursement shall file a claim in such form as may be prescribed by the Director of the Department of Finance and Administration. In order for the claim to be granted, the claimant must establish that:

(1) The actual damage resulted from an error made by the Revenue Division; and

(2) Prior to the actual damage, the taxpayer responded to all contacts by the Revenue Division and provided all requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived for reasonable cause.

(b) (1) (A) Claims made pursuant to this section shall be filed within ninety (90) calendar days after the date the actual damage was sustained.

(B) Within thirty (30) calendar days after the date the claim is received,

the claim shall be approved or denied.

(2) If a claim is denied, the taxpayer shall be notified in writing of the reason for the denial of the claim.

History. Acts 1991, No. 998, § 5.

Subchapter 10 **— Business Closure**

26-18-1001. Business closure authority — Notice.

26-18-1002. Administrative hearing.

26-18-1003. Judicial relief.

26-18-1004. Business closure procedure.

26-18-1005. Suspension of a business license.

26-18-1006. Authority to promulgate rules.

Effective Dates. Acts 2003 (2nd Ex. Sess.), No. 46, § 2, provided: "This act becomes effective on July 1, 2004."

Acts 2009, No. 605, § 27: July 31, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 606, § 27: July 31, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-18-1001. Business closure authority — Notice.

(a) In addition to all other remedies provided by law for the collection of unpaid taxes, the Director of the Department of Finance and Administration may close the business of a noncompliant taxpayer as defined by § 26-18-104, subject to the administrative and judicial appeal procedures in this subchapter, if the noncompliant taxpayer for three (3) times within any consecutive twenty-four-month period fails to either:

(1) Report in the manner required by Arkansas law:

- (A) Gross receipts or compensating use tax; or
 - (B) State income tax withholding for employees; or
- (2) Remit the tax that is due for the reporting period for:
 - (A) Gross receipts or compensating use tax; or
 - (B) State income tax withholding for employees.
- (b) (1) The director shall give notice to the noncompliant taxpayer that the third delinquency in reporting or remitting tax in any consecutive twenty-four-month period will result in the closure of the business.
 - (2) The notice must be in writing and delivered to the noncompliant taxpayer by the United States Postal Service or by hand delivery.
- (c) (1) If the noncompliant taxpayer has a third delinquency in reporting or remitting tax in any consecutive twenty-four-month period after the issuance of the notice provided in subsection (b) of this section, the director shall notify the noncompliant taxpayer by certified mail or by hand delivery that the business will be closed within five (5) business days from the date of the notice unless the noncompliant taxpayer makes arrangements with the director to satisfy the tax delinquency.
 - (2) When the fifth day falls on a Saturday, Sunday, or legal holiday, the performance of the act is considered timely if it is performed on the next succeeding business day that is not a Saturday, Sunday, or legal holiday.
- (d) A noncompliant taxpayer may avoid closure of the business by:
 - (1) Filing all delinquent reports and by remitting the delinquent tax including any interest and penalty; or
 - (2) Entering into a payment agreement approved by the director to satisfy the tax delinquency.
- (e) After written notice delivered to a lottery retailer by the United States Postal Service or by hand delivery, the Director of the Department of Finance and Administration may pursue a remedy under this subchapter against a lottery retailer as a noncompliant taxpayer upon receiving a referral from the Arkansas Lottery Commission under § 23-115-605.

History. Acts 2003 (2nd Ex. Sess.), No. 46, § 2; 2009, No. 360, § 3; 2009, No. 605, § 24; 2009, No. 606, § 24.

Amendments. The 2009 amendment by No. 360 rewrote (a)(1) and (a)(2). The 2009 amendment by identical acts Nos. 605 and 606 added (e).

26-18-1002. Administrative hearing.

- (a) A noncompliant taxpayer may request an administrative hearing concerning the decision of the Director of the Department of Finance and Administration to close the noncompliant taxpayer's business by following the procedures in this section.
- (b) Within five (5) business days after the delivery or attempted delivery of the notice required by § 26-18-1001(c), the noncompliant taxpayer may file a written protest, signed by the noncompliant taxpayer or his or her authorized agent, stating the reasons for opposing the closure of the business and requesting an administrative hearing.
- (c) (1) A noncompliant taxpayer may request that an administrative hearing be held in person, by telephone, upon written documents furnished by the noncompliant taxpayer, or upon written documents and any evidence produced by the noncompliant taxpayer at an

administrative hearing.

(2) The director has the discretion to determine whether an administrative hearing at which testimony is to be presented will be conducted in person or by telephone.

(3) A noncompliant taxpayer who requests an administrative hearing based upon written documents is not entitled to any other administrative hearing prior to the hearing officer's rendering a decision.

(d) The administrative hearing will be conducted by a hearing officer appointed by the director under § 26-18-405.

(e) (1) The hearing officer will set the time and place for a hearing and will give the noncompliant taxpayer notice of the hearing.

(2) At the administrative hearing, the noncompliant taxpayer may be represented by an authorized representative and may present evidence in support of his or her position.

(f) (1) The hearing may be held in any city in which the Revenue Division of the Department of Finance and Administration maintains a field audit district office or in such other city as the director may designate.

(2) The administrative hearing will be held within fourteen (14) calendar days of receipt by the director of the request for hearing.

(g) The administrative hearing and determinations made by the hearing officer under this subchapter are not subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(h) The defense or defenses to the closure of a business under this subchapter are:

(1) Written proof that the noncompliant taxpayer filed all delinquent returns and paid the delinquent tax due including interest and penalty; or

(2) That the noncompliant taxpayer has entered into a written payment agreement, approved by the director, to satisfy the tax delinquency.

(i) The decision of the hearing officer must be in writing with copies delivered to the noncompliant taxpayer and the Department of Finance and Administration by the United States Postal Service or by hand delivery.

History. Acts 2003 (2nd Ex. Sess.), No. 46, § 2.

26-18-1003. Judicial relief.

(a) (1) If the decision of the hearing officer under § 26-18-1002 is to affirm the closure of the business, the decision shall be submitted in writing and delivered by the United States Postal Service or by hand to the noncompliant taxpayer.

(2) The noncompliant taxpayer may seek judicial relief from the decision by filing suit within twenty (20) calendar days of the date of the decision.

(b) (1) Jurisdiction for a suit under this section to contest a determination of the Director of the Department of Finance and Administration shall be in the Pulaski County Circuit Court or the circuit court of the county where the noncompliant taxpayer resides or has his or her principal place of business, where the matter shall be tried de novo.

(2) (A) If the circuit court finds that the business closure order was appropriately issued by the director, the circuit court shall issue an injunction prohibiting the further operation of the business against the noncompliant taxpayer.

(B) In the event that a business subject to an injunction issued by the circuit court as provided in this subchapter continues in operation, upon conviction, any

person responsible for the decision to operate the business after the issuance of the injunction shall be guilty of a Class A misdemeanor.

(3) An appeal may be made from the circuit court to the appropriate appellate court, as provided by law.

(c) The procedures established by this section are the sole methods for seeking relief from a written decision to close the business of a noncompliant taxpayer.

(d) The decision to close the business of a noncompliant taxpayer will be final:

(1) If the noncompliant taxpayer fails to:

(A) Request an administrative hearing under § 26-18-1002; or

(B) Seek judicial relief under this section; or

(2) Upon the final decision of a circuit court or an appellate court.

(e) (1) It is unlawful for a business to continue in operation after a business closure order is issued that is:

(A) Upheld on appeal under this subchapter; or

(B) Not appealed by the noncompliant taxpayer under this subchapter.

(2) Upon conviction, any person responsible for the decision to operate the business in violation of this subchapter shall be guilty of a Class A misdemeanor.

History. Acts 2003 (2nd Ex. Sess.), No. 46, § 2; 2005, No. 1962, § 114.

Amendments. The 2005 amendment substituted “the United States Postal Service or by hand” for “mail” in (a)(1).

26-18-1004. Business closure procedure.

(a) If a noncompliant taxpayer fails to timely seek administrative or judicial review of a business closure decision or if the business closure decision is affirmed after administrative or judicial review, the Director of the Department of Finance and Administration shall affix a written notice to all entrances of the business that:

(1) Identifies the business as being subject to a business closure order; and

(2) States that the business is prohibited from further operation.

(b) (1) The director may also lock or otherwise secure the business so that it may not be operated.

(2) However, if the business is located in the noncompliant taxpayer's home, the director shall not lock or otherwise secure the business but may post the notice under subsection (a) of this section.

(c) The director may request the assistance of the Department of Arkansas State Police or any state or local law enforcement official to post the notice or to secure the business as authorized in this section.

(d) Any taxpayer information disclosed by the director under the procedures outlined in this section shall not be subject to the confidentiality provisions of § 26-18-303.

History. Acts 2003 (2nd Ex. Sess.), No. 46, § 2.

26-18-1005. Suspension of a business license.

(a) After the decision to close the noncompliant taxpayer's business becomes final, the Director of the Department of Finance and Administration shall contact the appropriate administrative body responsible for granting licenses to operate the business and report the closure of the business.

(b) The closure of a business under this subchapter shall be grounds for the suspension or revocation of any business license granted under the laws of the State of Arkansas, excluding professional licenses.

History. Acts 2003 (2nd Ex. Sess.), No. 46, § 2.

26-18-1006. Authority to promulgate rules.

The Director of the Department of Finance and Administration may promulgate rules necessary for the enforcement of this subchapter.

History. Acts 2003 (2nd Ex. Sess.), No. 46, § 2.

Chapter 19 Electronic Funds

26-19-101. Definition.

26-19-102. Applicability of Arkansas Tax Procedure Act.

26-19-103. Authority of Director.

26-19-104. Effective dates.

26-19-105. Payment by taxpayer.

26-19-106. Payment by corporation.

26-19-107. Penalties.

26-19-108. Rules and regulations.

26-19-101. Definition.

(a) As used in this subchapter, “electronic funds transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account, commonly referenced as either an automated clearinghouse credit or an automated clearinghouse debit.

(b) A transfer of funds by wire transfer which contains no electronic record from which to identify the taxpayer, tax type, tax account number, and tax period is not an electronic funds transfer.

History. Acts 1993, No. 848, § 1; 1999, No. 1132, § 3.

Amendments. The 1999 amendment added the language beginning “commonly referenced as either” at the end of the first sentence; and made stylistic changes.

26-19-102. Applicability of Arkansas Tax Procedure Act.

The provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., shall be applicable to this subchapter.

History. Acts 1993, No. 848, § 2.

26-19-103. Authority of Director.

The Director of the Department of Finance and Administration is authorized to require, and to contract for services necessary to implement, payment of taxes as specified in this subchapter by electronic funds transfer. Provided, however, that this subchapter shall not

be construed to require the director to contract for such services or implement a system for payment of any taxes by electronic funds transfer if the director determines that it is fiscally unsound or administratively burdensome to do so.

History. Acts 1993, No. 848, § 3.

26-19-104. Effective dates.

The provisions of this subchapter shall be effective on and after January 1, 1994, for the taxes set forth in § 26-19-105(a)(1); on and after January 1, 1995, for the taxes set forth in § 26-19-105(a)(2); and for the taxable period beginning on or after January 1, 1995, for the taxes set forth in § 26-19-106.

History. Acts 1993, No. 848, § 4.

26-19-105. Payment by taxpayer.

(a) (1) If the Director of the Department of Finance and Administration determines that a taxpayer's monthly liability for the following taxes for any calendar year equals or exceeds twenty thousand dollars (\$20,000), the taxpayer shall pay any tax due by electronic funds transfer:

(A) Income withholding taxes under the Arkansas Income Tax Withholding Act of 1965, § 26-51-901 et seq.;

(B) Gross receipts or sales taxes under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., §§ 26-74-201 — 26-75-705, or the Local Government Bond Act of 1985, § 14-164-301 et seq.;

(C) Compensating or use taxes under the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.;

(D) Privilege taxes;

(E) Special alcoholic beverage excise taxes under § 3-7-201;

(F) Alcoholic beverage supplemental taxes under §§ 3-9-213 and 3-9-223; and

(G) Any other taxes supplemental to the taxes in subdivisions (a)(1)(A)-(F) of this section or required to be collected and remitted in the same manner as sales or use taxes or any other law of this state.

(2) If the director determines that a taxpayer's monthly liability for the following taxes for any calendar year equals or exceeds twenty thousand dollars (\$20,000), the taxpayer shall pay the taxes due by electronic funds transfer:

(A) Taxes on tobacco products under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.;

(B) Severance taxes under §§ 26-58-101 — 26-58-303; or

(C) Taxes on spirituous liquors, wines, malt liquors, and beer under §§ 3-5-101 — 3-7-114.

(3) If the director determines that a taxpayer's monthly liability for soft drink taxes under the Arkansas Soft Drink Tax Act, § 26-57-901 et seq., for any calendar year equals or exceeds twenty thousand dollars (\$20,000), the taxpayer shall pay the taxes due by electronic funds transfer.

(b) Monthly liability for taxes shall be determined by the director on the basis of average monthly liability for the preceding year.

(c) (1) The transfer shall be made no later than the day before the due date for payment

of the taxes so that payment of the taxes is received by the director on or before the due date for payment of the taxes as required by the laws of this state.

(2) (A) A taxpayer who pays income withholding tax by electronic funds transfer or through the state module of the electronic funds transfer payment system of the United States Department of the Treasury in the time and manner required by this section shall not be required to file a monthly withholding return.

(B) However, the taxpayer shall annually file a withholding return, setting forth the basis for each monthly payment made during the year by electronic funds transfer or through the state module of the electronic funds transfer payment system of the United States Department of the Treasury, on or before the fifteenth day following the end of each year.

(C) The annual withholding return shall be made on such a form and shall include such information as the director prescribes.

(3) Except as otherwise provided by this subchapter, no taxpayer required to pay tax by electronic funds transfer or who remits tax through the state module of the electronic funds transfer payment system of the United States Department of the Treasury shall be relieved from filing returns or complying with all other requirements of state tax laws.

(4) (A) For any withholding tax reporting period, a company or any other business enterprise that provides the service of reporting and remitting withholding tax on the wages paid to Arkansas employees by other employers shall remit all such withholding taxes to the director by electronic funds transfer.

(B) However, a company or business that provides tax reporting and remitting services shall not be required to remit withholding taxes by electronic funds transfer if the company or business provides those services for fewer than one hundred (100) Arkansas employers.

(C) As used in this subdivision (c)(4), "Arkansas employer" means any employer required by Arkansas law to withhold, report, and remit Arkansas income tax on the wages, salary, or other compensation paid to its employees within this state.

(d) The following may elect to utilize the state module of the electronic funds transfer payment system of the United States Department of the Treasury to pay monthly income withholding taxes by electronic funds transfer:

(1) Any taxpayer who is not required by subdivision (a)(1) of this section to pay income withholding taxes by electronic funds transfer; or

(2) Any business that provides tax reporting and remitting services that is not required by subdivision (c)(4) of this section to pay income withholding taxes by electronic funds transfer.

History. Acts 1993, No. 848, § 5; 1995, No. 301, § 1; 1999, No. 1132, § 6; 2005, No. 389, §§ 1, 2; 2007, No. 827, §§ 198, 199, 200.

Amendments. The 1995 amendment added (a)(3).

The 1999 amendment added (c)(4) and made stylistic changes.

The 2005 amendment inserted the subdivision designations in (c)(2); inserted "or through the state module of the electronic funds transfer payment system of the United States Department of the Treasury" in (c)(2)(A) and (c)(2)(B); inserted "or who remits tax through the state module of the electronic funds transfer payment system of the United States Department of the Treasury" in (c)(3); and added (d).

The 2007 amendment, in (a), rewrote the introductory language of (1), deleted "§ 26-52-1401 et

seq. [expired and terminated]" following "§ 26-52-101 et seq." in (1)(B), rewrote (1)(G) and (2), in (3), substituted "for any calendar year" for "for the calendar year 1995 or any calendar year thereafter," and deleted "beginning January 1, 1996" at the end, and made related changes; substituted "For any withholding tax reporting period" for "Starting with withholding tax reporting periods beginning on January 1, 2001, and for all subsequent reporting periods" in (c)(4)(A); and deleted "for tax years beginning on and after January 1, 2006" at the end of the introductory paragraph in (d).

26-19-106. Payment by corporation.

(a) If the director determines that a corporation's estimated quarterly state income tax liability under § 26-51-911 et seq. equals or exceeds twenty thousand dollars (\$20,000), the corporation shall pay the quarterly income taxes due by electronic funds transfer.

(b) A corporation's quarterly liability shall be determined on the basis of average quarterly liability for the preceding year.

(c) (1) The transfer shall be made no later than the day before the due date for payment of the taxes so that payment of the taxes is received by the director on or before the due date for payment of the taxes as required by the laws of this state.

(2) If the corporation's income tax payment is timely made by electronic funds transfer, the corporation is not required to file a quarterly estimated tax declaration.

History. Acts 1993, No. 848, § 6.

26-19-107. Penalties.

(a) In addition to the penalties imposed under the Arkansas Tax Procedure Act, § 26-18-101 et seq., a taxpayer required to pay taxes by electronic funds transfer who fails to so pay the amount required under any state law on or before the due date for payment of the taxes shall be assessed a penalty of five percent (5%) of the amount of taxes due.

(b) In addition to all other penalties imposed under this subchapter and the Arkansas Tax Procedure Act, § 26-18-101 et seq., a taxpayer required to pay sales taxes by electronic funds transfer who fails to so pay any of the sales taxes on or before the due date for payment of the taxes in the amounts required under §§ 26-52-501 or 26-52-512 shall not be entitled to the benefits contained in §§ 26-52-503 and 26-52-512.

(c) (1) With respect to an electronic funds transfer by automated clearinghouse debit, "to pay taxes by electronic funds transfer" means that the following conditions are met on or before the due date for such payment:

(A) The taxpayer initiates the automated clearinghouse debit by calling the designated toll-free telephone number by 3:00 p.m. on the last business day prior to the due date;

(B) The taxpayer accurately provides the Director of the Department of Finance and Administration with sufficient information from which the payment may be applied to the correct account, including, but not limited to, the taxpayer's name, account number, tax type, tax period, and the amount of the payment; and

(C) The taxpayer's bank account designated as the account to be debited contains adequate funds to cover the payment of taxes by debit transfer at the time the debit transaction is initiated and continuing through the due date of the tax payment.

(2) With respect to an electronic funds transfer by automated clearinghouse credit, "to pay taxes by electronic funds transfer" means that the following conditions are met on or before the due date for the payment:

(A) (i) The taxpayer initiates a successful prenote or test transaction containing necessary information in cash concentration or disbursement plus tax payment addendum (CCD + TXP) format.

(ii) "Tax payment addendum format" means a technical format for the communication of limited tax remittance data accompanying a payment through the automated clearinghouse system and includes a list of standard tax-type and account-type codes;

(B) The transfer contains an electronic addenda which allows the director to identify the taxpayer, tax account number, tax payment amount, tax type, and tax period in accordance with instructions provided by the director;

(C) The taxpayer transfers the amount of funds due; and

(D) The taxpayer's designated bank account contains adequate funds to cover the credit transfer at the time the credit transaction is initiated and continuing through the due date of the tax payment.

(3) (A) A taxpayer is considered to have failed to pay taxes by electronic funds transfer if the conditions stated in subdivision (c)(1) or (c)(2) of this section are not met.

(B) The director will notify the taxpayer in writing of the failure to meet the conditions with respect to a particular reporting period.

(C) Subsequent failures to meet the prescribed conditions shall result in the assessment of penalties described in § 26-19-107(a) without necessity of additional written notice.

History. Acts 1993, No. 848, §§ 7, 8; 1999, No. 1132, § 4.

Amendments. The 1999 amendment added (c) and made stylistic changes.

26-19-108. Rules and regulations.

The director is authorized to adopt rules and regulations which he deems necessary to implement and enforce the provisions of this subchapter.

History. Acts 1993, No. 848, § 9.

Chapter 20 Uniform Sales and Use Tax Administration Act

26-20-101. Title.

26-20-102. Definitions.

26-20-103. Legislative finding.

26-20-104. Authority to enter agreement.

26-20-105. Relationship to state law.

26-20-106. Agreement requirements.

26-20-107. Cooperating sovereigns.

26-20-108. Limited binding and beneficial effect.

26-20-109. Seller and third-party liability.

Effective Dates. Acts 2001, No. 1279, § 10: Apr. 4, 2001. Emergency clause provided: "It is hereby found and determined by the 83rd General Assembly that passage of this bill would allow Arkansas to continue participating in the national Streamlined Sales Tax Project; that the Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax administration;

that the Streamlined Sales Tax System is focused on improving sales and use tax administration systems for all sellers and for all types of commerce; and that it is imperative for states to develop a more modern sales and use tax system in order to level the playing field between in-state and out-of-state sellers and preserve the sales and use tax system. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

26-20-101. Title.

This chapter shall be known as and referred to as the “Uniform Sales and Use Tax Administration Act”.

History. Acts 2001, No. 1279, § 1.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-20-102. Definitions.

As used in this chapter:

- (1) “Agreement” means the Streamlined Sales and Use Tax Agreement;
- (2) “Certified automated system” means software certified jointly by the states that are signatories to the agreement and which is used to calculate the sales and use tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;
- (3) “Certified service provider” means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller’s sales and use tax functions;
- (4) “Director” means the Director of the Department of Finance and Administration;
- (5) “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity;
- (6) “Sales tax” means the tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.;
- (7) “Seller” means any person making sales, leases or rentals of personal property or services;
- (8) “State” means any state of the United States and the District of Columbia; and
- (9) “Use tax” means the tax levied under the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 2001, No. 1279, § 2.

Meaning of “this act”. See note to § 26-20-101.

26-20-103. Legislative finding.

The Eighty-Third General Assembly finds that this state should enter into an agreement with one (1) or more states to simplify and modernize sales and use tax administration in

order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

History. Acts 2001, No. 1279, § 3.

26-20-104. Authority to enter agreement.

(a) The Director of the Department of Finance and Administration is authorized and directed to enter into the Streamlined Sales and Use Tax Agreement with one (1) or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

(b) In furtherance of the agreement, the director is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

(c) The director is further authorized to take other actions reasonably required to implement the provisions set forth in this chapter.

(d) Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

(e) The director or his or her designee is authorized to represent this state before the other states that are signatories to the agreement.

History. Acts 2001, No. 1279, § 4.

Meaning of “this act”. See note to § 26-20-101.

26-20-105. Relationship to state law.

(a) No provision of the agreement authorized by this chapter in whole or part invalidates or amends any provision of the law of this state.

(b) Adoption of the agreement by this state does not amend or modify any law of this state.

(c) Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

History. Acts 2001, No. 1279, § 5.

Meaning of “this act”. See note to § 26-20-101.

26-20-106. Agreement requirements.

The Director of the Department of Finance and Administration shall not enter into the agreement unless it requires each state to abide by the following requirements:

(a) **Uniform State Rate.**

The agreement must set restrictions to achieve more uniform state rates through the following:

(1) Limiting the number of state rates;

(2) Limiting the application of maximums on the amount of state tax that is due on a transaction;

(3) Limiting the application of thresholds on the application of state tax.

(b) Uniform Standards.

The agreement must establish uniform standards for the following:

- (1) The sourcing of transactions to taxing jurisdictions;
- (2) The administration of exempt sales;
- (3) The allowances a seller can take for bad debts;
- (4) Sales and use tax returns and remittances.

(c) Uniform Definitions.

The agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.

(d) Central Registration.

The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(e) No Nexus Attribution.

The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(f) Local Sales and Use Taxes.

The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:

- (1) Restricting variances between the state and local tax bases;
- (2) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;
- (3) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes;
- (4) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(g) Monetary Allowances.

The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

(h) State Compliance.

The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(i) Consumer Privacy.

The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(j) Advisory Councils.

The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult with in the administration of the agreement.

History. Acts 2001, No. 1279, § 6.

26-20-107. Cooperating sovereigns.

(a) The agreement authorized by this chapter is an accord among individual cooperating sovereigns in furtherance of their governmental functions.

(b) The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

History. Acts 2001, No. 1279, § 7.

Meaning of “this act”. See note to § 26-20-101.

26-20-108. Limited binding and beneficial effect.

(a) (1) The agreement authorized by this chapter binds and inures only to the benefit of this state and the other member states.

(2) No person, other than a member state, is an intended beneficiary of the agreement.

(3) Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(b) (1) Consistent with subsection (a), no person shall have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement.

(2) No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

History. Acts 2001, No. 1279, § 8.

Meaning of “this act”. See note to § 26-20-101.

26-20-109. Seller and third-party liability.

(a) (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes.

(2) As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section.

(3) A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud.

(4) In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider.

(5) A seller is subject to audit for transactions not processed by the certified service provider.

(6) The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is

functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) (1) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system.

(2) A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

History. Acts 2001, No. 1279, § 9.

Chapter 21

Streamlined Sales Tax Administrative Act

26-21-101. Title.

26-21-102. Legislative findings and intent.

26-21-103. Definitions.

26-21-104. Seller registration.

26-21-105. Taxing jurisdictions.

26-21-106. Relief from certain liability.

26-21-107. Administration of exemptions.

26-21-108. Returns and remittance of funds.

26-21-109. Customer refund procedures.

26-21-110. Amnesty for registration.

26-21-111. Certification and payment of service providers and automated systems.

26-21-112. Effective date for rate changes.

26-21-113. Promulgation of rules.

26-21-114. Governing board.

Effective Dates. Acts 2005, No. 2163, § 2: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this state is losing sales and use tax revenue due to the rapid growth of Internet sales; that the playing field between local businesses and out-of-state businesses needs to be leveled; that an undue burden on interstate commerce currently exists; and that this act is necessary in order for Arkansas to participate in the Streamlined Sales Tax Agreement. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005."

Acts 2007, No. 181, § 45: January 1, 2008.

26-21-101. Title.

This chapter shall be known and may be cited as the "Streamlined Sales Tax Administrative Act".

History. Acts 2005, No. 2163, § 1.

26-21-102. Legislative findings and intent.

The Eighty-Fifth General Assembly finds that this state should enter into an agreement with one (1) or more states to simplify and modernize sales and use tax administration in

order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

History. Acts 2005, No. 2163, § 1.

26-21-103. Definitions.

As used in this chapter:

(1) “Agent” means a person appointed by a seller to represent the seller before the State of Arkansas and the other states in the agreement;

(2) “Agreement” means the multistate agreement to simplify and modernize sales and use tax administration known as the “Streamlined Sales and Use Tax Agreement”;

(3) “Certified automated system” means software that is certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

(4) “Certified service provider” means an agent certified under the agreement to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(5) (A) “Entity-based exemption” means an exemption based on who purchases the product or who sells the product.

(B) An exemption that is available to all individuals shall not be considered an entity-based exemption;

(6) “Model 1 seller” means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(7) “Model 2 seller” means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax;

(8) (A) “Model 3 seller” means a seller that has:

(i) Sales in at least five (5) member states;

(ii) Total annual sales revenue of at least five hundred million dollars (\$500,000,000);

(iii) A proprietary system that calculates the amount of tax due each jurisdiction; and

(iv) Entered into a performance agreement with the member states that establishes a tax performance standard for the seller.

(B) As used in subdivision (8)(A) of this section, “seller” includes an affiliated group of sellers using the same proprietary system;

(9) “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity;

(10) “Purchaser” means a person to which a sale of personal property is made or to which a service is furnished;

(11) “Seller” means a person making sales, leases, or rentals of personal property or services;

(12) “State” means any state of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(13) “Use-based exemption” means an exemption based on a specified use of the

product by the purchaser.

History. Acts 2005, No. 2163, § 1; 2007, No. 181, §§ 1, 2.

Amendments. The 2007 amendment added (5)(B), and redesignated (5) as (5)(A); inserted “and the Commonwealth of Puerto Rico” in (12); substituted “a specified use of the product by the purchaser” for “the purchaser’s use of the product” in (13); and made related changes.

Effective Dates. Acts 2007, No. 181, § 45: Jan. 1, 2008, by its own terms.

26-21-104. Seller registration.

(a) The Department of Finance and Administration shall participate in an online sales and use tax registration system in cooperation with the states that are members of the agreement. (b) The department shall not use a seller’s registration with the online sales and use tax registration system as provided in subsection (a) of this section and any subsequent collection of a sales or use tax in determining whether the seller has nexus with the state for any tax at any time.

History. Acts 2005, No. 2163, § 1; 2007, No. 181, § 3.

Amendments. The 2007 amendment added (b), and designated the existing provisions as (a).

Effective Dates. Acts 2007, No. 181, § 45: January 1, 2008, by its own terms.

26-21-105. Taxing jurisdictions.

The Department of Finance and Administration shall develop a downloadable online database system to assign state and local taxing jurisdictions, boundaries, and sales and use tax rates.

History. Acts 2005, No. 2163, § 1; 2007, No. 181, § 4.

Amendments. The 2007 amendment substituted “develop a downloadable online database system ... use tax rates” for “participate with the states that are members of the agreement in the development of an address-based system for assigning taxing jurisdictions.”

Effective Dates. Acts 2007, No. 181, § 45: January 1, 2008, by its own terms.

26-21-106. Relief from certain liability.

(a) Except as provided in subsection (c) of this section, a seller or certified service provider using a database provided by the department shall not be liable to the State of Arkansas or its local jurisdictions for charging and collecting the incorrect amount of sales or use tax if the seller or the certified service provider relied on erroneous data provided by the department on sales or use tax rates, boundaries, taxing jurisdiction assignments, or the taxability matrix.

(b) The department shall promulgate rules to provide a purchaser relief from a sales or use tax, penalties, and interest for failing to pay the correct amount of sales or use tax if erroneous information on sales or use tax rates, boundaries, or taxing jurisdiction assignments or in the taxability matrix provided by the department has been relied on by the purchaser, the purchaser’s seller, or the purchaser’s certified service provider.

(c) (1) If the department provides an address-based boundary database for assigning taxing jurisdictions and their associated sales or use tax rates, the department may cease providing the relief from liability provided in subsections (a) and (b) of this section if the department gave the seller or the certified service provider adequate notice.

(2) If a seller demonstrates that requiring the use of the address-based database would create an undue hardship, the department may extend the relief from liability to the seller for a designated period of time.

History. Acts 2005, No. 2163, § 1; 2007, No. 181, § 5.

Amendments. The 2007 amendment added (b) and (c) and designated the existing provisions as (a); in (a), added “Except as provided in subsection (c) of this section,” inserted “using a database provided by the Department of Finance and Administration,” substituted “sales or use tax rates” for “tax rates,” and added “or the taxability matrix”; and made related changes.

Effective Dates. Acts 2007, No. 181, § 45; January 1, 2008, by its own terms.

26-21-107. Administration of exemptions.

(a) The Department of Finance and Administration shall administer use-based exemptions and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.

(b) (1) A seller that follows the exemption requirements as prescribed by the Director of the Department of Finance and Administration shall be relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption.

(2) If it is determined that the purchaser improperly claimed an exemption, the department shall hold the purchaser liable for the nonpayment of tax.

(3) The relief from liability provided in subdivision (b)(1) of this section does not apply to a seller that:

(A) Fraudulently fails to collect the sales or use tax;

(B) Solicits a purchaser to participate in the unlawful claim of an exemption; or

(C) Accepts an exemption certificate from a purchaser claiming an entity-based exemption when:

(i) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and

(ii) The state where that location resides provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in that state.

(4) (A) A seller may obtain a fully completed exemption certificate or capture the relevant data elements required by the department within ninety (90) days after the date of sale.

(B) If the seller has not obtained an exemption certificate or all relevant data elements and the department makes a request for substantiation of the exemption, the seller has one hundred twenty (120) days from the date of the request to prove by other means that the transaction was not subject to sales or use tax or to obtain in good faith a fully completed exemption certificate from the purchaser.

(c) A third party vendor may claim a resale exemption based on an exemption certificate provided by its customer or any other acceptable information available to the third party vendor evidencing qualification for a resale exemption regardless of whether the customer is registered with the department to collect and remit sales or use tax.

History. Acts 2005, No. 2163, § 1; 2007, No. 181, § 6.

Amendments. The 2007 amendment, in (b), inserted (b)(3)(C) and redesignated the existing provisions of (b)(3) as (A) and (B); added (c); and made related and stylistic changes.

Effective Dates. Acts 2007, No. 181, § 45: January 1, 2008, by its own terms.

26-21-108. Returns and remittance of funds.

(a) The Director of the Department of Finance and Administration shall promulgate rules to provide:

(1) An alternative method for making payments if an electronic funds transfer fails on its due date; and

(2) A rounding algorithm for sales or use tax computation.

(b) (1) The Department of Finance and Administration shall develop a simplified tax reporting form to be used for all state and local sales and use taxes levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(2) The department shall provide a separate reporting form for any other special or miscellaneous excise taxes so as not to violate the agreement.

(3) The department may require additional information returns to be submitted not more frequently than every six (6) months.

(4) The department shall allow a Model 1, Model 2, or Model 3 seller to submit its sales and use tax return in a simplified format.

(c) The department shall allow a seller to elect to compute the sales or use tax due on a transaction on an item or an invoice basis and shall allow the rounding rule to be applied to the aggregated state and local sales or use taxes.

History. Acts 2005, No. 2163, § 1; 2007, No. 181, § 7.

Amendments. The 2007 amendment added (a)(2) and designated the existing provision as (a)(1); added (b)(4) and (c); and made related and stylistic changes.

Effective Dates. Acts 2007, No. 181, § 1: January 1, 2008, by its own terms.

26-21-109. Customer refund procedures.

(a) (1) A cause of action against the seller for over-collected sales or use taxes does not accrue until sixty (60) days after a purchaser has provided written notice to the seller.

(2) The written notice to the seller required in subdivision (a)(1) of this section must contain the information necessary to determine the validity of the request.

(b) In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of the sales or use taxes, the seller:

(1) Uses either a certified service provider or a certified automated system, including a certified proprietary system, that is certified by the State of Arkansas; and

(2) Has remitted to the Department of Finance and Administration all taxes collected less any deductions, credits, or collection allowances.

History. Acts 2005, No. 2163, § 1.

26-21-110. Amnesty for registration.

(a) The Director of the Department of Finance and Administration shall provide amnesty for uncollected or unpaid sales or use tax to a seller that registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the state in accordance

with the terms of the agreement, provided that the seller was not registered to collect sales and use tax in the State of Arkansas in the twelve-month period preceding the effective date of the state's participation in the agreement.

(b) The amnesty shall preclude assessment for uncollected or unpaid sales or use tax, penalty, and interest for sales made during the period that the seller was not registered in the state, provided registration occurs within twelve (12) months of the date the state is found to be in compliance with the agreement.

(c) The amnesty shall not be available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and the audit is not yet finally resolved, including any related administrative and judicial processes.

(d) The amnesty shall not be available for sales or use taxes already paid or remitted to the Department of Finance and Administration or to taxes collected by the seller.

(e) The amnesty shall be fully effective, absent the seller's fraud or intentional misrepresentations of a material fact, so long as the seller continues its Arkansas sales and use tax registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six (36) months from the date amnesty was awarded.

(f) The amnesty shall be applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a purchaser.

(g) The director shall also provide amnesty to a seller for uncollected or unpaid sales or use tax if:

(1) The seller was already registered with the agreement at the time Arkansas became a full member of the agreement; and

(2) The seller was not registered to collect sales and use tax in Arkansas in the twelve-month period preceding the effective date of Arkansas's full membership in the agreement.

History. Acts 2005, No. 2163, § 1; 2007, No. 181, § 8.

Amendments. The 2007 amendment added (g).

Effective Dates. Acts 2007, No. 181, § 1: January 1, 2008, by its own terms.

26-21-111. Certification and payment of service providers and automated systems.

The Director of the Department of Finance and Administration may:

(1) Certify service providers and automated systems to aid in the administration of sales and use tax collections;

(2) Provide a monetary allowance to the certified service providers, certified automated systems, and to sellers that do not have a requirement to register to collect the gross receipts tax levied by the Arkansas Gross Receipts Tax Act of 1941, § 26-52-101 et seq. or the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.; and

(3) Promulgate rules concerning the review and approval of certified automated system software and the relief from liability for certified service providers and certified automated systems that were relying on the certification provided by the Department of Finance and Administration.

History. Acts 2005, No. 2163, § 1; 2007, No. 181, § 9.

Amendments. The 2007 amendment rewrote (2), which read: "Provide a monetary allowance to the certified service providers, and the certified automated systems"; added (3); and made related changes.

Effective Dates. Acts 2007, No. 181, § 1: January 1, 2008, by its own terms.

26-21-112. Effective date for rate changes.

The effective date of rate changes for services covering a period starting before and ending after the statutory effective date shall be as follows:

(1) For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date; and

(2) For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

History. Acts 2005, No. 2163, § 1.

26-21-113. Promulgation of rules.

The Director of the Department of Finance and Administration shall promulgate rules and develop forms to implement the provisions of this chapter.

History. Acts 2005, No. 2163, § 1.

26-21-114. Governing board.

For the purposes of representing this state on the governing board authorized by the agreement, there shall be four (4) representatives as follows:

(1) One (1) member appointed by the President Pro Tempore of the Senate;

(2) One (1) member appointed by the Speaker of the House of Representatives;

(3) One (1) member appointed by the Governor; and

(4) The Director of the Department of Finance and Administration or his or her designee.

History. Acts 2005, No. 2163, § 1.

Chapter 22

[Reserved]

Subtitle 3.

Administration Of Local Taxes

Chapter 23 Taxpayers

Chapter 24 Public Service Commission

Chapter 25 Levy Of Taxes

Chapter 26 Assessment Of Taxes

Chapter 27 Equalization Of Assessments

Chapter 28 Tax Books And Records

Chapters 29-33 [Reserved.]

Chapter 23

Taxpayers

Subchapter 1 — General Provisions

Subchapter 2 — Arkansas Property Taxpayer Bill of Rights

Subchapter 1 — General Provisions

[Reserved]

Subchapter 2 — Arkansas Property Taxpayer Bill of Rights

26-23-201. Title.

26-23-202. Purpose.

26-23-203. Notice procedures.

26-23-204. Tax bill information.

26-23-205. Taxpayer notice.

Effective Dates. Acts 2009, No. 151, § 3: Jan. 1, 2008. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that not all counties are following the dictates of Arkansas Constitution, Amendment 79; that some counties are not allowing persons that meet the property tax relief requirements under Arkansas Constitution, Amendment 79, to be assessed a later assessed value if that assessment is lower; that this results in taxpayers not being treated equally across the state; that all counties should allow its taxpayers that qualify for the property tax relief to be assessed a later assessed value if that assessment is lower; and that all counties should follow the provisions of Arkansas Constitution, Amendment 79. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on January 1, 2008." Acts 2009, No. 278, § 2: July 31, 2009. Effective date clause provided: "Effective Date. This act is effective for the assessment year 2010 and thereafter."

26-23-201. Title.

This act shall be referred to as the "Arkansas Property Taxpayer Bill of Rights".

History. Acts 1999, No. 572, § 1.

Meaning of "this act". Acts 1999, No. 572, codified as §§ 26-23-201—26-23-204, 26-27-317, 26-27-318, 26-34-105, 26-35-901.

26-23-202. Purpose.

(a) It is the intent of this act that the following objectives shall apply to the operation of the property tax system for Arkansas taxpayers:

- (1) To be taxed fairly and assessed equitably throughout the state;
- (2) To have access to information concerning how the system of property taxation works and how their tax dollars are spent;
- (3) To participate in the determination of tax rates or millage rates levied in local taxing units;
- (4) To receive fair and courteous treatment throughout the property tax system;
- (5) To review the reassessments and methodology used in determining the value

of their properties and that of comparable properties;

(6) To receive a prompt response by government officials to inquiries regarding the value of their properties;

(7) To require government officials or others responsible for the valuation of property to review and correct any measurement error to the nearest foot, clerical error, or other technical error which occurred in the valuation of their properties;

(8) To be sent a notice setting forth the following:

(A) The amount of any change in the value of their properties;

(B) The right of the taxpayer to appeal such a change; and

(C) The procedures which must be followed on appeal, including the name, title, address, and telephone number of the secretary of the county equalization board to whom the appeal and any supporting documentation should be directed, the deadline for requesting a hearing, and the proof required for adjustment of value;

(9) To complete all steps in the appeal process before paying any disputed taxes;

(10) To receive written notification of the outcome of any appeal; and

(11) To recover any overpayment of taxes resulting from erroneous assessments within three (3) years after payment.

(b) The rights enumerated in subsection (a) of this section shall be prominently displayed in each county assessor's and county collector's office in Arkansas.

(c) (1) The provisions of subsections (a) and (b) of this section are goals and objectives only and no person or entity shall have a civil cause of action for any alleged breach or violation of any of these goals and objectives.

(2) However, subdivision (c)(1) of this section shall not be interpreted or construed to limit the rights of any taxpayer under any other law of this state.

History. Acts 1999, No. 572, § 2.

Meaning of "this act". See note to § 26-23-201.

26-23-203. Notice procedures.

The following procedures shall be employed to ensure taxpayers receive adequate notice of value changes:

(1) (A) Countywide reappraisals of real property shall be completed no later than July 1 of the year in which the countywide reappraisal is scheduled to be completed.

(B) Original valuations of newly discovered and newly constructed real property shall be completed no later than July 1 of each assessment year;

(2) (A) Notice of value changes shall be sent to affected property owners no later than ten (10) business days after July 1 of the assessment year.

(B) The notice of value changes shall include:

(i) The previous year's full and assessed value, the reassessed full and assessed value, or the new full and assessed value resulting from an original assessment of newly discovered and newly constructed property;

(ii) The time period for meeting with the county assessor or his or her representative to review the new valuation of the taxpayer's property;

(iii) A statement that property owners have the right to appeal the new valuation to the county equalization board;

(iv) The deadline to petition the county equalization board to

conduct a hearing to review the contested assessment; and

(v) A summary of laws relating to the criteria established by the Supreme Court to uphold an assessment determination by the county equalization board; and

(3) (A) Property owners shall have the right to have a meeting with the county assessor or his or her representative for a change in value before petitioning the county equalization board for a hearing.

(B) In order to accommodate property owners, the county assessor or his or her representative shall conduct the informal hearings required by this section after normal business hours at least one (1) day per week.

History. Acts 1999, No. 572, § 3; 2009, No. 278, § 1.

Amendments. The 2009 amendment deleted “and personal” following “real” in (1)(B).

Meaning of “this act”. See note to § 26-23-201.

Effective Dates. Acts 2009, No. 278, § 2, provided: “This act is effective for the assessment year 2010 and thereafter.”

26-23-204. Tax bill information.

In order to assist property taxpayers to better understand their property tax bills, the following information shall be included on each tax bill sent by the county collector:

(1) The dollar amount of the taxpayer's total tax bill distributed to each taxing unit in the county where the taxpayer's property is taxed;

(2) The millage rate levied by each taxing unit used to determine the tax distribution to each taxing unit and the percentage of the full value of the taxpayer's property that each millage rate levy represents;

(3) The percentage of the full value of the property shall be calculated by multiplying the legal assessment level by the appropriate millage rate levy; and

(4) The sum of the millage rates levied by each taxing unit, the percentage of the full value of the taxpayer's property that the sum of the millage rate levies represents, and the total dollar amount due and billed.

History. Acts 1999, No. 572, § 6.

26-23-205. Taxpayer notice.

(a) A county collector shall send a property taxpayer a yearly notice concerning his or her rights under the provisions of Arkansas Constitution, Amendment 79, containing the following:

(1) A statement that the assessed value of a homestead used as a principal place of residence and owned by a taxpayer who is disabled or sixty-five (65) years of age or older shall be the lower of the assessed value at the time the taxpayer qualified for the property tax relief under Arkansas Constitution, Amendment 79, or a later assessed value; and

(2) The county assessor's contact information.

(b) The yearly notice required in subsection (a) of this section may be sent with the taxpayer's tax statement or by separate first-class mail.

History. Acts 2007, No. 467, § 1; 2009, No. 151, § 1.

Amendments. The 2009 amendment substituted “be the lower of the assessed value ... or a

later assessed value” for “not increase” in (a)(1).

Chapter 24

Public Service Commission

- 26-24-101. Divisions created.
- 26-24-102. Power and authority generally.
- 26-24-103. Assessment of utility property.
- 26-24-104. Basis of valuation.
- 26-24-105. Supervision of local authorities.
- 26-24-106. Opinions of commission.
- 26-24-107. Rules and regulations.
- 26-24-108. Extension of time.
- 26-24-109. Suits.
- 26-24-110. Information from public officials.
- 26-24-111. Information from private persons or corporations.
- 26-24-112. Witnesses.
- 26-24-113. Depositions.
- 26-24-114. Appointment of agents — Penalty for disclosing information.
- 26-24-115. Investigation by agents.
- 26-24-116. Investigations by commission.
- 26-24-117. Omitted property.
- 26-24-118. Meetings of assessors.
- 26-24-119. Investigation of tax systems.
- 26-24-120. Consultation with Governor.
- 26-24-121. Biennial report.
- 26-24-122. Appearance of witnesses.
- 26-24-123. Appeal of actions or orders.

Cross References. Arkansas Public Service Commission as the State Board of Equalization, § 26-27-201 et seq.

Penalty for violation of law or orders of Public Service Commission, § 26-2-102.

Effective Dates. Acts 1927, No. 129, § 38: approved Mar. 9, 1927. Emergency clause provided: “This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage.”

Acts 1949, No. 191, § 12: Feb. 28, 1949. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that great inequalities and discriminations in property assessments now exist throughout the State, that there is urgent need for equalization, and that enactment of this bill will provide for more efficient and adequate administration of the tax laws. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its passage and approval.”

Acts 1951, No. 155, § 3: July 1, 1951.

Acts 1959, No. 245, § 2: July 1, 1959.

Acts 1961, No. 129, § 12: approved Feb. 22, 1961. Emergency clause provided: “Since the wording of the present statutes relating to the assessment, certification, and appeals from the assessment as determined and fixed by the Tax Division is somewhat confusing, and since this confusion adversely affects the administration of the assessments fixed by the Tax Division, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after

its passage.”

Acts 1975, No. 175, § 5: Feb. 18, 1975. Emergency clause provided: “It is determined by the Legislature that property used by certain cable television systems is not assessed for taxation, and that some question exists as to the nature and extent of the Public Service Commission’s jurisdiction and duty as regards this type of business. Therefore, this enactment is immediately necessary to provide that such properties are properly assessed and that the jurisdiction over such businesses shall be clearly defined. An emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from the date of its passage and approval.”

Research References

ALR.

Estoppel of state or local government in tax matters. 21 A.L.R.4th 573.

Am. Jur. 71 Am. Jur. 2d, State Tax., §§ 392-427, 438-442.

Case Notes

Constitutionality.

Constitutionality.

Acts 1927, No. 129 held constitutional. Arkansas Tax Comm’n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-24-101. Divisions created.

For the purpose of assisting it in the carrying out of its functions, powers, and duties, there is created within the Arkansas Public Service Commission the following divisions:

(1) (A) A Tax Division which shall have the responsibility of performing all functions and duties regarding assessment and equalization of properties of public utilities and public carriers.

(B) (i) (a) All rules, regulations, and procedures to be followed by the Tax Division in assessing public utilities shall be promulgated by the Arkansas Public Service Commission, and all assessments of public utilities made by the Tax Division shall be upon the approval of the Arkansas Public Service Commission.

(b) Any person aggrieved by any assessment of any public utility made by the Tax Division and approved by the Arkansas Public Service Commission shall, upon petition, be entitled to a hearing before the Arkansas Public Service Commission, and appeals from the rulings of the Arkansas Public Service Commission shall be to the circuit court upon the record made before the Arkansas Public Service Commission in the manner provided by law.

(ii) (a) All rules, regulations, and procedures to be followed by the Tax Division in assessing public carriers shall be promulgated by the Arkansas Transportation Commission [abolished], and all assessments of public carriers made by the Tax Division shall be upon the approval of the Arkansas Transportation Commission [abolished].

(b) Any person aggrieved by any assessment of any public carrier made by the Tax Division and approved by the Arkansas Transportation Commission [abolished] shall, upon petition, be entitled to a hearing before the Arkansas Public Service Commission, and appeals from the rulings of the Arkansas Transportation Commission [abolished] shall be to the circuit court upon the record made before the Arkansas Transportation Commission [abolished] in the manner provided by law; and

(2) An Assessment Coordination Division [abolished], the duties of which shall be such of those formerly imposed upon the Arkansas Assessment Coordination

Department [abolished] as shall be assigned to the Assessment Coordination Division [abolished] by the Arkansas Public Service Commission. None of the duties so assigned shall relate to the assessment of the properties of public carriers or public utilities.

History. Acts 1959, No. 245, § 1; 1961, No. 129, § 8; A.S.A. 1947, § 84-114; Acts 2009, No. 218, § 1; 2009, No. 951, §§ 1, 2.

A.C.R.C. Notes. The Assessment Coordination Division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by Acts 1997, No. 436, § 2.

This section was amended by Acts 2009, No. 218, § 1. However, Acts 2009, No. 951, §§ 1 and 2, repealed this section as amended by Acts 2009, No. 218, § 1, and reenacted this section as it existed before the amendments by Acts 2009, No. 218, § 1.

Publisher's Notes. The first sentence of Acts 1959, No. 245, § 1, abolished the Arkansas Assessment Coordination Department and transferred all functions, etc., to the Arkansas Public Service Commission.

The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23 and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the State Highway and Transportation Department, respectively. See § 23-2-201 et seq.

Amendments. The 2009 amendment substituted "Court of Appeals" for "circuit court" in (1)(B)(i)(b) and (1)(B)(ii)(b); substituted "State Highway Commission" for "Arkansas Transportation Commission" in (1)(B)(ii)(a) and (1)(B)(ii)(b); and substituted "§§ 23-2-422 – 23-2-424" for "law" in (1)(B)(i)(b).

Case Notes

Appellate Review.

Boundary Disputes.

Appellate Review.

Courts can only review real property assessments and reverse them and send them back to the executive department when they are clearly erroneous, manifestly excessive, or confiscatory. Tuthill v. Arkansas County Equalization Bd., 303 Ark. 387, 797 S.W.2d 439 (1990).

Boundary Disputes.

The Public Service Commission does not have jurisdiction to determine the boundary between two counties arising from a change in the flow of the Arkansas River through accretion or avulsion. Arkansas County v. Desha County, 342 Ark. 135, 27 S.W.3d 379 (2000).

Cited: Kansas City S. Ry. v. Arkansas Commerce Comm'n, 230 Ark. 663, 326 S.W.2d 805 (1959).

26-24-102. Power and authority generally.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to have and exercise general and complete supervision and control over:

(1) The valuation, assessment, and equalization of all property, privileges, and franchises; and

(2) The several county assessors, county boards of equalization, and other officers charged with the assessment or equalization of property taxes throughout the state, to the end that all assessments on property, privileges, and franchises in this state shall be made in relative proportion to the just and true value of the property, privileges, and franchises, in substantial compliance with the law.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103; Acts 1999, No. 228, § 1.

Amendments. The 1999 amendment deleted former (2) and redesignated former (3) as present (2); in present (2), deleted "tax collectors" following "review and equalization" and deleted "or the collection of" preceding "taxes"; and made minor stylistic changes.

Case Notes

Boundary Disputes.

Boundary Disputes.

The Public Service Commission does not have jurisdiction to determine the boundary between two counties arising from a change in the flow of the Arkansas River through accretion or avulsion. *Arkansas County v. Desha County*, 342 Ark. 135, 27 S.W.3d 379 (2000).

Cited: *Raef v. Radio Broadcasting, Inc.*, 209 Ark. 253, 190 S.W.2d 1 (1945); *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973); *Tuthill v. Arkansas County Equalization Bd.*, 303 Ark. 387, 797 S.W.2d 439 (1990); *Potlatch Corp. v. Arkansas City Sch. Dist.*, 311 Ark. 145, 842 S.W.2d 32 (1992).

26-24-103. Assessment of utility property.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to have the exclusive power of original assessment of both real and personal property used in the operating of carrier pipeline, railroad, street railroad, express, sleeping car, and intercounty bus line companies, and all telegraph, telephone, electric power, cable television, heating, gas, water, water transportation, toll bridge, or ferry, interurban, or other similar companies, associations, or corporations, commonly known as utilities, doing business or owning property in this state.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; Acts 1975, No. 175, § 1; A.S.A. 1947, § 84-103.

Case Notes

Commercial Mobile Service Providers.
Determinations.

Commercial Mobile Service Providers.

The termination of the Public Service Commission's traditional regulatory authority over commercial mobile service providers did not result in the termination of the commission's tax assessment power over utilities. *Southwestern Bell Mobile Sys. v. Arkansas Pub. Serv. Comm'n*, 73 Ark. App. 222, 40 S.W.3d 838 (2001).

A commercial mobile service provider is a "telephone company" within the meaning of this section. *Southwestern Bell Mobile Sys. v. Arkansas Pub. Serv. Comm'n*, 73 Ark. App. 222, 40 S.W.3d 838 (2001).

Determinations.

Assessment at 20% of value by Public Service Commission was not arbitrary and was not shown to be arbitrary by spot check of assessments in the state which showed a lower valuation. *Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n*, 227 Ark. 1066, 304 S.W.2d 297 (1957).

Cited: *Raef v. Radio Broadcasting, Inc.*, 209 Ark. 253, 190 S.W.2d 1 (1945); *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-104. Basis of valuation.

(a) The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to file with the county judge, county clerk, and county assessor of each county not later than ten (10) days before the time for the beginning of the assessment of property by the tax assessors a certificate showing the percentage of true and full market or actual value that it has used, or will use, in valuing for taxation for that year the property the commission is required to assess.

(b) It shall be the duty of the assessors and boards of review or equalization and county judges to adopt the same basis of valuation of property in their county for the purpose of taxation as that certified by the commission.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Cross References. Resolution of valuation adopted by county equalization boards, § 26-27-319.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-105. Supervision of local authorities.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to confer with, advise, and direct all assessors, county boards of review and equalization, county judges, county clerks, and collectors of state and county taxes concerning their duty with respect to the revenue laws of this state.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Assessments.

Assessments.

The commission was authorized to direct county clerks to ignore orders of county boards of equalization directing a blanket reduction in the assessments of urban and rural real estate.

Arkansas Tax Comm'n v. Turley, 185 Ark. 31, 45 S.W.2d 859 (1932).

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-106. Opinions of commission.

(a) The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to answer all questions that may arise in the construction of any statute affecting the assessment, equalization, or collection of taxes, in accordance with the advice and opinion of the Attorney General.

(b) Such opinion and the rules, regulations, orders, and instructions of the commission prescribed and issued in conformity therewith shall be binding upon all officers, who shall faithfully observe and obey the same unless and until they are reversed, annulled, or modified by a court of competent jurisdiction.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; Acts 1951, No. 155, § 2; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-107. Rules and regulations.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to:

(1) Prescribe from time to time such general and uniform rules and regulations and issue such orders and instructions, not inconsistent with law, as may be deemed necessary respecting the manner of the exercise of the powers and discharge of the duties of any and all taxing officials; and

(2) Require compliance with the commission's forms, rules, regulations, orders, and instructions.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-108. Extension of time.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to extend to any official, individual, company, association, or corporation additional time, not to exceed sixty (60) days, within which to file any report required by law to be filed with the commission, in which event the attaching or taking effect of any penalty for failure to file the report or pay any tax or fee shall be postponed accordingly when deemed necessary or advisable.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-109. Suits.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to direct and approve suits to be instituted by the Attorney General, prosecuting attorneys, or attorneys specially employed for such purpose for the collection of any taxes or penalties due the state or any subdivisions.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Authority.

Authority.

This section places authority for the institution of suits against corporations for collection of back taxes with the Public Service Commission. State ex rel. Attorney Gen. v. Standard Oil Co., 179 Ark. 280, 16 S.W.2d 581 (1929).

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-110. Information from public officials.

The Arkansas Public Service Commission shall have the full power and authority in the

administration of the tax laws of this state to require any public official in this state to report information as to the valuation, assessment, and equalization of property, privileges, or franchises, the collection of taxes, receipts from licenses and other sources, the method of taxation, value of franchises, or intangible property or assets subject to taxation, and such other information as may be needful in the work of the commission, in such form and upon such blanks as the commission may prescribe.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-111. Information from private persons or corporations.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to require individuals, partnerships, associations, and corporations, and the agents, officers, and employees thereof, to furnish information concerning their capital, funded or otherwise, gross receipts, net profits or income, excess profits, current assets and liabilities, values or franchises, value of property, earnings, operating and other expenses, bonds, deeds, conduct of business, and all other facts, records, books, papers, documents, and other information of any kind or character demanded which may be useful, in order to enable the commission to ascertain the value and relative burden to be borne by every kind of property in this state.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-112. Witnesses.

(a) The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to summon witnesses to appear, give testimony, and produce records, books, papers, documents, and all other information of any kind or character required relating to any matter which the commission shall have authority to investigate and determine.

(b) (1) (A) Witnesses may be summoned by ordinary subpoena or by subpoena duces tecum issued by any member of the commission, or by the secretary, in the name of the commission, directed to any sheriff of Arkansas, and returnable to the commission, which subpoena may be served in like manner as process issued out of any circuit court; or

(B) The subpoenas may be served by registered mail, addressed to the witness with return receipt demanded.

(2) In either case, the subpoenas must be served at least five (5) days previously to the day named therein for the appearance of the witness.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-113. Depositions.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken upon notice to the interested party, if any, in like manner that depositions of witnesses are taken in civil actions in the circuit court, in any matter which the commission may have authority to investigate or determine.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-114. Appointment of agents — Penalty for disclosing information.

(a) (1) For the purpose of making any investigation of any company, firm, corporation, person, association, copartnership, or public utility, subject to the provisions of the laws which the commission is required to administer, the Arkansas Public Service Commission may appoint, by an order in writing, an agent whose duties shall be prescribed in that order.

(2) In the discharge of his duties, the agent shall have every power of an inquisitorial nature granted by the law to the commission and the same powers as a notary public, with regard to the taking of depositions; and all powers given by law to a notary public relative to deposition are given to the agent.

(b) Except in his report to the commission, or when called on to testify in any court or proceedings, any agent who shall divulge any information acquired by him in respect to the transactions, property, or business of any company, firm, or corporation, person, association, copartnership, or public utility, while acting or claiming to act under such order, shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) and shall thereafter be disqualified from acting as agent or in any other capacity under appointment or employment of the commission.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-115. Investigation by agents.

(a) The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to conduct any number of investigations, contemporaneously, through different agents, and may delegate to any agent the taking of all testimony bearing upon any investigation or hearing.

(b) The decision of the commission shall be based upon its examination of all testimony and records.

(c) The recommendations made by an agent shall be advisory only and shall not preclude the taking of further testimony nor further investigation, if the commission so orders.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-116. Investigations by commission.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to:

(1) Visit in a body or singly, or by authorized agents, the several counties in this state for the purpose of investigating the work and methods of tax assessors, or other officers or boards charged with the duty of administering the tax laws;

(2) Examine carefully into all cases where evasion or violation of the tax laws is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective, or are improperly or negligently administered; and

(3) Report the result of the investigation and the facts ascertained to the Governor from time to time when so required by him.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-117. Omitted property.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to cause to be placed upon the assessment rolls omitted property which may be discovered to have escaped for any reason assessment and taxation and to correct any errors that may be found on the assessment rolls and cause the proper entry to be made thereon.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-118. Meetings of assessors.

(a) The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to call a group meeting of two (2) or more assessors at such time and place as it may designate, due notice of which shall be given by the commission.

(b) (1) For attending these meetings, assessors shall receive no compensation but shall be reimbursed for their actual and necessary expenses in attending the meeting, including only the fare necessarily spent in going to and returning from the place of the meeting.

(2) When such claims are verified by oath and approved by the commission or any member thereof, they shall be presented to the county court which shall make an order showing the amount due and directing the clerk to draw his warrant on the county treasurer to be paid out of any general funds belonging to the county.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-119. Investigation of tax systems.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to:

- (1) Investigate the revenue systems of other states;
- (2) Thoroughly inform themselves upon the subject of taxation and of the progress made in other states and countries in improving their tax systems;
- (3) Formulate and recommend such legislation as may be deemed expedient to forestall evasion of existing tax laws; and
- (4) Secure just and equal taxation and improvements in the system of taxation in Arkansas.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-120. Consultation with Governor.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to consult and confer with the Governor upon the subject of taxation and the administration of the revenue laws, and upon progress of the work of the commission, and to furnish him from time to time such information as he may require.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-121. Biennial report.

The Arkansas Public Service Commission shall have the full power and authority in the administration of the tax laws of this state to transmit to the Governor, thirty (30) days before the convening of the General Assembly, a written report showing in tabular form all the taxable property in the state and the assessed value thereof, together with suggestions of such measures as the commission may formulate and recommend for the consideration of the General Assembly.

History. Acts 1927, No. 129, § 12; Pope's Dig., § 2038; A.S.A. 1947, § 84-103.

A.C.R.C. Notes. The Assessment Coordination Division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by Acts 1997, No. 436, § 2.

Case Notes

Cited: Raef v. Radio Broadcasting, Inc., 209 Ark. 253, 190 S.W.2d 1 (1945); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-24-122. Appearance of witnesses.

(a) (1) In case any witness who has been summoned to testify before the Arkansas Public Service Commission shall fail or refuse to testify to or make answer to any material question relating to any matter under investigation or to produce any records, books, papers, or other documents in his custody or control when required to do so, any circuit court, or any judge thereof, upon application of any member of the commission, shall issue an attachment for the witness and compel him to comply with the summons and to attend before the commission and produce the books, documents, papers, or records and give testimony upon matters about which he may be lawfully interrogated.

(2) The court, or judge thereof, may punish a witness for contempt as in the case of disobedience of a like subpoena issued from the court for the refusal to testify in any cases pending therein.

(b) (1) No witness shall be excused from attending or testifying or from producing books, papers, records, accounts, and other documents before the commission, or in obedience to its subpoena, on the ground or for the reason that the testimony, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture.

(2) No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before the commission, or in obedience to its subpoena. However, no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

(c) (1) Every witness who shall appear before the commission by its order shall receive for his attendance the fees and mileage allowed by law for witnesses in civil cases in circuit courts, which shall be audited and paid by the state in the same manner as other expenses of the commission are audited and paid, upon the presentation of the proper voucher sworn to by the witness and approved by the commission or the chairman thereof.

(2) Witnesses summoned at the instance of parties other than the commission shall be paid by the party causing the witnesses to be summoned.

History. Acts 1927, No. 129, §§ 26-28; Pope's Dig., §§ 2052-2054; A.S.A. 1947, §§ 84-104 — 84-106.

Research References

Ark. L. Rev.

Rules of Evidence in Administrative Proceedings, 15 Ark. L. Rev. 138.

26-24-123. Appeal of actions or orders.

(a) Any taxpayer aggrieved by the action or order of the Arkansas Public Service Commission respecting the assessment or equalization of property shall have the right of appeal to the circuit court and thence to the Supreme Court.

(b) (1) All appeals from the commission involving the assessment or equalization of property locally assessed may be either to the circuit court of the county where the property is located or the Pulaski County Circuit Court.

(2) All appeals involving the assessment or equalization of property, the original assessment of which has been fixed by the commission, shall be to the Pulaski County

Circuit Court.

(c) All appeals shall be taken within thirty (30) days from the date of the action or order appealed from by filing a written notice with the commission and shall be tried de novo.

(d) No appeal shall lie from the action or order of the commission on original assessments unless the property owner shall have first exhausted his or her remedy before the commission by way of petition for review.

History. Acts 1949, No. 191, § 8; 1953, No. 388, § 3; A.S.A. 1947, § 84-115; Acts 2009, No. 218, § 2; 2009, No. 951, §§ 1, 3.

A.C.R.C. Notes. This section was amended by Acts 2009, No. 218, § 2. However, Acts 2009, No. 951, §§ 1 and 3, repealed this section as amended by Acts 2009, No. 218, § 2, and reenacted this section as it existed before the amendments by Acts 2009, No. 218, § 2.

Amendments. The 2009 amendment rewrote the section.

Case Notes

Construction.

Burden of Proof.

Evidence.

Judicial Review.

Scope of Judicial Authority.

Construction.

Section 23-2-423 and this section are easily distinguishable, inasmuch as § 23-2-423 pertains to public utility regulatory matters and this section governs judicial review on Public Service Commission decisions concerning taxation matters. *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n*, 307 Ark. 171, 818 S.W.2d 935 (1991).

Burden of Proof.

The burden of proof is on the protestant to show that the property assessment is manifestly excessive or clearly erroneous or confiscatory. *Potlatch Corp. v. Arkansas City Sch. Dist.*, 311 Ark. 145, 842 S.W.2d 32 (1992).

Evidence.

An appeal from a ruling by the Public Service Commission is not the type that calls for the reception of new evidence, but is the type in which review is confined to the record made before the administrative body. *Southwestern Bell Mobile Sys. v. Arkansas Pub. Serv. Comm'n*, 73 Ark. App. 222, 40 S.W.3d 838 (2001).

Judicial Review.

Courts can only review assessments, and reverse them, and send them back to the executive department when they are clearly erroneous, manifestly excessive, or confiscatory. *Potlatch Corp. v. Arkansas City Sch. Dist.*, 311 Ark. 145, 842 S.W.2d 32 (1992).

Scope of Judicial Authority.

Because of the separation of powers doctrine, it is not within the province of the state courts to assess property. *Potlatch Corp. v. Arkansas City Sch. Dist.*, 311 Ark. 145, 842 S.W.2d 32 (1992).

Cited: *Kansas City S. Ry. v. Arkansas Commerce Comm'n*, 230 Ark. 663, 326 S.W.2d 805 (1959).

Chapter 25

Levy Of Taxes

26-25-101. Limitation on counties.

26-25-102. Limitation on cities and towns.

26-25-103. Basis of city and town levies.

26-25-104. State levy in cities one mile from state line.

- 26-25-105. Objections to levy.
- 26-25-106. Use of voluntary tax for other purposes.
- 26-25-107. Ordinance.
- 26-25-108. Sample forms and ordinances.

Cross References. Adjustment of taxes, § 26-26-401 et seq.
Limitation on levy by state, Ark. Const., Art. 16, § 8.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.
Acts 1957, No. 201, § 3: Mar. 11, 1957. Emergency clause provided: "It has been found and declared by the General Assembly of the State of Arkansas that the persons residing in the cities and incorporated towns described in Section 1 hereof, are being unjustly taxed and that the merchants in such towns are losing much trade due to the lower tax levy in nearby cities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, safety and welfare shall be in full force and effect from and after its passage and approval."
Acts 2007, No. 181, § 45: January 1, 2008.

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 704 et seq.
C.J.S. 84 C.J.S., Tax., § 349 et seq.

26-25-101. Limitation on counties.

It shall be unlawful for the county court to levy on the taxable property of the county in any one (1) year a greater percentage rate than is authorized in this section:

- (1) For all county purposes, not exceeding five (5) mills on the dollar; and
- (2) For paying indebtedness existing at the time of the adoption of the present constitution, not exceeding five (5) mills on the dollar.

History. Acts 1883, No. 114, § 8, p. 199; C. & M. Dig., § 9863; Pope's Dig., § 13611; A.S.A. 1947, § 84-302.

Publisher's Notes. Acts 1980 (1st Ex. Sess.), No. 64, provided for a one-time millage rate adjustment for county, community college district and municipal ad valorem taxes, and school district taxes in order to avoid excessive taxation which might result from the court ordered reappraisal of taxable property (Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization, 266 Ark. 64, 582 S.W.2d 942 (1979)), and the procedure for making this one-time millage rate adjustment.

Case Notes

- County Bonds.
- Excessive Levy.
- Existing Indebtedness.
- Judicial Districts.
- Schools.

County Bonds.

Where county bonds had been issued under authority of law and where at the same time the law had directed a tax to be levied for their protection or where there was a general law authorizing and directing a tax in all like cases applicable to such bonds, the law became a part of the contract and the holder had a right to look to the taxing provision as a part of his security and to demand at the proper time that it be exercised in his favor. *Brodie v. McCabe*, 33 Ark. 690 (1878) (decision under prior law).

Excessive Levy.

An excessive levy vitiated the whole tax and a court, upon a bill to enjoin, could not treat as valid

so much of the levy as was not in excess of the rate authorized by law. *Worthen v. Badgett*, 32 Ark. 496 (1877) (decision under prior law).

Existing Indebtedness.

Where county court levied tax of five mills for purpose of paying indebtedness existing at time of adoption of Arkansas Constitution, but on subsequent day of term modified its order and appropriated whole of the levy to payment of a judgment rendered against it in federal court, conceding the latter order to have been an error, it was not void for want of jurisdiction of the subject matter, and where no appeal was taken, it could not subsequently be corrected. *Graham v. Parham*, 32 Ark. 676 (1878) (decision under prior law).

When county court levied a tax of five mills to pay indebtedness existing at time of adoption of the Arkansas Constitution of 1874, it exhausted its power to levy for that purpose and could not make an additional levy for a particular debt. *Cope v. Collins*, 37 Ark. 649 (1881) (decision under prior law).

Judicial Districts.

Although a county is divided into two judicial districts, a different tax levy in each district is invalid. *Hutchinson v. Ozark Land Co.*, 57 Ark. 554, 22 S.W. 173 (1893) (decision under prior law).

Schools.

County court had no authority to levy school tax without return of election. *Hodgkin v. Fry*, 33 Ark. 716 (1878) (decision under prior law).

Cited: *County Bd. of Educ. v. Austin*, 169 Ark. 436, 276 S.W. 2 (1925).

26-25-102. Limitation on cities and towns.

(a) The amount of taxes which may be levied for general purposes in any one (1) year by the constituted authorities of any city or town under the provisions of Arkansas Constitution, Article 12, Section 4, may equal, but not exceed, the maximum amount of levy at any time fixed under this section of the Arkansas Constitution.

(b) This limitation shall not be construed to prohibit assessments on property adjacent to local improvements made in any city or town for the purpose of paying the costs and damages occasioned thereby.

History. Acts 1883, No. 114, § 10, p. 199; C. & M. Dig., § 9864; Pope's Dig., § 13612; Acts 1963, No. 480, § 1; A.S.A. 1947, § 84-303.

Publisher's Notes. As to the one-time millage rate adjustment for taxes, see "Publisher's Notes" to § 26-25-101.

Case Notes

Municipal Bonds.

Tax on Property.

Municipal Bonds.

Where municipal bonds had been issued under authority of law and where at the same time the law had directed a tax to be levied for their protection or where there was a general law authorizing and directing a tax in all like cases applicable to such bonds, the law became a part of the contract and the holder had a right to look to the taxing provision as a part of his security and to demand at the proper time that it be exercised in his favor. *Brodie v. McCabe*, 33 Ark. 690 (1878) (decision under prior law).

Tax on Property.

When reading this section and § 26-25-103 in conjunction with Ark. Const., Art. 12, it is clear that these enactments have reference to taxes on property. *Holt v. City of Maumelle*, 302 Ark. 51, 786 S.W.2d 581 (1990).

City ordinance imposing charge for police and fire protection and street lighting was not a property tax within the meaning of Ark. Const., Art. 12, § 4 or this section and § 26-25-103, where ordinance placed tax on the "resident" or "occupant" of the property as opposed to a tax on the

“residence” or upon the “real property,” and was a tax not otherwise prohibited by law pursuant to § 26-73-103(a). *Holt v. City of Maumelle*, 302 Ark. 51, 786 S.W.2d 581 (1990).

26-25-103. Basis of city and town levies.

All levies of taxes in cities and towns shall be based upon the appraisal of the county assessor, as equalized for the levy of state and county taxes, and placed upon the tax book by the clerk of the county court. They shall be collected in the same manner, and by the same person, that county taxes are collected.

History. Acts 1883, No. 114, § 11, p. 199; C. & M. Dig., § 9865; Pope's Dig., § 13613; A.S.A. 1947, § 84-304.

Case Notes

Tax on Property.

Tax on Property.

When reading § 26-25-102 and this section in conjunction with Ark. Const., Art. 12, it is clear that these enactments have reference to taxes on property. *Holt v. City of Maumelle*, 302 Ark. 51, 786 S.W.2d 581 (1990).

City ordinance imposing charge for police and fire protection and street lighting was not a property tax within the meaning of Ark. Const., Art. 12, § 4 or § 26-25-102 and this section where ordinance placed tax on the “resident” or “occupant” of the property as opposed to a tax on the “residence” or upon the “real property,” and was a tax not otherwise prohibited by law pursuant to § 26-73-103(a). *Holt v. City of Maumelle*, 302 Ark. 51, 786 S.W.2d 581 (1990).

26-25-104. State levy in cities one mile from state line.

The rate of all taxes levied by the State of Arkansas, not including county, city, and other local tax levies, in cities and incorporated towns whose corporate limits on March 11, 1957, extend to within one (1) mile of the corporate limits of an Arkansas city which adjoins a city in another state and is separated therefrom only by a state line, shall be at the rate at which the tax is levied and collected in the Arkansas city which adjoins a city in another state and is separated therefrom only by a state line.

History. Acts 1957, No. 201, § 1; A.S.A. 1947, § 84-307.

26-25-105. Objections to levy.

(a) (1) Any person having real or personal property assessed for taxation may appear in person or by attorney before the county court, at the time of the levy of taxes by it, or at the succeeding term thereafter, and by petition or remonstrance, object to the levy of any specific tax for illegality, and may by sworn petition, set forth and show any facts upon which the illegality rests.

(2) If the petition is based upon facts, it shall be the duty of the court to determine both the law and the facts presented, and for that purpose, it shall hear any testimony offered.

(3) If the court should rule against the objection so presented, the party objecting to the levy may appeal from the ruling to the circuit court of the county. Upon giving bond within ten (10) days, with good and sufficient security, in double the amount of specific tax levied upon the property of the party objecting, subject to the approval of the court, and conditioned for the payment of the tax, should it be decided to have been lawfully levied, it shall operate as a supersedeas of the collection of the tax.

- (b) (1) The bond shall not operate to prevent the tax being placed upon the tax book.
- (2) The bond shall be given to the State of Arkansas.
- (3) In the event the levy shall finally be declared illegal, the judgment shall operate as an acquittal to the collector and his securities for the noncollection of the tax.
- (4) If the tax is finally declared legal, the collector shall immediately proceed to collect it as in other cases, or by action on the appeal bond.
- (5) Any taxpayer feeling himself aggrieved by any such levy may, at any time before the returning of delinquent taxes by the collector for that year, appeal as provided in this section.
- (6) Any person interested in the levy of the tax may resist the petition to prevent a levy, either before the county court or in the circuit court on appeal.
- (7) In all cases where an appeal is taken, the clerk of the county court shall enter on the tax books, opposite the name of the party, tract, or lot of land, the supersedeas of the specific tax.

(c) (1) The county court shall employ counsel to attend before it at the hearing, and, should it be appealed to the circuit court, the prosecuting attorney and, if to the Arkansas Supreme Court, the Attorney General, shall appear in the interest and behalf of the levy of the tax.

(2) The real or personal property upon which the illegal specific tax as alleged to have been levied shall not be withheld from sale on account of any taxes for any purpose due or to become due upon it and which has not been paid as provided by law, and against the collection of which no petition has been filed.

History. Acts 1883, No. 114, § 12, p. 199; C. & M. Dig., §§ 9870-9872; Pope's Dig., §§ 13619-13621; A.S.A. 1947, § 84-306.

Cross References. Right to institute suit to prevent illegal exactions, Ark. Const., Art. 16, § 13.

Research References

Ark. L. Rev.

Taxpayers' Suits to Prevent Illegal Exactions in Arkansas, 8 Ark. L. Rev. 129.

Case Notes

Excessive Taxes.

Injunctions.

Excessive Taxes.

One asking relief against excessive taxes should tender amount of taxes legally due. Wells, Fargo & Co. Express v. Crawford County, 63 Ark. 576, 40 S.W. 710 (1897).

Injunctions.

One is entitled to an injunction against the collection of an illegal or unauthorized tax. Merwin v. Fussell, 93 Ark. 336, 124 S.W. 1021 (1910).

Cited: Chicago, R.I. & P. Ry. v. Brazil, 166 Ark. 246, 266 S.W. 66 (1924); Paschal v. Munsey, 168 Ark. 58, 268 S.W. 849 (1925).

26-25-106. Use of voluntary tax for other purposes.

(a) Whenever the electors of any county of this state may levy a voluntary tax, it shall be unlawful for the county judge, the county court, or any other county official to use or allocate any moneys derived from any voluntary tax for purposes other than for which it was levied and collected.

(b) Any county official violating the provisions of this section shall, upon conviction, be

removed from office.

History. Acts 1967, No. 423, §§ 1, 2; A.S.A. 1947, §§ 84-308, 84-309.

26-25-107. Ordinance.

(a) (1) Every city or county that adopts an ordinance levying a local sales and use tax which is collected by the Director of the Department of Finance and Administration shall submit the ordinance to the director at least forty-five (45) days prior to the election on the levy.

(2) The director shall review the ordinance to determine if the proposed levy complies with all statutory requirements and limitations, including a separate levy of the sales and use tax, and an authorized sales or use tax rate.

(b) (1) The director shall approve or reject the ordinance and provide written notice to the city or county within fifteen (15) days of receipt of the ordinance.

(2) (A) If the ordinance is rejected, the director shall note the defects.

(B) If the ordinance is rejected and the city or county fails to correct the noted defects, any tax levied by the defective ordinance shall not be collected by the director.

(c) Whenever a special election is called for the purpose of submitting an initiated measure which levies a city or county sales and use tax to be collected by the director, the county board of election commissioners shall submit the initiated measure to the director and the provisions of subsections (a) and (b) of this section shall apply.

(d) No ordinance or initiated measure shall be deemed invalid because of the failure to submit the ordinance or measure to the director or to use a sample form, and such failure shall not constitute a cause of action to invalidate an ordinance or initiated measure.

History. Acts 1999, No. 1289, § 1; 2007, No. 181, § 10.

Amendments. The 2007 amendment, in (a)(2), deleted “the existence of a single transaction definition” following “including”, and substituted “an authorized sales or use tax rate” for “an authorized tax rate.”

Effective Dates. Acts 2007, No. 181, § 1: January 1, 2008, by its own terms.

26-25-108. Sample forms and ordinances.

(a) The Arkansas Municipal League, the Association of Arkansas Counties, and the Department of Finance and Administration may jointly develop sample forms and ordinances for levying local sales and use taxes which comply with all statutory requirements and limitations.

(b) The sample forms and ordinances will be reviewed regularly in order to comply with changes in the law.

History. Acts 1999, No. 1289, § 2.

Chapter 26 Assessment Of Taxes

Subchapter 1 — General Provisions

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Subchapter 3 — Administration Generally

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Subchapter 20 — Coordination of Uniform Reporting of County Property Tax Information

A.C.R.C. Notes. References to “this chapter” in subchapters 1-18 may not apply to §§ 26-26-305, 26-26-1115 and 26-26-1207 which were enacted subsequently.

References to “this chapter” in subchapters 1 and 2, §§ 26-26-301 — 26-26-304, and subchapters 4-18 may not apply to §§ 26-26-306 — 26-26-308, which were enacted subsequently.

References to “this chapter” in subchapters 1-3, §§ 26-26-401 — 26-26-409, and subchapters 5-18 may not apply to § 26-26-410 which was enacted subsequently.

Publisher's Notes. References to “this chapter” in subchapters 1 through 19 may not apply to § 26-26-311 which was enacted subsequently.

References to “this chapter” in subchapters 1 through 19 and §§ 26-26-1101 — 26-26-1120 may not apply to § 26-26-1121 which was enacted subsequently.

Cross References. Appeal to circuit court, § 26-24-123.

Application by property owner for adjustment of assessment, § 26-27-317.

Objections to tax levy, § 26-25-105.

Research References

ALR.

Situs of tangible personal property for purposes of property taxation. 2 A.L.R.4th 432.

Situs of aircraft, rolling stock, and vessels for purposes of property taxation. 3 A.L.R.4th 837.

Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation. 9 A.L.R.4th 428.

Requirement of full-value real property taxation assessments. 42 A.L.R.4th 676.

Am. Jur. 72 Am. Jur. 2d, State Tax., § 704 et seq.

C.J.S. 84 C.J.S., Tax., § 390 et seq.

Subchapter 1 — General Provisions

26-26-101. Attorney General as chief counsel in tax assessment review.

A.C.R.C. Notes. Acts 2001, No. 783, § 3, provided:

“**Section 1** of uncodified Act 1176 of 1993 is repealed.”

Publisher's Notes. Acts 1993, No. 1176, § 1, formerly noted at this subchapter, was repealed by Acts 2001, No. 783, § 3.

Effective Dates. Acts 1980 (2nd Ex. Sess.), No. 5, § 3: May 8, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present statutes governing appeals from assessments made by the Tax Division of the Public Service Commission do not provide a specific procedure for appellate review of decisions of the Public Service Commission and the Transportation Commission which modify property tax assessments made by the Tax Division of the Public Service Commission; that the Attorney General's participation in appeals of property tax assessments made by the Tax Division of the Public Service Commission is necessary to ensure that Public Service Commission or Transportation Commission decisions in such cases can be appealed by the Tax Division and that the Attorney General should be designated as chief counsel for the Tax Division when Tax Division property tax assessments are appealed to the Public Service Commission or the Transportation Commission and empowered to appeal orders from the Public Service Commission or the Transportation Commission which modify Tax Division property tax assessments; and that the immediate passage of this Act is necessary to ensure that Public Service Commission or Transportation Commission decisions affecting property tax assessments in 1980 and thereafter can be appealed. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-26-101. Attorney General as chief counsel in tax assessment review.

(a) When any person, firm, company, copartnership, association, or corporation whose property is required by law to be assessed for ad valorem taxation by the Tax Division of the Arkansas Public Service Commission shall file a petition with the commission or the Arkansas Transportation Commission seeking review of the assessment, the chairman of the commission having jurisdiction over the review shall, within ten (10) days of the filing of the petition, give notice to the Attorney General.

(b) (1) Upon receipt of notice from the Arkansas Public Service Commission or the Arkansas Transportation Commission that a person, firm, company, copartnership, association, or corporation whose property is required by law to be assessed for ad valorem taxation by the Tax Division of the Arkansas Public Service Commission has filed a petition for review of the assessment, the Attorney General shall undertake legal representation of the division and shall serve as chief counsel for the division during the pendency of the review before the commission having jurisdiction of the matter.

(2) The Attorney General shall be assisted by the division's legal counsel and on appeals to the Arkansas Transportation Commission by the Arkansas Transportation Commission's legal counsel.

(3) If any assessment made by the division is modified on review by order of the commission having jurisdiction of the matter, the Attorney General, after consulting with the administrator of the division, shall be empowered to appeal the commission order to the Pulaski County Circuit Court and shall continue to serve as chief counsel for the division during the appellate process, with the authority to appeal subsequent court orders.

History. Acts 1980 (2nd Ex. Sess.), No. 5, §§ 1, 2; A.S.A. 1947, §§ 84-490, 84-491.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23 and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the State Highway and Transportation Department, respectively. See § 23-2-201 et seq.

Subchapter 2 — Penalties and Offenses Generally

26-26-201. Delinquent assessments.

26-26-202. Refusal to give name or description of property.

Effective Dates. Acts 1919, No. 147, § 18: approved Mar. 1, 1919. Emergency clause provided: "That Act 234 of the Acts of 1917 and Act 124 of the Acts of 1913, and all other laws in conflict herewith, are hereby repealed, and this Act, being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage."

Acts 1929, No. 111, § 14: approved Mar. 9, 1929. Emergency clause provided: "All laws and parts of laws in conflict herewith are hereby repealed, and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: "It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

26-26-201. Delinquent assessments.

(a) (1) (A) There shall be a penalty of ten percent (10%) of all taxes due on all persons and property delinquent in assessment.

(B) Where the penalty of ten percent (10%) of the amount of all taxes due shall amount to less than one dollar (\$1.00), the penalty shall be arbitrarily fixed at one dollar (\$1.00).

(2) (A) All persons and property not listed for assessment with the assessor on or before May 31 of the year in which the assessment is required, as provided by this chapter, shall be deemed to be delinquent in assessment, and the assessor shall so designate it on his records that the clerk may know each item of property and all persons so delinquent.

(B) It shall be the duty of the clerk to affix and extend the penalty provided in this section against each item of property and all persons so delinquent.

(3) The penalty shall be collected by the county tax collector and shall be by him paid into the county general fund.

(b) Between January 1 and June 5 of each year, each county assessor shall file with the State Treasurer a sworn statement that he will comply with subsection (a) of this section. If a county assessor fails to file the statement by June 5, then the State Treasurer shall withhold county turnback to that county until the statement is received by the State Treasurer.

(c) If the neglect is willful, the delinquent shall be deemed guilty of a misdemeanor and shall be fined in any sum not more than one thousand dollars (\$1,000).

(d) (1) In addition to the penalties for not assessing, delinquent persons shall be required to pay an additional fifty cents (50¢) for each list, which shall go to the assessor.

(2) This additional sum shall be collected by the tax collector in the usual manner.

History. Acts 1919, No. 147, § 7; C. & M. Dig., § 9898; Acts 1929, No. 111, §§ 11, 12; 1929, No. 172, § 11; Pope's Dig., §§ 13635, 13636, 13661; A.S.A. 1947, §§ 84-438 — 84-440; Acts 1987, No. 153, § 1; 1991, No. 860, § 1.

Case Notes

Cited: Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-26-202. Refusal to give name or description of property.

(a) It shall be unlawful for any person to refuse to give the county assessor or the appointed deputy his or her name and a complete and accurate description of his or her personal and real property, together with the location and value of it.

(b) Any person so refusing, upon conviction, shall be guilty of a violation and shall be fined in any sum not less than ten dollars (\$10.00) and not more than twenty-five dollars (\$25.00).

History. Acts 1929, No. 172, § 14; Pope's Dig., § 13665; A.S.A. 1947, § 84-443; Acts 2005, No. 1994, § 165.

Amendments. The 2005 amendment substituted “violation” for “misdemeanor” in the second sentence.

Case Notes

Cited: Rottinghaus v. Holder, 261 Ark. 634, 550 S.W.2d 462 (1977).

Subchapter 3 — Administration Generally

26-26-301. Duties of officers.

26-26-302. Assessment records to be kept current.

26-26-303. Percentage of value to be used in appraisal.

26-26-304. Ratio of assessed value to market value in the assessment year that reappraised values are placed on the assessment rolls.

26-26-305. [Repealed.]

26-26-306. Countywide reappraisal of property.

26-26-307. Completion of reappraisal — Suspension of penalties.

26-26-308. Rules and regulations.

26-26-309. [Repealed.]

26-26-310. Certification of amount of property tax reduction.

26-26-311. Appraisal completion on the date the collector's books are open for collection on the newly appraised value.

A.C.R.C. Notes. References to “this subchapter” in §§ 26-26-301 — 26-26-304 may not apply to §§ 26-26-306 — 26-26-308, which were enacted subsequently. References to “this subchapter” in §§ 26-26-301 through 26-26-310 may not apply to § 26-26-311 which was enacted subsequently.

Effective Dates. Acts 1955, No. 153, § 15: Mar. 7, 1955. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that great inequalities and discriminations in property assessments now exist throughout the State, that there is urgent need for equalization, and that only by the enactment of this bill can there be provided a more efficient and adequate administration of the tax laws. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace,

health and safety, shall take effect and be in force from and after the date of its passage and approval.”

Acts 1959, No. 31, § 2: approved Feb. 13, 1959. Emergency clause provided: “It has been found and is declared by the General Assembly of Arkansas that under the present reappraisal law of Arkansas, funds would be withheld beginning in April of 1959; that it has been impossible for several counties of this State to comply with the reappraisal requirement due to a lack of sufficient technically skilled personnel to handle the reappraisal; that the withholding of State funds will cause a shortened school term for many schools of this State to the deprivation of the school children of Arkansas; that the General Assembly is desirous of maintaining the full nine months school term; and that this act is necessary to enable the schools to remain open for the full term. Therefore, an emergency is declared to exist and this act being necessary for the public peace, health and safety shall take effect and be in full force from and after the date of its passage.”

Acts 1959, No. 244, § 2: Mar. 25, 1959. Emergency clause provided: “The General Assembly does hereby make the following findings: (1) That Section 12 of Act 153 of 1955, as amended will require the withholding of State aid from many school districts in this State during the current school year, and (2) that such withholding of State school funds will prevent such school districts from having a regular nine month school term, and thereby depriving thousands of school children in this State of an adequate education, (3) that many counties need additional time in which to complete reassessment of property, and (4) that the immediate passage of this Act is necessary in order to correct the situation mentioned above. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 440, § 6: March 11, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Arkansas Code 26-26-305 which requires a reappraisal of property in each county for ad valorem tax purposes at least every five (5) years does not address various issues concerning the application of the new appraised values when the reappraisal is carried out over a period of two or more years and purports to prevent application of the rollback provisions of Amendment #59 to the Arkansas Constitution when a reappraisal is carried out over a period of two or more years and consequently has raised several constitutional questions and caused considerable confusion in the administration of ad valorem tax laws and should be repealed immediately. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1997, No. 836, § 8: March 26, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 758 of 1995 has placed an unfair burden on the taxpayers of the State of Arkansas by directing countywide reappraisals of property in a manner which circumvents the rollback provisions of Amendment 59 of the Arkansas Constitution; that counties which have commenced a cyclical review of property in accordance with Act 758 of 1995 should be permitted to implement a fair and equitable comprehensive countywide reappraisal using valuations determined through the cyclical review program and in a manner which minimizes the disparities and inequities created through Act 758 of 1995; that when there is a countywide reappraisal of property for ad valorem tax purposes which is conducted over a period of two or more years, fairness and equity demand that taxes not be assessed on the new appraised values of any property in the county until all property therein has been reappraised, and that when taxes are first assessed on the basis of the newly appraised values, the provisions of Amendment #59 to the Arkansas Constitution, including the rollback provision, should be applied; that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1079, § 2: January 1, 2000.

Acts 1999, No. 1492, § 8: if contingency met, sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Effective date clause provided: "Effective Date. The provisions of Section 5 shall be effective 90 days after adjournment. The provisions of Sections 1, 2, 3, 4, 6 and 7 shall not be effective unless; a) the General Assembly refers a constitutional amendment to be approved during the 2000 general election; b) the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and c) the amendment is approved. If those conditions are met, Sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Claims for refund may be filed in 2001 pursuant to §§ 26-51-601 - 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999."

Identical Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 11. December 15, 2000. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Amendment 79 to the Arkansas Constitution requires the General Assembly to provide for a property tax credit of not less than \$300 for each homestead; that providing such a property tax credit results in a significant reduction in revenues for funding county services and public schools; that without an alternative source of funding counties and public schools cannot operate effectively; that an increase in the state sales and use tax provides a source of funding for counties and public schools; that this act will accomplish the purposes of Amendment 79 in providing a property tax credit and source of funding. It is necessary that this act become effective immediately in order to facilitate the administration of the property tax credit and to generate sufficient revenues to fully fund the credit. Therefore, an emergency is declared to exist and Sections 1, 2, 3, 4, 5, 6, 8 and 9 of this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1275, § 4: Apr. 4, 2001. Emergency clause provided: "It is found and determined by the General Assembly that property tax reimbursements to the counties will most likely begin in April and it is critical to the counties to account for costs borne by the certification of amounts of real property tax reduction to the Chief Fiscal Officer of the State as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1544, § 6: Apr. 12, 2001. Emergency clause provided: "It is found and determined by the General Assembly that in order to efficiently reimburse the counties for the homestead property tax credit, county assessors are required to recertify to the Chief Fiscal Officer the amount of real property reduction on or before June 30 of the year 2001 and every year thereafter. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 1772, § 3: Apr. 6, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Assessment Coordination Department prepares a ratio study to determine the average ratio of full assessed value to market value of real property; that there is a large amount of data submitted to the department by July 1 of each year; that the department is required to complete the ratio study by August 1 of that same year; and that extending the due date to September 15 would give the department more time to prepare an accurate ratio study. Therefore, an emergency is declared to exist and this act being

immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 720 et seq.

C.J.S. 84 C.J.S., Tax., § 373 et seq.

26-26-301. Duties of officers.

(a) All duties imposed by this subchapter on all state and county officers are declared to be mandatory, and any officer who neglects, fails, or refuses to perform any such duty shall be subject to removal from office and liable on his official bond for such neglect, failure, or refusal.

(b) (1) Upon the refusal or failure of any state officer to perform any duty imposed upon him under the provisions of this subchapter, any citizen of the state may, and the Attorney General of the State of Arkansas shall, institute in the proper court mandamus proceedings to compel the state officer to perform his duties.

(2) Upon the refusal or failure of any county officer to perform any duty imposed upon him under the provisions of this subchapter, any citizen of the county may, and the prosecuting attorney of the district including such county shall, institute in the proper court mandamus proceedings to compel the county officer to perform his duties.

History. Acts 1955, No. 153, § 13; A.S.A. 1947, § 84-478.

Publisher's Notes. See “Publisher's Notes” following § 26-26-304.

Case Notes

Jurisdiction.

Jurisdiction.

Subdivision (b)(2) of this section does not provide an exception to the exclusive jurisdiction of county courts over matters relating to county taxes provided in Ark. Const., Art. 7, § 28. *Young v. Jamison*, 309 Ark. 187, 828 S.W.2d 831 (1992).

Cited: *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-26-302. Assessment records to be kept current.

(a) It shall be the duty of each county assessor to keep his appraisal and assessment data and records current by securing the necessary field data and making changes in valuations as changes occur in land use and improvements, and as errors are discovered and corrected, so that his records will at all times show the valuation of property in accordance with the provisions of this subchapter.

(b) Whenever land assessed on an acreage basis is subdivided into lots, the land shall be reassessed on the basis of lots, and whenever land is rezoned for a different use, the land shall be reassessed on the basis of its new classification.

History. Acts 1955, No. 153, § 6; A.S.A. 1947, § 84-475.

Case Notes

Cited: *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966); *Board of Equalization v. Evelyn Hills Shopping Ctr.*, 251 Ark. 1055, 476 S.W.2d 211 (1972).

26-26-303. Percentage of value to be used in appraisal.

- (a) The appraisal and assessment shall be according to value as required by Arkansas Constitution, Article 16, Section 5.
 - (b) The percentage of true and full market or actual value to be used in the appraisal and assessment shall be fixed and certified by the Arkansas Public Service Commission as provided by § 26-24-104.
 - (c) Until and unless a budget system is adopted with provisions for eliminating excessive and illegal tax rates and expenditures, the commission shall not fix and certify a percentage of true and full market or actual value in excess of twenty percent (20%).
- History.** Acts 1955, No. 153, § 4; A.S.A. 1947, § 84-476.

Case Notes

Basis of Valuation.

Basis of Valuation.

Arkansas Constitution requires assessment of property on basis of current market value. Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization, 266 Ark. 64, 582 S.W.2d 942 (1979), superseded by statute as stated in, Clark v. Union P. R. Co., 294 Ark. 586, 745 S.W.2d 600 (Ark. 1988) (decision prior to Const. Amend. 59).
Cited: Arkansas State Hwy. Comm'n v. Roberts, 246 Ark. 1216, 441 S.W.2d 808 (1969); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-26-304. Ratio of assessed value to market value in the assessment year that reappraised values are placed on the assessment rolls.

(a) (1) (A) The Assessment Coordination Department shall prepare a ratio study for the purpose of determining the average ratio of full assessed value to the true and full market or actual value of real property, by classifications, in each of the several counties and school districts of the state in the assessment year that reappraised values are placed on the assessment rolls.

(B) (i) This ratio study shall be based on sales-to-assessment ratios, supplemented with appraisal to assessment ratios as required to meet generally accepted statistical techniques.

(ii) The study shall determine the actual assessment level of real estate as required by law, including the value of agricultural lands that qualify for use and productivity valuation, by classification such as residential, commercial and industrial, agricultural, and other classifications.

(iii) No later than January 31 of every year, all counties shall report, by electronic transmission, sales data to the department. The sales data shall include:

- (a) A listing of each property transferred under a warranty deed or special warranty deed;
- (b) The consideration paid;
- (c) The date of the sale;
- (d) The parcel number;
- (e) The legal description;
- (f) The names of the grantor and grantee;
- (g) The most recent assessed value of the property; and

(h) Other data prescribed by the department.

(iv) (a) The sales-to-assessment ratio study shall include sales data for the calendar year previous to the assessment year.

(b) In those instances when the number of appropriate sales from the calendar year previous to the assessment year is insufficient to present a statistically sound sample, the sales-to-assessment ratio study may include sales data for the three (3) calendar years previous to the assessment year.

(c) The department shall report the preliminary sales-to-assessment ratio studies to the county assessor and county judge on or before March 1 of the assessment year.

(2) The department shall supplement the sales-to-assessment ratio with appraisals as required and report the original combined real property ratios to the county assessor and county judge.

(3) In conducting the studies, the department shall use generally accepted valuation procedures, statistical compilation, and analysis techniques found in the International Association of Assessing Officers' standards on ratio studies.

(b) (1) (A) An annual ratio study for the purpose of determining the average ratio of assessed value to the true and full market or actual value of personal property in each of the several counties of the state shall also be made.

(B) This ratio study of personal property shall be based upon a physical examination of the records of each county assessor's office to determine the degree of compliance with the criteria as established by the Personal Property Manual.

(2) The personal property original ratio study shall be certified by the department to the county judge and county assessor of each county by September 15 of each year.

(c) (1) On or before August 1 of each year the county assessor shall report to the department by total of items and value the total assessment of the county as made by the county assessor.

(2) (A) The county clerk shall file a report with the department showing the percent of true market or actual value at which the county equalization board has equalized the assessed values of the property of the county under the county equalization board's jurisdiction for the year, together with an abstract of the adjusted assessment by total of items and value.

(B) The report and abstract shall be filed each year no later than thirty (30) days after final adjournment of the county equalization board.

(d) (1) Whenever any county assessor or deputy assessor attends a school or instructional meeting pursuant to the request of the department, he or she shall be entitled to reimbursement for his or her travel expenses, which shall be paid by the department upon filing of a proper claim for the travel expenses.

(2) The county assessor and his or her deputies shall also be entitled to reimbursement for travel expenses within the county in performance of their duties as required by this section, which shall be paid by the county.

(3) (A) All reimbursements for travel expenses shall be limited to the actual and necessary expenses incurred.

(B) The total expenses incurred, other than for transportation, for travel within the county shall not exceed one-half (1/2) the daily maximum amount authorized for travel of state employees within the state, and, for travel outside the county, the

amount shall not exceed the daily maximum amount authorized for travel of state employees within the state, in accordance with state travel laws and regulations.

(C) The transportation expenses shall not exceed the actual amount paid, except that the reimbursement for use of a private automobile shall be at the same rate per mile as is allowed in the reimbursement of state employees under the state travel laws and regulations for transportation expenses for each mile actually and necessarily traveled by the automobile, within and without the county.

(e) (1) In addition to the other provisions of this section, whenever the September 15 ratio for the classifications of market value real estate, business personal property, auto and other personal property, or agricultural and timber falls below eighteen percent (18%) or above twenty-two percent (22%) of full fair market value, the county shall be deemed to have failed the ratio study and shall be subject to the corrective actions outlined in subsection (f) of this section.

(2) Furthermore, when a ratio study determines that the county does not meet the ratio standards found in the International Association of Assessing Officers' standards on ratio studies, the county shall be deemed to have failed the ratio study and shall be subject to the corrective actions outlined in subsection (f) of this section.

(3) The department may conduct a county ratio study, in full or in part, at any time that the department determines that a county has engaged in inappropriate assessment roll changes or manipulations.

(f) (1) (A) When a county has failed the ratio study, the department shall direct and supervise a detailed market value and assessment value analysis of the area or class indicating a deficiency in order to determine the political subdivisions and neighborhoods or appraisal methodology, or both, in need of assessment value adjustments.

(B) When appropriate assessment value adjustments are determined for the county, the county shall place the assessment value adjustments on the assessment rolls of the county in a manner that is most equitable for the taxpayers of the county for taxation according to the laws of this state.

(C) (i) The department and counties employing contracted appraisal services shall bear no additional expense for correcting a failed ratio study if the failure is found to be the fault of the contractor.

(ii) The contractor shall bear the cost of these additional services.

(2) (A) In the case in which a county fails to place the assessment value adjustments on the assessment rolls of the county as directed by the department, the department may notify the disbursing agents of the State of Arkansas to withhold the funds accruing to the county from all sources until the time that the adjustments are made.

(B) If the adjustments are not made for one (1) year, the withheld funds shall not be reimbursed to the county and shall be deposited in the State General Government Fund, and withholding shall begin for the following year.

(g) (1) If a county is aggrieved at the findings of the department, the county may appeal the findings of the department to the Director of the Assessment Coordination Department.

(2) The officials of each unit of government affected shall have the right to examine the records of the department that pertain to the ratio findings or value adjustment order for that unit of government.

History. Acts 1955, No. 153, §§ 9, 12; 1957, No. 304, § 1; 1959, No. 31, § 1; 1959, No. 244, § 1; 1969, No. 60, § 1; A.S.A. 1947, §§ 84-477, 84-477n; Acts 1987, No. 838, § 1; 1997, No. 440, § 2(g); 1999, No. 1079, § 1; 2001, No. 1131, § 1; 2005, No. 73, § 1; 2005, No. 1772, §§ 1, 2.

A.C.R.C. Notes. The Assessment Coordination Division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by Acts 1997, No. 436, § 2.

Publisher's Notes. Acts 1955, No. 153 as originally enacted was, except for §§ 4, 6, and 13 (§§ 26-26-301 — 26-26-303), a temporary law providing for an appraisal and assessment of property as of January 1, 1957. However, thereafter, amendments were made to § 12 (this section) inserting continuing provisions making this section permanent in nature. Therefore, § 12 has been codified above, and because of possible applicability of other provisions of this act to this subchapter, the other sections of Acts 1955, No. 153, as amended, should also be checked.

Amendments. The 1997 amendment added (g).

The 1999 amendment added the present second sentence in (a)(1)(B)(iii).

The 2001 amendment rewrote the section.

The 2005 amendment by No. 73 inserted the subdivision (A) designation in (c)(2); deleted “on or before October 1 of each year” following “The county clerk” in present (c)(2)(A); and inserted (c)(2)(B).

The 2005 amendment by No. 1772 substituted “September 15” for “August 1” in (b)(2) and (e)(1).

Effective Dates. Acts 1999, No. 1079, § 2: January 1, 2000.

Case Notes

Capitalization of Income Method.

Manual for Assessors.

Market Value.

Remedies of Taxpayer.

Capitalization of Income Method.

A trial court did not err in basing its decision as to the property assessment upon values reflected by the capitalization of income method. *Board of Equalization v. Evelyn Hills Shopping Ctr.*, 251 Ark. 1055, 476 S.W.2d 211 (1972).

Manual for Assessors.

The methods and criteria of the manual required by Acts 1955, No. 153, § 5, are to be used as a guide by assessors in assessing real and personal property. *Kitchens v. Arkansas Appraisal Serv.*, 233 Ark. 384, 344 S.W.2d 853 (1961).

Assessors who substantially comply with procedure outlined in assessment manual in assessing real and personal property have complied with Acts 1955, No. 153, § 5. *Kitchens v. Arkansas Appraisal Serv.*, 233 Ark. 384, 344 S.W.2d 853 (1961).

Market Value.

Acts 1973, No. 411 was held unconstitutional, because, under the act, property was not assessed as to current market value, but, instead, artificial 1956 values for residential property and certain construction were used, and likewise, farm and timber land were valued as of 1961. *Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization*, 266 Ark. 64, 582 S.W.2d 942 (1979), superseded by statute as stated in, *Clark v. Union P. R. Co.*, 294 Ark. 586, 745 S.W.2d 600 (Ark. 1988) (decision prior to Const. Amend. 59).

A 1979 county reassessment, although not based on current market value of real property, was an action taken to achieve a more proper level of taxation and, as such, was neither illegal nor contrary to the decision in *Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization*, 266 Ark. 64, 582 S.W.2d 942 (1979), which allowed the Public Service Commission until the end of 1979 to prepare an implementation plan and provided that statewide reassessments begin in January 1981. *Rodgers v. Easterling*, 270 Ark. 255, 603 S.W.2d 884 (1980).

Remedies of Taxpayer.

Taxpayer cannot enjoin an assessment where he has failed to exhaust his remedy of appeal from

action or inaction by a county board of equalization. *New St. Mary's Gin, Inc. v. Moore*, 232 Ark. 24, 334 S.W.2d 683 (1960).

Writ of mandamus as remedy. *New St. Mary's Gin, Inc. v. Moore*, 232 Ark. 24, 334 S.W.2d 683 (1960).

Cited: *Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n*, 227 Ark. 1066, 304 S.W.2d 297 (1957); *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958); *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966); *Gilmore v. Lawrence County*, 246 Ark. 614, 439 S.W.2d 643 (1969); *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971); *ABF Freight Sys. v. Tax Div.*, 787 F.2d 292 (8th Cir. 1986).

26-26-305. [Repealed.]

Publisher's Notes. This section, concerning the valuation review program, was repealed by Acts 1997, No. 440, § 1 and No. 836, § 1. The section was derived from Acts 1995, No. 758, §§ 1-5. For present law, see §§ 26-26-306 — 26-26-308, and 26-36-410.

26-26-306. Countywide reappraisal of property.

(a) Any countywide valuation review program begun in accordance with the requirements of § 26-26-305 [repealed] shall be deemed to be a countywide reappraisal of property pursuant to directive of law enacted by the General Assembly.

(b) Any county which has begun but has not completed a countywide valuation review program in accordance with the requirements of § 26-26-305 [repealed] or otherwise on March 26, 1997, shall direct that a countywide reappraisal of property be completed, using, in part, valuations determined through the valuation review program for each parcel of taxable property reviewed to date.

(c) The provisions of § 26-26-401 et seq., relative to the adjustment or rollback of millage levied for ad valorem tax purposes shall be applicable where a countywide reappraisal of property is completed as provided in this section.

(d) Any county which has begun but has not completed a countywide valuation review program in accordance with the requirements of § 26-26-305 [repealed] or otherwise on March 26, 1997, shall suspend the valuations determined through the valuation review program and use the valuations which were applicable prior to the valuation adjustments pending the completion of the countywide reappraisal.

(e) Ad valorem taxes which are due and owing on March 26, 1997, shall continue to be due and owing and shall not be affected by the terms of this section.

History. Acts 1997, No. 836, § 2.

A.C.R.C. Notes. References to “this chapter” in subchapters 1 and 2, §§ 26-26-301 to 26-26-304 and subchapters 4-18 may not apply to this section which was enacted subsequently. References to “this subchapter” in §§ 26-26-301 to 26-26-304 may not apply to this section which was enacted subsequently.

Case Notes

In General.

In General.

It was error for the trial court to interpret subsection (e) of this section as exempting 1996 county taxes from the rollback provision of Amendment 59 on the basis that the taxes from 1996 were due and owing at the time the law took effect and that, therefore, the provisions of the statute were inapplicable to those taxes; such an interpretation of the statute improperly carved out an exception to the requirements of Amendment 59. *Worth v. City of Rogers*, 341 Ark. 12, 14 S.W.3d

471 (2000).

26-26-307. Completion of reappraisal — Suspension of penalties.

(a) When there is a countywide reappraisal of property for ad valorem tax purposes in any county, which reappraisal is conducted over a period of two (2) or more years, taxes shall not be assessed on the basis of the reappraised value of any property in the county until all taxable property in the county has been reappraised. When a countywide reappraisal of property is completed in any county and taxes are first assessed on the newly reappraised values, the provisions of Arkansas Constitution, Amendment 59 and § 26-26-401 et seq. relative to the adjustment or rollback of millage levied for ad valorem tax purposes shall be applicable.

(b) Provided that newly discovered real property, new construction and improvements to real property, and personal property, shall be listed, appraised and assessed as otherwise provided by law until the countywide reappraisal of property is completed.

(c) No county which is conducting a comprehensive countywide reappraisal of property for ad valorem tax purposes which is in progress on the third Monday in November in any year, or any municipality or school district therein, shall be subject to any penalties provided in § 26-26-304 for such fiscal year if the following requirements are met:

(i) The reappraisal meets the requirements of § 26-26-401; and

(ii) The reappraisal is conducted in accordance with a plan which has been approved by the Assessment Coordination Division and provides that the reappraisal will be completed within twenty-four (24) months following the date of such approval.

History. Acts 1997, No. 836, § 3.

A.C.R.C. Notes. References to “this chapter” in subchapters 1 and 2, §§ 26-26-301 to 26-26-304, and subchapters 4-18 may not apply to this section which was enacted subsequently. References to “this subchapter” in §§ 26-26-301 to 26-26-304 may not apply to this section which was enacted subsequently.

26-26-308. Rules and regulations.

The Assessment Coordination Division of the Arkansas Public Service Commission shall promulgate appropriate rules and regulations to carry out the provisions of §§ 26-26-306 — 26-26-308.

History. Acts 1997, No. 836, § 4.

A.C.R.C. Notes. References to “this chapter” in subchapters 1 and 2, §§ 26-26-301 to 26-26-304, and subchapters 4-18 may not apply to this section which was enacted subsequently. References to “this subchapter” in §§ 26-26-301 to 26-26-304 may not apply to this section which was enacted subsequently.

26-26-309. [Repealed.]

Publisher's Notes. This section, concerning a contingent certification of amount of property tax reduction, was repealed by identical Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 3. The section was derived from Acts 1999, No. 1492, § 2. For present law, see Ark. Const. Amend. 79 and § 26-26-310.

26-26-310. Certification of amount of property tax reduction.

(a) (1) On or before March 31 of each year, the county collector of each county shall certify to the Chief Fiscal Officer of the State the amount of the real property tax reduction provided in § 26-26-1118.

(2) (A) After receipt of the certification from the county collectors, the Chief Fiscal Officer of the State shall determine the proportionate share of the total statewide reduction attributable to each county.

(B) (i) At the end of each month, the Chief Fiscal Officer of the State shall determine the balance in the Property Tax Relief Trust Fund and certify it to the Treasurer of State.

(ii) The Treasurer of State shall make distributions from the Property Tax Relief Trust Fund to each county treasurer in accordance with the county's proportionate share of the total statewide property tax reduction for that calendar year resulting from the provisions of § 26-26-1118.

(iii) (a) Effective January 1, 2006, the Treasurer of State shall make a monthly distribution from the Property Tax Relief Trust Fund to each county treasurer.

(b) The distributions for January, February, and March shall be in accordance with the county's proportionate share of the total statewide property tax reduction as of the final county certification of the previous year.

(c) Beginning in April of each year, the distribution from the Property Tax Relief Trust Fund to each county treasurer shall be in accordance with the county's proportionate share of the total statewide property tax reduction for that calendar year under § 26-26-1118.

(C) (i) If the Chief Fiscal Officer of the State has not received all of the certifications from the county collectors, then the distribution of the Property Tax Relief Trust Fund shall be as follows until all certifications have been received:

(a) The total amount of the Property Tax Relief Trust Fund to be distributed shall equal the total amount in the Property Tax Relief Trust Fund multiplied by the proportion of the previous year's total property assessment, less tangible personal property and property owned by utilities and regulated carriers, of the counties that have certified, divided by the previous year's total property assessment, less tangible personal property and property owned by utilities and regulated carriers in the state; and

(b) Each county that has certified its property tax reduction shall receive an amount of the Property Tax Relief Trust Fund, as adjusted in subdivision (a)(2)(C)(i)(a) of this section, equal to the county's proportionate share of the total property tax reduction of the counties that have certified their property tax reductions.

(ii) However, until all counties have certified their property tax reductions to the Chief Fiscal Officer of the State, no county shall receive more than seventy-five percent (75%) of its certified property tax reduction.

(3) (A) (i) Funds so received by the county treasurers shall be credited to the county property tax relief fund.

(ii) Ninety-six percent (96%) of the funds shall be allocated and distributed to the various taxing entities within the county that levy ad valorem taxes.

(iii) The allocation shall be based on a certification from the county collector of the amount of the real property tax reduction per taxing entity provided in § 26-26-1118.

(iv) (a) The four percent (4%) retained in the county property tax relief fund is the commission of the county collector as authorized under § 21-6-305(a)(4).

(b) This commission shall become a part of the total commission of the county collector.

(v) These funds are subject to § 21-6-305(d).

(B) Funds so received by the various taxing units shall be used for the same purposes and in the same proportions as otherwise provided by law.

(b) (1) Distributions to each county shall continue on a monthly basis from the Property Tax Relief Trust Fund until the full amount certified by the county collectors, as of November 15 of each year, has been paid.

(2) (A) In no event shall the amount distributed to a county during a calendar year from the Property Tax Relief Trust Fund exceed the final amount certified by the county collector as of November 15 as the property tax reduction for that calendar year resulting from § 26-26-1118.

(B) If a county is paid in excess of its proportionate share, the Chief Fiscal Officer of the State may reduce payments made to the county for the subsequent calendar year until the overpayment is recovered.

(C) (i) On or before December 31 of each year, the Chief Fiscal Officer of the State, in cooperation with the Legislative Council and the Legislative Auditor, shall determine that portion of the balance remaining in the Property Tax Relief Trust Fund that is in excess of the required reimbursement to the counties and shall certify the excess to the Treasurer of State.

(ii) Beginning December 31, 2005, and on December 31 of each subsequent year, the Treasurer of State shall:

(a) Calculate an amount equal to one percent (1%) of the amount of the excess funds certified in subdivision (b)(2)(C)(i) of this section;

(b) Calculate each county's proportionate share of the amount calculated in subdivision (b)(2)(C)(ii)(a) of this section based on the proportions used to reimburse the county for property tax reductions under subsection (a) of this section; and

(c) Transfer the amount calculated under subdivision (b)(2)(C)(ii)(b) of this section to the county treasurer for allocation to the county assessor.

(iii) (a) These funds shall be used by the county assessor for the costs of administering Arkansas Constitution, Amendment 79.

(b) These costs include personnel, equipment, services, and postage used in the administration of Arkansas Constitution, Amendment 79.

(iv) The remaining excess funds may be used in accordance with subsequent legislation to provide additional tax relief or financial assistance to school districts that incur a reduction in revenue as a direct result of Arkansas Constitution, Amendment 79.

(3) (A) The Legislative Auditor or his or her designee shall audit the books and records of the county assessor, county collector, or any other party as needed to ensure that the amount of the property tax reduction certified by the county collector is accurate.

(B) The Chief Fiscal Officer of the State may adjust the amount certified

by the county collector if it is discovered that the certified amount is incorrect.

(c) (1) On or before June 30 and November 15 of each year, the county collector of each county shall recertify to the Chief Fiscal Officer of the State the amount of the real property tax reduction provided in § 26-26-1118.

(2) The recertification shall reflect the most current total of tax reductions based on corrections and amendments to the records of the county assessor.

(3) After receipt of the recertification from the county collectors, the Chief Fiscal Officer of the State shall redetermine the proportionate share of the total statewide reduction attributable to each county.

History. Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 4; 2001, No. 1275, § 3; 2001, No. 1544, § 2; 2005, No. 659, § 1; 2005, No. 1892, § 2.

Amendments. The 2001 amendment by No. 1275 rewrote (a)(3)(A).

The 2001 amendment by No. 1544 rewrote the section.

The 2005 amendment by No. 659 substituted "March 31 of each year" for "March 31, 2001, and each March 31 thereafter" in (a)(1); inserted the subdivision (i) and (ii) designations in (a)(2)(B); substituted "The Treasurer of State shall" for "who shall" in present (a)(2)(B)(ii); added (a)(2)(B)(iii); deleted "be transferred to the general fund of the county in December of each year to" following "This commission shall" in (a)(3)(A)(v); substituted "Distributions" for "Reimbursements" in (b)(1); substituted "On or before December 31 of each year" for "Commencing December 31, 2002, and each December 31 thereafter" in (b)(2)(C); and inserted "Beginning in 2001" in (c)(1).

The 2005 amendment by No. 1892 inserted the present (i) and (iv) designations in (b)(2)(C); inserted (b)(2)(C)(ii), (b)(2)(C)(iii); substituted "on or before December 31 of each year" for "commencing December 31, 2002, and each December 31 thereafter" in (b)(2)(C)(i); and substituted "The remaining" for "Such" at the beginning of (b)(2)(C)(iv).

Cross References. Pro rata contribution to salaries, § 14-15-203.

Property tax relief, Ark. Const. Amend. 79.

Property Tax Relief Trust Fund, § 19-5-1103.

Limitation on increase of property's assessed value, § 26-26-1118.

Additional taxes levied, §§ 26-52-302, 26-53-107.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-26-311. Appraisal completion on the date the collector's books are open for collection on the newly appraised value.

(a) For purposes of Arkansas Constitution, Amendment 79 and any laws of this state referencing countywide reappraisals of property for property taxation purposes, a countywide reappraisal of property shall be deemed to have been completed on the date that the county collector's books are open for collection on the newly appraised values.

(b) This section does not prohibit any increases allowed by the Arkansas Constitution.

History. Acts 2001, No. 204, § 1.

Publisher's Notes. References to "this subchapter" in §§ 26-26-301 through 26-26-310 may not apply to this section which was enacted subsequently.

References to "this chapter" in subchapters 1 through 19 may not apply to this section which was enacted subsequently.

Subchapter 4

— Adjustment of Taxes

26-26-401. Applicability.

26-26-402. Procedure for adjustment of taxes after reappraisal or reassessment of property.

26-26-403. Certification of assessed value data.

26-26-404. Computation and certification form.

26-26-405. Personal property interim millage adjustment.

26-26-406. Tax adjustment procedure.

26-26-407. Valuation of different types and uses of property.

26-26-408. Implementation of millage rollback in fringe school districts.

26-26-409. Rules and regulations.

26-26-410. [Repealed.]

A.C.R.C. Notes. References to “this subchapter” in §§ 26-26-401 to 26-26-409 may not apply to § 26-26-410 which was enacted subsequently.

Effective Dates. Acts 1981, No. 848, § 11: Mar. 28, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly that Amendment 59 to the Arkansas Constitution was adopted to minimize the increased tax burden which would otherwise have resulted from a court ordered statewide reappraisal of property for ad valorem tax purposes; that several counties are in the process of conducting the reappraisal of property mandated by the court; that Amendment 59 requires enactment of legislation to implement the provisions thereof and that this Act provides such implementation and should be given effect immediately to accomplish the purposes of Amendment 59 in an orderly, effective and efficient manner. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 1300, § 29: Apr. 10, 1997. Emergency clause provided: “It is found and determined by the General Assembly that Amendment No. 74 to the Arkansas Constitution was adopted by the electors of this state on November 5, 1996; that Amendment No. 74 became effective on adoption and applies to ad valorem property taxes due in 1997; that the tax books of each county will open for collection of taxes in the near future and that local officials and school districts must have direction on procedures and effects of the various actions required. The General Assembly further finds that Amendment No. 74 requires enactment of legislation to implement the provisions thereof and that this act provides such implementation and should be given effect immediately to accomplish the purposes of Amendment No. 74 in an orderly, effective and efficient manner. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003 (2nd Ex. Sess.), No. 28, § 10: Dec. 31, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Supreme Court has declared that the current method that the state uses to determine compliance with Amendment 74 to be unconstitutional and has instructed the General Assembly to take action before the termination of the court's stay of its mandate. It is also found that the people must be informed as early as possible the impact of the court's ruling on the property taxes that they pay for education. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides

the veto.”

Acts 2003 (2nd Ex. Sess.), No. 105, § 12: Feb. 10, 2004. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Supreme Court has declared that the current method that the state uses to determine compliance with Amendment 74 to be unconstitutional and has instructed the General Assembly to take action before the termination of the court's stay of its mandate. It has also found that the people must be informed as early as possible of the impact of the court's ruling on the property taxes that they pay for education. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 817 et seq.

C.J.S. 84 C.J.S., Tax., § 506 et seq.

Case Notes

Purpose.

Equalization.

Purpose.

Constitutional Amend. 59 was intended to effect equalization on a gradual basis by holding the revenue from taxation of personal property relatively static as taxes on real estate increased, and Act 848 of 1981, codified as this subchapter, was passed to implement Amendment 59. *Crane v. Newark School Dist.* No. 33, 303 Ark. 650, 799 S.W.2d 536 (1990).

Equalization.

From both the wording of Ark. Const. Amend. 59 (which appears as Ark. Const., Art. 16, §§ 5, 14-16 in the text of the Constitution) and this subchapter, real estate taxes cannot be increased more than 10 percent per year until such time as the personal and real property evaluation and millage rates are equalized. The amendment prevents the taxing units from receiving more than a 10 percent increase in tax collections for any one year; in the event the applicable millage would result in the collection of more than a 10 percent increase in revenues, a rollback procedure is mandated. *Clark v. Union Pac. R.R.*, 294 Ark. 586, 745 S.W.2d 600 (1988).

Both Ark. Const., Art. 16, § 14 and this subchapter contemplate that equalization of rates of taxation on realty and personalty will occur because there will be an increase in personal property in any taxing unit from year to year but the amount of realty will remain the same. *Crane v. Newark School Dist.* No. 33, 303 Ark. 650, 799 S.W.2d 536 (1990).

26-26-401. Applicability.

The provisions of this subchapter relative to the adjustment or rollback of millage levied for ad valorem tax purposes shall be applicable only where there is a countywide or statewide reappraisal of property:

(1) Pursuant to court order; or

(2) Pursuant to directive of law enacted by the General Assembly; or

(3) When the reappraisal is initiated by the assessor, the county equalization board, by directive of the quorum court or upon request of one (1) or more taxing units of a county, and is determined and certified by the Assessment Coordination Division of the Arkansas Public Service Commission as constituting a comprehensive countywide reappraisal; or

(4) When ordered by or implemented by a county pursuant to a directive of the division or its successor agency.

History. Acts 1981, No. 848, § 8; A.S.A. 1947, § 84-493.7.

A.C.R.C. Notes. The Assessment Coordination Division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by Acts 1997, No. 436, § 2.

Research References

U. Ark. Little Rock L.J.

Survey—Miscellaneous, 11 U. Ark. Little Rock L.J. 235.

Case Notes

In General.

In General.

This subchapter applies only to a rollback of millage levied where there has been a countywide or statewide reappraisal of property pursuant to the four factors listed in this section. *Gazaway v. Greene County Equalization Bd.*, 314 Ark. 569, 864 S.W.2d 233 (1993).

Where there is no evidence an appraisal occurred as a result of a countywide or statewide reappraisal of property by one of the four methods listed in this section, § 26-26-407 does not apply. *Gazaway v. Greene County Equalization Bd.*, 314 Ark. 569, 864 S.W.2d 233 (1993).

Cited: *Crane v. Newark School Dist. No. 33*, 303 Ark. 650, 799 S.W.2d 536 (1990); *Worth v. City of Rogers*, 341 Ark. 12, 14 S.W.3d 471 (2000).

26-26-402. Procedure for adjustment of taxes after reappraisal or reassessment of property.

(a) (1) Whenever a countywide reappraisal or reassessment of property subject to ad valorem taxes, made in accordance with procedures established in this subchapter and with regulations of the Assessment Coordination Division of the Arkansas Public Service Commission, or its successor agency, adopted pursuant to the authority granted in this section shall result in an increase in the aggregate value of taxable real and personal property in any taxing unit in this state of ten percent (10%) or more over the previous year, the rate of city or town, county, school district, and community college district taxes levied against the taxable real and personal property of each taxing unit shall, upon completion of the reappraisal or reassessment, be adjusted or rolled back by the governing body of the taxing unit for the year for which levied as provided.

(2) The adjustment or rollback of tax rates or millage for the base year as defined in subdivision (5) of this subsection shall be designed to assure that each taxing unit will receive an amount of tax revenue from each tax source no greater than ten percent (10%) above the revenues received during the previous year from each tax source, adjusted for any lawful tax or millage rate increase or reduction imposed in the manner provided by law for the year for which the tax adjustment or rollback is to be made, and after making the following additional adjustments:

(A) By excluding from calculation the assessed value of, and taxes derived from, tangible personal property assessed in the taxing unit and all real and tangible personal property of public utilities and regulated carriers assessed in the taxing unit; and

(B) (i) By computing the adjusted or rollback millage rates on the basis of the reassessed taxable real property for the base year that will produce an amount of revenue no greater than ten percent (10%) above the revenues produced from the assessed value of real property in the taxing unit after making the aforementioned adjustments for personal properties and properties of public utilities and regulated carriers as provided in subdivision (a)(2)(A) from millage rates in effect in the taxing unit

during the base year in which the millage adjustment or rollback is to be calculated;

(ii) In calculating the amount of adjusted or rollback millage necessary to produce tax revenues no greater than ten percent (10%) above the revenues received during the previous year, the governing body shall separate from the assessed value of taxable real property of the taxing unit, newly discovered real property and new construction and improvements to real property, after making the adjustments for personal property or property of public utilities and regulated carriers as provided in subdivision (a)(2)(A), and shall compute the millage necessary to produce an amount of revenues equal to, but no greater than, the base year revenues of the taxing unit from each millage source. Such taxing unit may elect either to obtain an increase in revenues equal to the amount of revenues that the computed or adjusted rollback millage will produce from newly discovered real property, new construction, and improvements to real property, or, if the same is less than ten percent (10%), the governing body of the taxing unit may recompute the millage rate to be charged to produce an amount no greater than ten percent (10%) above the revenues collected for taxable real property during the base year.

(3) The amount of revenues to be derived from taxable personal property assessed in the taxing unit for the base year, other than personal property taxes to be paid by public utilities and regulated carriers in the manner provided, shall be computed at the millage necessary to produce the same dollar amount of revenues derived during the current year in which the base year adjustment or rollback of millage is computed, and the millage necessary to produce the amount of revenues received from personal property taxes received by the taxing unit, for the base year shall be reduced annually as the assessed value of taxable personal property increases until the amount of revenues from personal property taxes, computed on the basis of the current year millage rates, will produce an amount of revenues from taxable personal property equal to or greater than that received during the base year, and thereafter the millage rates for computing personal property taxes shall be the millage rates levied for the current year.

(4) The taxes to be paid by public utilities and regulated carriers in the respective taxing units of the several counties of this state during the first five (5) calendar years in which taxes are levied on the taxable real and personal property as reassessed and equalized in each of the respective counties as a part of a statewide reappraisal program shall be the greater of the following:

(A) The amount of taxes paid on property owned by such public utilities or regulated carriers in or assigned to the taxing unit, less adjustments for properties disposed of or reductions in the assessed valuation of such properties in the base year as defined below; or

(B) The amount of taxes due on the assessed valuation of taxable real and tangible personal property belonging to the public utilities or regulated carriers located in or assigned to the taxing unit in each county at millage rates levied for the current year.

(5) As used in this section, the term "base year" shall mean the year in which a county completes reassessment and equalization of taxable real and personal property as a part of a statewide reappraisal program and extends the adjusted or rolled back millage rates for the first time, as provided in subdivision (1) of this subsection, for the respective taxing units in that county for collection in the following year.

(A) In the event the amount of taxes paid the taxing unit in a county in the

base year, as defined in this subdivision, is greater than the taxes due to be paid to such taxing unit for the current year of any year of the second period of five (5) years after the base year, the difference between the base-year taxes and the current year taxes for any year of the five-year period shall be adjusted as follows:

Current year of second period of five (5) years	Taxes shall be current-year taxes to which shall be added the following percentage of the difference between the current-year taxes and the base-year taxes (if greater than current-year taxes)
1st year	80% of difference
2nd year	60% of difference
3rd year	40% of difference
4th year	20% of difference
5th year and thereafter	Current year's taxes only

(B) If the current-year taxes of a public utility or regulated carrier equal or exceed the base-year taxes due a taxing unit during any year of the first ten (10) years after the base year, the amount of taxes to be paid to the taxing unit shall thereafter be the current-year taxes, and the adjustment authorized in this section shall no longer apply in computing taxes to be paid to such taxing unit.

(6) In the event the requirement for payment of taxes by public utilities and regulated carriers, or any class of utilities or carriers for the ten-year period as provided in subdivision (a)(5)(B) shall be held by court decision to be contrary to the constitution or statutes of this state or of the federal government, all utilities and all classes of carriers shall receive the same treatment provided or required under the court order for a particular type of carrier or utility if deemed necessary to promote equity between similar utilities or classes of carriers.

(b) If it is determined that the adjustment or rollback of millages as provided for in this section will render income from millages pledged to secure any bonded indebtedness insufficient to meet the current requirements of all principal, interest, paying agents' fees, reserves, and other requirements of a bond indenture, any pledged millage shall be rolled back or adjusted only to a level which will produce at least a level of income sufficient to meet the current requirements of all principal, interest, paying agents' fees, reserves, and other requirements of the bond indenture.

(c) Pursuant to the application of Arkansas Constitution, Amendment 74, to the rollback provisions of Arkansas Constitution, Amendment 59, for millage rates levied by the various school districts within the county, if it is determined that the adjustment or rollback of millages as provided in Amendment 59 will result in a tax rate available for maintenance and operation of less than the uniform rate of tax, then the millage shall be rolled back only to the uniform rate of tax plus debt service millage required, and no further.

History. Acts 1981, No. 848, § 1; A.S.A. 1947, § 84-493; Acts 1997, No. 1300, § 22.

A.C.R.C. Notes. The Assessment Coordination Division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by

Acts 1997, No. 436, § 2.

Publisher's Notes. Acts 1980 (1st Ex. Sess.), No. 69, provided for a statewide reappraisal of taxable property over the years 1981, 1982, and 1983.

Acts 1981, No. 46, provided for funds to be made available to counties to pay the cost of countywide reappraisals.

One-time millage rate adjustment for local taxes, see "Publisher's Notes" to § 26-25-101.

Amendments. The 1997 amendment added (c).

Cross References. Procedure for adjustment of taxes after reappraisal or reassessment of property, Const., Amend. No. 59, § 14 (incorporated as Ark. Const., Art. 16, § 14).

Case Notes

Guarantee of 10 Percent.

Guarantee of 10 Percent.

The language in subdivision (a)(2) of this section that, upon completion of a county-wide reappraisal or reassessment of property, "each taxing unit will receive an amount of tax revenue from each tax source no greater than 10% above the revenues received during the previous year" is part of a guarantee to the taxpayers that their taxes would not be increased by more than 10%; the language is not a guarantee to school districts that they would get an exact 10% increase in tax money. Thus, where, following a reappraisal and reassessment of property, school districts received increases ranging from 4.9% to 8.7%, the districts could not argue that the increases were insufficient and that they were instead entitled to full 10% increases. Wells, 281 Ark. 303, 663 S.W.2d 733 (1984).

Cited: Barker v. Frank, 327 Ark. 589, 939 S.W.2d 837 (1997).

26-26-403. Certification of assessed value data.

(a) In the base year of an approved countywide reassessment program, the county clerk shall certify the assessed value by taxing unit after the county equalization board hearings and county court hearings, on the first Monday in November.

(b) On or before the second Monday in November of the base year, the county clerk shall report to the governing body of each taxing unit the following completed form, accurately listing the required data on each line.

Base Year Certification of Assessment Data on Real Estate

COUNTY:

TAXING UNIT:

DATE:

1. Total Assessment
2. Total Newly Discovered
Property List
3. Total Taxes Certified
for Collection
4. Millage Levy for Main-

tenance and Operations

5. Millage Levy for Bonds
or Debt Service

County Clerk Certification:

Signature

History. Acts 1981, No. 848, § 2; A.S.A. 1947, § 84-493.1; Acts 2003 (2nd Ex. Sess.), No. 28, § 4; 2003 (2nd Ex. Sess.), No. 105, § 6.

Amendments. The 2003 (2nd Ex. Sess.) amendment by identical acts Nos. 28 and 105 repealed (c).

Case Notes

Cited: Barker v. Frank, 327 Ark. 589, 939 S.W.2d 837 (1997).

26-26-404. Computation and certification form.

(a) (1) The governing body of each taxing unit in the base year of countywide reassessment shall complete the following form and return the form to the county clerk on or before the third Monday in November of the base year, using certified data provided by the county clerk as described in § 26-26-402.

(2) The form shall be signed by the officers of the governing body of each taxing unit.

(b) (1) If newly discovered and new construction properties are less than a ten percent (10%) increase in assessments, the governing body of each taxing unit may elect to increase the rolled back millage an amount to allow no more than an overall ten percent (10%) increase in taxes.

(2) If the newly discovered and new construction property list is ten percent (10%) or more above reassessment total, the total amount is allowed; however, no increase in the rolled back millage shall be considered.

(c) Each tax source or millage levy shall be computed and rounded up to the nearest one-tenth ($\frac{1}{10}$) mill.

(d) The county clerk shall file and record the completed forms required in § 26-26-403 and this section and shall forward a copy of the forms to the Assessment Coordination Division of the Arkansas Public Service Commission by December 1 of the base year.

Base Year Millage Rollback Computation and Certification Form

COUNTY: _____

TAXING UNIT: _____

DATE: _____

1. Compute the following to discover total of reassessed property: a. Total base year assessments _____

b. Less newly discovered, new construction properties _____

c. Equals total reassessed properties _____

2. Compute the following to find the zero-increase millage adjustment: a. Base-year taxes certified for collection _____

b. Divided by reassessed properties _____

c. Equals zero-increase millage _____

3. Compute the following to find the percentage of newly discovered property: a. Newly discovered, new construction properties _____

b. Divided by total assessed properties _____

c. Equals percent newly discovered _____

4. Millage adjustment option: a. Maximum increase option _____ 10%

b. Minus newly discovered property percentage _____

c. Allowable optional millage increase _____

5. To compute millage adjustment option if applicable: a. Rolled back zero-base millage _____

b. Times allowed optional millage increase percent _____

c. Equals indicated overall millage of _____

6. Each tax source or levy shall be adjusted by applying the following computed multipliers and adjusting to the next highest one-tenth (110) mill: a. Overall millage from 5.c. above _____

b. Divided by previous millage prior to base year _____

c. Equals multiplier _____

7. Compute each tax source or levied millage in the following table:

Tax Source	Previous Millage	x	Multiplier	=	Adjusted Rounded Millage/Millage
_____	_____	x	_____	=	/
_____	_____	x	_____	=	/
_____	_____	x	_____	=	/
_____	_____	x	_____	=	/
_____	_____	x	_____	=	/
_____	_____	x	_____	=	/

Total Millage

Minimum Millage Required by Amendment 74 = _____

Minimum Millage to be Levied (Greater of above) = _____

CERTIFICATION:

Signatures

8. Proration of minimum millage by tax source if applicable: a. Millage to be levied _____
 b. Divided by total previous millage _____
 c. Equals multiplier _____
 d. Compute each tax source or levied millage in the following table:

Tax Source	Previous Millage	x	Multiplier
_____	_____	x	_____
_____	_____	x	_____
_____	_____	x	_____
_____	_____	x	_____
_____	_____	x	_____
_____	_____	x	_____
_____	_____	x	_____
			Total Millage _____

9. TOTAL MILLAGE TO BE LEVIED _____

CERTIFICATION:

Signatures

History. Acts 1981, No. 848, § 3; A.S.A. 1947, § 84-493.2.

A.C.R.C. Notes. Subsection (c) was made a part of § 26-26-403 as an addition to § 26-26-403 pursuant to the authority given to the Assessment Coordination Division, now the Assessment Coordination Department, by § 26-26-410.

Case Notes

Cited: Barker v. Frank, 327 Ark. 589, 939 S.W.2d 837 (1997).

26-26-405. Personal property interim millage adjustment.

(a) Revenues derived from personal property by each taxing unit in the county are to be frozen at the base-year levels. The millage applied to personal property only is then adjusted downwards in the same proportion that the assessment base increases. The current millage is defined as the millage that was used in each taxing unit to derive the base-year revenues for personal property. This procedure shall be followed each year until the personal property millage rate is equal to or lesser than the millage rate applied to real estate, at which time the interim adjustment is complete, and both personal property and real estate shall thereafter be taxed at the same millage rate.

(b) In calculating the interim millage, all millage will be rounded up only to the nearest one-tenth ($\frac{1}{10}$) mill or to four (4) places to the right of the decimal.

(c) The adjustment shall be performed by the county clerk at the conclusion of all due process proceedings, or by the second Monday in November, whichever is earlier. The county clerk shall then certify the interim personal property millage rate by taxing unit to the county quorum court by the third Monday in November for certification of all millage rates.

(d) The county clerk shall file and record the completed form required by this section. The clerk shall forward a copy of the form to the Assessment Coordination Division of the Arkansas Public Service Commission by December 1 of each year where an interim millage is used, or the year of final adjustment.

PERSONAL PROPERTY INTERIM MILLAGE ADJUSTMENT

COUNTY:

TAXING UNIT:

DATE:

Data Needed For Calculation

1. Base year revenues

$$\underline{\hspace{2cm}} \quad \times \quad \underline{\hspace{2cm}} \quad = /$$

TOTAL INTERIM MILLAGE

3. Verification:

<u>Total Interim Millage</u>	x	<u>New Assessment Base</u>
		x _____

History. Acts 1981, No. 848, § 4; A.S.A. 1947, § 84-493.3.

A.C.R.C. Notes. The Assessment Coordination Division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by Acts 1997, No. 436, § 2.

Case Notes

Divergence From Formula.

Divergence From Formula.

Section 26-26-409 does not give the Assessment Coordination Division the authority to vary the specific terms of this subchapter or to adopt a formula directly at odds with that contained in this section. *Crane v. Newark School Dist. No. 33*, 303 Ark. 650, 799 S.W.2d 536 (1990).

Cited: *Clark v. Union Pac. R.R.*, 294 Ark. 586, 745 S.W.2d 600 (1988).

26-26-406. Tax adjustment procedure.

The following tax adjustment procedure must be completed by the county clerk on or before the third Monday in November, after all due process proceedings of the equalization board and county court. Upon completion, the county clerk shall record and file the original, sending certified copies to the county quorum court and the Assessment Coordination Division of the Arkansas Public Service Commission by the third Monday in November.

Public Utility and Regulated Carrier Property Tax Adjustment
Procedure For the Year _____

for

_____ (Company Name) _____

in

_____ (Taxing Unit) _____ (County) _____

I. Calculating Base Year Taxes: a. Base year total assessment: _____

b. Base year millage rate prior to rollback: _____

c. Base year taxes (line a x b); _____

II. Calculating Current Year Taxes: a. Current year total assessment: _____

b. Current year millage rate after rollback: _____

c. Current year taxes (Line a x b); _____

III. Property Tax Adjustment Time Frame: a. Base year: _____

b. First five-year adjustment period:

Adjustment Year
YearDate _____

1 1st Year After Base Year

2 2nd Year After Base Year

3 3rd Year After Base Year

4 4th Year After Base Year

5 5th Year After Base Year

c. Second five-year adjustment period:

Adjustment Year
YearDate _____

6 6th Year After Base Year

7

7th Year After Base Year

8

8th Year After Base Year

9

9th Year After Base Year

10

10th Year After Base Year

IV. Property Tax Calculations:a. First five-year adjustment period:1. Are current year taxes from Item II greater than base year taxes from Item I?a. ____ Yes. Then Current Year Taxes only are to be billed and the adjustment process is complete.

b. ____ No. Then Base Year Taxes only are to be billed.

b. Second five-year adjustment period:1. Are current year taxes (from Item II) greater than base year taxes (from Item I)?a. ____ Yes. Then Current Year Taxes only are to be billed and the adjustment process is complete.

b. ____ No. Then complete the following adjustment process to calculate the adjusted tax due.

2. Tax due adjustment procedure:

<u>Adj. Year</u>	<u>Base Year Taxes</u>	-	<u>Current Year Taxes</u>	x	<u>Adjust. Factor</u>	+
6						
7						
8 _____						
9						
10						

History. Acts 1981, No. 848, § 5; A.S.A. 1947, § 84-493.4.

A.C.R.C. Notes. The State Board of Vocational Education was abolished and transferred to the State Board of Workforce Education and Career Opportunities by a type 3 transfer under § 25-16-106 by Acts 1997, No. 803, § 2.

26-26-407. Valuation of different types and uses of property.

(a) Residential property used solely as the principal place of residence of the owner shall be assessed in accordance with its value as a residence, so long as the property is used as the principal place of residence of the owner and shall not be assessed in accordance with some other method of valuation until the property ceases to be used for the residential purpose.

(b) (1) (A) Agricultural land, pasture land, and timber land valuation shall be based on the productivity of the agricultural land, pasture land, or timber land soil.

(B) Agricultural land, pasture land, and timber land guidelines shall be developed based on the typical or most probable use of the soils for agricultural land, pasture land, and timber land in the region.

(2) Land that is enrolled in the Wetland Reserves Program of the Natural Resources Conservation Service of the United States Department of Agriculture or in the Conservation Reserve Program of the Natural Resources Conservation Service of the United States Department of Agriculture shall be treated as agricultural land, pasture land, or timber land for purposes of valuation.

(c) (1) Commercial land and residential land that are vacant shall be valued on their typical use.

(2) The county assessor shall determine what the typical use of vacant commercial land or residential land is by considering the primary current use of adjacent lands.

(d) (1) For real property in which the mineral estate and surface estate are severed, if a surface estate owner's use and enjoyment of the surface estate are adversely affected by a severed mineral estate owner's use and enjoyment of the severed mineral estate, or a surface estate owner's utility of the surface estate interest is adversely affected by a severed mineral estate owner's use and enjoyment of the severed mineral estate, the assessment of the surface estate is as follows:

(A) For agricultural land, pasture land, or timber land, a well drilled for the purpose of extracting minerals from a severed mineral estate creates a presumption of diminished utility of the surface estate, and the assessed value of the affected surface estate shall reflect the minimum productivity value of the surface estate and shall be reduced accordingly.

(B) For residential property and commercial property, a well drilled for the purpose of extracting minerals from a severed mineral estate creates a presumption of diminished utility of the surface estate, and the assessed value of the affected surface estate shall reflect the diminished utility of the surface estate and reduced accordingly.

(2) Unless market evidence indicates an increase in land area value or an increase in value of the surface estate, the portion of the surface estate for which a presumption of diminished utility exists under subdivision (d)(1) of this section shall not exceed one (1) acre per well, and the value of the surface estate for that one (1) acre shall be assessed in an amount not to exceed twenty-five percent (25%) less than surrounding comparable

property.

(e) (1) The county equalization board may reclassify land upon proof of change in use of the land or upon proof that the land is not eligible for classification under the provisions of this section.

(2) The owner may appeal the decisions of the county assessor and county equalization board as provided by law for other appeals from the county assessor or county equalization board.

(f) (1) In devising and developing methods of assessing and levying the ad valorem property tax on real property, the Assessment Coordination Department shall annually develop and publish valuation tables and other data that shall be used by county assessors for assessing lands qualifying under this subchapter.

(2) (A) Each year the Assessment Coordination Department shall update the valuation tables for assessing lands qualifying as agricultural land, pasture land, and timber land in time for counties to use the updated tables when they finish their countywide appraisals.

(B) When there is a countywide reappraisal, a county shall assess agricultural land, pasture land, and timber land based upon the updated land values in the valuation tables issued for the assessment year.

(3) (A) The Assessment Coordination Department by rule shall develop appropriate formulas reflecting the productivity valuation of the land based upon income capability attributable to agricultural land, pasture land, and timber land soils.

(B) Each year the Assessment Coordination Department shall develop and calculate capitalization rates by using appropriate long-term federal security rates, risk rates, management rates, and other appropriate financial rates.

(C) However, the capitalization rate developed under subdivision **(f)(3)(B)** of this section shall not be less than eight percent (8%) nor more than twelve percent (12%).

(4) By October 15 of each year, the Assessment Coordination Department shall report to the Legislative Council any changes to any part of the formula used to determine the value of land or the capitalization rate.

(g) (1) Whenever land that has qualified for valuation on use or productivity under subsection **(b)** of this section is converted to another use, the person converting the land to another use shall notify, immediately and in writing, the county assessor of the change in use.

(2) At the appropriate time, the county assessor shall extend the taxes on the land based on the change in use and shall certify to the county collector the amount to be collected.

(h) (1) If any person shall fail to give written notice of a change in use of land as required in subsection **(g)** of this section, the person shall be subject to a penalty in an amount equal to three (3) years of taxes on the land at the value in the new use or conversion use.

(2) Any penalty so assessed shall be included in the taxes on the land for the year in which the failure is discovered and shall be a lien on the land to the same extent as any other taxes levied on the land.

(i) Any funds derived from penalties assessed pursuant to subsection **(h)** of this section shall be deposited into the county general fund to be used for the purposes prescribed by

law.

History. Acts 1981, No. 848, § 6; A.S.A. 1947, § 84-493.5; Acts 2005, No. 1432, § 1; 2007, No. 660, § 1; 2007, No. 994, § 1; 2009, No. 655, §§ 2, 3.

A.C.R.C. Notes. The Assessment Coordination Division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by Acts 1997, No. 436, § 2.

Amendments. The 2005 amendment redesignated former (b)(1) and (b)(2) as present (b)(1)(A) and (b)(1)(B); and added (b)(2).

The 2007 amendment by No. 660 inserted “and uses” in the section heading; added (d) and redesignated the following subdivisions accordingly; and substituted “(g)” for “(f)” in present (h)(1). The 2007 amendment by No. 994 redesignated former (e) as present (e)(1); in (e)(1), inserted “annually” and inserted “valuation”; and added (e)(2) through (e)(4).

The 2009 amendment substituted “county assessor shall” for “assessor must” in (c)(2); in (f), substituted “Each year” for “Effective for assessment years beginning January 1, 2008, and every year thereafter” in (f)(2)(A) and (f)(3)(B), deleted “Beginning January 1, 2008” in (f)(2)(B), and deleted “Effective for assessment years beginning January 1, 2008” in (f)(3)(A); and made related and minor stylistic changes.

Cross References. Assessment of residential property and agricultural, pasture, timber, residential, and commercial land, Ark. Const., Art. 16, § 15.

Property taxed according to value — Procedures for valuation — Tax exemptions, Ark. Const., Art. 16, § 5.

Case Notes

Applicability.

Assessment According to Use.

Applicability.

Where there is no evidence an appraisal occurred as a result of a countywide or statewide reappraisal of property by one of the four methods listed in § 26-26-401, this section does not apply. *Gazaway v. Greene County Equalization Bd.*, 314 Ark. 569, 864 S.W.2d 233 (1993).

Assessment According to Use.

Argument that if residential property of the owner and vacant residential property are to be assessed according to their use, so should residential rental property, held without merit.

Gazaway v. Greene County Equalization Bd., 314 Ark. 569, 864 S.W.2d 233 (1993).

26-26-408. Implementation of millage rollback in fringe school districts.

(a) For purposes of this section, the term “fringe school districts” means those school districts whose boundaries extend across one (1) or more county lines.

(b) When there is a statewide or countywide reappraisal of property for ad valorem tax purposes pursuant to court order or pursuant to law enacted by the General Assembly, the millage rollback for fringe school districts will be implemented as follows: That part of the school district in a county reappraised first will be rolled back in accordance with procedures prescribed in this subchapter, and taxes will be levied at that millage rate until such time as a similar reappraisal is completed in the other counties in which the school district lies and the millage in those counties is rolled back in accordance with this subchapter at which time the rolled back millage for the first part of the school district that has been reappraised and the rolled back millage for each succeeding part of the school district that has been reappraised shall be averaged, weighted by the percentage of the total assessment of the school district that each part consists of in order to create a weighted average millage, and thereafter the weighted average millage for the school district will be the millage rate levied in the whole school district.

History. Acts 1981, No. 848, § 7; A.S.A. 1947, § 84-493.6.

CASE NOTES

Cited: Frank v. Barker, 341 Ark. 577, 20 S.W.3d 293 (2000)

26-26-409. Rules and regulations.

The various state agencies having authority and responsibility with respect to the implementation of the provisions of Arkansas Constitution, Amendment 59 and the provisions of this subchapter or any other laws enacted to carry out the purpose and intent of the amendment are authorized and directed to adopt appropriate rules, regulations, and guidelines to assure that the intent and purpose of the amendment and the laws designed to implement and carry out its purposes are effectively and efficiently carried out during the transitional period.

History. Acts 1981, No. 848, § 9; A.S.A. 1947, § 84-493.8.

Publisher's Notes. Amendment 59, referred to in this section, repealed Ark. Const., Art. 16, § 5, and substituted a new section therefor which appears as Ark. Const., Art. 16, § 5, in the text of the Constitution. The amendment also added Ark. Const., Art. 16, §§ 14-16, which appear in the text of the Constitution.

Case Notes

Authority of Division.

Authority of Division.

This section does not give the Assessment Coordination Division the authority to vary the specific terms of this subchapter or to adopt a formula directly at odds with that contained in § 26-26-405. Crane v. Newark School Dist. No. 33, 303 Ark. 650, 799 S.W.2d 536 (1990).

26-26-410. [Repealed.]

Publisher's Notes. This section, concerning revised millage rate forms produced by the Assessment Coordination Division, was repealed by Acts 2003 (2nd Ex. Sess.), No. 28, § 5 and No. 105, § 7. The section was derived from Acts 1997, No. 1300, § 23.

Subchapter 5

— County Assessors

26-26-501. [Repealed.]

26-26-502. Deputy assessors.

26-26-503. Appointment and training of personnel.

Cross References. Failing or neglecting to make property appraisals, § 26-2-105.

Failure to list and value property for taxation, § 26-2-106.

Nonperformance of duty by assessor, § 26-2-108.

Effective Dates. Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: "It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1931, No. 120, § 3: Jan. 1, 1932.

Acts 1977, No. 186, § 3: Feb. 17, 1977. Emergency clause provided: "It is hereby found and determined that in some counties of the State, the county revenue office is not located near the assessor's office and that it would be advantageous to the taxpayers, the county and the State for the assessor to be authorized to deputize one or more employees in the county revenue office to assess and list for assessment the personal property of taxpayers who come to the revenue office to register vehicles and attend other business; that this Act is designed to permit the assessor to deputize county revenue office employees to perform this service for the taxpayers and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1980 (1st Ex. Sess.), No. 48, § 5: Jan. 30, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that a court ordered statewide reappraisal of property for ad valorem tax purposes will commence on January 1, 1980; that it will be necessary for the various counties to employ qualified personnel to accomplish such appraisal, and that this Act should be given effect immediately to permit the employment of such personnel and to assure that the personnel so employed are properly trained to appraise property in the area. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, Nos. 389, 392, § 4: Mar. 18, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 48 of the First Extraordinary Session of 1980 was intended to require the persons employed by elected county assessors to conduct appraisals of property to be certified by the Assessment Coordination Division as meeting standards set forth by the Assessment Coordination Division; that Act 48 was never intended to require elected county assessors themselves to be so certified; and that this Act is immediately necessary to eliminate the confusion which has arisen regarding the application of Act 48. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-26-501. [Repealed.]

Publisher's Notes. This section, concerning duties generally, was repealed by Acts 1999, No. 933, § 1. The section was derived from Acts 1929, No. 172, § 7; 1931, No. 120, § 1; Pope's Dig., § 13658; Acts 1965, No. 474, § 1; 1983, No. 173, § 1; A.S.A. 1947, § 84-414.

26-26-502. Deputy assessors.

The county assessor in each county, with the approval of the Director of the Department of Finance and Administration, is authorized to deputize one (1) or more full-time or part-time clerks or other employees in the county revenue office and to authorize these deputies to assess personal property or to list personal property for assessment for ad valorem taxes.

History. Acts 1977, No. 186, § 1; A.S.A. 1947, § 84-416.1.

26-26-503. Appointment and training of personnel.

- (a) The county assessor in each county may employ such personnel as the assessor deems necessary to reappraise taxable property in the county in compliance with the court order in *Arkansas Public Service Commission, et al. v. Pulaski County Board of Equalization, et al.* and to thereafter maintain a proper appraisal of property in the county.
- (b) (1) (A) The Assessment Coordination Division of the Arkansas Public Service

Commission shall prescribe an appropriate course of training to qualify persons employed by elected county assessors to conduct appraisals of property for ad valorem tax purposes and shall issue a certificate of qualification to each person who successfully completes the course of training or is otherwise determined by the division to be qualified to conduct appraisals.

(B) (i) Only those persons who hold certificates of qualification issued by the division as provided for in this section shall be employed by the elected county assessors for or undertake the appraisal of property for ad valorem tax purposes in any county.

(ii) This section only applies to persons employed by elected county assessors, and the elected county assessors are not themselves required to be certified by the division.

(2) The division shall seek the advice of the Legislative Council prior to the final adoption of training criteria for persons to be employed by county assessors to appraise property for ad valorem tax purposes.

History. Acts 1980 (1st Ex. Sess.), No. 48, §§ 1-3; 1985, No. 389, §§ 1, 2; 1985, No. 392, §§ 1, 2; A.S.A. 1947, §§ 84-414.1 — 84-414.3.

A.C.R.C. Notes. The Assessment Coordination Division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by Acts 1997, No. 436, § 2.

Publisher's Notes. Arkansas Public Service Commission, et al. v. Pulaski County Board of Equalization, et al., referred to in this section, is reported in 266 Ark. 64, 582 S.W.2d 942 (1979).

Subchapter 6 **— Professional Appraisers**

26-26-601 — 26-26-607. [Repealed.]

Effective Dates. Acts 2001, No. 590, § 2: Mar. 7, 2001. Emergency clause provided: "It is found and determined by the General Assembly that conflicting provisions exist within the Arkansas Code concerning the procedures for hiring professional appraisers. Counties in the State of Arkansas are in the process of contracting with professional appraisers and it is required that reappraisal management plans be filed with the Assessment Coordination Department no later than July 1 of the year preceding the commencement of the reappraisal. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

26-26-601 — 26-26-607. [Repealed.]

Publisher's Notes. This subchapter, concerning professional appraisers, was repealed by Acts 2001, No. 590, § 1. The subchapter was derived from the following sources:

26-26-601. Acts 1949, No. 351, § 1; A.S.A. 1947, § 84-468.

26-26-602. Acts 1949, No. 351, § 2; A.S.A. 1947, § 84-469.

26-26-603. Acts 1949, No. 351, § 3; A.S.A. 1947, § 84-470.

26-26-604. Acts 1949, No. 351, § 4; A.S.A. 1947, § 84-471.

26-26-605. Acts 1949, No. 351, § 5; A.S.A. 1947, § 84-472.

26-26-606. Acts 1949, No. 351, § 6; A.S.A. 1947, § 84-473.

26-26-607. Acts 1949, No. 351, § 7; A.S.A. 1947, § 84-474.

Subchapter 7

— Lists — Abstracts — Books — Records

- 26-26-701. Furnishing of lists, blanks, and records.
- 26-26-702. Abstracts of tracts and lots of land furnished assessor.
- 26-26-703. Exempt lands to be abstracted.
- 26-26-704. Land book and list.
- 26-26-705. School district lists.
- 26-26-706. Lists of motor vehicle licenses.
- 26-26-707. List of building permits.
- 26-26-708. List of contracts, deeds, leases.
- 26-26-709. Other instruments conveying real estate.
- 26-26-710, 26-26-711. [Repealed.]
- 26-26-712. Employees' names furnished on demand.
- 26-26-713. Filing of required lists.
- 26-26-714. Preservation of assessment lists.
- 26-26-715. Information gathered by assessor.
- 26-26-716. Assessment reports filed with county clerk.
- 26-26-717. Accurate description of all tracts required.
- 26-26-718. Duty to account for all realty.
- 26-26-719. Irregular or incomplete descriptions.
- 26-26-720. Correcting descriptions already on books.
- 26-26-721. Checking for nonpayment of delinquent taxes.

Cross References. Tax books and records generally, § 26-28-101 et seq.

Unit tax ledger system, § 26-28-201 et seq.

Preambles. Acts 1887, No. 13 contained a preamble which read:

“Whereas, 1st. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled “An Act to enforce the payment of Overdue Taxes,” approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

“Whereas, 2d. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

“Whereas, 3d. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

“Now, therefore....”

Acts 1945, No. 211 contained a preamble which read:

“Whereas, the County assessors are now forced under Section 13653 of Pope's Digest of 1937 [§ 26-26-1202] to put a valuation on all land, lots and parts of lots subject to taxation, and

“Whereas, the assessor put a valuation on the assessment record of the land, lots, and parts of

lots that has been certified to the State of Arkansas for the nonpayment of the delinquent taxes thereon, and the County Clerk in copying the valuations from the assessment record to the tax records, get a valuation on the forfeited land, lots and parts of lots, and extends taxes against said forfeited land, lots and parts of lots and no taxes should be extended as long as it remains against said property in the State Land Office, and to correct these errors and to help the County Clerks of the various counties of the State of Arkansas, to get their tax records correct....”

Acts 1953, No. 235 contained a preamble which read:

“Whereas, numerous owners of real estate fail to receive their tax statements through incorrect addresses on the tax books, thereby permitting their property to go delinquent; and

“Whereas, certain real estate and the improvements thereon do not appear on the tax books with the result that the owners thereof avoid the payment of taxes, thereby penalizing others who carry an additional tax burden.

“Now, therefore....”

Acts 1969, No. 38 contained a preamble which read:

“Whereas, the 1967 regular session of the General Assembly enacted laws providing for the issuance of motor vehicle licenses on a twelve-month staggered basis, and

“Whereas, existing laws of the State require each motor vehicle owner to submit proof of the assessment of the motor vehicle as a condition of the issuance or the renewal of the license thereon; and

“Whereas, the issuance and renewal of motor vehicle license plates on a twelve-month staggered basis is working extreme hardship upon the county assessors in discovering and assessing motor vehicles and other personal property within the scheduled time provided for assessment of property;

“Now therefore....”

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1903, No. 142, § 3: effective on passage.

Acts 1911, No. 19, § 2: effective on passage.

Acts 1919, No. 147, § 18: approved Mar. 1, 1919. Emergency clause provided: “That Act 234 of the Acts of 1917 and Act 124 of the Acts of 1913, and all other laws in conflict herewith, are hereby repealed, and this Act, being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage.”

Acts 1929, No. 111, § 14: approved Mar. 9, 1929. Emergency clause provided: “All laws and parts of laws in conflict herewith are hereby repealed, and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage.”

Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: “It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage.”

Acts 1931, No. 72, § 2: approved Mar. 2, 1931. Emergency clause provided: “As the time for the preparation of said books by said Clerks for delivery to the respective Assessors of the various counties of the State is limited, and work thereon will necessarily have to begin at once by said Clerk, so that it appears to the General Assembly that the immediate operation of this Act is essential for the immediate preservation of the public peace, health and safety, and an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage.”

Acts 1935, No. 170, § 12: Mar. 21, 1935. Emergency clause provided: “Whereas the status of the tax forfeiture laws of this State are such as to encourage tax delinquencies and has greatly decreased the efficient operation of the schools and various governmental functions, now, therefore, an emergency is declared and this Act being necessary for the immediate preservation of the public peace, health, and safety, it shall become effective immediately upon its passage

and approval.”

Acts 1997, No. 974: January 1, 1998.

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 725 et seq.

C.J.S. 84 C.J.S., Tax., § 454 et seq.

26-26-701. Furnishing of lists, blanks, and records.

(a) (1) The Arkansas Public Service Commission shall prepare and furnish, at the proper time, to the county clerks in this state copies for all lists, blanks, and records to be used in the assessment, extension, and collection of taxes, and the county clerk shall have all lists, blanks, and records made at the expense of the county.

(2) This subsection shall not apply to poll tax receipts.

(3) No lists, blanks, or records shall be used by any official in the assessment, extension, or collection of taxes except as shall have had the approval of the commission.

(b) On or before January 1 of each year, the county clerk shall furnish to the assessor all lists, blanks, and records necessary for the assessment of all real and personal property for the year, all of them to be prepared as provided by law unless otherwise directed by the commission.

History. Acts 1919, No. 147, § 3; C. & M. Dig., § 9880; Acts 1929, No. 172, § 8; Pope's Dig., § 13648; A.S.A. 1947, § 84-401.

Case Notes

Extensions.

Extensions.

This section amends by necessary implication § 26-28-103, relating to extension of taxes. *Lambert v. Reeves*, 194 Ark. 1109, 110 S.W.2d 503 (1937), modified, 194 Ark. 1123, 112 S.W.2d 33 (Ark. 1938).

This section conferred authority on the commission to change the form of tax books so as to omit blank spaces for the extension in dollars and cents of the amounts due the state and its various subdivisions, and since, acting under this authority, the commission had, for a number of years, approved forms of tax books omitting such extension, failure of a county clerk to make such an extension did not render a tax sale based thereunder void. *Lambert v. Reeves*, 194 Ark. 1109, 110 S.W.2d 503 (1937), modified, 194 Ark. 1123, 112 S.W.2d 33 (Ark. 1938); *Kansas City Life Ins. Co. v. Moss*, 196 Ark. 553, 118 S.W.2d 873 (1938).

26-26-702. Abstracts of tracts and lots of land furnished assessor.

(a) On or before January 1 of each year, the clerk of the county court of each county shall make out and deliver to the assessor, in books prepared for that purpose, an abstract containing a description of each tract or lot of land situated within the boundaries of any city or town and additions thereto which have been regularly platted into lots and blocks. In the case of real estate situated within the boundaries of any city or town and additions thereto which have been regularly platted into lots and blocks, the clerk shall proceed according to the plan or plat thereof, commencing with the lowest number of the block and lot of each city, town, or addition and proceed numerically with all lots in a block and all blocks in a city, town, or addition until completed.

(b) On or before January 1 of each year, the clerk shall make out and deliver to the assessor, in books prepared for that purpose, an abstract containing a description of each tract of land situated outside the boundaries of any city or town and additions thereto

which have been regularly platted into lots and blocks. In case of acreage land, he shall commence the abstract in the lowest number in township and range in his county, and in the northeast corner of each township, and shall proceed numerically with all sections, townships, and ranges in his county first setting down all the subdivisions of each section as they belong to different individuals or the whole section together if owned by one (1) person and not divided on account of parcels being of different value.

(c) The abstract in each case shall show the name of the owner, if known, and the number of acres or quantity of land contained in each call.

(d) No failure to observe any of these requirements shall be held to vitiate any assessment if the lands are so described as to be identified.

History. Acts 1883, No. 114, § 85, p. 199; 1887, No. 92, § 35, p. 143; C. & M. Dig., § 9879; Acts 1929, No. 172, § 9; 1931, No. 72, § 1; Pope's Dig., § 13649; A.S.A. 1947, § 84-402.

Cross References. All lands on list furnished by clerk to be assessed, § 26-28-107.

Case Notes

Contiguous Tracts.

Duties of County Clerks.

Mineral Interests.

Contiguous Tracts.

Tax sale was not invalidated by fact that two contiguous forty-acre tracts were listed separately in assessment book while county clerk in making up tax book combined the two tracts into one tract of 80 acres. *Coulter v. Anthony*, 228 Ark. 192, 308 S.W.2d 445 (Ark. 1957).

Duties of County Clerks.

Duties of county clerks prior to 1929 amendment. *Rives v. Woodruff County*, 179 Ark. 1110, 20 S.W.2d 184 (1929).

Mineral Interests.

Mineral interests severed from the soil are to be arranged according to the land assessments, and not alphabetically by names of owners. *Sorkin v. Myers*, 216 Ark. 908, 227 S.W.2d 958 (1950).

Tax title obtained on mineral interests was void where names of owners were listed alphabetically under each school district instead of by section, township, and range. *Stienbarger v. Keever*, 219 Ark. 411, 242 S.W.2d 713 (1951).

Tax sale of severed mineral interest not subjoined to surface assessment is not valid. *Blackburn v. Cline*, 8 Ark. App. 108, 650 S.W.2d 588 (1983).

26-26-703. Exempt lands to be abstracted.

Lands of the United States or of Arkansas, or lands otherwise exempt from taxation, shall be entered upon the abstract in the name of the owner.

History. Acts 1883, No. 114, § 85, p. 199; C. & M. Dig., § 9883; Pope's Dig., § 13650; A.S.A. 1947, § 84-403.

26-26-704. Land book and list.

(a) To facilitate the assessment and collection of taxes, the county court of each county shall procure and keep a land book or books of maps of all the townships or fractional townships in the county. The book shall be well-bound and shall be deposited in the office of the clerk of the county court.

(b) The court shall also procure a list of the lands owned by the United States and by this

state in their respective counties.

History. Acts 1883, No. 114, § 85, p. 199; C. & M. Dig., § 9885; Pope's Dig., § 13651; A.S.A. 1947, § 84-404.

26-26-705. School district lists.

(a) The school directors of each and every school district in the state shall furnish to the county assessor a complete list, showing addresses alphabetically arranged, of all persons who under the law should be taxpayers in the school district.

(b) The various school boards are authorized to pay out of the school funds of the district the expense incurred in the preparation of the list.

History. Acts 1929, No. 111, § 3; Pope's Dig., §§ 11540, 13627; A.S.A. 1947, § 84-405.

Case Notes

Expenses.

Expenses.

Where six school districts cooperatively employed a tax representative to prepare the list required by this section, there was authority to pay the expense incurred in preparation of the list. *Burnett v. Nix*, 244 Ark. 235, 424 S.W.2d 537 (1968).

26-26-706. Lists of motor vehicle licenses.

On or before January 1, 1999, the Director of the Department of Finance and Administration shall institute a system whereby the county assessor and county collector shall notify the director that a vehicle owner has assessed a vehicle and has paid all personal property taxes that were due by the preceding October 10. Upon receipt of such notification the director shall renew the vehicle license. Such notification by the county assessor and collector shall be in the form of an electronic notation placed on or removed from the department's vehicle license record by the county assessor and collector denoting that the vehicle has been assessed and that the owner owes no delinquent personal property taxes. Prior to instituting such system the director shall continue to require vehicle owners to present proof that each vehicle has been assessed and that all personal property taxes due from the owner by the preceding October 10 have been paid before issuing or renewing any vehicle registration.

History. Acts 1969, No. 38, §§ 1, 2; A.S.A. 1947, §§ 84-406, 84-406.1; Acts 1997, No. 974, § 5.

A.C.R.C. Notes. Acts 1997, No. 974, § 19, codified as § 27-13-103, provided:

"The Director of the Department of Finance and Administration shall have the authority to promulgate such regulations as are necessary to implement and administer the provisions of this Act."

Amendments. The 1997 amendment rewrote this section.

Cross References. Motor vehicles to be listed for assessment before registration, § 27-14-706.

26-26-707. List of building permits.

The city clerks of all cities and municipalities in each county shall prepare and file with the county assessor a list of all building permits issued each year. The list shall be alphabetically arranged, showing the value of the improvements to be made and the

names and addresses of the persons making the improvements.

History. Acts 1929, No. 111, § 5; Pope's Dig., § 13629; A.S.A. 1947, § 84-407.

26-26-708. List of contracts, deeds, leases.

(a) The recorder of deeds and mortgages in each county shall, each year, prepare and file with the county assessor a list, alphabetically arranged in the name of the grantor, or a copy of the following which were recorded during the year, to wit:

- (1) All deeds, mortgages, and contracts for the sale of realty;
- (2) All timber deeds or contracts, or mineral or royalty deeds; and
- (3) All leases or contracts of every kind, whether oil and gas or other things leased.

(b) If a list is furnished, it shall reflect the last known business address of the person owning the rights under the contract, deed, or lease, the date, and the consideration.

(c) [Repealed.]

History. Acts 1929, No. 111, § 6; Pope's Dig., § 13630; A.S.A. 1947, § 84-408; Acts 1989, No. 807, §§ 1, 4.

26-26-709. Other instruments conveying real estate.

(a) When an instrument for the conveyance of real estate, save mortgages and deeds of trust, is tendered to the county recorder for recording, that official shall obtain from the person tendering the instrument the name of the grantee and the address to which the grantee wants future tax statements mailed.

(b) At least weekly the recorder shall transmit the duplicate statements to the county assessor, who shall keep the original and immediately transmit the copy to the county clerk, together with his instructions as to any change in legal description or separation of parcel as they then appear on the tax books.

(c) In counties operating under the unit tax ledger system, the county assessor shall immediately transmit the copy to the county collector, together with his instructions as to any change in legal description or separation of parcel as they then appear on the tax books.

(d) Both the county assessor and the county clerk shall make proper entry of the information so received into their permanent records.

(e) Where a plat is offered for record to the county recorder, the person so offering the plat shall tender to the circuit clerk the original for recording and one (1) copy of the plat, which shall be certified to by the circuit clerk, showing the book and page of the records wherein the original is recorded. The certified copy shall be transmitted by the circuit clerk to the tax assessor within five (5) days from the date of recording.

(f) [Repealed.]

History. Acts 1953, No. 235, §§ 1, 2; A.S.A. 1947, §§ 84-408.1, 84-408.2; Acts 1989, No. 807, §§ 2, 4.

26-26-710, 26-26-711. [Repealed.]

Publisher's Notes. These sections, concerning lists of guardians, administrators and employees, were repealed by Acts 1989, No. 807, § 4. They were derived from the following sources: Acts 1929, No. 111, § 7; Pope's Dig., § 13631; A.S.A. 1947, § 84-409.

Acts 1929, No. 111, § 8; Pope's Dig., § 13632; A.S.A. 1947, § 84-410.

26-26-712. Employees' names furnished on demand.

(a) Any person, partnership, company, or corporation having any person in their employ shall be required to give the name of the employee to the county assessors, sheriffs, or county collectors of the various counties when demanded by the county assessors, sheriffs, or county collectors in their official capacity.

(b) Any person, partnership, company, or corporation, their agents, attorneys, or managers that shall violate this section shall be guilty of a violation and shall be fined in any sum not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100).

History. Acts 1903, No. 142, §§ 1, 2, p. 243; 1911, No. 19, § 1, p. 7; C. & M. Dig., §§ 10169, 10550; Pope's Dig., §§ 13951, 14246; A.S.A. 1947, § 84-413; Acts 2005, No. 1994, § 166.

Amendments. The 2005 amendment, in (b), substituted "managers that" for "managers, who" and "violation" for "misdemeanor."

26-26-713. Filing of required lists.

(a) All lists required in §§ 26-26-705, 26-26-707, and 26-26-708 by clerks, school directors, and others shall be filed with the county assessors of the various counties on the first Monday in January of each year.

(b) The lists shall be filed in triplicate:

(1) One (1) to be forwarded by the county assessor to the Arkansas Public Service Commission;

(2) One (1) to be filed with the county clerk; and

(3) One (1) to be retained by the county assessor.

(c) (1) The list retained by the county assessor shall be checked by him or her and used in his or her endeavor to place all taxable property on the books.

(2) When the county assessor's books are closed, the county assessor shall certify all of the lists to the county court, and the certificate shall show whether the individuals have made an assessment and if not, why not, and what effort the county assessor has put forth in each case to secure an assessment by each individual on the lists.

(d) (1) Upon conviction, any individual, school director, tax commissioner, county assessor, or other person charged with a duty under this section who fails to perform the duty is guilty of a violation and shall be fined in any sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(2) Upon conviction for a second offense, in the case of any public official, the public official shall be removed from office.

(e) The commission shall prepare such forms as will ensure the effective execution of this section.

History. Acts 1929, No. 111, §§ 9, 10; Pope's Dig., §§ 3622, 11541, 13633, 13634; A.S.A. 1947, §§ 84-411, 84-412; Acts 2005, No. 1994, § 166; 2007, No. 827, § 201.

Amendments. The 2005 amendment substituted "and 26-26-708" for "26-26-708, 26-26-710 [repealed], and 26-26-711 [repealed]" in (a); inserted "or her" twice in (c), in (d)(1), substituted "violation" for "misdemeanor" and inserted "dollars" following "one hundred"; and substituted "ensure" for "insure" in (e).

The 2007 amendment rewrote (d)(1).

26-26-714. Preservation of assessment lists.

(a) The original assessment lists as made out, sworn to, and delivered to the assessor by any person or property owner of the county and assessment lists made by the assessor prior to the date on which the assessment rolls are delivered to the county clerk, together with copies of all assessment lists as made out, sworn to, and delivered to the county clerk by the assessor or any other person after the assessment rolls have been delivered to the clerk and before the county collector closes his books, shall remain in the office of the assessor for at least four (4) years after the date upon which they shall have been made, during which time the lists shall be filed by the assessor in such manner that they may be readily referred to and utilized.

(b) Copies of all assessment lists as made by the assessor or any other person subsequent to the date on which penalty attached for failure to assess and before the assessment record is required to be filed with the county clerk shall be delivered to the clerk at the same time the assessment record is filed, which lists, together with the original of all assessment lists as may be filed with the clerk by the assessor or any other person after the assessment record has been delivered to the clerk and before the collector closes his books, shall be preserved by the clerk for the purpose of checking the tax books to determine if all penalties for failure to assess at the proper time have been properly designated and extended.

History. Acts 1883, No. 114, § 66, p. 199; C. & M. Dig., § 9916; Acts 1929, No. 172, § 16; Pope's Dig., § 13677; A.S.A. 1947, § 84-445.

Case Notes

Applicability.

Applicability.

This section relates to the assessment of personal property and has no applicability to the assessment of real estate. *Evans v. F.L. Dumas Store, Inc.*, 192 Ark. 571, 93 S.W.2d 307 (1936).
Cited: *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

26-26-715. Information gathered by assessor.

From time to time, the assessor shall, by personal inspection and examination of persons, property, or records, gather and record in writing any and all available data and information bearing upon the location, number, amount, kind, and value of any and all property and persons which he is by law required to assess. This data and information shall be and remain permanently a part of the records of the assessor's office and shall be filed in such manner as may be readily referred to and utilized by the equalization board, county clerk, county court, or other interested parties.

History. Acts 1929, No. 172, § 17; Pope's Dig., § 13678; A.S.A. 1947, § 84-446.

Case Notes

Cited: *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931); *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

26-26-716. Assessment reports filed with county clerk.

(a) (1) (A) Each year, the assessor shall, on or before the third Monday in August, file with the county clerk his report of assessment of all real property of the county situated within the boundaries of any city or town and additions thereto which have been regularly platted into lots and blocks.

(B) Each year, the assessor shall, on or before the third Monday in August, file with the county clerk his report of assessment of all real property of the county situated outside the boundaries of any city or town and additions thereto which have been regularly platted into lots and blocks.

(2) On or before July 31, the assessor shall deliver the personal property assessment report or roll book to the county clerk, to be arranged in alphabetical order according to school districts and showing separately in alphabetical order the persons residing outside of incorporated cities and towns and of persons who are residents of incorporated cities and towns of the same school district.

(3) In addition to the other requirements of this section, the county assessors shall be required to list poll and personal property owners to the respective political township and ward in which they reside at the time of the assessment.

(b) (1) These reports shall be filed in books or records of the kind and character furnished to the assessor by the county clerk for that purpose, unless otherwise directed by the Arkansas Public Service Commission, and each report shall show each item of property by totals in number and value.

(2) The clerk shall not receive these reports unless they are in a neat and legible manner, and to each of which the assessor shall have attached his oath in the following words:

“I, _____, Assessor for _____ County, State of Arkansas, do solemnly swear that I have made diligent efforts to ascertain all the taxable property and persons subject to taxation in said county; that so far as I have been able to ascertain, the same is correctly set forth and described in the foregoing report, and that the property therein mentioned is not appraised at less than its true market or actual value, or authorized percentage thereof.

That this record or book is one of _____ records or books constituting the report of assessment or appraisal of all property and persons of the county which I am by law required to assess or appraise for the year 19 _____, so help me God.

Sworn to and subscribed before me this _____ day of _____, 19 _____,
Clerk _____ County.”

History. Acts 1883, No. 114, § 65, p. 199; 1887, No. 92, § 30, p. 143; C. & M. Dig., § 9915; Acts 1929, No. 172, § 18; Pope's Dig., § 13676; Acts 1935, No. 152, § 1; A.S.A. 1947, §§ 84-447, 84-448; Acts 1987, No. 621, § 3.

Cross References. Additional provisions of certificate in counties adopting unit tax ledger system, § 26-28-205.

Error in ownership of property does not affect validity of assessment, § 26-34-102.

Tangible personal property, § 26-26-1401 et seq.

Case Notes

Affidavit and Oath.
Levy of Taxes.
State Lands.

Affidavit and Oath.

Tax sale of rural land was not void on ground that assessor failed to make affidavit to real estate assessments for the year 1929, where assessor testified that he made an affidavit and a certificate, but testimony did not show what oath was taken or what certificate was made. *Peace v. Tippet*, 195 Ark. 799, 114 S.W.2d 461 (1938).

Title of purchaser of real estate certified to state for nonpayment of taxes was not void because assessor failed to attach to assessment roll the oath prescribed by this section. *Hudson v. Marlin*, 196 Ark. 1070, 121 S.W.2d 91 (1938).

Sale of land to the state for taxes was not void on ground that the assessor failed to attach to his assessment roll the oath prescribed by this section, where attached oath stated that assessor solemnly swore that the foregoing was correct and he had appraised each tract or lot of land, except such as was exempt from taxation, at the per centum of its cash value as agreed upon by the state. *Hargrave v. Williams*, 200 Ark. 66, 138 S.W.2d 1045 (1940).

Actual possession of land, taken and held continuously for statutory period of two years under clerk's tax deed, bars action against grantee for recovery thereof by prior owners, as provided in §§ 18-60-212 and 18-61-106, even though clerk's affidavit and assessor's reports were insufficient. *Hoch v. Ratliff*, 216 Ark. 357, 226 S.W.2d 39 (1950).

Levy of Taxes.

In action involving the ad valorem assessment of real property, where assessor, after making up his assessment books and an abstract of the assessed property, filed claim with the county clerk, who made out his report in accordance with the assessor's abstract, forwarding the report to the state, during which time the county board of equalization was in session, the action of the quorum court directing taxes be collected from the value established by the assessor was void, since it was without authority to levy millages on any basis other than the assessment of the assessor as equalized and adjusted by the equalization board. *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958).

State Lands.

Assessor's duty to return all lands is not affected by fact that particular lands may have been sold to state. *Crockett v. Bearden*, 203 Ark. 48, 156 S.W.2d 79 (1941).

Cited: *Arkansas Tax Comm'n v. Ashby*, 217 Ark. 759, 233 S.W.2d 361 (1950); *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

26-26-717. Accurate description of all tracts required.

(a) (1) (A) It shall be the duty of each assessor to make out, from such sources of information as shall be in his power, a correct and pertinent description of each tract or lot of real property in his county, so that it can be identified and distinguished from any other tracts or parts of tracts.

(B) The assessor shall place a value on each subdivision of a block, and the improvements thereon, in cities and towns, or additions thereto, notwithstanding the fact that one (1) individual owns the whole block.

(2) (A) When the assessor shall deem it necessary to obtain an accurate description of any separate tract or lot in his county, he may require the owner or occupier to furnish it with any title papers he may have in his possession.

(B) (i) If the owner or occupier, upon demand made for it, shall neglect or refuse to furnish a satisfactory description of the parcel of real property to the assessor, he may employ the county surveyor to make out a description of the boundaries, and

location thereof, and a statement of the quantity of land therein.

(ii) The expense of the survey shall be returned by the assessor to the clerk of the county court, who shall add the expense of the survey to the tax assessed upon the real property, and it shall be collected by the collector of the county with the tax. When collected, it shall be paid on demand to the person to whom it is due.

(b) (1) The assessor shall, in all cases, from actual view or from the best sources of information within his reach, determine, as near as practicable, the true value of each separate tract and lot of real property in his county, according to the rules prescribed by this chapter for valuing property.

(2) The assessor shall note in his plat book, separately, the value of all houses, mills, and other buildings which shall be carried out as a part of the value of the tracts.

History. Acts 1883, No. 114, § 70, p. 199; C. & M. Dig., § 9928; Pope's Dig., § 13695; A.S.A. 1947, § 84-450.

Case Notes

Insufficient Descriptions.

Sufficient Descriptions.

Insufficient Descriptions.

Description as "N., N.E., sec. 3, Town 15, range 6, 87.19 acres" was not description by abbreviations so generally known as to sufficiently describe land. *Cooper v. Lee*, 59 Ark. 460, 27 S.W. 970 (1894).

Description as "west part S.W.S.W. sec. 20, T. 15, range 28, 30 acres, valuation, \$30,000 belonging to a certain company" was insufficient to describe 30 acres belonging to such company where land was not in shape of parallelogram and part of it was outside the southwest quarter of the southwest quarter. *Texarkana Water Co. v. State*, 62 Ark. 188, 35 S.W. 788 (1896).

Tax deed is insufficient that describes land sold as four-sixths of a certain quarter section without describing the tract sold with sufficient definiteness to locate it without reference to the remainder of the tract. *King v. Booth*, 94 Ark. 306, 126 S.W. 830 (1910).

Claim of property owners in drainage district that numerous descriptions of land in district were fatally defective did not invalidate an assessment where there was no complaint that the description of the petitioners' property was insufficient, since defects and irregularities in assessments could be cured by subsequent orders. *St. Louis S. F. R. Co. v. Subdistrict*, 179 Ark. 567, 17 S.W.2d 299 (1929).

Sale of land for delinquent taxes described as "Part South Half Northwest Quarter" was a void sale for insufficient description of land sold. *Holt v. Reagan*, 201 Ark. 1101, 148 S.W.2d 155 (1941).

Tract of land described as "Accretions, Section 20" was too indefinite and was insufficient to pass title when accretions had been formed to two separate quarter sections of that section. *Sanders v. Plant*, 211 Ark. 913, 204 S.W.2d 323 (1947).

Sufficient Descriptions.

Description of lands in complaint as "W. ½ 6-3-7" and notice described land as "W. ½ section 6, township 3 north, range 7 east" held valid. *Beck v. Anderson-Tulley Co.*, 113 Ark. 316, 169 S.W. 246 (1914).

A description of land by the abbreviations commonly used to designate government subdivisions sufficiently identifies it; however, the use of abbreviations in a tax assessment or notice must be confined to those commonly known or understood. *Beck v. Anderson-Tulley Co.*, 113 Ark. 316, 169 S.W. 246 (1914).

Description "Southwest quarter section 3, township 20 south, range 18 west, 112.28 acres", which included all that part of the quarter section lying within the state of Arkansas, was sufficient against contention that it could not be known what portion of the quarter section was assessed where only other portion of quarter section was in another state. *Alphin v. Banks*, 193 Ark. 563,

102 S.W.2d 558 (1937).

Describing lands as the "NE SE" of a certain section was sufficient notice under the law creating improvement district. *Chestnut v. Harris*, 64 Ark. 580, 43 S.W. 977 (1897); *Kunze v. Blackwood*, 195 Ark. 658, 113 S.W.2d 705 (1938).

Inclusion of letter W following block number in description of property did not render description invalid where there was only one such block in the town and the block embraced the lots in question. *Moseley v. Moon*, 201 Ark. 164, 144 S.W.2d 1089 (1940).

26-26-718. Duty to account for all realty.

It is the duty of the several tax assessors of the state to correctly describe according to ownership each parcel of real property in the county, and every acre of land or town or city lot must be accounted for on the assessment roll. In instances where real property is exempt from taxation, either under the Arkansas Constitution or because title is vested in the state, this fact must be noted on the assessment roll with the reason for the exemption. The county clerk must likewise in extending taxes account for every parcel of real property within the county.

History. Acts 1935, No. 170, § 5; Pope's Dig., § 13792; A.S.A. 1947, § 84-449.

Publisher's Notes. Acts 1935, No. 170, § 8, provided that this act shall be cumulative to Acts 1933, No. 16, except where in conflict therewith.

Case Notes

Assessor's Error.

Extension of Taxes.

Assessor's Error.

Where plaintiff went to the assessor's office in good faith attempt to ensure that taxes on his property would be correctly billed and paid, and the assessor's office failed to change ownership of the property, which was subsequently sold by the state land commission for delinquent taxes, plaintiffs' good faith attempt to pay was not defeated by the assessor's mistake; because of the interrelationship of the tax assessor, county clerk, and collector, plaintiff's inquiry at the assessor's office was sufficient notice. *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990). Where landowner did not literally comply with § 26-26-501(a)(2) by delivering a verified list of property but demonstrated substantial compliance with the statute by personally visiting the assessor's office to ensure that the records reflected the change of ownership for the property, and where the assessor's office admitted that they did not do so, tax sale of property was properly set aside. *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

Extension of Taxes.

Where taxes were extended as follows: "Value of lot, 300; value of improvements, 200; total value 300", assessment was not void for failure to show what the figures represented, since it would be presumed they meant dollars; nor was it void for apparent error. *London v. Montgomery*, 211 Ark. 434, 201 S.W.2d 760 (1947).

26-26-719. Irregular or incomplete descriptions.

(a) (1) It is the duty of a county assessor to strictly follow the provisions of § 26-26-717.

(2) When it is otherwise impossible to correctly describe real property on the assessment roll according to its ownership, it is the duty of a county assessor to petition the county court for a survey of the real property under the provisions of § 26-26-802.

(b) (1) In any case where a tract of land is irregularly described, the assessor must require the owner to bring in his or her deed.

(2) The tract of land must then be taken from the deed, and the tract of land to be

assessed must be platted on a plat book furnished the county assessor by the county court of each township in the county.

(3) The county assessor shall draw a plat of the tract of land and shall number it as "Lot No." and then enter the tract of land on the assessment book as "Lot No. of" describing the section or portion of the section in which the tract of land is found.

(c) It shall be sufficient to advertise the tract of land for failure to pay taxes by the number of the lot assigned to the tract of land.

(d) (1) If for any reason a part description of the real property assessed is made by the county assessor, the reason must be stated, and the county assessor shall immediately certify his or her inability to properly describe the real property to the Commissioner of State Lands on or before October 1 in each year.

(2) (A) The Commissioner of State Lands shall assemble the certificates of part description received from the county assessors and certify them to the Attorney General, who shall file his or her petition in the circuit court having jurisdiction.

(B) The circuit court is vested with jurisdiction upon the petition to issue any form or writ necessary for ascertaining the correct ownership description of the real property involved.

(e) Upon petition of the Attorney General addressed to the circuit court having jurisdiction, any county assessor who shall fail or refuse to comply with the provisions of § 26-26-718 and this section shall be removed from office and shall only be reinstated when he or she has performed the duties enjoined but shall receive no compensation for correcting any of his or her acts of omission or commission.

History. Acts 1935, No. 170, § 6; Pope's Dig., § 13793; A.S.A. 1947, § 84-451.

Publisher's Notes. As to cumulative effect of Acts 1935, No. 170, see Publisher's Notes to § 26-26-718.

Case Notes

Purpose.

Surveys.

Purpose.

Purpose of this section is to furnish descriptions of lands and lots assessed for taxation so that they may be identified by reference to the plat of the survey that has become a public record. *Bracken v. Henson*, 211 Ark. 572, 201 S.W.2d 580 (1947).

Surveys.

Acting under this section, it is the duty of a surveyor to make a survey conforming to the boundary lines as shown by the title papers. *Bracken v. Henson*, 211 Ark. 572, 201 S.W.2d 580 (1947). Where surveyor ignores existing boundary lines as described in title papers, lots cannot be properly assessed and sale for delinquent taxes by description according to such a survey would be void. *Bracken v. Henson*, 211 Ark. 572, 201 S.W.2d 580 (1947).

26-26-720. Correcting descriptions already on books.

The Attorney General is authorized to have corrected any part description of lands on the books of the Commissioner of State Lands in the manner provided. This authority shall be exercised upon the application of any applicant to purchase or upon application by the Department of Parks and Tourism, the Arkansas Forestry Commission, or the Arkansas Game & Fish Commission.

History. Acts 1935, No. 170, § 7; Pope's Dig., § 13794; A.S.A. 1947, § 84-452.

Publisher's Notes. As to cumulative effect of Acts 1935, No. 170, see Publisher's Notes to § 26-26-718.

Cross References. Correcting descriptions of lands when lists in hands of county clerk, § 26-28-111.

26-26-721. Checking for nonpayment of delinquent taxes.

(a) (1) It shall be the duty of the county assessor of each county of the State of Arkansas, after extending the valuation against each parcel of land, lot, and part of lot on his assessment record to check it, and for all land, lots, and parts of lots that have been certified to the State Land Office for the nonpayment of the delinquent taxes due, he shall stamp or write by the valuation, "State of Arkansas," and also the year which it was certified to the state.

(2) The county assessor shall take the list of the land, lots, and parts of lots, that have been redeemed or purchased which is certified to the county clerks by the Commissioner of State Lands January of each year and show on his assessment record the disposition of the land, lots, and parts of lots.

(b) If the county assessor of the various counties of the State of Arkansas shall need a starting point, he can write the Commissioner of State Lands for a list of the forfeited land, lots, and parts of lots in his county. Upon such request, the Commissioner of State Lands shall furnish him with a correct list of the forfeited land, lots, and parts of lots that have not been redeemed or sold in his office. The county clerks of the various counties of the State of Arkansas shall furnish the county assessor a list of the forfeited land, lots, and parts of lots that he sends to the Commissioner of State Lands yearly. In this way, the county assessor will have a complete record of the forfeited land, lots, and parts of lots for his assessment record.

History. Acts 1945, No. 211, §§ 1, 2; A.S.A. 1947, §§ 84-461, 84-462.

Subchapter 8 **— Surveys and Plats**

26-26-801. Duties of officials.

26-26-802. Platting subdivisions for assessment purposes.

26-26-803. Designation of tracts.

26-26-804. Compensation of officials.

Effective Dates. Acts 1887, No. 139, § 5: effective on passage.

26-26-801. Duties of officials.

(a) It is made the duty of the clerks of the county courts to promptly notify the county surveyors of their respective counties of all orders made by their respective courts in pursuance of this subchapter.

(b) It is the duty of the recorder of every county to provide and keep in his office a record book to be entitled "Record of Surveyor's Plats and Notes," in which he shall accurately record or make a fair copy and transcript of every plat and the notes accompanying it returned to him by the county surveyor, as provided in this subchapter.

History. Acts 1887, No. 139, § 2, p. 243; C. & M. Dig., §§ 9931, 9932; Pope's Dig., §§ 13696, 13697; A.S.A. 1947, § 84-454.

Case Notes

Assessments.

Assessments.

Assessments may be made with reference to the record book. *St. Louis S. F. R. Co. v. Subdistrict*, 179 Ark. 567, 17 S.W.2d 299 (1929); *Holt v. Reagan*, 201 Ark. 1101, 148 S.W.2d 155 (1941).

Cited: *Sanders v. Plant*, 211 Ark. 913, 204 S.W.2d 323 (1947).

26-26-802. Platting subdivisions for assessment purposes.

(a) Whenever it shall be made to appear to the satisfaction of the county court of any county that any section, or part of section of land in the county is in such small or irregular subdivisions as respects ownerships thereof, that the subdivisions or any of them cannot be accurately or conveniently designated in the assessment list or tax list in the usual or ordinary manner of designating subdivisions of land, it shall be the duty of the court to order the county surveyor of the county to make and return to the recorder of the county a plat, with accompanying marginal or footnotes, of the section or part section, whereupon it shall be the duty of the county surveyor to promptly comply with and obey such orders.

(b) In the plats and by the marginal or footnotes which he shall make and return, he shall show the relative size and position of the several subdivisions and the area of each, which subdivisions shall be designated as "lots" and shall be numbered consecutively in like manner and order, insofar as practicable, as is done in the case of fractional sections in the surveys and plats made under the direction of the United States General Land Office.

History. Acts 1887, No. 139, § 1, p. 243; C. & M. Dig., § 9930; A.S.A. 1947, § 84-453.

26-26-803. Designation of tracts.

When a plat and notes accompanying it of any section or part of section of land shall have been made, returned, and recorded, as provided in this subchapter, a designation by number of a lot therein, either upon the assessment list, the tax book, the delinquent list, or in any tax receipt, certificate of sale, tax deed, or in any other deed or writing shall be held and considered to refer to and as being intended to designate the subdivision of the section or part of section as is of the same number on the plat and the notes accompanying.

History. Acts 1887, No. 139, § 3, p. 243; C. & M. Dig., § 9933; Pope's Dig., § 13698; A.S.A. 1947, § 84-455.

26-26-804. Compensation of officials.

Each of the officials named in this subchapter shall be allowed a reasonable compensation for the services as he may be required to perform in pursuance thereof, to be determined by the respective county courts, payable out of the county treasury of the county in which the service shall be rendered.

History. Acts 1887, No. 139, § 4, p. 243; C. & M. Dig., § 9934; Pope's Dig., § 13699; A.S.A. 1947, § 84-456.

Subchapter 9

— Listing of Property for Assessment

- 26-26-901. Furnishing of forms.
- 26-26-902. Oath of one listing.
- 26-26-903. Owner to list property.
- 26-26-904. Listing by representatives.
- 26-26-905. Persons holding property.
- 26-26-906. Pawnbrokers.
- 26-26-907. Lands sold for taxes.
- 26-26-908. Property converted into nontaxable securities.
- 26-26-909. Credits and stocks which need not be listed.
- 26-26-910. Valuations in listings not conclusive.
- 26-26-911. Inquiries to makers of lists.
- 26-26-912. House-to-house canvass.
- 26-26-913. Special list of omitted property.
- 26-26-914. Unavoidable failure to list property.

Preambles. Acts 1887, No. 13 contained a preamble which read:

“WHEREAS, 1ST. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled ‘An Act to enforce the payment of Overdue Taxes,’ approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

“WHEREAS, 2D. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

“WHEREAS, 3D. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

“Now, therefore....”

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1929, No. 111, § 14: approved Mar. 9, 1929. Emergency clause provided: “All laws and parts of laws in conflict herewith are hereby repealed, and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage.”

Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: “It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage.”

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 725 et seq.

C.J.S. 84 C.J.S., Tax., § 462 et seq.

26-26-901. Furnishing of forms.

Upon the application of the property owner or other person required to file an assessment list, the assessor shall furnish appropriate blanks upon which to list and report the property required to be listed.

History. Acts 1929, No. 172, § 10; Pope's Dig., § 13662; A.S.A. 1947, § 84-418.

Cross References. Assessment blanks in counties using unit tax ledger system, § 26-28-205.

Case Notes

Cited: Summers Chevrolet, Inc. v. Yell County, 310 Ark. 1, 832 S.W.2d 486 (1992).

26-26-902. Oath of one listing.

(a) The assessors, deputy assessors, and Arkansas Public Service Commission, or any other officer charged under the law with assessing taxes, shall, when each and every person present themselves to make and prepare a property list, administer the following oath:

“You do solemnly swear that you will well and truly answer all questions that may be asked of you touching on the assessment of your property.”

(b) Provided, however, this oath shall not be required of any individual assessing his or her real or personal property by telephone under § 26-26-1114 or where the assessor lists the property for the property owner as permitted in § 26-26-903.

History. Acts 1929, No. 111, § 1; Pope's Dig., § 13667; A.S.A. 1947, § 84-419; Acts 1991, No. 291, § 3.

Case Notes

Noncompliance.

Noncompliance.

Failure to file or swear to on assessment list does not render invalid an assessment of taxes against land. Evans v. F.L. Dumas Store, Inc., 192 Ark. 571, 93 S.W.2d 307 (1936).

26-26-903. Owner to list property.

(a) Every person of full age and sound mind shall list the real property of which he is the owner, situated in the county in which he resides, and the personal property of which he is the owner.

(b) The assessor may relieve the person of this requirement by listing the current year's assessment of real property from a previous property list or from a changed list based on a reassessment of the value of the real property of the owner.

History. Acts 1883, No. 114, § 13, p. 199; C. & M. Dig., § 9890; Pope's Dig., § 13652; A.S.A. 1947, § 84-420; Acts 1991, No. 291, § 4.

Cross References. Error in ownership of property does not affect validity of assessment, § 26-34-102.

Penalty for disposition of property to avoid assessment, § 26-2-107.

Case Notes

Mineral Rights.

Residence.

Mineral Rights.

Under this section, mineral rights severed from the fee should be declared even though taxpayer regards them as of no value. *Stout Lumber Co. v. Parker*, 197 Ark. 65, 122 S.W.2d 180 (1938).

Residence.

As used in this section, residence means the place of actual abode, and not an established domicile or home which one expects to return to and occupy at some future time. *Smith v. Union County*, 178 Ark. 540, 11 S.W.2d 455 (1928).

Personal property of an attorney was properly taxed in county wherein he maintained an office for practice of his profession and actually lived and spent most of his time, instead of county where he maintained a closed and unrented home and office though much of his property remained there. *Smith v. Union County*, 178 Ark. 540, 11 S.W.2d 455 (1928) (decision prior to 1929 amendment of § 26-26-1102).

Where farm extended in part of three counties without separating fences and cattle ranged freely from one county to another, situs of livestock for taxing purposes was the residence of the owner. *Magness v. Moss*, 203 Ark. 684, 158 S.W.2d 262 (1942).

Cited: *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-26-904. Listing by representatives.

The property of every ward shall be listed by his guardian; of every minor, idiot, or lunatic, having no other guardian, by his father, if living, and if not, by his mother, if living; and if neither father nor mother is living, by the person having the property in charge; of every wife, by her husband, if of sound mind; if not, by herself, if she is of sound mind; of every person for whose benefit property is held in trust, by the trustee; of every estate of a deceased person, by the executor or administrator; of corporations whose assets are in the hands of receivers, by the receiver; of every company, firm, body politic, or corporate, by the president or principal accounting officer, partner, or agent thereof.

History. Acts 1883, No. 114, § 16, p. 199; C. & M. Dig., § 9893; Pope's Dig., § 13656; A.S.A. 1947, § 84-421.

Case Notes

Instructions.

Instructions.

Refusal of requested instructions in eminent domain proceedings that the value placed on land by owner for tax purposes could be considered as evidence of its value was not error where record did not show who placed value on the land. *Arkansas State Hwy. Comm'n v. McMillan Estate*, 247 Ark. 421, 445 S.W.2d 717 (1969).

26-26-905. Persons holding property.

Property held under a lease for a term exceeding ten (10) years belonging to the state or to any religious, scientific, or benevolent society or institution, whether incorporated or unincorporated, and school, seminary, saline, or other lands shall be considered, for all purposes of taxation, as the personal property of the person holding them and shall be listed as such by the person or his agent, as in other cases.

History. Acts 1883, No. 114, § 18, p. 199; C. & M. Dig., § 9895; Pope's Dig., § 13659; A.S.A. 1947, § 84-434.

26-26-906. Pawnbrokers.

Every person or company engaged in the business of receiving property in pledge or as security for money or other things advanced to the pawner or pledger shall annually, at the time prescribed by this chapter for the assessment of personal property, return, under oath, all property pledged to and held by him as a pawnbroker to the assessor of the proper county. The assessor shall list and assess it to the pawnbroker at its fair cash value. **History.** Acts 1883, No. 114, § 40, p. 199; C. & M. Dig., § 9955; Pope's Dig., § 13736; A.S.A. 1947, § 84-422.

26-26-907. Lands sold for taxes.

All lands and town lots sold for the payment of taxes shall be assessed in the name of the purchaser.

History. Acts 1883, No. 114, § 24, p. 199; C. & M. Dig., § 9909; Pope's Dig., § 13670; A.S.A. 1947, § 84-435.

26-26-908. Property converted into nontaxable securities.

(a) If any person shall have converted moneys, credits, or other personal property in the year preceding January 1 of the year in which he is required to assess his property into bonds or other securities of the United States or this state not taxed, and shall hold or control the bonds or securities when he is required to list his property, he shall list the monthly average value of the moneys, credits, or other property held or controlled by him.

(b) Any indebtedness of the persons represented by him, created by investment in the bonds or other securities, shall not be deducted from the amount of credits in making up his list for taxation.

History. Acts 1883, No. 114, § 14, p. 199; 1887, No. 92, § 3, p. 143; C. & M. Dig., § 9891; Pope's Dig., § 13654; A.S.A. 1947, § 84-423.

26-26-909. Credits and stocks which need not be listed.

(a) No person shall be required to list a greater portion of any credits than he believes will be acquired or can be collected, nor any greater portion of any obligation given to secure the payment of rent than the amount of rent that shall have accrued on the lease and shall remain due and unpaid at the time of listing.

(b) No person shall be required to include in his statement, as a part of the personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, which he is required to list, any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation in this state.

History. Acts 1883, No. 114, § 15, p. 199; C. & M. Dig., § 9892; Pope's Dig., § 13655; A.S.A. 1947, § 84-424.

Case Notes

Constitutionality.
Purpose.
Rents.
Stocks.

Constitutionality.

This section is not unconstitutional as creating an exemption not authorized by the Arkansas Constitution. *Dallas County v. Home Fire Ins. Co.*, 97 Ark. 254, 133 S.W. 1113 (1911).

Purpose.

Purpose of this section is to prevent double taxation. *Dallas County v. Home Fire Ins. Co.*, 97 Ark. 254, 133 S.W. 1113 (1911).

Rents.

Notes under contract in the form of a lease with option to purchase are rental notes and not taxable until maturity. *McConnell v. Sebastian County*, 144 Ark. 394, 222 S.W. 707 (1920).

Stocks.

An owner of stock in a domestic insurance company is not required to list such stock for taxation. *Dallas County v. Banks*, 87 Ark. 484, 113 S.W. 37 (1908).

Corporate stock purchased by another corporation is not taxable in the hands of the purchasing corporation, but the capital stock of a corporation, although invested in another corporation, is taxable. *Dallas County v. Home Fire Ins. Co.*, 97 Ark. 254, 133 S.W. 1113 (1911).

Corporations, in returning capital stock for taxation, cannot deduct investments of surplus in shares of stock of other corporation. *State ex rel. Attorney Gen. v. Ft. Smith Lumber Co.*, 131 Ark. 40, 198 S.W. 702 (1917).

Cited: *First Nat'l Bank v. Board of Equalization*, 92 Ark. 335, 122 S.W. 988 (1909); *State ex rel. Davis v. Bodcaw Lumber Co.*, 128 Ark. 505, 194 S.W. 692 (1917); *Pulaski County Bd. of Equalization v. American Republic Life Ins. Co.*, 233 Ark. 124, 342 S.W.2d 660 (1961).

26-26-910. Valuations in listings not conclusive.

(a) (1) The valuations as set out in any assessment list required under the provisions of this subchapter to be delivered to the assessor by the property owner shall not be held to be conclusive as to the value of the property so listed, and the assessor may make such assessment of the property as he may deem just and equitable.

(2) (A) The assessor, in each instance where he raises the valuation of any property which has been listed with him as by law required, shall deliver to the property owner or his agent a duplicate copy of the adjusted assessment list, or he shall notify the property owner or his agent by first class mail, which notice shall state separately the total valuation of real and personal property as listed by the property owner and as fixed by the assessor, and shall advise that the owner may, by petition or letter, apply to the equalization board for the adjustment of the assessment as fixed by the assessor.

(B) All applications shall be made to the board on or before the third Monday in August.

(b) (1) For the purpose of enabling the assessor to determine just and equitable values of property, he is authorized, and it shall be his duty, to enter upon and make such personal inspection thereof as he shall deem necessary.

(2) Any person shall, when called upon by the assessor, be required to answer upon oath and furnish proof demanded as to purchases, sales, transfers, improvements, accounts, notes, stocks, bonds, bank notes, bank deposits, invoices, insurance carried, or any and all other information requested and pertaining to the location, amount, kind, and value of his own property or that of another person.

History. Acts 1929, No. 172, § 12; Pope's Dig., § 13663; A.S.A. 1947, § 84-437.

Case Notes

Adjustment of Assessments.

Notice Requirements.

Valuation of Property.

Adjustment of Assessments.

Where taxpayer did not voluntarily assess his property as permitted by § 26-26-501 and where there were major increases in the assessment valuation of the property, the taxpayer, under due process requirements, had the right to appear and be heard through the processes provided by this section before the increased assessments became irrevocably fixed. *McMahen v. Hargett*, 252 Ark. 239, 478 S.W.2d 43 (1972).

An equalization board had no authority on December 10th to reduce or raise anybody's assessment for § 26-27-311 very definitely provides that the board cannot exercise such a function after the third Monday in November. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

Every landowner is given the opportunity under this section to protest when his land is assessed for general taxation; a second opportunity need not be given for them to protest valuations for suburban improvement districts pursuant to § 14-92-238. *Harrill v. Board of Comm'rs*, 282 Ark. 348, 668 S.W.2d 538 (1984).

Notice Requirements.

Under this section and the due process of law requirement of the Arkansas Constitution, a taxpayer must be given notice, both of the raised assessment and of his right to a review thereof by the equalization board. *Prather v. Martin*, 257 Ark. 576, 519 S.W.2d 72 (1975).

Where notice was prepared by county clerk but was not mailed or otherwise communicated to taxpayer, the reassessment was invalid, since the requirement of notice was not obviated by the provision of § 26-27-318, which permits a property owner to appeal to the county court without first having exhausted his remedy before the equalization board in cases where he shall have had no opportunity to appear before the board. *Prather v. Martin*, 257 Ark. 576, 519 S.W.2d 72 (1975).

Although the requirements of due process and this section require that a property owner be notified of a raised assessment and of his right to a review thereof by the equalization board, where evidence reflected that notice was mailed, the reassessment was valid although there was no proof that the notice actually was received. *Prather v. Martin*, 257 Ark. 576, 519 S.W.2d 72 (1975).

Valuation of Property.

Refusal of requested instructions in eminent domain proceedings that the value placed on land by owner for tax purposes could be considered as evidence of its value was not error where record did not show who placed value on the land. *Arkansas State Hwy. Comm'n v. McMillan Estate*, 247 Ark. 421, 445 S.W.2d 717 (1969).

Cited: *Beard v. Wilcockson*, 184 Ark. 349, 42 S.W.2d 557 (1931).

26-26-911. Inquiries to makers of lists.

(a) The Arkansas Public Service Commission, the tax assessor, or any one of them who may be required under the law to make assessment rolls shall, in addition to their duties as required by law, specifically inquire of the maker of each list the following:

- (1) The number, kind, and value of each automobile they own;
- (2) The cash or funds on hand, and money on time deposit or otherwise in any depository, in or out of the state;
- (3) The taxable securities of every kind and their value, in or out of the state, they may own;
- (4) What stock, bonds, or mortgages owned and their value, in or out of the state;
- (5) What leases or mineral deeds are owned and the value of them that are contemplated in §§ 26-26-1109 and 26-26-1110;
- (6) What timber, deeds, or contracts contemplated by § 26-3-205 they own and the value of them;
- (7) Any other property of any kind whatsoever that has a value about which

questions have not been asked.

(b) The taxpayer shall then be required to assess the properties disclosed by investigation.

History. Acts 1929, No. 111, § 2; Pope's Dig., § 13626; A.S.A. 1947, § 84-425.

Research References

Ark. L. Rev.

Acts Affecting Property Taxation, 5 Ark. L. Rev. 365.

26-26-912. House-to-house canvass.

(a) After April 10 of each year, the assessor shall make a house-to-house canvass of his county and visit each store, mill, factory, shop, or other place of business and each dwelling, farm, and all other places of residence located therein for the purpose of ascertaining if all property and persons have been listed for assessment in the manner required by law.

(b) If the assessor shall find that any person or property owner has failed to file the assessment list by law required or, if filed, has failed to truly value any item of property included therein or has omitted any item of property therefrom, the assessor shall assess all such persons a per capita or poll tax and shall appraise and assess, at such sum as in his judgment is just and equitable, all property listed by the owner but not truly valued and all property which has not been listed as by law required.

History. Acts 1929, No. 172, § 13; Pope's Dig., § 13664; A.S.A. 1947, § 84-442.

Case Notes

Cited: Collins v. Jones, 186 Ark. 442, 54 S.W.2d 400 (1932); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-26-913. Special list of omitted property.

Whenever the assessor shall discover that any property has been omitted for any cause from the assessment roll, if it is before the collector closes his books for the collection of taxes for the year in which the property was due to have been assessed, it shall be his duty, immediately upon making that discovery, to make a special list or assessment thereof and file it with the county clerk, who shall place it upon the tax books and extend the taxes and penalty thereon for the year. The collector shall proceed to collect these taxes and penalty as is required by law.

History. Acts 1929, No. 172, § 15; Pope's Dig., § 13666; Acts 1977, No. 202, § 1; A.S.A. 1947, § 84-444.

Publisher's Notes. Acts 1977, No. 202, § 2, provided that it was the purpose and intent of the act to relieve the respective counties of any responsibility or authority to pay any person a "finder's fee" for discovering, or purporting to have discovered, and reporting any taxable property in the county which is not listed on the assessment rolls as required by law.

Research References

U. Ark. Little Rock L.J.

Survey of Arkansas Law, Public Law, 1 U. Ark. Little Rock L.J. 230.

Case Notes

Purpose.

Assessment of Property.
Tax Representatives.
Valuation of Property.

Purpose.

The purpose of this section was held to be to permit an individual taxpayer to report unassessed property and collect an award, and the section assumes that there will be no disagreement as to the legality of the assessment, since there is no provision to resolve such disagreement. *Rottinghaus v. Holder*, 261 Ark. 634, 550 S.W.2d 462 (1977) (decision prior to 1977 amendment).

Assessment of Property.

Where an assessor, before the collector closes his books, discovers land purchased from the state has not been assessed, it is his duty to make and file an assessment regardless of whether the land was certified to the county clerk. *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931). Assessment for year in which former owner has redeemed the land from the state was authorized after time for regular assessment had passed. *Vandergriff v. Lowery*, 195 Ark. 257, 111 S.W.2d 510 (1937).

Though equalization board had finally adjourned when assessment of taxpayer's mineral rights were made, taxpayer was not without right of redress, since he had the right, by certiorari from the circuit court directed to the county clerk, to have the record brought up for review and correction. *Stout Lumber Co. v. Parker*, 197 Ark. 65, 122 S.W.2d 180 (1938).

This section does not authorize additional assessments of the taxpayer's personalty after the collector's books for the tax years involved have been closed. *Jensen v. Dierks Lumber & Coal Co.*, 209 Ark. 262, 190 S.W.2d 5 (1945).

Tax Representatives.

Cooperative employment by school districts of tax representative, whose duties include discovery of new construction and other property not listed for taxation, appraisal of such property, and submission of that information to appropriate district held not duplication of duties of county assessor. *Burnett v. Nix*, 244 Ark. 235, 424 S.W.2d 537 (1968).

Valuation of Property.

This section gives no guideline or formula by which the taxability or value of reported property can be judged, and the setting of such value requires independent judgment, which cannot be determined in advance by the circuit court on a petition for mandamus. *Bunting v. Tedford*, 261 Ark. 638, 550 S.W.2d 459 (1977).

Cited: *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971).

26-26-914. Unavoidable failure to list property.

(a) If any person required to list property for taxation shall have been prevented by sickness or absence from giving to the assessor the list of property as prescribed by this subchapter, the person, or his agent having charge of the property, may, at any time before the making out of the tax books by the clerk of the county court, make out and deliver to the assessor of the county a statement of the same as required by this subchapter. The assessor shall in such case make an entry in the returns of the proper city, town, ward, or school district and correct the items in the return made by him, as the case may require.

(b) No such statement shall be received by the assessor from any person who shall have refused or neglected to make oath to his statement when required by the assessor under the provisions of this subchapter, nor from any person unless he shall have first made and filed with the clerk of the county court an affidavit that the person required to list the same was absent from his county without design to avoid listing his property or was prevented by sickness from giving to the assessor the required statement when called upon for that purpose.

History. Acts 1883, No. 114, § 97, p. 199; C. & M. Dig., § 10021; Pope's Dig., § 13768;

A.S.A. 1947, § 84-441.

Subchapter 10 **— Exempt Property**

26-26-1001. List of exempt real property.

26-26-1002. Separate list of omitted exempt realty.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.
Acts 1915, No. 197, § 2: approved Mar. 20, 1915. Emergency declared.

26-26-1001. List of exempt real property.

The assessor, at the time of making the assessment of real property subject to taxation, shall enter in a separate list pertinent descriptions of all burying grounds, public school houses, houses used exclusively for public worship, and institutions of purely public charity, and public buildings and property used exclusively for any public purpose, with the lot or tract of land on which the house or institution or public building is situated, and which are by law exempt from taxation. If the property is held and used for other public purposes, he shall state by whom or how it is held.

History. Acts 1883, No. 114, § 72, p. 199; C. & M. Dig., § 9935; Pope's Dig., § 13700; A.S.A. 1947, § 84-459; Acts 1997, No. 336, § 1.

Amendments. The 1997 amendment deleted “and the value thereof” from the end of the first sentence.

Cross References. Exemption of real property to be noted on assessment roll, § 26-26-718. Providing for exemption of value of residence of person 65 or over, Ark. Const., Art. 16, § 16. Property taxed according to value — Procedures for valuation — Tax exemptions, Ark. Const., Art. 16, § 5.

Property subject to taxation and exemptions, § 26-3-201 et seq.

Case Notes

Improvement Districts.

Improvement Districts.

Value of exempt property as determined by county assessor should be used in determining valuation of property in improvement district on petition for formation of district. *Improvement Dist. v. St. Louis S. R. Co.*, 99 Ark. 508, 139 S.W. 308 (1911); *Fry v. Poe*, 175 Ark. 375, 1 S.W.2d 29 (1927).

Value of public buildings as shown by last county assessment should be included in determining total assessed value of improvement district for purpose of determining whether cost of improvement exceeds specified value. *Brown v. Board of Comm'rs*, 165 Ark. 585, 265 S.W. 81 (1924).

Cited: *Lenon v. Brodie*, 81 Ark. 208, 98 S.W. 979 (1906); *Improvement Dist. v. St. Louis S. R. Co.*, 99 Ark. 508, 139 S.W. 308 (1911); *Malvern v. Nunn*, 127 Ark. 418, 192 S.W. 909 (1917); *Pulaski County v. Jacuzzi Bros.*, 317 Ark. 10, 875 S.W.2d 496 (1994).

26-26-1002. Separate list of omitted exempt realty.

(a) Whenever the assessor of any county has, during any year at the time of making the assessment of real property subject to taxation, failed to enter in a separate list pertinent descriptions of all burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public buildings, and property used

exclusively for any public purpose, libraries, and grounds used exclusively for school purposes, and property which by the Arkansas Constitution is exempted from taxation, the lots or tracts of land on which the institution or public building is situated, and which by law are exempted from taxation, and the value thereof, the assessor of the county, or his successor in office, is authorized and empowered, at any time and during any year thereafter, upon discovery of the omission to make out separate lists, giving their description and the value of all the described property which has been omitted from the list.

(b) (1) The list of the property, together with the valuation thereof, shall be filed with the county clerk of the county and by him entered upon the proper assessment book of the county.

(2) When the list of the omitted property has been filed by the assessor, or his successor in office, with the county clerk in the county where the property is situated, it shall have the same force and validity as if entered, made, and filed at the proper time as prescribed by law.

History. Acts 1915, No. 197, § 1, p. 796; C. & M. Dig., § 9936; Pope's Dig., § 13701; A.S.A. 1947, § 84-460.

Case Notes

Improvement Districts.

Improvement Districts.

City council properly took into account tax exempt school and church property in determining whether two-thirds in value of property owners of improvement district had signed petitions for forming district where it had before it last assessment of real property, together with list of tax exempt property, even though separate list was filed subsequently to assessment. *Brown v. Headlee*, 224 Ark. 156, 272 S.W.2d 56 (1954).

Subchapter 11

— Assessment of Property Generally

26-26-1101. Time to assess realty.

26-26-1102. Place of assessment.

26-26-1103. Reports of total assessments.

26-26-1104. Failure to list intangible personalty.

26-26-1105. Report of manufactured home and mobile home purchases.

26-26-1106. [Repealed.]

26-26-1107. Change in or damage to property.

26-26-1108. Agricultural lands annexed by city or town.

26-26-1109. Timber rights.

26-26-1110. Mineral rights.

26-26-1111. Mineral and surface estates owned by same person.

26-26-1112. Separate records for severed mineral interests.

26-26-1113. Property used for other than church purposes.

26-26-1114. Assessment of personal property taxes by mail or by telephone.

26-26-1115. Apportionment of realty taxes.

26-26-1116. [Repealed.]

26-26-1117. [Repealed.]

- 26-26-1118. Limitation on increase of property's assessed value.
- 26-26-1119. Prohibited conduct — Penalties — Time limitation.
- 26-26-1120. Disabled persons.
- 26-26-1121. Time of assessment.
- 26-26-1122. Definitions.
- 26-26-1123. Sale of real property.
- 26-26-1124. Property tax relief for persons disabled or more than sixty-five years of age.

Cross References. Assessment of residential property and agricultural, pasture, timber, residential, and commercial land, Ark. Const., Art. 16, § 15.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1905, No. 303, § 5: effective on passage.

Acts 1919, No. 147, § 18: approved Mar. 1, 1919. Emergency clause provided: "That Act 234 of the Acts of 1917 and Act 124 of the Acts of 1913, and all other laws in conflict herewith, are hereby repealed, and this Act, being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage."

Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: "It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1929, No. 221, § 2: effective on passage.

Acts 1943, No. 278, § 5: effective on passage.

Acts 1957, No. 385, § 3: approved Mar. 27, 1957. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the failure to assess all real property annually in each county of the State has resulted and will continue to result in a great loss of revenues to the several taxing units in the State of Arkansas, that on account of such loss of revenues the cities, counties and school districts in the State of Arkansas are deprived of funds and are thereby to such extent handicapped in supplying their respective services to the citizens of this State; and that only by the passage of this Act and giving immediate effect to its provisions can the Assessors prepare for proper annual assessments and thereby an immediate reduction be made in such loss of revenues. An emergency, therefore, is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1959, No. 246, § 5: Mar. 25, 1959. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the laws of this State regarding the time for assessment of real and personal property and the equalization thereof have resulted and will continue to result in a great loss of revenues to the several taxing units in the State of Arkansas, that on account of such loss of revenues the cities, counties and school districts in the State of Arkansas are deprived of funds and are thereby to such extent handicapped in supplying their respective services to the citizens of this State, and that only by the immediate passage of this Act may such situation be corrected. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1963, No. 545, § 4: approved Mar. 3, 1963. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that a substantial amount of agricultural lands are and will be annexed into various cities and towns in the State. That same will be taxed in many instances as subdivision or other real estate development land, imposing an inequitable and an undue tax burden upon farmers farming agricultural lands within such annexed areas, and this Act being necessary for the immediate preservation of the public

peace, health and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage.”

Acts 1969, No. 269, § 4: Mar. 18, 1969. Emergency clause provided: “It is hereby determined by the General Assembly that prospective manufacturing and processing industries and commercial warehouses are confused as to ad valorem taxation of personal property in transit through Arkansas, and that because of this confusion the decision to locate industries therein may be adversely influenced to the extent that the State may lose valuable new industries. Therefore, an emergency is hereby declared to exist, and this Act, being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1975, No. 461, § 2: Mar. 18, 1975. Emergency clause provided: “It is hereby found and determined by the General Assembly that in recent years there has been an enormous increase in the sale of mobile homes in this State; that such increase in mobile home sales has created an undue burden on the tax assessors of this State; and that immediate passage of this Act is necessary to encourage, promote and assist in the efficient enforcement of the property assessment procedures as now provided by law. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1977, No. 203, § 3: Feb. 21, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that it is obviously impossible for the county assessor in each county to discover all taxable intangible personal property in the county for inclusion on the assessment rolls; that to impose this impossible burden on the assessor without exempting him from personal or official liability for failure to discover all of such property is totally unfair and places a severe hardship on the assessors; that this Act is designed to exempt the assessors from any liability, personal or official, for failure to find any and all intangible property in the county unless the failure to discover such property and include it on the tax rolls was a result of collusion between the assessor and the property owner for the purpose of evading taxes, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1985, No. 961, § 3: Apr. 15, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Supreme Court has ruled that maintaining separate tax assessment records for severed mineral interests and surface interests contravenes present law; that many county assessors do maintain separate records for severed mineral interests; that it is an unreasonable burden to require the records of severed mineral interests to be subjoined to the tax records of the surface estates; and that this Act is immediately necessary to allow the maintenance of such separate records. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 1040, § 7: Apr. 14, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that many churches have engaged in the practice of investing in real and personal property, or have received donations of commercial or rental property which is not now assessed for ad valorem tax purposes and are not paying tax thereon as required by law, thereby depriving the local taxing units of thousands of dollars of much needed revenues; that under the Arkansas Constitution of 1874, Article 16, Sections 5 and 6, such property is not exempt from the provisions of the ad valorem property tax; that in many instances such churches do not report for Arkansas Income Tax purposes income derived from investments or profits derived from rental income or other commercial or business activities and do not pay taxes thereon; that this reduces the amount of revenues available for funding of State services; and that only by the immediate passage of this Act can this situation be remedied. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 1261, § 4: January 1, 1994.

Acts 1999, No. 974, § 5: Mar. 31, 1999. Emergency clause provided: “It is found and determined by the General Assembly that devastating tornadoes recently occurred in several counties of the

state; several of the affected counties have been declared disaster areas; and that this act provides assistance to persons whose property was damaged in the tornadoes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Identical Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 11. December 15, 2000. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Amendment 79 to the Arkansas Constitution requires the General Assembly to provide for a property tax credit of not less than \$300 for each homestead; that providing such a property tax credit results in a significant reduction in revenues for funding county services and public schools; that without an alternative source of funding counties and public schools cannot operate effectively; that an increase in the state sales and use tax provides a source of funding for counties and public schools; that this act will accomplish the purposes of Amendment 79 in providing a property tax credit and source of funding. It is necessary that this act become effective immediately in order to facilitate the administration of the property tax credit and to generate sufficient revenues to fully fund the credit. Therefore, an emergency is declared to exist and Sections 1, 2, 3, 4, 5, 6, 8 and 9 of this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2001, No. 1544, § 6: Apr. 12, 2001. Emergency clause provided: “It is found and determined by the General Assembly that in order to efficiently reimburse the counties for the homestead property tax credit, county assessors are required to recertify to the Chief Fiscal Officer the amount of real property reduction on or before June 30 of the year 2001 and every year thereafter. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2001, No. 1598, § 2: Apr. 13, 2001. Emergency clause provided: “It is found and determined by the General Assembly that Amendment 79 to the Constitution of Arkansas went into effect on January 1, 2001 and confusion has arisen as to claiming the property tax credit. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2005, No. 1268, § 3: Mar. 29, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there are many terms used in Amendment 79 of the Arkansas Constitution that are not defined; that Amendment 79 gives the General Assembly the authority to implement the provisions of that amendment; that for uniformity and clarity certain terms should be defined; and that this act accomplishes this purpose. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2005, No. 2284, § 2: effective on and after January 1, 2006.

Acts 2009, No. 151, § 3: Jan. 1, 2008. Emergency clause provided: “It is found and determined by

the General Assembly of the State of Arkansas that not all counties are following the dictates of Arkansas Constitution, Amendment 79; that some counties are not allowing persons that meet the property tax relief requirements under Arkansas Constitution, Amendment 79, to be assessed a later assessed value if that assessment is lower; that this results in taxpayers not being treated equally across the state; that all counties should allow its taxpayers that qualify for the property tax relief to be assessed a later assessed value if that assessment is lower; and that all counties should follow the provisions of Arkansas Constitution, Amendment 79. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on January 1, 2008." Acts 2009, No. 421, § 2: July 31, 2009: effective for the assessment year 2009 and thereafter.

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 704 et seq.

C.J.S. 84 C.J.S., Tax., § 390 et seq.

26-26-1101. Time to assess realty.

Each year the assessor shall, between the first Monday in January and July 1, appraise and assess all real property situated within the boundaries of the county.

History. Acts 1957, No. 385, § 1; 1959, No. 246, § 3; A.S.A. 1947, § 84-415.

Case Notes

Method of Assessment.

Tax Basis.

Timeliness.

Method of Assessment.

Assessment of real estate is accomplished by assessor without intervention of property owner. *Evans v. F.L. Dumas Store, Inc.*, 192 Ark. 571, 93 S.W.2d 307 (1936) (decision under prior law). An assessor has full authority to assess property at whatever figure, based on his information or investigation, he deems to be right and proper; it is the duty of the assessor to make the assessment and notify the property owner, after which the owner can file his petition with the county equalization board. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

Tax Basis.

Quorum court held without authority to levy millages on any basis other than assessment of assessor, as equalized and adjusted by equalization board. *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958) (decision under prior law).

Timeliness.

The fact that a notice of property revaluation was dated July 11, 1993, is not conclusive proof that a 1993 assessment was not made before July 1, 1993. *City of N. Little Rock v. Pulaski County*, 332 Ark. 578, 968 S.W.2d 582 (1998).

Cited: *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966); *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971); *McMahen v. Hargett*, 252 Ark. 239, 478 S.W.2d 43 (1972).

26-26-1102. Place of assessment.

(a) All real estate and tangible personal property shall be assessed for taxation in the taxing district in which the property is located and kept for use.

(b) (1) (A) Tangible personal property in transit for a destination within this state shall be assessed only in the taxing district of its destination.

(B) Tangible personal property in transit through this state including raw materials from within or outside this state used in the manufacturing process and tangible personal property manufactured, processed, or refined in this state and stored for

shipment outside the state shall, for purposes of ad valorem taxation, acquire no situs in this state and shall not be assessed for taxation in this state.

(C) The owner of tangible personal property in transit through this state and of tangible personal property in transit for a destination within this state may be required, by the appropriate assessor, to submit documentary proof of the in-transit character and the destination of the property.

(2) "Tangible personal property in transit through this state" means, for the purposes of this section, tangible personal property:

(A) Which is moving in interstate commerce through or over the territory of this state; or

(B) Which is consigned to or stored in or on a warehouse, dock, or wharf, public or private, within this state for storage in transit to a destination outside this state, whether the destination is specified when transportation begins or afterward, except where the consignment or storage is for purposes other than those incidental to transportation of the property; or

(C) Which is manufactured, processed, or refined within this state and which is in transit and consigned to, or stored in or on, a warehouse, dock, or wharf, public or private, within this state for shipment to a destination outside this state.

History. Acts 1883, No. 114, § 17, p. 199; C. & M. Dig., § 9894; Acts 1929, No. 172, § 6; Pope's Dig., § 13657; Acts 1969, No. 269, § 1; A.S.A. 1947, § 84-417; Acts 1997, No. 1294, § 1.

A.C.R.C. Notes. Commas could not be inserted between the words "state" and "including" and between the words "state" and "shall" in subdivision (b)(1)(B) pursuant to § 1-2-303.

Amendments. The 1997 amendment inserted "including raw materials from within or outside this state used in the manufacturing process" in (b)(1)(B).

Case Notes

Legislative Intent.

Raw Materials.

Recovery of Taxes.

Legislative Intent.

This section is ambiguous and effect must be given to the legislative intent. The General Assembly did not intend to tax the raw materials used to produce products to be shipped outside this state. *Omega Tube & Conduit Corp. v. Maples*, 312 Ark. 489, 850 S.W.2d 317 (1993).

Raw Materials.

According to this section, raw materials used to produce products to be shipped out of state do not attain a tax situs in Arkansas. *Omega Tube & Conduit Corp. v. Maples*, 312 Ark. 489, 850 S.W.2d 317 (1993).

Recovery of Taxes.

A taxpayer may not recover taxes it has paid voluntarily. *Omega Tube & Conduit Corp. v. Maples*, 312 Ark. 489, 850 S.W.2d 317 (1993).

Cited: *Hutton v. King*, 134 Ark. 463, 205 S.W. 296 (1918); *Arkansas Tax Comm'n v. Ashby*, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-26-1103. Reports of total assessments.

(a) The county assessor shall, on or before August 1 of each year, deliver to the clerk of the board of equalization his completed assessment tax record, showing the total assessment of the county as made by the assessor. He shall also furnish such other

information as the board may request of the assessor.

(b) The county assessor shall, on or before the third Monday in August of each year, report to the Arkansas Public Service Commission, by total of items and value, the total assessment of the county as made by the assessor and the commission and in the manner as directed by the commission, as to kind, character, number, and value of all tangible property assessed for taxation in the county and such other information as the commission may demand of the assessor.

History. Acts 1919, No. 147, § 14; C. & M. Dig., § 9920; Acts 1929, No. 172, § 19; Pope's Dig., § 13687; Acts 1959, No. 246, § 4; A.S.A. 1947, §§ 84-463, 84-463.1.

Cross References. Reports in counties adopting unit tax ledger system to be by total and not by items, § 26-28-205.

Case Notes

Cited: Burgess v. Four States Mem. Hosp., 250 Ark. 485, 465 S.W.2d 693 (1971).

26-26-1104. Failure to list intangible personalty.

A county assessor in this state shall not be held liable, either personally or in his official capacity as assessor, for failure to discover and include on the assessment rolls any taxable intangible personal property in the county unless the failure to discover or to include the intangible property on the assessment rolls was a result of, or pursuant to, collusion between the assessor and the property owner for the purpose of evading taxes due on the property.

History. Acts 1977, No. 203, § 1; A.S.A. 1947, § 84-417.1.

Case Notes

Cited: Bunting v. Tedford, 261 Ark. 638, 550 S.W.2d 459 (1977).

26-26-1105. Report of manufactured home and mobile home purchases.

(a) A purchaser of a manufactured home or mobile home shall report the purchase of each new or used manufactured home or mobile home to the county assessor of the appropriate county where the manufactured home or mobile home will be located.

(b) The report shall include:

- (1) The name of the purchaser;
- (2) The purchaser's address;
- (3) The date on which the purchase was made; and
- (4) Other information as may be deemed necessary by the county assessor.

History. Acts 1975, No. 461, § 1; A.S.A. 1947, § 84-426.4; Acts 2005, No. 2228, § 2.

Amendments. The 2005 amendment inserted the subsection (a) and (b) designations; rewrote (a); and added present (b)(4).

26-26-1106. [Repealed.]

A.C.R.C. Notes. This section was specifically repealed by Acts 2005, No. 2228, § 3. Acts 2005, No. 1994, § 167 would have amended § 26-26-1106(c) to change "misdemeanor" to "violation".

Publisher's Notes. This section, concerning mobile home decals, was repealed by Acts 2005, No. 2228, § 3. The section was derived from Acts 1973, No. 16, §§ 1-3; A.S.A. 1947, §§ 84-426.1 — 84-426.3.

26-26-1107. Change in or damage to property.

(a) All lands that shall have been purchased from owners, the property of whom or which was by law exempt, all new improvements over the actual value of one hundred dollars (\$100), and all town or city lots as may have been platted, as the case may be, subsequent to January 1 of any year shall be subject to assessment and taxation for the year immediately following the purchase, improvement, or platting.

(b) (1) (A) In each year, all real estate or improvements on real estate which have been damaged by fire, flood, tornado, or other act of God, if the property is then on the assessment record at a value determined prior to the damage and if the damage occurred prior to the date the county assessor is required by law to deliver his or her report of assessment to the county clerk, then that property shall be revalued and assessed by the county assessor.

(B) Nothing in this subsection shall be construed as requiring a county assessor to seek to identify property which may have been damaged.

(2) An appeal shall lie from the action of the county assessor as in the case of other property in that year assessed.

History. Acts 1883, No. 114, § 67, p. 199; C. & M. Dig., § 9918; Acts 1929, No. 172, § 4; Pope's Dig., § 13685; Acts 1943, No. 278, § 4; A.S.A. 1947, § 84-436; Acts 1999, No. 974, § 1.

Amendments. The 1999 amendment, in (b)(1), deleted "if the actual loss not covered by insurance shall be more than one hundred dollars (\$100)" following "act of God"; added (b)(1)(B); and made stylistic changes.

Case Notes

Constitutionality.

Improvements.

Purchases from State.

Redemption of Land.

Constitutionality.

This section, requiring assessment and taxation at the beginning of the year following the purchase, is an administrative directive that need not be construed as an exemption of property from taxation in violation of Ark. Const., Art. 16, § 6. *Taylor v. Finch*, 288 Ark. 50, 701 S.W.2d 377 (1986).

Improvements.

Former law on assessment of improvements. *State v. F. W. Burford Co.*, 203 Ark. 399, 156 S.W.2d 806 (1941).

Purchases from State.

Lands purchased from state become subject to taxation when deed is executed and do not remain free of tax until land commissioner certifies land to county clerk. *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931).

Redemption of Land.

Evidence insufficient to show that assessor had not performed his duty to assess land after redemption. *Slaton v. Pride*, 195 Ark. 1055, 115 S.W.2d 547 (1938) (decision prior to 1943 amendment).

Cited: *Arkansas Tax Comm'n v. Turley*, 185 Ark. 31, 45 S.W.2d 859 (1932).

26-26-1108. Agricultural lands annexed by city or town.

(a) All lands which may be annexed by any city or incorporated town which are being

used for agricultural purposes shall be assessed as agricultural lands upon an acreage basis, regardless of the fact that any or all of the lands are embraced in a plat of a subdivision or other real estate development, and regardless of the fact that the lands may be zoned as commercial, industrial, or residential, and regardless of the fact that the lands may be adaptable to commercial, industrial, or residential uses.

(b) Agricultural purposes shall include lands which are presently used and have been used for a period of five (5) continuous years in a bona fide farming, pasture, or grove operation by the owner, lessee, or some person in his employ.

(c) Lands which have not been used for agricultural purposes prior to March 29, 1963, shall be prima facie subject to assessment on the same basis as assessed for the previous years, and any demand for a reassessment of such lands for agricultural purposes shall be subject to the scrutiny of the assessor to the end that the lands shall be classified properly.

(d) When lands subject to this section cease to be used for agricultural purposes, the lands shall be assessed as other lands of the same character.

(e) For the purposes of this section, agricultural lands shall include dairy, livestock, poultry, and all forms of farm products and farm production.

History. Acts 1963, No. 545, §§ 1, 2; A.S.A. 1947, §§ 84-479, 84-480.

Cross References. Assessment of agriculture land, Ark. Const., Art. 16, § 15.

Research References

Ark. L. Notes.

Olson, Agricultural Zoning: A Remedy for Land Use Conflicts Between Poultry Production and Residential Development In Northwest Arkansas, 1997 Ark. L. Notes 119.

26-26-1109. Timber rights.

(a) (1) When the timber rights in any land shall, by conveyance or otherwise, be held by one (1) or more persons, firms, or corporations, and the fee simple in the land by one (1) or more other persons, firms, or corporations, it shall be the duty of the assessor, when advised of the fact, either by personal notice or by recording of the deeds in the office of the recorder of the county, to assess the timber rights in the lands separate from the soil.

(2) In such case, a sale of the timber rights for nonpayment of taxes shall not affect the title to the soil itself, nor shall a sale of the latter for nonpayment of taxes affect the title to the timber rights.

(b) (1) It shall be the duty of the assessor to assess timber rights with a description of the land on the real estate tax books, and the assessment shall be marked "timber."

(2) Upon the nonpayment of taxes so assessed against the timber, it shall be advertised with a description of the land as "timber" giving the character or kind of the timber, in some newspaper as provided by law for nonpayment of taxes on land, and the timber shall be sold as provided by law for the sale of delinquent lands.

(c) When any timber rights assessed as set out in this section become forfeited on account of nonpayment of taxes, they shall, in all things, be certified to and redeemed in the same manner as is provided for the certification and redemption of real estate upon which taxes duly assessed have not been paid.

History. Acts 1897, No. 30, § 1, p. 38; 1905, No. 303, §§ 1, 2, p. 738; C. & M. Dig., §§ 9856, 9940, 9941; Acts 1929, No. 221, § 1; Pope's Dig., §§ 13600, 13724, 13725; A.S.A. 1947, §§ 84-203, 84-432, 84-433.

Cross References. Assessment of timber land, Ark. Const., Art. 16, § 15.
Tax on timber and range lands, § 26-61-101 et seq.
Timber rights as taxable property, § 26-3-205.

Research References

U. Ark. Little Rock L. Rev.

Annual Survey of Caselaw, Property Law, 25 U. Ark. Little Rock L. Rev. 1025.

Case Notes

Constitutionality.

Applicability.

Abandonment.

Separate Assessment.

Constitutionality.

This section is not unconstitutional as discriminating against corporations in favor of individuals. State ex rel. Attorney Gen. v. Arkansas Fuel Oil Co., 179 Ark. 848, 18 S.W.2d 906 (1929); Arkansas Fuel Oil Co. v. State, 180 Ark. 765, 22 S.W.2d 556 (1929).

Applicability.

Standing timber, although the ownership thereof is severed from the ownership of the soil, is part of the land and as such, subject to assessment in a levee district. Lewis v. Delinquent Lands, 182 Ark. 838, 33 S.W.2d 379 (1930).

This section is intended to apply to the assessment of property for general taxes rather than to an assessment of benefits by an improvement district. Long Prairie Levee Dist. v. Wall, 227 Ark. 305, 298 S.W.2d 52 (1957).

Abandonment.

Failure of purported owner of timber to assess or pay taxes on timber for a period of approximately 40 years was evidence of abandonment of timber rights. United States v. Wheeler, 161 F. Supp. 193 (W.D. Ark. 1958).

Separate Assessment.

This section does not authorize separate assessment of standing timber and collection of taxes thereon except in cases where "the timber rights in any land shall, by conveyance or otherwise, be held by one or more persons, firm or corporation and the fee simple in the land by one or more persons, firms or corporations." Connell v. Pioneer Cooperage Co., 172 Ark. 1056, 291 S.W. 1005 (1927).

Where land and timber rights had been owned by one person, a purchaser of the land, apart from the timber, who voluntarily paid the taxes on both land and timber could not recover the proportionate amount of the taxes on the timber from the purchaser of the timber. Connell v. Pioneer Cooperage Co., 172 Ark. 1056, 291 S.W. 1005 (1927).

When there has been a severance of timber rights by a deed duly recorded, such rights must be assessed separately and apart from the surface rights. Huffman v. Henderson Co., 184 Ark. 278, 42 S.W.2d 221 (1931).

When timber rights have not been assessed separately from the surface rights, the assessment will be held to apply only to the surface rights, and a sale under this assessment will operate to convey title only to the surface rights. Huffman v. Henderson Co., 184 Ark. 278, 42 S.W.2d 221 (1931).

In sum, this section provides that timber rights held by one person are to be assessed separately from the fee simple rights of another in the land, because the timber rights are separate from another's rights in the soil. Bonds v. Carter, 348 Ark. 591, 75 S.W.3d 192 (2002).

Cited: Sorkin v. Myers, 216 Ark. 908, 227 S.W.2d 958 (1950); United States v. Wheeler, 161 F. Supp. 193 (W.D. Ark. 1958).

26-26-1110. Mineral rights.

(a) (1) When the mineral rights in any land shall, by conveyance or otherwise, be held by one (1) or more persons, and the fee simple in the land by one (1) or more other

persons, it shall be the duty of the county assessor when advised of the fact, either by personal notice or by recording of the deeds in the office of the county recorder, to assess the mineral rights in the lands separate from the general property therein.

(2) In such case a sale of the mineral rights for nonpayment of taxes shall not affect the title to the land itself, nor shall a sale of the land for nonpayment of taxes affect the title to the mineral rights.

(b) When any mineral rights assessed as set out in subsection (a) of this section become forfeited on account of nonpayment of taxes, they shall, in all things, be certified to and redeemed in the same manner as is provided for the certification and redemption of real estate upon which taxes duly assessed have not been paid.

(c) (1) Because of the difficulty of ascertaining the value of a nonproducing mineral right and in order to ensure equal and uniform taxation throughout the state, a nonproducing mineral right has zero (0) value for the purpose of property tax assessment and is included in the value of the fee simple interest assessed.

(2) If the fee simple in the land and the nonproducing mineral right that has zero (0) value as determined under subdivision (c)(1) of this section are owned by different persons, there is no property tax due on the mineral right.

(3) For a nonproducing mineral right that has zero (0) value as determined under subdivision (c)(1) of this section, the mineral right owner may agree to a voluntary property tax assessment of the mineral right and pay a property tax according to rules established by the Assessment Coordination Department with the assistance of the Arkansas Assessors Association.

(4) When a nonproducing mineral right begins producing minerals, the mineral right shall be assessed for tax purposes in accordance with rules established by the department.

History. Acts 1897, No. 30, § 1, p. 38; C. & M. Dig., § 9856; Acts 1929, No. 221, § 1; Pope's Dig., § 13600; A.S.A. 1947, § 84-203; Acts 2009, No. 421, § 1.

Amendments. The 2009 amendment added (c).

Effective Dates. Acts 2009, No. 421, § 2, provided: "Section 1 of this act is effective for the assessment year 2009 and thereafter."

Research References

Ark. L. Rev.

Real Property — Scope of the Term "Minerals" in a Mineral Deed, 4 Ark. L. Rev. 249.

Oil and Gas — Severance of Surface from Mineral Title, 16 Ark. L. Rev. 301.

Case Notes

Constitutionality.

Construction.

Applicability.

Deeds; Recording.

Leases.

Separate Assessment.

Constitutionality.

This section is not unconstitutional as discriminating against corporations in favor of individuals. State ex rel. Attorney Gen. v. Arkansas Fuel Oil Co., 179 Ark. 848, 18 S.W.2d 906 (1929); Arkansas Fuel Oil Co. v. State, 180 Ark. 765, 22 S.W.2d 556 (1929).

Construction.

This section permitting separate assessment has been interpreted broadly, and there is no

requirement that there be a conveyance of the minerals in place in order to effect a sufficient severance to invoke the separate assessment statute. *Edwards v. Hall*, 267 Ark. 1003, 593 S.W.2d 465 (1980).

Applicability.

This section is intended to apply to the assessment of property for general taxes rather than to an assessment of benefits by an improvement district. *Long Prairie Levee Dist. v. Wall*, 227 Ark. 305, 298 S.W.2d 52 (1957).

Deeds; Recording.

Exclusion of "coal and mineral deposits" from executed deed did not reserve oil and gas. *Missouri P.R.R. v. Strohacker*, 202 Ark. 645, 152 S.W.2d 557 (1941).

The effect of mineral deeds placed of record is to constitute a constructive severance of the minerals from the surface and to make two titles, one the surface and the other the mineral title. *Skelly Oil Co. v. Johnson*, 209 Ark. 1107, 194 S.W.2d 425 (1946).

Where railroad executed deed to certain land, but reserved coal and mineral deposits, and state thereafter made an assessment against minerals in the land, and later issued a tax deed for such minerals to another, original grantee of land from railroad was entitled to oil and gas rights, as oil and gas was not included in mineral reservation, and taxes on the surface covered taxes against oil and gas. *Brizzolara v. Powell*, 214 Ark. 870, 218 S.W.2d 728 (1949).

Deeds for sale of real estate for nonpayment of taxes on mineral interests could be set aside because of faulty methods of recording assessments of mineral interests. *Sorkin v. Myers*, 216 Ark. 908, 227 S.W.2d 958 (1950) (decision under prior law).

Mineral interests severed from the soil are to be arranged according to the land assessments and not alphabetically by names of owners. *Sorkin v. Myers*, 216 Ark. 908, 227 S.W.2d 958 (1950).

Tax title obtained on mineral interests was void where names of owners were listed alphabetically under each school district instead of by section, township, and range. *Stienbarger v. Keever*, 219 Ark. 411, 242 S.W.2d 713 (1951).

Leases.

A lessee under an oil and gas lease acquires an interest in the land subject to assessment separate and apart from the assessment of the fee. *State ex rel. Attorney Gen. v. Arkansas Fuel Oil Co.*, 179 Ark. 848, 18 S.W.2d 906 (1929); *Arkansas Fuel Oil Co. v. State*, 180 Ark. 765, 22 S.W.2d 556 (1929).

While minerals may be assessed separately from lands containing them, the mere fact of leasing lands for exploration purposes does not, ipso facto, create such severance. *Quality Coal Co. v. Guthrie*, 203 Ark. 433, 157 S.W.2d 756 (1941).

An oil and gas lease does not of itself constitute constructive severance of the estate, but conveys only an interest and easement in the land, passing no title until the oil and gas are reduced to possession, and a short-term nonproducing mineral lease is not such a severance as to fall within this section. *Garvan v. Kimsey*, 239 Ark. 295, 389 S.W.2d 870 (Ark. 1965).

Separate Assessment.

When there has been a severance of mineral rights by a deed duly recorded, such rights must be assessed separately and apart from the surface rights. *Huffman v. Henderson Co.*, 184 Ark. 278, 42 S.W.2d 221 (1931).

When mineral rights have not been assessed separately from the surface rights, the assessment will be held to apply only to the surface rights, and a sale under this assessment will operate to convey title only to the surface rights. *Huffman v. Henderson Co.*, 184 Ark. 278, 42 S.W.2d 221 (1931).

Where the mineral interest was assessed and taxed separately from the surface land and the owner of a one-half interest in the minerals failed to pay the taxes, his property rights in the one-half mineral interest, which were to terminate in 25 years, were immediately forfeited when his mineral interest was sold at a tax sale, and the tax deed vested complete title in a one-half mineral interest in the purchaser. *Edwards v. Hall*, 267 Ark. 1003, 593 S.W.2d 465 (1980).

Cited: *United States v. Wheeler*, 161 F. Supp. 193 (W.D. Ark. 1958).

26-26-1111. Mineral and surface estates owned by same person.

When the mineral estate and the surface estate in land shall become vested in the same

person, after a prior severance by deed or otherwise, the two (2) estates shall merge and be considered as a single interest or estate and shall be assessed and carried on the assessment books in the same manner as provided by law for interests or estates in land where the mineral interest has never been severed from the surface estate.

History. Acts 1957, No. 366, § 1; A.S.A. 1947, § 84-203.1.

26-26-1112. Separate records for severed mineral interests.

County assessors may maintain separate records for severed mineral interests if the records are maintained by legal description of the surface estate in the same manner as records of the estates are maintained.

History. Acts 1985, No. 961, § 1; A.S.A. 1947, § 84-203.2.

Research References

U. Ark. Little Rock L. Rev.

Well, Now, Ain't That Just Fugacious!: A Basic Primer on Arkansas Oil and Gas Law, 29 U. Ark. Little Rock L. Rev. 211.

Case Notes

Cited: *Gilbreath v. Union Bank*, 309 Ark. 360, 830 S.W.2d 854 (1992).

26-26-1113. Property used for other than church purposes.

(a) All real or personal property owned by any church and held for, or used for, commercial, business, rental, or investment purposes or purposes other than church purposes shall be listed for assessment annually for ad valorem tax purposes between the first Monday in January and April 10 of each year.

(b) The church or its governing official or board shall annually list for assessment for ad valorem tax purposes all property which is not exempted from the tax under the provisions of this chapter.

(c) (1) The Assessment Coordination Division of the Public Service Commission shall promulgate reasonable rules and regulations to effectuate the provisions of this chapter.

(2) The division shall certify to the various county assessors and to each church in this state, upon request therefor, guidelines to be used in listing nonexempt property for assessment under the provisions of this chapter.

History. Acts 1987, No. 1040, §§ 1, 2.

A.C.R.C. Notes. The Assessment Coordination division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by Acts 1997, No. 436, § 2.

26-26-1114. Assessment of personal property taxes by mail or by telephone.

(a) For any assessment of personal property taxes after December 31, 1993, a taxpayer may assess the personal property taxes by mail, by telephone, or in person.

(b) (1) The assessor shall permit assessment of real and personal property of individuals by telephone without a signature verification under oath.

(2) The assessment by telephone shall not apply to business, commercial, and industrial real and personal property assessments.

(3) (A) The assessor shall mail to individuals assessing personal property by telephone, within five (5) working days from the date of assessment by telephone, an

assessment containing a certification, which shall be provided by the tax collector, indicating whether all required personal property taxes have been paid.

(B) The assessor shall provide, if requested, proof of assessment for each motor vehicle assessed and proof of said payment information appropriate for motor vehicle registration renewal by mail.

(c) The Director of the Assessment Coordination Division of the Public Service Commission shall promulgate regulations for the administration of this section. The forms and regulations promulgated by the director shall apply to all counties in the state.

History. Acts 1989, No. 517, § 1; 1991, No. 291, § 1; 1993, No. 1261, § 1.

A.C.R.C. Notes. The Assessment Coordination division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by Acts 1997, No. 436, § 2.

Amendments. The 1993 amendment, effective January 1, 1994, substituted "1993" for "1989" in (a); rewrote (b)(1) and (b)(3); and made stylistic changes in (c).

Cross References. Tangible personal property, § 26-26-1401 et seq.

26-26-1115. Apportionment of realty taxes.

(a) (1) When a person acquires ownership of a portion of a parcel of realty during the time of year when the county assessor is not making changes in the assessment book, that person may request the county assessor to apportion the current assessment between the remaining portion of the parcel and that acquired by the person making the request; provided, however, that:

(A) All necessary deeds and papers proving ownership of the portion have been filed with the county recorder;

(B) No provision has been made for payment of taxes on the realty at the time the person acquired the portion; and

(C) The request is made at least thirty (30) days before the last day to pay taxes on the assessment year in question.

(2) The request shall be in writing, signed by the owner, and shall include a complete legal description of the entire parcel and a complete legal description of the parcel being conveyed.

(b) The provisions of this section shall not apply to any parcel of realty on which there is an actual tax delinquency at the time the request for allocation is made.

(c) The county assessor shall allocate the assessment within thirty (30) days after the request and shall provide the information included in the allocation to the county collector.

(d) (1) The county collector, after receiving notification of the allocation, shall accept payment in full toward any prior year's taxes currently due according to the values provided in the notification.

(2) Payment may be applied to the current tax bill as a partial payment, or a separate parcel number may be assigned to the portion and receipted to the new number.

(e) Payment shall be considered as satisfying the tax lien for that portion of the prior year's taxes as legally defined in the notification.

History. Acts 1993, No. 859, § 1.

A.C.R.C. Notes. References to "this chapter" in subchapters 1 — 18 may not apply to this section

which was enacted subsequently.

26-26-1116. [Repealed.]

Publisher's Notes. This section, concerning land modification, was repealed by Acts 2007, No. 994, § 2. The section was derived from Acts 1999, No. 486, § 1.

26-26-1117. [Repealed.]

Publisher's Notes. This section, concerning a contingent limitation on increase of property's assessed value, was repealed by identical Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 5. The section was derived from Acts 1999, No. 1492, § 1. For present law, see Ark. Const. Amend. 79 and § 26-26-1118.

26-26-1118. Limitation on increase of property's assessed value.

(a) (1) (A) There is established a homestead property tax credit for each assessment year that reduces the amount of real property taxes assessed on the homestead of each property owner by three hundred fifty dollars (\$350).

(B) However, an assessment shall not be reduced to less than zero dollars (\$0.00).

(2) Each property owner shall pay the reduced tax amount to the county.

(3) The homestead property tax credit adopted by this section shall be reflected on the tax bill sent to the property owner by the county collector.

(4) The county and taxing units within the county are entitled to reimbursement of the tax reduction resulting from the homestead property tax credit in accordance with § 26-26-310.

(b) (1) Each county assessor shall be responsible for identifying those parcels of real property that are used as homestead residences prior to issuing tax bills.

(2) (A) Each property owner shall register with the county assessor proof of eligibility for the property tax credit if the property owner intends to claim a property tax credit.

(B) (i) The registration may be attached to the deed or other instrument conveying an interest in real property and filed with the circuit clerk, who shall remit the registration to the county assessor.

(ii) The registration form shall not be filed by the circuit clerk.

(C) The property owner may submit a registration for the property tax credit directly to the county assessor.

(3) In no event shall the property tax credit authorized by subdivision (a)(1) of this section be allowed after October 10 of the year after the assessment.

(4) (A) A parcel of real property shall qualify as a homestead prior to January 1 of the year after assessment to be eligible for the property tax credit.

(B) Once a parcel of real property is determined to be eligible for the property tax credit, the parcel of real property shall remain eligible for that year regardless of a change in the use of the parcel of real property during the year.

(5) (A) The parties to a transfer of real property may prorate, as between themselves, the property tax credit and the benefits of the property tax credit by agreement of the parties.

(B) If a parcel of real property qualifies for the property tax credit, the property tax credit shall apply regardless of who or what entity pays the property tax.

(6) (A) When real property is transferred, the purchaser of the real property shall notify the county assessor of the new use of the real property.

(B) The notification may be by affidavit provided by the purchaser of the real property or on a form provided by the county assessor.

(7) (A) The Division of Vital Records of the Department of Health shall send to the county assessor a monthly report listing the residents of that county who have died.

(B) The report shall be sent to each county assessor by:

(i) Electronic mail;

(ii) Fax; or

(iii) United States Postal Service.

History. Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 6; 2001, No. 1544, § 3; 2001, No. 1598, § 1; 2003, No. 864, § 1; 2005, No. 1268, § 1; 2005, No. 1892, § 1; 2007, No. 142, § 1; 2007, No. 827, § 202; 2009, No. 655, § 4.

Amendments. The 2001 amendment, by No. 1544, substituted “property owner” for “taxpayer” in (a)(1); redesignated former (c) as present (c)(1) and made related changes; added (c)(2)-(3); added (d); and made minor stylistic changes throughout.

The 2001 amendment, by No. 1598, redesignated former (c) as present (c)(1) and made related changes; added (c)(2)-(6); and made minor stylistic changes throughout.

The 2003 amendment redesignated former (d) as present (d)(1), and former (d)(1)-(d)(3) as present (d)(1)(A)-(d)(1)(C); in present (d)(1), substituted “Property owner” for “The term property owner” and made a minor stylistic change; and added (d)(2).

The 2005 amendment by No. 1268 deleted former (b); redesignated former (c) as present (b); substituted “October 10” for “October 31” in present (b)(3); and deleted former (d).

The 2005 amendment by No. 1892 added present (b)(7).

The 2007 amendment by No. 142 inserted (a)(1)(B) and redesignated the following subdivision accordingly.

The 2007 amendment by No. 827, in (a), substituted “There is established a homestead property tax credit for each assessment year that reduces” for “Effective with the assessment year 2000 and thereafter” and deleted “shall be reduced” following “owner” in (1)(A), inserted present (1)(B) and redesignated former (1)(B) as present (1)(C), substituted “homestead property tax credit” for “tax reduction” in (3), inserted “resulting from the homestead property tax credit” in (4), and made related and stylistic changes.

The 2009 amendment substituted “three hundred fifty dollars (\$350)” for “three hundred dollars (\$300)” in (a)(1)(A); deleted (a)(1)(B), which read: “Effective with the assessment year 2007 and thereafter, the amount of real property taxes assessed on the homestead of each property owner shall be reduced by three hundred fifty dollars (\$350)”; redesignated the subsequent subdivision; and made a minor stylistic change.

Cross References. Certification of amount of property tax deduction, § 26-3-310.

Property tax relief, Ark. Const. Amend. 79.

Property Tax Relief Trust Fund, § 19-5-1103.

Certification of amount of property tax reduction, § 26-26-310.

Additional taxes levied, §§ 26-52-302, 26-53-107.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-26-1119. Prohibited conduct — Penalties — Time limitation.

(a) (1) No property owner shall claim more than one (1) homestead property tax credit

for each year.

(2) (A) If the county assessor determines that a property owner has claimed more than one (1) homestead property tax credit in a year, in addition to repayment of the homestead property tax credit, the designated preparer of the tax books shall extend a penalty of one hundred percent (100%) of the amount of the unlawfully claimed homestead property tax credit.

(B) (i) If the property owner has unlawfully claimed a homestead property tax credit in a county other than the county where his or her lawfully claimed homestead property tax credit was claimed, then the property owner shall pay the entire amount of the unlawfully claimed homestead property tax credit and the penalty at the time of payment of the property owner's taxes.

(ii) If the property owner has unlawfully claimed a homestead property tax credit in the same county that he or she lawfully claimed a homestead property tax credit, then the property owner shall elect to either:

(a) Pay the entire amount of the unlawfully claimed homestead property tax credit and the penalty at the time of payment of the property owner's taxes; or

(b) Not claim a homestead property tax credit on any property in the county or on any other property in the state for two (2) years for each year that the credit was claimed unlawfully.

(C) In order to qualify for the homestead property tax credit after repayment of an unlawfully claimed homestead property tax credit and payment of a penalty, the property owner shall register with the county assessor according to § 26-26-1118(b)(2)(A).

(b) (1) Every property owner shall report to the county assessor a change in eligibility to claim a property tax credit or a change in use of the property prior to January 1 of the year following the change.

(2) If the county assessor determines that a property owner has failed to report a change in the eligibility to claim a property tax credit or has failed to register a required change in the use of the property, the designated preparer of the tax books shall extend, in addition to repayment of the unlawfully claimed homestead property tax credit, the correct property tax due along with a penalty of one hundred percent (100%) of the amount of the unlawfully claimed homestead property tax credit.

(3) (A) If the property owner has unlawfully claimed a homestead property tax credit in a county other than the county where his or her lawfully claimed homestead property tax credit was claimed, then the property owner shall pay the entire amount of the unlawfully claimed homestead property tax credit and the penalty at the time of payment of the property owner's taxes.

(B) If the property owner has unlawfully claimed a homestead property tax credit in the same county that he or she lawfully claimed a homestead property tax credit, then the property owner shall elect to either:

(i) Pay the entire amount of the unlawfully claimed homestead property tax credit and the penalty at the time of payment of the property owner's taxes; or

(ii) Not claim a homestead property tax credit on any property in the county or on any other property in the state for two (2) years for each year that the

credit was claimed unlawfully.

(c) (1) Penalties assessed under this section shall bind the real property and shall be entitled to preference over all judgments, executions, encumbrances, or liens, whenever created, until the penalties are repaid.

(2) Penalties collected under this section shall be remitted to the county treasurer to be credited to the county general fund.

(d) (1) The debt owed for the repayment of an unlawfully claimed homestead property tax credit assessed under this section shall bind the real property and shall be entitled to preference over all judgments, executions, encumbrances, or liens, whenever created, until it is repaid.

(2) A homestead property tax credit repaid under this section from a person who was not entitled to claim a credit shall be remitted to the Treasurer of State for deposit in the Property Tax Relief Trust Fund.

(e) (1) The property owner may appeal to the county court the determination by a county assessor that:

(A) The property owner shall repay an unlawfully claimed homestead property tax credit;

(B) The property owner shall pay penalties; or

(C) Any other determination that the property owner has violated this section.

(2) To appeal the determination by a county assessor, the property owner must file a petition with the county court within thirty (30) days from the date of the determination by the county assessor.

(3) After the petition is filed, the county court shall set a hearing within thirty (30) days after the filing of the petition.

(4) At the hearing, the property owner and county assessor shall present evidence to support their positions.

(5) The county court shall provide the property owner, county assessor, and county clerk with the county court's decision in writing within ten (10) business days after the hearing.

(6) The property owner or county assessor may appeal the county court's decision to circuit court within thirty (30) days after the date of the decision.

(f) (1) No penalties under this section shall be imposed against a property owner for an unlawfully claimed property tax credit after the expiration of three (3) years from the date the property tax credit was claimed.

(2) No repayment requirement under this section shall be imposed against a property owner for an unlawfully claimed property tax credit after the expiration of three (3) years from the date the property tax credit was claimed.

(3) This section does not alter the property owner's deadline to claim the homestead property tax credit as provided in § 26-26-1118(b)(3).

History. Acts 2001, No. 1544, § 4; 2003, No. 1354, § 1.

Amendments. The 2003 amendment added "for each year" to the end of (a)(1); rewrote (a)(2)(A); added (a)(2)(B) and (C); rewrote (b)(2); added (b)(3)(A), (c)(1) and (d)(1); in (d)(2), substituted "Homestead property tax credits repaid under this section" for "Property tax collected" and "in" for "to"; and added (e) and (f).

Cross References. Property Tax Relief Trust Fund, § 19-5-1103.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Homestead Property Tax Credit, 26 U. Ark. Little Rock L. Rev. 501.

26-26-1120. Disabled persons.

(a) As used in Arkansas Constitution, Amendment 79, the term “disabled person” means a person who:

(1) Is disabled for purposes of Subchapter XIX of the Social Security Act as in effect on January 1, 2003, for any period during the calendar year;

(2) Is a permanently and totally disabled veteran as defined by 38 C.F.R., Part IV, as in effect on January 1, 2003; or

(3) Has received permanent and total disability insurance benefits for any period of time during the calendar year.

(b) (1) When a disabled person or a person sixty-five (65) years of age or older sells his or her real property, the purchaser shall not be entitled to claim any reduction to the real property's assessed value.

(2) On or after January 1 of the year following the date of the sale, the county assessor shall assess the real property at its full market value, unadjusted for assessment limitations required by Arkansas Constitution, Amendment 79.

History. Acts 2001, No. 1544, § 5; 2003, No. 646, § 1.

Amendments. The 2003 amendment inserted the subdivision (a)(1) and (a)(2) designations; added “a person who” in the introductory language in (a); in (a)(1) and (a)(2), deleted “a person who” at the beginning and substituted “January 1, 2003” for “January 1, 2001”; in (a)(1), substituted “Subchapter” for “Title” and deleted “federal” preceding “Social Security”; added (a)(3); added the subdivision designations in (b); in present (b)(2), inserted “On or after January 1 of the year following the date of the sale”; and made minor stylistic changes.

U.S. Code. Subchapter XIX of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 1396 et seq.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Disabled Person Defined, 26 U. Ark. Little Rock L. Rev. 496.

26-26-1121. Time of assessment.

(a) To determine whether a rollback of millage rates is required under Arkansas Constitution, Article 16, § 14, each taxing entity shall compare the adjusted taxable assessed values of the real and personal property in the current year to the adjusted taxable assessed values of the real and personal property in the preceding year.

(b) To calculate the millage rollback, the adjusted taxable assessed value of the real property in the current year shall be compared to the adjusted taxable assessed value of real property in the preceding year.

History. Acts 2001, No. 1793, § 2.

A.C.R.C. Notes. Acts 2001, No. 1793, § 1, provided:

“(a) It is determined by the General Assembly that confusion exists with regards to the year to be used in determining rollback of millage rates under Amendment 79 to the Constitution of Arkansas and Article 16, Section 14 of the Constitution of Arkansas. (b) Upon a review of

Amendment 79 in conjunction with Article 16, Section 14, it is the intent of the General Assembly that the rollback of millage rates be based upon the adjusted assessed value of the property in the current year compared to the adjusted assessed value of the property in the preceding year so as to simplify and make equitable the administrative implementation of Amendment 79.”

Publisher's Notes. References to “this chapter” in subchapters 1 through 19 and §§ 26-26-1101 — 26-26-1120 may not apply to this section which was enacted subsequently.

26-26-1122. Definitions.

(a) As used in this subchapter and in the Arkansas Constitution, Amendment 79:

(1) (A) “Homestead” means the dwelling of a person that is used as his or her principal place of residence with the contiguous land, excluding all land valued as agricultural land, pasture land, or timber land.

(B) “Homestead” shall also include a dwelling owned by a revocable trust and used as the principal place of residence of a person who formed the trust;

(2) “New construction” means changes to real property that have occurred to real property already on the assessment roll;

(3) “Newly discovered real property” means real property that has never been on the assessment roll or that has changed use; and

(4) (A) “Property owner” means a person who is:

(i) The owner of record of real property or the mortgagee of the real property;

(ii) A buyer under a recorded contract to purchase real property; or

(iii) A person holding a recorded life estate in real property.

(B) “Property owner” shall include the previous record owner of tax-delinquent real property that has vested in the State of Arkansas in care of the Commissioner of State Lands under § 26-37-101(c) if the previous record owner continues to occupy the residence subject to his or her right of redemption.

(b) The Assessment Coordination Department may by rule define the term “substantial improvements” and any other term necessary to administer this subchapter.

History. Acts 2005, No. 1268, § 2.

26-26-1123. Sale of real property.

(a) When a person sells his or her real property, the county assessor shall assess the real property at twenty percent (20%) of the appraised value at the next assessment date after the date of the transfer of title to the real property.

(b) The owner of real property to whom title is transferred by a sale is not entitled to claim any limitation on the assessed value of the real property until the second assessment date after the date of the transfer of title to the real property.

(c) This section does not apply to any transfer of title to real property claimed as a homestead in which the owner or beneficiary of the homestead retains a life-estate interest in the homestead following the transfer of title to the real property.

History. Acts 2005, No. 2284, § 1; 2007, No. 827, § 203.

Amendments. The 2007 amendment substituted “Sale of real property” for “Transfer of property” in the section heading; added “of title to the real property” in (a) and (b); inserted “by a sale” in (b); and added (c).

Effective Dates. Acts 2005, No. 2284, § 2, provided: “EFFECTIVE DATE. Section 1 of this act shall be effective on and after January 1, 2006.”

26-26-1124. Property tax relief for persons disabled or more than sixty-five years of age.

(a) (1) A homestead used as the taxpayer's principal place of residence that is purchased or constructed on or after January 1, 2001, by a person who is disabled or by a person sixty-five (65) years of age or older shall be assessed for property tax thereafter based on the lower of:

- (A) The assessed value as of the date of purchase or construction; or
- (B) A later assessed value.

(2) When a person becomes disabled or reaches sixty-five (65) years of age on or after January 1, 2001, the person's homestead that is used as the taxpayer's principal place of residence shall thereafter be assessed based on the lower of:

- (A) The assessed value on the person's sixty-fifth birthday;
- (B) The assessed value on the date the person becomes disabled; or
- (C) A later assessed value.

(3) If a person is disabled or is at least sixty-five (65) years of age and owns a homestead used as the taxpayer's principal place of residence on January 1, 2001, the homestead shall be assessed based on the lower of:

- (A) The assessed value on January 1, 2001; or
- (B) A later assessed value.

(b) Residing in a nursing home does not disqualify a person from the benefits of subsection (a) of this section.

(c) If a homestead is jointly owned and one (1) of the owners qualifies under subsection (a) of this section, then all owners shall receive the benefits of subsection (a) of this section.

(d) Subsection (a) of this section does not apply to substantial improvements to real property.

History. Acts 2009, No. 151, § 2.

Subchapter 12

— Valuation of Property

26-26-1201. Date of valuation.

26-26-1202. Valuation procedures.

26-26-1203. Merchants.

26-26-1204. Accounts and notes included in merchant's valuation.

26-26-1205. Manufacturers.

26-26-1206. Federally funded housing for elderly or handicapped.

26-26-1207. Motor vehicle dealer inventory.

Cross References. Valuation by Arkansas Public Service Commission, § 26-24-101 et seq.

Preambles. Acts 1887, No. 13 contained a preamble which read:

"Whereas, 1ST. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled 'An Act to enforce the payment of Overdue Taxes,' approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

"Whereas, 2D. Also the lands of many other persons were under like proceedings and decrees

aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

"Whereas, 3D. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

"Now, therefore...."

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: "It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1967, No. 454, § 3: effective for the year 1967 and thereafter.

Acts 1981, No. 261, § 4: approved Feb. 27, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that since the enactment of Act 454 of 1967, Section 202 of the National Housing Act of 1959 has been amended to include housing for handicapped persons as well as elderly persons; that Act 454 of 1967 should be amended to include housing for the handicapped as well as elderly persons in order that it will conform to the provisions of Section 202 of the National Housing Act of 1959; that this Act is designed to revise Act 454 of 1967, to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage."

Acts 1993, No. 1124, § 6: Apr. 13, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that motor vehicles are unique in regard to the procedure for assessment for personal property taxes, registration and titling, and payment of sales taxes; that there is a correlation between sales of motor vehicles by motor vehicle dealers and the valuation of motor vehicle inventory; and that this act is necessary to provide a fair method of assessing such motor vehicle inventories. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 753 et seq.

C.J.S. 84 C.J.S., Tax., § 410 et seq.

26-26-1201. Date of valuation.

All property in this state shall be assessed by the authorized authorities according to its value on January 1. However, stocks of merchants and manufacturers shall be assessed at the value of the average stock in possession or under control during the year immediately preceding January 1 of the year in which assessment is required.

History. Acts 1929, No. 172, § 1; Pope's Dig., § 13680; A.S.A. 1947, § 84-426.

Case Notes

Appellate Review.
Value.

Appellate Review.

Courts can only review real property assessments and reverse them and send them back to the executive department when they are clearly erroneous, manifestly excessive, or confiscatory. Tuthill v. Arkansas County Equalization Bd., 303 Ark. 387, 797 S.W.2d 439 (1990).

Value.

The Arkansas Constitution requires the assessment of property on the basis of current market value. Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization, 266 Ark. 64, 582 S.W.2d 942 (1979), superseded by statute as stated in, Clark v. Union P. R. Co., 294 Ark. 586, 745 S.W.2d 600 (Ark. 1988), (decision prior to Const. Amend. 59).

Cited: Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950); City of Fayetteville v. Phillips, 306 Ark. 87, 811 S.W.2d 308 (1991).

26-26-1202. Valuation procedures.

- (a) (1) Each separate parcel of real property shall be valued at its true market value in money, excluding the value of crops growing thereon.
 - (2) The price at which the real estate would sell at auction or at a forced sale shall not be taken as the criterion of the true value.
- (b) Each tract of land belonging to the state or to any county, city, town, or charitable institution, whether incorporated or unincorporated, and saline, swamp, seminary, school, or mineral lands held under a lease exceeding five (5) years and not exceeding ten (10) years shall be valued at the price the assessor believes could be obtained at a private sale for the leasehold estate.
- (c) (1) Personal property of any description shall be valued at the usual selling price of similar property at the time of listing.
 - (2) If any personal property shall have no well-fixed or determined value in that locality at the time, then it shall be appraised at such price as in the opinion of the assessor could be obtained at that time and place.
- (d) Investments in bonds, stocks, joint-stock companies, or otherwise shall be valued at their value in money, and the quotations and selling price thereof may be considered in determining their values.
- (e) Money, whether in possession or on deposit in this state, or out of it subject to the order or control of the person listing, shall be entered in the statement at the full amount thereof.
- (f) Every credit for a sum certain, payable either in money, property of any kind, labor, or service, shall be assessed according to its true value. If for a specified number or quantity of any article of property, for a certain amount of labor, or for services of any kind, it shall be assessed according to its true value.
- (g) Annuities or moneys receivable at a stated period shall be rated at the price which they may be worth in money.
- (h) Where the fee of the soil in any tract, parcel, or lot of land is in any person, natural or artificial, and the right to any mineral therein is in another, it shall be valued and listed agreeably to the ownership, in separate entries, and taxed to the parties owning it respectively.

History. Acts 1883, No. 114, § 68, p. 199; C. & M. Dig., § 9919; Pope's Dig., § 13653; A.S.A. 1947, § 84-428.

Cross References. Property taxed according to value — Procedures for valuation, Ark. Const., Art. 16, § 5.

Research References

U. Ark. Little Rock L.J.

Seventeenth Annual Survey of Arkansas Law — Property, 17 U. Ark. Little Rock L.J. 453.

Case Notes

Current Use.

Depreciation.

True Value.

Current Use.

Current use is a factor to be considered in making a property assessment, but it is only one factor; “use” is not restricted to current use, but rather to “the uses to which it may be put.” *Gazaway v. Greene County Equalization Bd.*, 314 Ark. 569, 864 S.W.2d 233 (1993).

Depreciation.

The assessor's decision to value computers by the cost-less-depreciation method over six years, rather than to use the fair market value evidenced by various trade magazines, was not clearly erroneous, arbitrary, or confiscatory. *IBM Credit Corp. v. Pulaski County*, 316 Ark. 580, 873 S.W.2d 161 (1994).

True Value.

The assessment to be placed upon mineral lands depends upon their market value. *Ex parte Ft. Smith & Van Buren Bridge Co.*, 62 Ark. 461, 36 S.W. 1060 (1896); *American Bauxite Co. v. Board of Equalization*, 119 Ark. 362, 177 S.W. 1151 (1915).

Although this section requires all property in the state to be assessed for taxation at its full value, it was a defense to an action to require the assessor in a certain county to assess the property in the county at its full value that the property in the other counties of the state was assessed at less than its full value. *State ex rel. Nelson v. Meek*, 127 Ark. 349, 192 S.W. 202 (1917).

Where, in 1970, the assessor's office listed a piece of property at \$74,684 valuation for tax purposes based on a front footage formula, but in 1969, the property had actually sold for \$30,000, the tax valuation of \$74,684 could not be supported. *Lile v. Pulaski County Bd. of Equalization*, 252 Ark. 508, 479 S.W.2d 856 (1972).

Constitution, Art. 16, § 5 requires the assessment of property on the basis of current market value. *Arkansas Pub. Serv. Comm'n v. Pulaski County Bd. of Equalization*, 266 Ark. 64, 582 S.W.2d 942 (1979), superseded by statute as stated in, *Clark v. Union P. R. Co.*, 294 Ark. 586, 745 S.W.2d 600 (Ark. 1988) (decision prior to Const. Amend. 59).

Cited: *Pulaski County Bd. of Equalization v. American Republic Life Ins. Co.*, 233 Ark. 124, 342 S.W.2d 660 (1961).

26-26-1203. Merchants.

(a) Any person owning or having in his possession or under his control, within this state, with authority to sell it, any personal property purchased with a view to its being sold at a profit, or which has been consigned to him from any place out of this state, to be sold within this state, shall be held to be a merchant for the purpose of this valuation.

(b) (1) The property shall be listed for taxation and in estimating the value the merchant shall take the average value of the property in his possession or under his control during the year immediately preceding January 1 of the year in which the assessment is made.

(2) If the merchant has not been engaged in the business for one (1) year, then he shall take the average valuation during such time as he shall have been so engaged.

(3) If the merchant is commencing business, he shall take the value of the property at the time of assessment.

History. Acts 1883, No. 114, § 26, p. 199; 1887, No. 92, § 10, p. 143; C. & M. Dig., § 9942; Pope's Dig., § 13726; A.S.A. 1947, § 84-429.

Case Notes

Cited: Froug-Smullion & Co. v. Pulaski County, 103 Ark. 397, 147 S.W. 72 (1912).

26-26-1204. Accounts and notes included in merchant's valuation.

Each merchant in giving a list of value of personal property as provided in § 26-26-1203 shall include in the valuation all good balances of accounts on his books and all notes at their true value in money, and the list shall be rendered under oath as prescribed in cases of personal property.

History. Acts 1883, No. 114, § 27, p. 199; C. & M. Dig., § 9943; Pope's Dig., § 13727; A.S.A. 1947, § 84-430.

26-26-1205. Manufacturers.

(a) Every person who shall purchase, receive, or hold personal property of any description for the purpose of adding to the value thereof by process of manufacturing, refining, rectifying, or by combination of different materials, with a view of making a gain or profit by so doing, shall be held to be a manufacturer. He shall make out and deliver to the assessor a sworn statement of the amount of his other personal property subject to taxation, also including in his statement the average value, estimated as provided in § 26-26-1203, of all articles purchased, received, or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying, or refining which from time to time he shall have on hand during the year next previous to the time of making the statement, if so long he shall have been engaged in such manufacturing business, and, if not, then during the time he shall have been so engaged.

(b) Every person owning a manufacturing establishment of any kind and every manufacturer shall list as a part of his manufacturer's stock the value of all engines and machinery of every description, used or designed to be used for the indicated purpose.

History. Acts 1883, No. 114, § 28, p. 199; C. & M. Dig., § 9944; Pope's Dig., § 13728; A.S.A. 1947, § 84-431.

Case Notes

Persons Included.

Property Included.

Persons Included.

A company owning land and engaged in sawing timber on it into lumber and shingles is a manufacturer within this section. Arkansas Cypress Shingle Co. v. Lonoke County, 74 Ark. 28, 84 S.W. 1029 (1905).

Property Included.

Timbers belonging to railroad companies on hand for treatment at creosoting plant need not be listed for assessment as the manufacturer is required only to list property which is owned by himself. North Little Rock Special School Dist. v. Koppers Co., 211 Ark. 322, 200 S.W.2d 519 (1947).

26-26-1206. Federally funded housing for elderly or handicapped.

(a) Housing owned and operated by a nonprofit corporation or association for occupancy or use by elderly or handicapped persons, the construction of which is financed by the United States of America, shall be valued, for purposes of assessment, on the basis of the

equity owned in the housing by the nonprofit corporation or association.

(b) As used in this section, unless the context otherwise requires:

(1) “Elderly person” means a person sixty-two (62) years of age or older and the spouse of that person;

(2) “Handicapped person” means any adult having an impairment which is expected to be of long, continued, and indefinite duration; is a substantial impairment to his ability to live independently; and is of a nature that such ability to live independently would be improved by more suitable housing conditions and shall include an adult who is developmentally disabled;

(3) “Housing” means structures consisting of eight (8) or more residential units for occupancy and use by elderly or handicapped persons, including essential contiguous land and related facilities, as well as all personal property of the corporation or association used in connection with the facilities;

(4) “Nonprofit corporation or association” means any corporation or association incorporated under the laws of this state not otherwise exempt from general ad valorem, real, and personal property taxes, operating a housing facility or project qualified, built, and financed by the United States of America under § 202 of the National Housing Act of 1959, as amended; and

(5) “Equity” means the market value of the housing less any mortgage indebtedness to the United States of America.

History. Acts 1967, No. 454, §§ 1, 2; 1981, No. 261, §§ 1, 2; A.S.A. 1947, §§ 84-481, 84-482.

Publisher's Notes. Acts 1967, No. 454, § 3 provided that this act shall be effective for the year 1967 and thereafter.

U.S. Code. Section 202 of the National Housing Act of 1959, referred to in this section, is codified as 12 U.S.C. § 1701q.

26-26-1207. Motor vehicle dealer inventory.

(a) The General Assembly recognizes that motor vehicles are unique in regard to the procedure for assessment of personal property taxes, registration and titling, and payment of sales taxes and that there is a correlation between sales of motor vehicles by motor vehicle dealers and the valuation of motor vehicle inventory.

(b) The method of determining the average value of inventory of motor vehicle dealers in accordance with §§ 26-26-1201 and 26-26-1203(b) shall be as provided in this section.

(c) The assessment of motor vehicle inventories of motor vehicle dealers shall be determined by calculating the monthly average of the number of sales of new and used motor vehicles by the dealer and multiplying the average by the unit inventory value.

(d) The unit inventory value shall be based on the typical new and used car values by name of manufacturer as set forth in the *Commercial Personal Property Appraisal Manual* published in the year prior to the year of assessment by the Assessment Coordination Division of the Arkansas Public Service Commission.

History. Acts 1993, No. 1124, §§ 1, 2; 1997, No. 1036, § 1.

A.C.R.C. Notes. References to “this chapter” in subchapters 1 — 18 may not apply to this section which was enacted subsequently.

Amendments. The 1997 amendment deleted “retail” preceding “sales of new and used motor

vehicles" in (c).

Subchapter 13 **— Reassessment of Property**

- 26-26-1301. Order upon complaint.
- 26-26-1302. Qualification of appointees.
- 26-26-1303. Power and authority.
- 26-26-1304. Compensation.
- 26-26-1305. Effect of reassessment.
- 26-26-1306. Liability for expenses.
- 26-26-1307. Notice of reappraisal.
- 26-26-1308. Limitations on reappraisals.

Cross References. Equalization of assessments by county equalization board, § 26-27-301 et seq.

No assessment after payment of tax except for fraud, § 26-34-107.

Effective Dates. Acts 1927, No. 129, § 38: approved Mar. 9, 1927. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 831 et seq.

C.J.S. 84 C.J.S., Tax., § 506 et seq.

26-26-1301. Order upon complaint.

(a) Whenever, upon the complaint made to the Arkansas Public Service Commission by the county judge, county assessor, or county equalization board of any county or upon the commission's own investigation and motion, and a summary hearing in that behalf had, it shall be made to appear satisfactorily to the commission that the assessment of the property in any county, or district or subdivision thereof, is not in substantial compliance with law and that the interest of the public will be promoted by a reassessment of the property, then the commission shall have authority, at its discretion, to order a reassessment of all or any part of the taxable property in the county, or district or subdivision thereof, to be made by the local assessment officers, or to cause a reassessment to be made by a person to be recommended by the county judge and appointed by the commission for that purpose.

(b) Due notice of the time and place fixed for a hearing upon any complaint made as indicated shall be mailed, at least fifteen (15) days before the time fixed for the hearing, to the county judge and county assessor of the county affected, and the county judge shall immediately cause the notice to be published, at the expense of the county, in a newspaper having a general circulation in the county and district.

History. Acts 1927, No. 129, § 29; Pope's Dig., § 2055; A.S.A. 1947, § 84-464.

Case Notes

Cited: Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-26-1302. Qualification of appointees.

Persons appointed to make the reassessment shall qualify without delay by severally subscribing to an oath or affirmation to support the Constitution of the United States and the Constitution of the State of Arkansas, and to faithfully perform the duties imposed by any order of reassessment to the best of their ability, and shall file it with the Arkansas Public Service Commission.

History. Acts 1927, No. 129, § 29; Pope's Dig., § 2055; A.S.A. 1947, § 84-464.

Case Notes

Cited: Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-26-1303. Power and authority.

(a) Any person appointed to reassess the property or any class of property in any county, or district or subdivision thereof, shall have all the power and authority given by law to deputy assessors and shall perform all the duties and be subject to all restrictions and penalties imposed by law upon deputy assessors.

(b) (1) Appointees shall have access to all public records and files which may be needful or serviceable in the performance of the duty imposed and while engaged in this duty shall be entitled to have the custody and possession of the assessment roll containing the original assessment in the district and all other statements and memoranda relative thereto.

(2) A blank assessment roll, if necessary, and all property statements and other blank forms needful for the purpose of reassessment shall be furnished by the county clerk at the expense of the county.

History. Acts 1927, No. 129, § 29; Pope's Dig., § 2055; A.S.A. 1947, § 84-464.

Case Notes

Cited: Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-26-1304. Compensation.

(a) For their services in making any reassessment of property pursuant to the order of the Arkansas Public Service Commission, local assessment officers shall receive no compensation other than the salary or fees allowed by law for making the original assessment; but when the person making any reassessment does not officially serve the county, or district or subdivision thereof, compensation for which service is elsewhere provided, then each person so employed shall receive five dollars (\$5.00) per day for each day's services.

(b) Claims for services shall be presented, audited, and paid as are other claims against the county.

History. Acts 1927, No. 129, § 30; Pope's Dig., § 2056; A.S.A. 1947, § 84-465.

26-26-1305. Effect of reassessment.

Any reassessment shall, when completed, be treated exactly as an original assessment and be subject to equalization by the county board and to appeals from the action of any officer having to do with the reassessment as are provided by law in the case of original assessments.

History. Acts 1927, No. 129, § 29; Pope's Dig., § 2055; A.S.A. 1947, § 84-464.

Case Notes

Cited: Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-26-1306. Liability for expenses.

The expense of any reassessment shall be borne by the county in which is situated the district or districts so reassessed.

History. Acts 1927, No. 129, § 29; Pope's Dig., § 2055; A.S.A. 1947, § 84-464.

Case Notes

Cited: Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-26-1307. Notice of reappraisal.

(a) (1) Prior to any countywide reappraisal of property for ad valorem tax purposes, the county assessor or the county assessor's employees or agents shall notify the property owners of the county assessor's intent to reappraise at least forty-five (45) calendar days prior to the reappraisal.

(2) Prior to any reappraisal of an individual's property for ad valorem tax purposes other than a countywide reappraisal under subdivision (a)(1) of this section, the county assessor or the county assessor's employees or agents shall give the property owner reasonable notice of the county assessor's intent to reappraise the property owner's property.

(3) The notice required by this section may be accomplished by publication in newspapers, by radio, by television, by direct mail, or by any other reasonable means.

(b) (1) If a reappraisal under subsection (a) of this section results in an increase in the assessed value of the property, the county assessor shall note in writing on the assessment records the:

- (A) Justification for the increase;
- (B) Date the property was inspected; and
- (C) Details of the inspection.

(2) The records of the appraisal shall be public records subject to inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(c) Any property owner whose property is reappraised under this section may appeal to the county board of equalization, and the county board of equalization is required to grant an adequate hearing on the appeal.

History. Acts 1999, No. 416, § 1.

26-26-1308. Limitations on reappraisals.

(a) Property shall not be reappraised for ad valorem tax purposes more than one (1) time every five (5) years unless the reappraisal is the result of a countywide reappraisal.

(b) In the event that there is a countywide reappraisal of property for ad valorem tax purposes in any county, taxes shall not be assessed on the basis of the reappraised value of any property in the county until all taxable property in the county has been reappraised.

(c) When a countywide reappraisal of property is completed in any county and taxes are first assessed on the newly reappraised values, the provisions of Arkansas Constitution,

Amendment 59 and § 26-26-401 et seq. relative to the adjustment or rollback of millage levied for ad valorem tax purposes shall be applicable.

(d) Newly discovered real property, new construction and improvements to real property, and personal property shall be listed, appraised, and assessed as otherwise provided by law until the countywide reappraisal of property is completed.

History. Acts 1999, No. 1444, § 1.

Subchapter 14 **— Tangible Personal Property**

26-26-1401. Purpose.

26-26-1402. Applicability.

26-26-1403. Effective date.

26-26-1404. Provisions supplemental.

26-26-1405. Rights and responsibilities not limited.

26-26-1406. Penalties.

26-26-1407. Procedure and forms.

26-26-1408. Time for assessment and payment.

26-26-1409, 26-26-1410. [Repealed.]

Effective Dates. Acts 2009, No. 277, § 2: July 31, 2009. Effective date clause provided: "Effective Date. This act is effective for the assessment year 2010 and thereafter."

Research References

Am. Jur. 71 Am. Jur. 2d, State Tax., § 655 et seq.

26-26-1401. Purpose.

(a) It is the purpose and intent of this subchapter to reduce the number of persons avoiding the payment of tangible personal property taxes by moving from one county to another within the state or by moving outside the state between the time of assessing property for taxes and the time of collecting taxes thereon by establishing a system that reduces the time period from the date of assessment to the date of collection.

(b) It is further the intent of this subchapter that, when personal property taxes are paid in advance as provided for in this subchapter, the normal procedures carried out by the various county officials and state officials with respect to property taxes shall continue in effect, and, if it is determined through the normal procedures presently in effect that any person who paid personal property taxes in advance overpaid such taxes, the overpayment will be refunded to the taxpayer, and that, if the advance payment of the tangible personal property taxes by a taxpayer is an underpayment of the tax, the taxpayer will be billed for the additional amount due.

(c) It is further the intent of this subchapter that the taxpayer will be required to furnish proof of payment of tangible personal property taxes as a condition for registering or renewing the registration of any motor vehicle.

History. Acts 1981, No. 927, § 1; A.S.A. 1947, § 84-494; Acts 1987, No. 621, § 1.

26-26-1402. Applicability.

The provisions of this subchapter shall not be applicable to taxpayers whose property is subject to assessment by the Tax Division of the Arkansas Public Service Commission.

History. Acts 1981, No. 927, § 9; A.S.A. 1947, § 84-494.8.

26-26-1403. Effective date.

The provisions of this subchapter shall be effective beginning with the year in which the statewide reappraisal of taxable property as ordered in Arkansas Public Service Commission et al. v. Pulaski County Board of Equalization et al., and the roll back or adjustment of millage is completed in all counties in this state, as contemplated in Arkansas Constitution, Amendment 59.

History. Acts 1981, No. 927, § 10; A.S.A. 1947, § 84-494.9.

Publisher's Notes. Arkansas Public Service Commission et al. v. Pulaski County Board of Equalization et al., referred to in this section, is reported in 266 Ark. 64, 582 S.W.2d 942 (1979). Amendment 59, referred to in this section, repealed Ark. Const., Art. 16, § 5, and substituted a new section therefor which appears as Ark. Const., Art. 16, § 5, in the text of the Constitution. The amendment also added Ark. Const., Art. 16, §§ 14-16, which appear in the text of the Constitution.

26-26-1404. Provisions supplemental.

The provisions of this subchapter shall be supplemental to any other laws of this state relating to the assessment and collection of ad valorem taxes on property and shall be deemed to repeal or modify only those laws in direct conflict with it.

History. Acts 1981, No. 927, § 11; A.S.A. 1947, § 84-494.10; Acts 1987, No. 621, § 9.

A.C.R.C. Notes. Former § 26-26-1404, containing provisions deemed supplemental, is deemed to be superseded by this section. The former section was derived from Acts 1981, No. 927, § 11; A.S.A. 1947, § 84-494.10.

26-26-1405. Rights and responsibilities not limited.

(a) Nothing contained in this subchapter shall be construed to limit or restrict the right of a taxpayer to make application to the equalization board for adjustment of the tangible personal property assessment or the right of the taxpayer to obtain judicial review of the final determination of the board.

(b) Nothing contained in this subchapter shall be construed to limit or restrict or alter the authority and responsibility of any county official, the county equalization board, the county court, or any other agency or person having responsibility with respect to the assessment and collection of ad valorem taxes on tangible personal property.

History. Acts 1981, No. 927, § 8; A.S.A. 1947, § 84-494.7.

26-26-1406. Penalties.

(a) A penalty of ten percent (10%) of the taxpayer's total tangible personal property taxes shall be imposed on any taxpayer who fails or refuses to assess his tangible personal property on or before April 10 of each year.

(b) A penalty of ten percent (10%) of the taxpayer's total tangible personal property taxes shall be assessed if the taxpayer fails or refuses to pay tangible personal property taxes on or before October 10 next following the assessment of the property for taxes.

History. Acts 1981, No. 927, § 5; A.S.A. 1947, § 84-494.4.

26-26-1407. Procedure and forms.

The Assessment Coordination Division shall prescribe the forms to be used for the assessment and collection of tangible personal property pursuant to the provisions of this subchapter. The Division of Legislative Audit shall assist and guide the various county officials in establishing an appropriate procedure to be followed in assessing and collecting tangible personal property taxes and other matters necessary to effectively and efficiently carry out the purposes of this subchapter.

History. Acts 1981, No. 927, § 7; A.S.A. 1947, § 84-494.6; Acts 1987, No. 621, § 6.

A.C.R.C. Notes. The Assessment Coordination division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by Acts 1997, No. 436, § 2.

26-26-1408. Time for assessment and payment.

(a) (1) A taxpayer shall annually assess his or her tangible personal property for ad valorem taxes during the period from January 1 through May 31.

(2) (A) Taxable tangible personal property of a new resident and a new business established between January 1 and May 31 and taxable tangible personal property acquired by a resident during the period from January 1 through May 31, except tangible personal property acquired during the period of May 2 through May 31, shall be assessable without delinquency within thirty (30) days following the date of its acquisition.

(B) All taxable tangible personal property assessable during this period shall be assessed according to its market value as of:

(i) January 1 of the year of the assessment; or

(ii) The date of acquisition if the tangible personal property was acquired during the period of January 2 through May 31 of the year of assessment.

(3) The ten percent (10%) penalty for delinquent assessment shall not apply to tangible personal property becoming eligible for assessment through May 31 if the tangible personal property is assessed on or before May 31, except that the tangible personal property acquired during the period of May 2 through May 31 shall be assessable without penalty within thirty (30) days following the date of its acquisition.

(4) (A) Taxable tangible personal property of a person moving his or her residence from Arkansas, and taxable tangible personal property disposed of by a resident and a business, during the period between January 1 and May 31, if assessed for that year, shall be removed from the assessment rolls, and, if not assessed, shall not be deemed assessable for that year.

(B) Before removal of the tangible personal property from the assessment rolls, it shall be the responsibility of the property owner to provide the county assessor with notification, and, upon request from the county assessor, proof of the disposal.

(5) The tangible personal property referred to in subdivisions (a)(1)-(4) of this section shall not include the inventory of a commercial establishment because specific provisions for the assessment of the inventory of a commercial establishment is provided elsewhere in this Arkansas Code.

(6) (A) The county assessor may list, value, and assess tangible personal property for a period extending through July 31 of each year of assessment.

(B) Assessment of tangible personal property after July 31 shall be according to provision of existing law.

(b) Personal property taxes are payable from the third Monday in February through October 10 each year.

History. Acts 1981, No. 927, § 2; A.S.A. 1947, § 84-494.1; Acts 1987, No. 621, §§ 2, 4; 1988 (3rd Ex. Sess.), No. 35, § 1; 1991, No. 860, § 2; 1995, No. 754, § 1; 1999, No. 1292, § 1; 2007, No. 827, § 204; 2009, No. 277, § 1.

Amendments. The 1995 amendment substituted “May 12 through May 31” for “January 1 through May 31” and “twenty (20) days” for “ten (10) days” in the first sentence in (a)(2) and in (a)(3).

The 1999 amendment substituted “May 2 through May 31” for “May 12 through May 31” and “thirty (30) days” for “twenty (20) days” in (a)(2) and (a)(3); and made stylistic changes.

The 2007 amendment deleted “On and after January 1, 1991” at the beginning of (a)(1); in (b), deleted “On and after the third Monday in February, 1988” at the beginning, and deleted “with the provision in § 27-13-101 [repealed] taking precedent” at the end; and made related changes.

The 2009 amendment inserted (a)(2)(B)(ii), redesignated the remainder of (a)(2)(B), and made related and minor stylistic changes.

Effective Dates. Acts 2009, No. 277, § 2, provided: “This act is effective for the assessment year 2010 and thereafter.”

26-26-1409, 26-26-1410. [Repealed.]

Publisher's Notes. These sections, concerning the original and copies of tax assessments and payment of same, were repealed by Acts 1991, No. 860, § 3. They were derived from the following sources:

26-26-1409. Acts 1981, No. 927, § 6; A.S.A. 1947, § 84-494.5.

26-26-1410. Acts 1981, No. 927, § 4; A.S.A. 1947, § 84-494.3.

Subsection (a)(2) of former § 26-26-1409 was also repealed by Acts 1991, No. 291, § 2.

Subchapter 15

— Corporations and Financial Institutions

26-26-1501. Purpose and intent.

26-26-1502. Definitions.

26-26-1503. Personal property.

26-26-1504. Real property.

26-26-1505. Statement of capital stock.

Cross References. State ad valorem tax prohibited, Ark. Const. Amend. No. 47.

Preambles. Acts 1887, No. 13 contained a preamble which read:

“Whereas, 1st. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled ‘An Act to Enforce the Payment of Overdue Taxes,’ approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

“Whereas, 2d. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

"Whereas, 3d. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

"Now, therefore...."

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1907, No. 451, § 3: effective on passage.

Acts 1929, No. 74, § 4: approved Mar. 2, 1929. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1943, No. 89, § 5: Feb. 19, 1943. Emergency clause provided: "It is hereby ascertained and declared that by reason of the enactment of Section 5 of Act 129 of the Acts of 1941 the General Assembly inadvertently elected to tax the dividends derived from shares in national banking associations instead of an ad valorem tax upon the shares of said associations, and thereby repealed by implication Section 13743 of Pope's Digest in so far as it applied to national banking associations, and in so doing caused a disproportionate burden of taxation as to state banks and trust companies and a loss of revenues to the state and its subdivisions and also caused confusion to arise as to the method of taxing national banking associations and state banks and trust companies. Therefore, it now becomes necessary for the General Assembly to elect the method of taxing national banking associations and state banks and trust companies, and in order that the method of assessing such associations, banks and trust companies for ad valorem taxes may be made definite, and provision for the collection thereof made, and in order that said associations, banks and trust companies may be assessed for the year 1943 and national banking associations assessed for the year 1942, as herein provided, and for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this Act reviving Section 13743 of Pope's Digest as to such associations, banks and trust companies shall be in force and effect from and after its passage and approval."

Acts 1973, No. 182, §§ 9, 10: Jan. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to the taxation of banks and savings and loan associations is somewhat vague and indefinite, that such institutions should pay the same taxes as other business corporations in the State, and this Act is immediately necessary to clarify the laws with respect to the taxation of financial institutions and to assure that such institutions pay the same taxes as other business corporations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved February 22, 1973.

Research References

Am. Jur. 71 Am. Jur. 2d, State Tax., § 428 et seq.

C.J.S. 84 C.J.S., Tax., § 126 et seq.

26-26-1501. Purpose and intent.

(a) It is the purpose of this subchapter to clarify the law relating to the taxation of state and national banks, savings and loan associations, building and loan associations chartered under state and federal law and to simplify and to broaden the tax base applicable to these financial institutions.

(b) It is the intent of this subchapter to repeal the capital stock tax and, in lieu thereof, to tax state and national banks, savings and loan associations, and building and loan associations under existing tax laws generally applicable to business corporations.

History. Acts 1973, No. 182, § 1; A.S.A. 1947, § 84-1937n.

Publisher's Notes. Acts 1973, No. 182, § 9, provided that this act shall be in effect on and after

January 1, 1973, and shall apply to tax years after said date.

26-26-1502. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "State bank" means a bank, trust company, or savings bank chartered under the banking laws of this state;

(2) "National bank" means a bank chartered under the banking laws of the United States;

(3) "Savings and loan association" or "building and loan association" means any financial institution or association established and operating under the authority of § 23-37-101 et seq., or § 23-37-706 and § 23-38-201 et seq., or under any other appropriate state or federal law;

(4) "Financial institution" means a state or national bank, or a savings and loan association, or a building and loan association as defined in subdivisions (1), (2), and (3) of this section;

(5) "Business corporation" means a corporation incorporated under the Arkansas Business Corporation Act.

History. Acts 1973, No. 182, § 2; A.S.A. 1947, § 84-2087.

Publisher's Notes. As to effective date of 1973 amendment, see Publisher's Notes to § 26-26-1501.

26-26-1503. Personal property.

For purposes of the ad valorem personal property tax, financial institutions shall assess and be taxed upon their personal property the same as other owners of personal property, except as may be prohibited by federal law.

History. Acts 1973, No. 182, § 5; A.S.A. 1947, § 84-487.

Publisher's Notes. Acts 1973, No. 182, § 1, provided that it is the purpose of this act to clarify the law relating to the taxation of state and national banks, savings and loan associations, and building and loan associations chartered under state and federal law and to simplify and to broaden the tax base applicable to these financial institutions; it is the intent of this act to repeal the capital stock tax and, in lieu thereof, to tax state and national banks, savings and loan associations, and building and loan associations under the existing tax laws generally applicable to business corporations.

As to effective date of 1973 amendment, see Publisher's Notes to § 26-26-1501.

26-26-1504. Real property.

(a) Financial institutions shall be subject to the ad valorem real property tax levied pursuant to the authority granted in the laws of this state, to the same extent as other owners of real property in this state.

(b) The assessment of taxes upon the real property of national banking associations and state banks and trust companies shall be had and done in the manner provided by law for the assessment of all other real property by whomsoever owned.

History. Acts 1943, No. 89, § 1; 1973, No. 182, § 6; A.S.A. 1947, §§ 84-505, 84-1937.

Publisher's Notes. Acts 1973, No. 182, § 1, provided that it is the purpose of this act to clarify the law relating to the taxation of state and national banks, savings and loan associations, and

building and loan associations chartered under state and federal law and to simplify and to broaden the tax base applicable to these financial institutions; it is the intent of this act to repeal the capital stock tax and, in lieu thereof, to tax state and national banks, savings and loan associations, and building and loan associations under the existing tax laws generally applicable to business corporations.

As to effective date of 1973 amendment, see Publisher's Notes to § 26-26-1501.

26-26-1505. Statement of capital stock.

(a) Bridge, savings banks, mutual loan, building, transportation, construction, and all other companies, corporations, or associations incorporated under the laws of this state, or under the laws of any other state, and doing business in this state, other than the companies, corporations, or associations whose taxation is specifically provided for in this subchapter, shall, through their president, secretary, principal accounting officer, or agent, annually, during the month of July, make out and deliver to the assessor of the county where the company or corporation is located or doing business a sworn statement of the capital stock setting forth particularly:

(1) The name and the location of the company or association;

(2) The amount of capital stock authorized, and the number of shares into which the capital stock is divided;

(3) The amount of capital stock paid up, its market value, and, if no market value, then the actual value of the shares of stock;

(4) The total amount of all the indebtedness, except the indebtedness for current expenses, excluding from the indebtedness the amount paid for the purchase or improvement of the property; and

(5) True valuation of all tangible property belonging to the company or corporation. The schedule shall be made in conformity to instructions and forms as may be prescribed by the Auditor of State and shall also show in what county the property is situated.

(b) Corporations doing business in this state engaged exclusively in the manufacture of cotton or fiber goods or yards, which is commonly called the textile manufacturing business, having mills located in this state, and other corporations to the extent of their assets invested in textile mills located in this state, shall not be required to comply with the provisions of this section for a period of seven (7) years after the location of its textile mills in this state.

(c) (1) The assessor shall, annually, at least by June 20, deliver to the president, secretary, accounting officer, or agent of any such company, corporation, or association located in or doing business in the county a notice in writing to return the schedule by July 31 next ensuing.

(2) (A) Any president, secretary, principal accounting officer, or agent of any companies or corporations, upon whom notice shall have been served, willfully neglecting or refusing to make the return by July 31 next ensuing after the delivery of the notice, shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not exceeding one hundred dollars (\$100) or imprisoned not exceeding three (3) months, or both.

(B) The assessor shall, from the best information he can obtain, make out and enter upon the proper assessment roll a list, with the valuation of all tangible and intangible property belonging to a defaulting company or corporation subject to taxation

by the provisions of this section, with fifty percent (50%) penalty.

History. Acts 1883, No. 114, §§ 42, 43, p. 199; 1887, No. 92, §§ 17, 18, p. 143; 1907, No. 451, § 1, p. 1225; C. & M. Dig., §§ 9961, 9963; Acts 1929, No. 74, § 1; Pope's Dig., §§ 13741, 13742; A.S.A. 1947, §§ 84-501, 84-502.

Case Notes

Capital Stock.

Located or Doing Business.

Valuation of Property.

Capital Stock.

As used in this section, "capital stock" means the aggregate value of the corporation's stock in the hands of its stockholders, and not the capital of the corporation as represented by its tangible assets, although the value of the shares of capital stock does not constitute the limit of taxation; and as the shares of stock in the hands of the stockholders and the property of the corporation do not contain the same elements of value, a tax on the capital stock of the corporation, in addition to the tangible property thereof, does not constitute double taxation and is valid. State ex rel. Davis v. Bodcaw Lumber Co., 128 Ark. 505, 194 S.W. 692 (1917).

In returning capital stock for taxation, corporations cannot deduct investments of surplus in shares of stock of other corporations. State ex rel. Attorney Gen. v. Ft. Smith Lumber Co., 131 Ark. 40, 198 S.W. 702 (1917); Ft. Smith Lumber Co. v. State ex rel. Attorney Gen., 138 Ark. 581, 211 S.W. 662 (1919), aff'd, 251 U.S. 532, 40 S. Ct. 304 (1920).

In assessing the value of the capital stock of a corporation, it is proper to include lands belonging to the corporation situated in another state. Crossett Lumber Co. v. State, 139 Ark. 397, 214 S.W. 43 (1919).

Taxable value of shares of stock of a corporation is ascertained by deducting the value of its tangible property otherwise assessed from the market value of the shares of stock. State v. Eagle Lumber Co., 149 Ark. 6, 231 S.W. 180 (1921).

Located or Doing Business.

A foreign corporation is to be assessed for its personal property only in the county where it is doing business. McDaniel v. Texarkana Cooperage & Mfg. Co., 94 Ark. 235, 126 S.W. 727 (1910).

The effect of the 1907 amendment was to make the personal property of a corporation taxable in the county where the property is located. Beal-Doyle Dry Goods Co. v. Beller, 105 Ark. 370, 150 S.W. 1033 (1912).

Where corporation has part of its property within a city and part outside the city in the same county, all the tangible personal property of the corporation within the county is to be assessed at the place of the corporation's domicile. Arkadelphia Milling Co. v. Board of Equalization, 126 Ark. 611, 191 S.W. 410 (1916).

Valuation of Property.

Valuation of the property of a natural gas company could not be fixed by ascertaining the net earnings of the company and then fixing an amount as the valuation which would produce the net earnings at the rate of six percent per annum. The net income of the company could be taken into consideration as affecting its value, but the probable producing life of the gas wells, the increased cost of developing them, and the percent of the capitalization of the concern included in the net income should have also been considered. Martineau v. Clear Creek Oil & Gas Co., 141 Ark. 596, 217 S.W. 807 (1920).

Subchapter 16

— Utilities and Carriers Generally

26-26-1601. Applicability.

26-26-1602. Report of property subject to assessment.

- 26-26-1603. Information to be furnished.
- 26-26-1604. Delinquency in filing statement.
- 26-26-1605. Annual assessment meeting.
- 26-26-1606. Determination of assessment.
- 26-26-1607. Method of valuing property.
- 26-26-1608. Assessment when no report or erroneous report filed.
- 26-26-1609. Hearing prior to assessment.
- 26-26-1610. Notice of assessment — Review and refunds.
- 26-26-1611. Assignment or apportionment of assessed value.
- 26-26-1612. Recording and certification of valuation.
- 26-26-1613. Property not used in utility operation.
- 26-26-1614. Levy and collection of taxes.
- 26-26-1615. Average tax rate.
- 26-26-1616. Disposition of taxes and penalties.

Cross References. Exemption for electricity to low-income households, § 26-52-416.

Effective Dates. Acts 1927, No. 129, § 38: approved Mar. 9, 1927. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1939, No. 119, § 5: approved Feb. 22, 1939. Emergency clause provided: "Whereas, the large increase in the number of bus and/or truck line companies now subject to ad valorem taxation under the provisions of said Act 129 of 1927, as amended by Act 12 of 1933, make the extension, collection and distribution of taxes therefrom a most difficult, long drawn out, and expensive task, as now by law provided, and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1953, No. 168, § 3: approved Mar. 2, 1953. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that doubt exists as to the legality of the method heretofore used in distributing the taxes identified in this Act, and that the language contained in Section 2 hereof removes all such doubts, thereby assuring the respective taxing units that all such taxes will be available for carrying on the necessary functions of government. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage."

Acts 1961, No. 129, § 12: approved Feb. 22, 1961. Emergency clause provided: "Since the wording of the present statutes relating to the assessment, certification, and appeals from the assessment as determined and fixed by the Tax Division is somewhat confusing, and since this confusion adversely affects the administration of the assessments fixed by the Tax Division, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

Acts 1963, No. 215, § 3: Mar. 8, 1963. Emergency clause provided: "The General Assembly finds that the Tax Division of the Arkansas Public Service Commission is now in the process of fixing the values and assessing the property of companies within its jurisdiction and that presently inequities are obvious in the methods available under existing statutes, and that it is necessary to avoid any delay or discrimination that an emergency be declared and it is hereby found to exist, and this act being, therefore, necessary for the immediate preservation of the public peace, health and safety, and the assessment of certain properties without discrimination, an emergency is declared to exist and this act shall become effective immediately upon its passage and approval."

Acts 1980 (2nd Ex. Sess.), No. 3, § 3: May 8, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of rulings by the Public Service Commission and the Transportation Commission with respect to assessments made by the Tax

Division of the Public Service Commission of properties assessed by said Tax Division, the Tax Division of the Public Service Commission will be unable to complete within the time now fixed by law its 1980 final recalculations of assessed value of properties owned or operated by the respective public utilities and carriers within the several counties of the State, and that an additional sixty (60) days will be necessary to enable the Tax Division to complete its work and certify such assessed value to the proper officials of the respective counties, and that the immediate passage of this Act is necessary to accomplish said purpose and to prevent undue delay in the proper administration of the tax laws of this State. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1980 (2nd Ex. Sess.), No. 9, § 3: May 8, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that the method utilized by the Tax Division of the Public Service Commission to value utility property for purposes of ad valorem taxation is not now adequately outlined by statute; that a recent Public Service Commission order indicated a change in the traditional method of valuation of the utility property resulting in a substantial decrease in the assessed value of such utility property which in turn will result in a substantial reduction in tax revenues available to schools and local governments; and that this Act is immediately necessary to delineate the method of valuing utility property by the Tax Division of the Public Service Commission. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1980 (2nd Ex. Sess.), No. 10, § 3: May 8, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law pertaining to the assessment by the Tax Division of the Public Service Commission of property used and/or held for use in the operation of utilities and carriers is vague; that it is immediately necessary to clarify such law to provide for an equitable assessment of such property used and/or held for use by utilities and carriers; and that this Act is immediately necessary to make such clarification. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Research References

Am. Jur. 71 Am. Jur. 2d, State Tax., §§ 392-427, 438-442.

C.J.S. 84 C.J.S., Tax., §§ 156, 159-161, 171-184.

26-26-1601. Applicability.

For the purpose of assessment and taxation, any person, firm, company, copartnership, cooperative, association, or corporation, wherever organized or incorporated, engaged in the business of:

(1) Transmitting natural gas or oil through pipelines, within, into, from, or through this state, or owning or having control of pipelines for those purposes, except integrated utility companies, shall be deemed to be a pipeline company;

(2) Operating within, into, from, or through this state, a railroad, authorized by the laws of this state, shall be deemed to be a railroad company;

(3) Operating within, into, from, or between cities, towns, and villages of this state, a street, suburban, or interurban railway, whether cars used are propelled by electricity or other motor power, shall be deemed to be a street, suburban, or interurban railway;

(4) Conveying within, into, from, or through this state or any part thereof, money, merchandise, or effects of any kind by express or contracts with any railroad or steamboat company, or the managers, lessees, agents, or receivers thereof, not including railroads or steamboats engaged in the ordinary transportation of merchandise or property

in this state, shall be deemed to be an express company;

(5) Operating within, into, from, or through this state, sleeping cars, dining cars, palace cars, or parlor cars, shall be deemed to be a sleeping car company;

(6) Intercounty transporting for hire within, into, from, or through this state, passengers and property by motor vehicle over the public highways of this state, except taxicab companies, shall be deemed to be an intercounty bus line company;

(7) Intercounty transporting for hire within, into, from, through, or across this state, property by motor vehicle over the public highways of this state, or transporting for hire by motor vehicle property over the public highways of this state, though neither loading nor unloading the property within the State of Arkansas, shall be deemed to be an intercounty motor freight carrier company;

(8) Transporting for hire within, into, from, through, or over this state, by regulated airlines passengers or property, shall be deemed to be an airline company;

(9) Permitting passage or of conducting or transporting passengers or property across any waterway within this state by means of a bridge, boat, or other watercraft for which a toll or fee is charged, shall be deemed to be a ferry or a toll bridge company;

(10) Transporting for hire property by boat, barge, or other watercraft over any waterway whether natural or artificial, within this state, shall be deemed to be a water transportation company;

(11) Permitting passage over or of conducting or transporting passengers or property over any road in this state for the use of which a toll is taken, shall be deemed to be a toll road company;

(12) Transmitting within, into, from, or through this state, telegraphic messages, shall be deemed to be a telegraph company;

(13) Transmitting for hire within, into, from, or through this state, telephonic messages, shall be deemed to be a telephone company;

(14) Generating, conducting, or distributing electric power within, into, from, or through this state, for the purpose of supplying to utilities for resale or to the public electricity for light, heat, or power purposes, shall be deemed to be an electric power company;

(15) Conducting or distributing artificial or natural gas within, into, from, or through this state, pipe or tubing for resale to the public for light, heat, or power purposes, shall be deemed to be a gas company;

(16) Conducting or distributing water within, into, from, or through this state, through pipe or tubing to the public, shall be deemed to be a water company.

History. Acts 1927, No. 129, § 13; Pope's Dig., § 2039; Acts 1961, No. 129, § 2; 1963, No. 131, § 1; A.S.A. 1947, § 84-602.

26-26-1602. Report of property subject to assessment.

(a) For purposes of this subchapter, property is used or held for use in the operation of a company as such if it is owned or controlled by a utility or carrier and is being utilized, is capable of utilization, in the operation of a utility or carrier, or is being constructed for future utilization in the utility or carrier operation. However, leased property controlled by a utility or carrier shall not be assessed by a county assessor in this state if the property is assessed for ad valorem tax purposes by the Tax Division of the Arkansas Public Service Commission.

(b) (1) All property, both real and personal, used or held for use in the operation of the company as such, of carriers, by pipeline, railroads, street railway, express, sleeping car, intercounty bus lines, intercounty motor freight, airline, ferry, interurban, toll bridge, toll road, or water transportation, and by similar carriers, and all telegraph, telephone, electric power, gas, water, and other similar companies shall be assessed for ad valorem taxation by the Tax Division of the Arkansas Public Service Commission.

(2) Each such company doing business or authorized to do business in Arkansas and owning or having control of property, or owning or having control of property in Arkansas, shall, through its owner, president, secretary, general manager, or agent having control of the company's affairs in this state, on or before March 1 of each year, make a statement in writing to the division showing all property subject to assessment and taxation in this state. The statement shall truly show the amount, kind, and value of the property as of January 1 next preceding the filing of the annual statement. However, in the case of motor carriers, the statement and information shall be filed annually with the division on or before March 31.

History. Acts 1927, No. 129, § 14; Pope's Dig., § 2040; Acts 1961, No. 129, § 1; 1963, No. 131, § 2; 1980 (2nd Ex. Sess.), No. 10, § 1; A.S.A. 1947, § 84-601.

Research References

U. Ark. Little Rock L.J.

Survey of Arkansas Law, Taxation, 1 U. Ark. Little Rock L.J. 258.

Case Notes

Constitutionality.

Ad Valorem Tax.

Assessment Date.

Electric Companies.

Railroads.

Statement.

Constitutionality.

Tax authorized by this section is not violative of U.S. Const. Art. I, § 8, the commerce clause, or U.S. Const., Amend. 14, when applied to equipment engaged in hauling into and through the state in interstate commerce, since only an ad valorem tax on property found within the state is involved. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), dismissed, *Bolton v. Schuylkill Haven*, 365 U.S. 767, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961), dismissed, *Arco Auto Carriers, Inc. v. Arkansas*, 365 U.S. 770, 81 S. Ct. 912 (1961).

There is nothing in the Constitution of the United States or its laws that prevents a state from taxing personal property employed in interstate or foreign commerce like other personal property within its jurisdiction. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), dismissed, *Bolton v. Schuylkill Haven*, 365 U.S. 767, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961), dismissed, *Arco Auto Carriers, Inc. v. Arkansas*, 365 U.S. 770, 81 S. Ct. 912 (1961).

Tax authorized by this section is a county ad valorem tax administered by a state agency for purpose of efficiency and, as such, is not violative of Ark. Const., Art. 2, § 23 or Ark. Const. Amend. 47. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), dismissed, *Bolton v. Schuylkill Haven*, 365 U.S. 767, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961), dismissed, *Arco Auto Carriers, Inc. v. Arkansas*, 365 U.S. 770, 81 S. Ct. 912 (1961).

Ad Valorem Tax.

An ad valorem tax is on property that may be found in the state; it is immaterial that the property may not be moved on any regular route or schedule. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), dismissed, *Bolton v. Schuylkill Haven*, 365 U.S. 767, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961), dismissed, *Arco Auto Carriers, Inc. v. Arkansas*, 365 U.S. 770, 81 S. Ct.

912 (1961).

Assessment Date.

Pursuant to subsection (b)(2), a determination of assessed value is to be made as of January 1 of each year. *Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm'n*, 342 Ark. 591, 29 S.W.3d 730 (2000).

Electric Companies.

An electric cooperative's plants were assessable property pursuant to this section where: (1) the plants were included in the cooperative's rate base at their net book value and, as a consequence, the cooperative was recovering in authorized rates all of the expenses associated with the plants prior to their being placed in cold standby status, as well as the ad valorem taxes associated with the plants; (2) the plants remained capable of generating electricity subject to the management decisions of the cooperative; and (3) the cooperative continued to voluntarily maintain these plants as assets. *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n*, 307 Ark. 171, 818 S.W.2d 935 (1991).

Railroads.

A tram or log road on private property and not operated as a public carrier, though extended for 12 miles, was not a "railroad" within Acts 1911, No. 251 and was not assessable as a railroad. *State v. Mississippi, A. & W. Ry.*, 138 Ark. 483, 212 S.W. 317 (1919) (decision under prior law).

Statement.

The statement required of a railroad by this section should show the land descriptions constituting the railroad right-of-way. *Corn v. Arkansas Whse. Corp.*, 243 Ark. 130, 419 S.W.2d 316 (1967).

Cited: *Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n*, 227 Ark. 1066, 304 S.W.2d 297 (1957); *Kansas City S. Ry. v. Arkansas Commerce Comm'n*, 230 Ark. 663, 326 S.W.2d 805 (1959).

26-26-1603. Information to be furnished.

(a) Each company, as defined in § 26-26-1601, shall annually on or before March 1, make and deliver to the Tax Division of the Arkansas Public Service Commission, in such form as the division may prescribe, a statement of the proper official, agent, or person of the company, showing in detail the following facts:

- (1) Name of company;
- (2) The status of the company, whether person, firm, company, copartnership, association, or corporation, and under the laws of what state or country organized or incorporated;
- (3) Location of its principal office within or without Arkansas;
- (4) Name and post office address of the owner, president, secretary, general manager, and agent having control of the company's affairs in this state;
- (5) The par value of all outstanding capital stock and funded debt of every kind, the market and, if no market, the actual value on January 1 next preceding;
- (6) The total gross revenues, expenses, net revenues, and net income, separately, from utility operation, nonutility operation, and nonoperating properties, for the next preceding calendar year, both for the State of Arkansas and all states if the company operates in states other than Arkansas, in which latter case Arkansas' stated proportion of the total revenues, expenses, and income must include not only revenues, expenses, and income arising from intrastate business but also the state's due proportion of the revenues, expenses, and income from interstate business;
- (7) The total value of all real and personal property owned or controlled by the company and situated outside of Arkansas on January 1 next preceding showing separately that part used in connection with the daily operations of the company and that part used otherwise, if there is any;

(8) A detailed statement of all real and personal property owned or controlled by the company and situated in Arkansas on January 1 next preceding, giving the description, location, and value thereof, and showing separately that part used in connection with the daily operations of the company and that part used otherwise, if there is any;

(9) Such other and additional information as to ownership, amount, kind, location, operation, and value of property owned or controlled as the division may require.

(b) The official, agent, or person of the company submitting the required statement shall make and sign, on the face of the required statement, the following declaration: "I declare, under the penalties of perjury, that the foregoing statements are true to the best of my knowledge and belief."

History. Acts 1927, No. 129, § 15; Pope's Dig., § 2041; A.S.A. 1947, § 84-603; Acts 1997, No. 1002, § 1.

Amendments. The 1997 amendment added (b); and deleted "under oath" following "a statement" in the introductory language of present (a).

Case Notes

Rights-of-Way.

Rights-of-Way.

The report required of a railroad by this section should show the land descriptions constituting the railroad right-of-way. *Corn v. Arkansas Whse. Corp.*, 243 Ark. 130, 419 S.W.2d 316 (1967).

Cited: *Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n*, 227 Ark. 1066, 304 S.W.2d 297 (1957).

26-26-1604. Delinquency in filing statement.

(a) (1) Unless for good cause shown, should any company fail to file on or before March 1 the complete statement required of it by §§ 26-26-1602 and 26-26-1603, the time for making the return shall be extended for not more than sixty (60) days.

(2) The Tax Division of the Arkansas Public Service Commission shall advise the company in writing of the delinquency, and, thereafter, should the company fail to file the statement before May 1, the division shall immediately report the delinquency to the appropriate commission, and should delinquency exist on May 31 of the assessment year, the commission shall certify the delinquency to the Director of the Department of Finance and Administration.

(b) (1) By proper action in the name of the state, the director may recover from any delinquent company a penalty not to exceed one hundred dollars (\$100) for each day's delinquency, beginning as of March 1 of the assessment year.

(2) In the alternative, the director may petition the commission for revocation of the certificate or permit of authority issued to the delinquent company to operate in the State of Arkansas.

History. Acts 1927, No. 129, § 19; Pope's Dig., § 2045; Acts 1961, No. 129, § 3; 1983, No. 579, § 2; 1983, No. 602, § 2; A.S.A. 1947, § 84-607; Acts 2003, No. 831, § 2.

Amendments. The 2003 amendment inserted the subdivision designations in (a); substituted "Director of the Department of Finance and Administration" for "Attorney General" in present (a)(2); added "By proper action in the name of the state" in (b)(1); substituted "director" for

“Attorney General” in (b)(1) and (b)(2); and made stylistic changes.

26-26-1605. Annual assessment meeting.

(a) (1) The Tax Division of the Arkansas Public Service Commission shall meet the first Monday in March of each year for the purpose of assessing the property which it is required to assess.

(2) Before entering upon the discharge of his duties, each commissioner shall subscribe to an oath that he will well and truly value and assess the property required to be assessed by the division. The oath shall be recorded at length upon a book used by the division for recording the assessments.

(b) The division shall examine the returns filed of all persons, firms, companies, copartnerships, associations, and corporations required by law to make them and, also, such information as it may have obtained in addition thereto, and shall determine the valuation of the items of property which it is required to value, and shall assess the property at its true and full market or actual value, or such percentage thereof as the division shall have so adopted and ordered.

(c) In valuing the property of persons, firms, companies, copartnerships, associations, and corporations, the division shall take into consideration the value of all the property of the company as a unit, whether all or only a part of it is within this state.

History. Acts 1927, No. 129, § 16; Pope's Dig., § 2042; A.S.A. 1947, § 84-604.

26-26-1606. Determination of assessment.

(a) The returns of the persons, firms, companies, copartnerships, associations, and corporations whose assessment is provided for by this subchapter shall not be held to be conclusive as to the value of the property so returned, but the Tax Division of the Arkansas Public Service Commission may make such assessment of the property as it may deem just and equitable.

(b) The division shall ascertain the value of all property, tangible and intangible, including good will, easements, and franchises, except the right to be a corporation, it being the purpose of this subchapter to include in the valuation every element that adds value to the property.

History. Acts 1927, No. 129, § 17; Pope's Dig., § 2043; A.S.A. 1947, § 84-605.

Case Notes

Construction With Other Laws.

Construction With Other Laws.

Under the principle that a specific statute controls over a general statute, this section and § 26-26-1611, which relate to utilities and which include tangible and intangible property for fixing value, control over § 26-3-302, which provides that intangible personal property is exempt from all ad valorem tax levies. *Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm'n*, 342 Ark. 591, 29 S.W.3d 730 (2000).

26-26-1607. Method of valuing property.

(a) The valuation of the taxable property, both real and personal, of all persons, firms, companies, copartnerships, cooperatives, associations, and corporations required by law to be assessed by the Tax Division of the Arkansas Public Service Commission shall be

made upon the consideration of what a clear fee simple title thereto would sell for under conditions which usually govern the sale of property of that character.

(b) The division in determining fair market value, insofar as other evidence and information in its possession does not make it appear improper or unjust for it to do so, shall ascertain and determine as nearly as it can and consider:

(1) Original cost less depreciation, replacement cost less depreciation, or reconstruction cost less depreciation. Proper consideration may be made for functional or economic obsolescence and for operation of nonprofitable facilities which necessitate regulatory body approval to eliminate;

(2) (A) The market value of all outstanding capital stock and funded debt, excluding current and deferred liabilities, except accumulated deferred income taxes, investment tax credits, and items associated therewith. A premium or discount to capital stock may be considered above or below the current market price where evidence warrants.

(B) In cases where the outstanding capital stock is not traded or is not capable of reasonably accurate determination, book values may be substituted;

(3) (A) (i) The utility operating income after deduction of all actual income taxes paid, capitalized in the manner and at such rates as shall be just and reasonable, but in no event shall the capitalization rate be less than six percent (6%). The deduction from income of deferred income taxes, investment tax credits, and items associated therewith is specifically prohibited for purposes of this subsection.

(ii) The utility operating income after the deduction of all income tax expense capitalized in a manner which recognizes the utility's ability to defer income taxes, utilizing accumulated deferred income taxes, investment tax credits, and items associated therewith as cost-free debt in the capital structure to determine the capitalization rate.

(B) The utility operating income to be capitalized should be determined by reference to the company's historical income stream, appropriately weighted, with consideration to the future income stream.

(C) Directory sales revenue produced in this state is considered attributable to utility real and personal property located in this state and is to be appropriately considered in determining operating income;

(4) Such other information as evidence to value as may be obtained that will enable the division to determine the fair market value of the property of the companies. The fair market value of affiliated properties separately assessed and the nonoperating properties of such companies shall be ascertained and determined as nearly as possible and deducted from the total unit value of the properties of the companies if the properties are included in the unit value. Insofar as it is possible or practical to do so, the same method of evaluating the properties of the companies separately assessed, or nonoperating properties, shall be used as was used in determining the unit value of the company.

History. Acts 1927, No. 129, § 18; Pope's Dig., § 2044; Acts 1963, No. 215, § 1; 1980 (2nd Ex. Sess.), No. 9, § 1; A.S.A. 1947, § 84-606.

Case Notes

Court's Authority.

Railroads.
Stock-and-Debt Method.

Court's Authority.

Because of the separation of powers doctrine, it is not within the province of state courts to assess property, the court can only review the assessments and reverse them and send them back to the executive department when they are clearly erroneous, manifestly excessive, or confiscatory. *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n*, 307 Ark. 171, 818 S.W.2d 935 (1991).

Railroads.

The method of using cost value, capitalized earnings value, and stock and debt value is a proper yardstick to use to determine the system value of railroad property. *Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n*, 227 Ark. 1066, 304 S.W.2d 297 (1957).

In case involving proper valuation of property of railroads for ad valorem tax assessment purposes, the formula being used, being the reconstruction cost new minus depreciation, there was an error in failing to exclude current liabilities, and unadjusted credits from the stock and funded debt method of determining value, as included in the stock and funded debt valuation, were current liabilities and unadjusted credits that were not part of the funded debt, but consisted of such items as "traffic and car service balances" between involved company and other companies, audited wages and accounts payable, and accrued taxes. *Kansas C. S. R. Co. v. Arkansas Commerce Com.*, 230 Ark. 392, 323 S.W.2d 193 (1959), US Supreme Court cert. denied, *Kansas City Southern R. Co. v. Arkansas Commerce Com.*, 361 U.S. 825, 80 S. Ct. 80 (1959).

Stock-and-Debt Method.

The stock-and-debt method was a viable method for determining the value of a natural gas pipeline where the company that owned the pipeline had liabilities for valuation purposes, even though it did not have publicly traded stock. *Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm'n*, 342 Ark. 591, 29 S.W.3d 730 (2000).

26-26-1608. Assessment when no report or erroneous report filed.

If any person, firm, company, copartnership, association, or corporation whose assessment is provided for in this subchapter shall neglect or refuse to make and file with the Tax Division of the Arkansas Public Service Commission by March 1, the statements and schedules required by this subchapter, or make such report and fails to show or shows erroneously any information called for material to the determination of any fact to be ascertained by the division in connection with the amount, description, location, and value of the property required to be assessed, the division shall inform itself as best it can on the undisclosed facts in order to discharge its duties with respect to the assessment of the property of the company and proceed to assess it.

History. Acts 1927, No. 129, § 20; Pope's Dig., § 2046; A.S.A. 1947, § 84-608.

26-26-1609. Hearing prior to assessment.

At any time after the meeting of the Tax Division of the Arkansas Public Service Commission on the first Monday in March and before the assessment of the property of any company is determined, any company or person interested shall have the right, on written application, to appear before the division and be heard in the matter of the valuation of the property of any company for taxation.

History. Acts 1927, No. 129, § 21; Pope's Dig., § 2047; A.S.A. 1947, § 84-609.

Case Notes

Cited: *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960).

26-26-1610. Notice of assessment — Review and refunds.

(a) After the Tax Division of the Arkansas Public Service Commission shall have completed the original assessment of any property within its jurisdiction, it shall, as soon as practicable, give notice in writing by first class mail to the owner, officer, agent, or attorney making the statement, or, if no statement has been filed, then the notice is to be forwarded by first class mail to the party or company against which the assessment has been made, showing the total amount of the assessment.

(b) (1) If the owner of the property so assessed is dissatisfied with the assessment made by the division, as approved by the Arkansas Public Service Commission or the Arkansas Transportation Commission [abolished], the owner, within ten (10) days from date of notice, may file with the appropriate commission a written petition for review of the assessment.

(2) All hearings on the petition shall be had before the appropriate commission or its agent on or before November 1 after assessment notice has been given. However, hearings on petitions for review of assessments of bus lines, motor carriers, airlines, water transportation companies, and private car companies, which assessments are certified to the Director of the Department of Finance and Administration for collection of tax, shall be to the appropriate commission or its agent, on or before December 31 of the assessing year.

(c) (1) The company, on an appeal to the Pulaski County Circuit Court from an order or finding of the appropriate commission during the pendency of a final judgment after any appeal, shall pay all taxes due before the date on which penalties are attached based upon the original assessment.

(2) If on or prior to the final date for the payment of taxes without penalty the final judgment of the court shall have been entered, all taxes due shall be based upon the amount of the assessment arising under the final judgment.

(d) (1) In the event any company shall not have paid on or before the final date for payment of taxes without penalty, all taxes due based upon the assessment record on the tax rolls on the final date, then the company shall be required to pay, in addition to these taxes and by reason of the delinquency, all penalties at the time provided by law, together with the costs as shall have accrued.

(2) (A) At the time the payment is made, the company shall, in writing, advise the official to whom payment of taxes, penalties, and costs have been paid that a specified amount thereof is being paid under protest.

(B) (i) Upon receipt of the payment and written protest, the collecting official shall cause the specified amount set forth by the company to be deposited into an Ad Valorem Tax Protest Fund.

(ii) If as a result of any final judgment the company shall be entitled to a refund then the collecting official shall cause a refund, as determined by the final judgment to be made from the fund; and the remaining if any or the whole if no refund is due the company shall be distributed for the benefit of the respective taxing units entitled thereto.

History. Acts 1927, No. 129, § 24; Pope's Dig., § 2050; Acts 1945, No. 289, § 1; 1953, No. 388, § 1; 1961, No. 129, § 6; 1965, No. 425, § 1; A.S.A. 1947, § 84-612; Acts 2009, No. 218, § 3; 2009, No. 951, §§ 1, 4.

A.C.R.C. Notes. This section was amended by Acts 2009, No. 218, § 3. However, Acts 2009, No. 951, §§ 1 and 4, repealed this section as amended by Acts 2009, No. 218, § 3, and reenacted this section as it existed before the amendments by Acts 2009, No. 218, § 3.

The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23 and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the State Highway and Transportation Department, respectively. See § 23-2-201 et seq.

Amendments. The 2009 amendment by No.218, in (b), inserted (b)(2)(B), redesignated the remaining text of (b)(2) as (b)(2) and (b)(3), and deleted “on or before November 1 after assessment notice has been given” at the end of (b)(2)(A); in (c)(1), inserted “party or”, substituted “during the pendency of a petition for review and on appeal” for “on an appeal to the Pulaski County Circuit Court”, and substituted “pending” for “during the pendency of a”; and made minor stylistic changes.

Case Notes

Cited: Arco Auto Carriers, Inc. v. State, 232 Ark. 779, 341 S.W.2d 15 (1960); Missouri P.R.R. v. Tax Div., 504 F. Supp. 907 (E.D. Ark. 1980).

26-26-1611. Assignment or apportionment of assessed value.

The Tax Division of the Arkansas Public Service Commission shall assign or apportion the assessed value of the property of all persons, firms, companies, copartnerships, associations, and corporations which it is required to assess in the following manner:

(1) There shall be deducted from the true market or actual value of the entire property, tangible and intangible, ascertained as provided in this subchapter, the true market or actual value as ascertained from the information furnished by report or otherwise of all real and personal property of the company not used in its business as a public utility, and the remainder shall be treated as the true market or actual value of all its property, tangible or intangible, actually used or employed in its public utility business;

(2) The division shall then ascertain and fix the value of the total utility operating property, tangible and intangible, in this state by taking such proportion of the true market or actual value of the entire operating property, tangible or intangible, of the company actually used in its public utility business as its total lines within this state bear to the total lines, both within and without this state, or as its total receipts or income from operation, both within and without this state, or by using such other recognized method or combination of methods as will, in the judgment of the division, result in a just and equitable apportionment to this state of its due proportion of the value of the total utility operating property;

(3) (A) When the value of the total utility operating property, tangible and intangible, in this state has been determined, or when the property and operations of the company are wholly within this state, there shall be assigned or apportioned to the several counties, towns, school districts, and other taxing districts through or in which the company operates the value of all real estate and all tangible personal property which had a fixed situs therein on January 1 of the current tax year. The remaining part of the assessment, if any, shall be assigned or apportioned among the several taxing districts in proportion to the value of the tangible property assigned or apportioned thereto.

(B) (i) The value assigned to rolling stock of street, suburban, or interurban railroads and railroad companies shall be apportioned among the several

counties, towns, and school districts through or in which the company operated in proportion to the mileage operated therein.

(ii) The value of the personal property of any express or sleeping car company shall be apportioned among the several counties, towns, and school districts through or in which the company operated in proportion to the mileage operated therein.

History. Acts 1927, No. 129, § 22; Pope's Dig., § 2048; Acts 1961, No. 129, § 4; A.S.A. 1947, § 84-610.

Case Notes

Apportionment.

Assignment.

Construction With Other Laws.

Apportionment.

Crossties held for creosoting were for use throughout the system upon completion of the treating process and did not have a fixed situs; therefore, it was proper to apportion the value to the various taxing units. *North Little Rock Special School Dist. v. Koppers Co.*, 211 Ark. 322, 200 S.W.2d 519 (1947).

Assignment.

A railroad bridge across a navigable stream that had been taxed as local property, when acquired by a railroad for its trackage, became a part of the railroad and taxable by the state, and not taxable as an independent structure by local authorities. *Arkansas Tax Comm'n v. Crittenden County*, 183 Ark. 738, 38 S.W.2d 318 (1931).

Construction With Other Laws.

Under the principle that a specific statute controls over a general statute, this section and § 26-26-1606, which relate to utilities and which include tangible and intangible property for fixing value, control over § 26-3-302, which provides that intangible personal property is exempt from all ad valorem tax levies. *Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm'n*, 342 Ark. 591, 29 S.W.3d 730 (2000).

Cited: *Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n*, 227 Ark. 1066, 304 S.W.2d 297 (1957); *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960).

26-26-1612. Recording and certification of valuation.

(a) When the Tax Division of the Arkansas Public Service Commission shall have ascertained the assessed value of the property of any company which it is required to originally assess other than bus lines, motor freight, airlines, water transportation companies, and private car companies, the valuation shall be entered in detail in a record to be kept for that purpose.

(b) On or before July 15 of each year, it shall be the duty of the division to certify out, through its director or secretary, to the proper official of the respective counties in which is located or operated any property which it is required to assess so much of the value of the property as has been assigned or apportioned to each county and the districts and towns thereof.

(c) The official shall enter upon the proper record the assessments certified, and neither the assessor, the county equalization board, nor the county court has authority to change the assessment so certified, and the taxes shall be extended and collection made on the assessment so certified in like manner as extension and collection is made in case of property locally assessed.

History. Acts 1927, No. 129, § 23; Pope's Dig., § 2049; Acts 1953, No. 388, § 2; 1961,

No. 129, § 5; 1980 (2nd Ex. Sess.), No. 3, § 1; A.S.A. 1947, § 84-611.

Case Notes

Cited: Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n, 227 Ark. 1066, 304 S.W.2d 297 (1957); Arco Auto Carriers, Inc. v. State, 232 Ark. 779, 341 S.W.2d 15 (1960).

26-26-1613. Property not used in utility operation.

All real and personal property, not used in the utility operation of the company as such, of any carrier pipeline, railroad, street, interurban or suburban railroad, express, sleeping car or intercounty bus line company and of any telegraph, telephone, electric power, gas, water, water transportation, or toll road or ferry company shall be listed and assessed by the assessor of the county where the property is located at the same time and in the same manner as property belonging to individuals is by law required to be listed and assessed.

History. Acts 1927, No. 129, § 25; Pope's Dig., § 2051; A.S.A. 1947, § 84-613.

Case Notes

Property Used by Utilities.

Property Used by Utilities.

Where evidence showed that all property subject to taxation was used in utility operation of railroad, it was not to be assessed under this section. State v. Midland Valley R.R., 197 Ark. 243, 122 S.W.2d 173 (1938).

Crossties held for creosoting were acquired for the purpose of maintaining utility operation and were not to be assessed by assessor. North Little Rock Special School Dist. v. Koppers Co., 211 Ark. 322, 200 S.W.2d 519 (1947).

Cited: Saint Louis-San Francisco Ry. v. Arkansas Pub. Serv. Comm'n, 227 Ark. 1066, 304 S.W.2d 297 (1957).

26-26-1614. Levy and collection of taxes.

(a) (1) Having ascertained and fixed the taxable value of the tangible and intangible property used or held for use in the operation of each intercounty bus line, intercounty motor freight, airline, or water transportation company, as required by law, the Tax Division of the Arkansas Public Service Commission shall levy and extend against each valuation the average rate of ad valorem levy prevailing throughout this state for the assessment year, and then ten (10) days before the due date, the division shall certify the tax to the Director of the Department of Finance and Administration for collection.

(2) The director shall immediately forward by first-class mail a notice showing the assessed valuation, applicable rate of levy, the amount of tax charged, and the due date of the tax charged to each company against which a tax has been extended and so certified.

(b) (1) If the taxes are not paid on or before the date on which ad valorem taxes or any part of ad valorem taxes on personal property become delinquent, the director shall add a penalty of ten percent (10%) and mail a statement of the tax and penalty to each person, company, or corporation so delinquent.

(2) (A) If the tax and penalty are not paid on or before the date on which a county collector may collect taxes by distraint, in lieu of the ten percent (10%) penalty, the director shall add to the tax a penalty of twenty-five percent (25%).

(B) The statement of tax and ten percent (10%) penalty from the director

shall warn that if the tax and penalty are not paid within the time stated, in lieu of the ten percent (10%) penalty, a penalty of twenty-five percent (25%) will be added.

(c) (1) For the purpose of collecting the taxes and penalties, in addition to the powers vested in the director for the collection of taxes, the director shall have all the powers vested in county collectors for the purpose of collecting delinquent personal property taxes.

(2) The director may petition the commission for revocation of the certificate or permit of authority issued to the delinquent company to operate in the State of Arkansas.

History. Acts 1939, No. 119, § 1; 1953, No. 168, § 1; 1961, No. 129, § 7; 1963, No. 131, § 3; 1983, No. 579, § 3; 1983, No. 602, § 3; A.S.A. 1947, § 84-614; Acts 2003, No. 831, § 3.

Amendments. The 2003 amendment, in (b)(2)(A), deleted “and certify the tax and penalty to the Attorney General for collection” at the end; in (b)(2)(B), substituted “The statement” for “The director’s statement,” inserted “from the director” and deleted “and the tax and penalty shall be certified to the Attorney General for collection” from the end; in (c)(1), deleted “or the Attorney General” following “director” and substituted “vested in him or her” for “in them vested”; substituted “director” for “Attorney General” in (c)(2); and made stylistic changes.

Case Notes

Constitutionality.

Constitutionality.

Ad valorem tax collected under this section is a county tax administered by a state agency and, as such, is not violative of Ark. Const. Amend. 47, prohibiting state ad valorem tax. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), dismissed, *Bolton v. Schuykill Haven*, 365 U.S. 767, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961), dismissed, *Arco Auto Carriers, Inc. v. Arkansas*, 365 U.S. 770, 81 S. Ct. 912 (1961).

26-26-1615. Average tax rate.

The average rate of ad valorem levy throughout this state shall be determined by totaling the millage rate for all purposes for each of the several taxing districts of this state for the assessment year and dividing the total obtained by the number of taxing districts of this state.

History. Acts 1939, No. 119, § 3; A.S.A. 1947, § 84-616.

26-26-1616. Disposition of taxes and penalties.

(a) (1) Except as provided in subsection (c) of this section, all taxes and penalties collected under the provisions of § 26-26-1614 shall be deposited into the State Treasury as trust fund income to the credit of the Ad Valorem Tax Fund.

(2) (A) The Treasurer of State shall annually transmit to the respective county treasurers of the several counties of this state the proportionate part of the Ad Valorem Tax Fund coming from the source that the improved state highway mileage in each county bears to the improved state highway mileage in all counties, the highway mileage figures to be furnished by the Arkansas State Highway and Transportation Department on request of the Treasurer of State.

(B) The respective county treasurers shall prorate the amount so received among the several county funds, school districts, and municipalities of the county in the same ratio that the taxes received from the millage levy by each bore to the total taxes

from the millage levy received by all county funds, school districts, and municipalities, according to the local county collector's settlement for the particular assessment year.

(b) (1) So long as any agency of this state shall have the function or be charged with the duty of making audits of the records and accounts of the officers and employees of counties, municipalities, or school districts or so long as any agency of this state shall have the function or be charged with the duty of assessing the property referred to in this subchapter or so long as any agency of this state shall have the function or be charged with the duty of furnishing guidance, instruction, and assistance to the county assessor in the performance of his or her duties, then the aggregate total amount expended by this state in the performance and carrying out of the functions and duties indicated shall be a proper charge against the taxes and penalties credited to the Ad Valorem Tax Fund under subsection (a) of this section.

(2) It shall be the duty of the Chief Fiscal Officer of the State to annually determine the amount of these costs and to certify to the Treasurer of State the amount that the aggregate of the taxes and penalties exceeds these costs in order that the excess may be transmitted to the respective county treasurers as provided in this section.

(c) (1) The first one hundred thousand dollars (\$100,000) collected in taxes and penalties under § 26-26-1614 during each fiscal year shall be deposited into the State Treasury as nonrevenue receipts credited to the State Central Services Fund for use by the Revenue Division of the Department of Finance and Administration.

(2) No funds collected pursuant to § 26-26-1614 shall be withheld by the state if those funds were collected under the authority of the Arkansas Constitution, Article 14, § 3(b)(1).

History. Acts 1939, No. 119, § 2; 1953, No. 168, § 2; 1965, No. 470, § 3; A.S.A. 1947, § 84-615; Acts 2003, No. 831, §§ 4, 5.

Amendments. The 2003 amendment added "Except as provided in subsection (c) of this section" in (a)(1); and added (c).

Case Notes

Constitutionality.

Constitutionality.

Ad valorem tax collected under § 26-26-1614 is a county tax administered by a state agency for the purpose of efficiency and is not a violation of Ark. Const. Amend. 47, prohibiting state ad valorem tax. *Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960), dismissed, *Bolton v. Schuylkill Haven*, 365 U.S. 767, 81 S. Ct. 912, 6 L. Ed. 2d 189 (1961), dismissed, *Arco Auto Carriers, Inc. v. Arkansas*, 365 U.S. 770, 81 S. Ct. 912 (1961).

Subchapter 17

— Private Car Companies

26-26-1701. Definition.

26-26-1702. Report required.

26-26-1703. Report by railroads of private car mileage.

26-26-1704. Failure to make statements.

26-26-1705. Valuation and assessment.

26-26-1706. Levy of tax, collection, and penalty for delinquency.

26-26-1707. Disposition of taxes and penalties.

Effective Dates. Acts 1915, No. 224, § 9: approved Mar. 23, 1915. Emergency declared. Acts 1923, No. 560, § 8: effective on passage. Acts 1953, No. 167, § 10: approved Mar. 2, 1953. Emergency clause provided: "It is the sense of this body that the provisions of this Act will provide for more efficient administration in the assessment and collection of ad valorem taxes on private car companies, and a more equitable distribution of such taxes; and that undue delay in the effective date hereof will preclude such efficiency and equity of administration and distribution for the year 1953. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

26-26-1701. Definition.

As used in this subchapter, unless the context otherwise requires, "private car company" means every person, company, or corporation other than a railroad company, engaged in the business of operating cars or engaged in the business of furnishing or leasing cars for the transportation of freight, property, or persons, whether or not the cars are owned by the person, company, or corporation, over any railway lines, in whole or in part within this state, whether the cars are termed box, coal, flat, furniture, gondola, ore, refrigerator, stock, tank, express, or sleeping car, or by some other name.

History. Acts 1953, No. 167, § 1; 1965, No. 470, § 1; A.S.A. 1947, § 84-624.

26-26-1702. Report required.

The president or other chief officer of every private car company shall, on or before April 1 each year, make and file with the Tax Division of the Arkansas Public Service Commission a verified statement showing:

(1) The aggregate number of miles made by each class of its cars over the several lines of railroad in this state during the calendar year next preceding; and

(2) The average number of miles traveled per day by the cars of each particular class in the ordinary course of business during the period.

History. Acts 1915, No. 224, § 1; C. & M. Dig., § 10001; Acts 1923, No. 560, § 1; Pope's Dig., § 13751; Acts 1953, No. 167, § 2; A.S.A. 1947, § 84-617.

26-26-1703. Report by railroads of private car mileage.

The president or other chief officer of every railroad whose lines run through or in this state shall, on or before April 1 each year, make and file with the Tax Division of the Arkansas Public Service Commission a verified statement showing:

(1) Separately, by classes, the total number of miles traveled by the cars of each private car company over its lines within this state during the calendar year next preceding;

(2) The post office address of each car company; and

(3) The average number of miles traveled per day, in the ordinary course of business during the period, over its lines in Arkansas by each class of cars.

History. Acts 1915, No. 224, § 2; C. & M. Dig., § 10002; Acts 1923, No. 560, § 2; Pope's Dig., § 13752; Acts 1953, No. 167, § 3; A.S.A. 1947, § 84-618.

26-26-1704. Failure to make statements.

(a) If any private car company shall fail or refuse to make and file the statement required by § 26-26-1702 within the time therein prescribed or shall fail or refuse to authorize in writing the use of the information and data submitted by the several railroads in determining its assessment, the Tax Division of the Arkansas Public Service Commission shall proceed to determine and fix the assessment of each car company on the basis of information reported to it by the several railroad companies and other information it may obtain. Each assessed valuation so determined shall be increased by ten percent (10%) as a penalty for failure to file its report, and taxes shall be extended and certified on the increased amount.

(b) If any railroad shall fail or refuse to make and file the statement as required in § 26-26-1703, it shall forfeit to the state, as a penalty for the failure or refusal, the sum of five hundred dollars (\$500). Any failure or refusal shall be certified by the division to the Attorney General, whose duty it shall be to institute such action as he may deem proper for the collection of any penalty.

History. Acts 1915, No. 224, § 6; C. & M. Dig., § 10006; Acts 1923, No. 560, § 6; Pope's Dig., § 13756; Acts 1953, No. 167, § 4; A.S.A. 1947, § 84-622.

26-26-1705. Valuation and assessment.

(a) The Tax Division of the Arkansas Public Service Commission, from the statements required by §§ 26-26-1702 and 26-26-1703 and other information it may obtain, shall ascertain and fix, as the basis for assessment, a uniform daily average travel of cars of each particular class and the valuation per car of each particular class and, accordingly, the number of cars required to make the total mileage traveled in this state within the year by the cars of each class of each private car company, and the assessed valuation of all cars of each car company.

(b) When the basis for assessment shall have been determined, written notice shall be forwarded by first-class mail to each car company having filed the report required in § 26-26-1702, and each company, if dissatisfied with the basis for assessment so fixed, may file written petition for review within ten (10) days from date of the notice.

History. Acts 1915, No. 224, § 3; C. & M. Dig., § 10003; Acts 1923, No. 560, § 3; Pope's Dig., § 13753; Acts 1953, No. 167, § 5; A.S.A. 1947, § 84-619.

26-26-1706. Levy of tax, collection, and penalty for delinquency.

(a) The Tax Division of the Arkansas Public Service Commission, having ascertained and fixed the assessed valuation of the cars of each private car company as provided in § 26-26-1705, shall levy and extend against each valuation the average rate of ad valorem levy prevailing throughout the state for the respective assessment year, this rate to be determined as provided by § 26-26-1615, whereupon, the division, ten (10) days before due date, shall certify the tax so extended to the Director of the Department of Finance and Administration for collection.

(b) The director shall immediately forward by first-class mail to each private car company against which a tax has been extended and so certified a notice showing the assessed valuation, the applicable rate of levy, the amount of tax charged, and the due date thereof.

(c) (1) If the taxes are not paid on or before the date on which taxes, ad valorem, or any part thereof, on personal property become delinquent, the director shall add a penalty of

ten percent (10%) and mail to each company so delinquent a statement of the tax and penalty.

(2) (A) If the tax and penalty are not paid on or before the date on which county collectors are authorized to collect taxes by distraint, the director shall, in lieu of the ten percent (10%) penalty, add to the tax a penalty of twenty-five percent (25%) and certify the tax and penalty to the Attorney General for collection.

(B) The director's statement of tax and ten percent (10%) penalty shall warn that if the tax and penalty are not paid within the time therein stated, in lieu of the ten percent (10%) penalty, a penalty of twenty-five percent (25%) will be added, and the tax and penalty shall be certified to the Attorney General for collection.

(d) For the purpose of collecting these taxes and penalties, the director or the Attorney General, in addition to the powers in them vested for the collection of taxes, shall have all the powers vested in county collectors for the purpose of collecting delinquent personal property taxes.

History. Acts 1915, No. 224, § 4; C. & M. Dig., § 10004; Acts 1923, No. 560, § 4; Pope's Dig., § 13754; Acts 1953, No. 167, § 6; A.S.A. 1947, § 84-620.

26-26-1707. Disposition of taxes and penalties.

(a) (1) All taxes and penalties collected under the provisions of this subchapter shall be deposited in the State Treasury as trust fund income, to the credit of the Ad Valorem Tax Fund.

(2) (A) The State Treasurer shall annually transmit to the respective county treasurers of the several counties of the state the proportionate part of the fund coming from the source that the assessed value of the single or first main track railroad mileage in his respective county bears to the assessed value of the single or first main track railroad mileage in all counties, the ratios to be furnished by the Tax Division of the Arkansas Public Service Commission on request of the State Treasurer.

(B) The respective county treasurers shall allocate the amount so received among the several county funds and the school districts and municipalities of his county in which is located main track railroad mileage, in the ratio that millage taxes payable to each on the assessed value of single or first main track railroad mileage for the respective assessment year, when separately computed, bears to the total millage taxes payable to all such funds, districts, and municipalities from this source, when separately computed.

(b) (1) So long as any agency of this state shall have the function or be charged with the duty of making audits of the records and accounts of the officers and employees of counties, municipalities, or school districts, or so long as any agency of this state shall have the function or be charged with the duty of assessing the property referred to in this subchapter, or so long as any agency of this state shall have the function or be charged with the duty of furnishing guidance, instruction, and assistance to the county assessor in the performance of his duties, then the aggregate total amount expended by this state in the performance and carrying out of the functions and duties indicated shall be a proper charge against the taxes and penalties credited to the fund under subsection (a) of this section.

(2) It shall be the duty of the Chief Fiscal Officer of the State to annually determine the amount of these costs and to certify to the State Treasurer the amount that the aggregate of the taxes and penalties exceeds these costs in order that the excess may

be transmitted to the respective county treasurers as provided in this section.
History. Acts 1953, No. 167, § 7; 1965, No. 470, § 2; A.S.A. 1947, § 84-623.

Subchapter 18 **— Cable Television Systems**

- 26-26-1801. Definition.
- 26-26-1802. Jurisdiction.
- 26-26-1803. Rules and regulations.

Cross References. Cable television, assessment, § 26-24-103.

Effective Dates. Acts 1975, No. 175, § 5: Feb. 18, 1975. Emergency clause provided: "It is determined by the Legislature that property used by certain cable television systems is not assessed for taxation, and that some question exists as to the nature and extent of the Public Service Commission's jurisdiction and duty as regards this type of business. Therefore, this enactment is immediately necessary to provide that such properties are properly assessed and that the jurisdiction over such businesses shall be clearly defined. An emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from the date of its passage and approval."

Research References

ALR.

Cable television equipment or services as subject to sales or use tax. 5 A.L.R.4th 754.

Am. Jur. 71 Am. Jur. 2d, State Tax, §§ 150, 179.

72 Am. Jur. 2d, State Tax, § 816.

26-26-1801. Definition.

As used in this subchapter, unless the context otherwise requires, "cable television system" means any facility that, in whole or in part, receives, directly or indirectly, over the air and amplifies, or otherwise modifies, the signals transmitting programs broadcast by one (1) or more television or radio stations and distributes the signals by wire or cable to subscribing members of the public who pay for the service.

History. Acts 1975, No. 175, § 3; A.S.A. 1947, § 84-103.2.

26-26-1802. Jurisdiction.

The Arkansas Public Service Commission shall have no jurisdiction over or duties as regards cable television systems other than the duty to make original assessments of the property incorporated in or used by those systems as herein provided.

History. Acts 1975, No. 175, § 4; A.S.A. 1947, § 84-103.3.

26-26-1803. Rules and regulations.

The Tax Division of the Arkansas Public Service Commission shall adopt such rules and regulations as are necessary in order to make original assessments of all property, both real and personal, used by cable television systems in this state.

History. Acts 1975, No. 175, § 2; A.S.A. 1947, § 84-103.1.

Subchapter 19 **— Uniform System of Real Property Assessment**

- 26-26-1901. Definitions.

- 26-26-1902. Reappraisal.
- 26-26-1903. Criteria for reappraisal.
- 26-26-1904. Objectives.
- 26-26-1905. Rules relating to reappraisal procedures.
- 26-26-1906. Computer-assisted mass appraisal systems.
- 26-26-1907. Arkansas Real Property Reappraisal Fund.
- 26-26-1908. Applicability of relation to ad valorem tax.
- 26-26-1909. Relation to previous requirements.
- 26-26-1910. Scope.
- 26-26-1911. Department authority.

A.C.R.C. Notes. Acts 2007, No. 1218, § 8, provided:

“PARCELS. The Assessment Coordination Department shall reimburse counties and professional reappraisal companies monthly up to the maximum cost per parcel, multiplied by the total number of parcels in the county, divided by the number of months in a county's reappraisal cycle. The term parcel as used herein shall be defined by department rule, and department reimbursements based upon only the total number of parcels determined to qualify under department rule.

“The provisions of this section shall be in effect from July 1, 2007 through June 30, 2009.”

Acts 2007, No. 1218, § 9, provided:

“MAXIMUM ANNUAL FUNDING FOR REAPPRAISALS/REVIEWS. Whether a county's reappraisal of real property is simply a review of existing data, or a more extensive reappraisal where every improvement is measured, funding to any county, provided through the Assessment Coordination Department, will be for the actual appraisal cost, up to a maximum of seven dollars per parcel, per year. Counties must use other taxing unit sources of revenue to provide for the cost of real property reappraisals if the cost to complete the reappraisal exceeds seven dollars per parcel.”

Acts 2007, No. 1218, § 10, provided:

“CONCERNING TAX COLLECTION DATA NECESSARY TO MEET ADEQUACY. Failure by the preparer of the tax books to report the information necessary to comply with Rule 5.03 of the Rules of the Assessment Coordination Department by February 15 of each calendar year, shall result in the loss of all reappraisal funding provided under ACA26-26-1907 until the preparer of the tax books complies with Rule 5.03. Such funds shall be forfeited under the following provisions:

“(a) Failure to comply with this section shall result in the forfeiture of twenty percent (20%) of the total reappraisal funds every two (2) months of noncompliance;

“(b) After ten (10) months of noncompliance, the total amount of reappraisal funds shall be forfeited.

“(c) No county will be relieved of the requirement to reappraise property, and funding will be by local taxing unit sources until such time as the county comes into compliance with this section.”

Acts 2009, No. 599, § 8, provided: “The Assessment Coordination Department shall reimburse counties and professional reappraisal companies monthly up to the maximum cost per parcel, multiplied by the total number of parcels in the county, divided by the number of months in a county's reappraisal cycle. The term parcel as used herein shall be defined by department rule, and department reimbursements based upon only the total number of parcels determined to qualify under department rule.

“The provisions of this section shall be in effect from July 1, 2009 through June 30, 2010.”

Acts 2009, No. 599, § 9, provided: “Whether a county's reappraisal of real property is simply a review of existing data, or a more extensive reappraisal where every improvement is measured, funding to any county, provided through the Assessment Coordination Department, will be for the actual appraisal cost, up to a maximum of seven dollars per parcel, per year. Counties must use other taxing unit sources of revenue to provide for the cost of real property reappraisals if the cost

to complete the reappraisal exceeds seven dollars per parcel.”

Acts 2009, No. 599, § 10, provided: “Failure by the preparer of the tax books to report the information necessary to comply with Rule 5.03 of the Rules of the Assessment Coordination Department by February 15 of each calendar year, shall result in the loss of all reappraisal funding provided under Arkansas Code § 26-26-1907 until the preparer of the tax books complies with Rule 5.03. Such funds shall be forfeited under the following provisions:

“(a) Failure to comply with this section shall result in the forfeiture of twenty percent (20%) of the total reappraisal funds every two (2) months of noncompliance;

“(b) After ten (10) months of noncompliance, the total amount of reappraisal funds shall be forfeited.

“(c) No county will be relieved of the requirement to reappraise property, and funding will be by local taxing unit sources until such time as the county comes into compliance with this section.”

Effective Dates. Acts 1999, No. 1185, § 15: Apr. 7, 1999. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the ad valorem tax system in the state is of critical importance to the state and its citizens; that many property assessments in this state are erroneous and need to be revised; that in order to correct the erroneous assessments, each parcel of taxable property in each county of the state should be reviewed, and revalued, at a minimum of once every three (3) years; that the provisions of this act provide for such a review. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

26-26-1901. Definitions.

As used in this subchapter:

(1) “County-wide reappraisal” means a cyclical review program begun pursuant to the terms of this subchapter;

(2) “Department” means the Assessment Coordination Department; and

(3) “Reappraisal” means the estimating of the value of all taxable real property within the county as of a given date within a given time frame.

History. Acts 1999, No. 1185, § 10.

26-26-1902. Reappraisal.

(a) Except as provided in subsection (b) of this section, each county in the State of Arkansas shall be required to appraise all market value real estate normally assessed by the county assessor at its full and fair market value at a minimum of one (1) time every three (3) years.

(b) (1) Except as provided in subdivision (b)(2) of this section, any county that has completed a reappraisal under subsection (a) of this section or completed a reappraisal between the years 2002 through 2004 shall not be required to commence or complete an additional reappraisal under the three-year cycle but shall be required to appraise all real property normally assessed by the county assessor at its full and fair market value at a minimum of one (1) time every five (5) years from the previous assessment.

(2) (A) If, as a result of a three-year reappraisal cycle, the new market value real estate assessment is greater than fifteen percent (15%) from the market value real estate assessment in the county in the year preceding the beginning of the reappraisal cycle, the county shall be required to complete its next reappraisal at a minimum of one (1) time

every three (3) years from the previous assessment until the new market value real estate assessment is less than fifteen percent (15%) from the market value real estate assessment in the year preceding the beginning of the reappraisal cycle, at which point the county shall be placed into a five-year reappraisal cycle.

(B) If a county in a five-year reappraisal cycle has a new market value real estate assessment that is twenty-five percent (25%) greater than the market value real estate assessment in the county in the year preceding the beginning of the reappraisal cycle, the county shall be required to complete its next reappraisal at a minimum of one (1) time every three (3) years from the previous assessment until the new market value real estate assessment is less than fifteen percent (15%) from the market value real estate assessment in the year preceding the beginning of the reappraisal cycle, at which point the county shall be placed into a five-year reappraisal cycle.

(C) The market value real estate assessments shall be calculated by comparing the total values, unadjusted for the assessment increase limitations required under Arkansas Constitution, Amendment 79.

(3) (A) At the time that a county submits its market value real estate assessments to the Assessment Coordination Department, the county may appeal its new or continued placement into a three-year reappraisal cycle if the increased market value real estate assessment is a result of a single property improvement.

(B) (i) The department shall place a county in a five-year reappraisal cycle if the department concludes that the increase in the new real estate market value assessment is a result of a single property improvement in the county.

(ii) This decision by the department shall be made within thirty (30) calendar days after receiving the appeal.

(4) Each county shall provide the department with the previous and new market value real estate assessments on or before October 1 of the year in which it is required to have completed reappraisal.

(c) (1) The county assessor or other official or officials designated by law shall compare the assessed value of each parcel under a reappraisal or reassessment that is completed in 1999 or later to the assessed value of the parcel for the previous year.

(2) In the first county-wide reappraisal performed after January 1, 2001, by counties subject to Arkansas Constitution, Amendment 79, § 2:

(A) If the assessed value of the parcel increased, then the assessed value of the parcel for the year in which the parcel is reappraised or reassessed shall be adjusted by adding one-third (1/3) of the increase to the assessed value for the year prior to the reappraisal or reassessment; and

(B) An additional one-third (1/3) of the increase shall be added in each of the next two (2) years.

History. Acts 1999, No. 1185, § 1; 2001, No. 1058, § 1; 2005, No. 2259, § 1.

Amendments. The 2001 amendment redesignated former (a) and (b) as present (a)(1) and (a)(2), respectively, and made related changes; substituted "Except as provided in subsection (b) of this section, each county" for "Each county" in (a)(1); added (b) and the present first sentence of (c)(2); and made related changes.

The 2005 amendment deleted "former (a)(2)"; redesignated former (a)(1) as present (a); in (b)(2)(A) and (B), inserted "in the year preceding the beginning of the reappraisal cycle" twice and deleted "previous" preceding "market" twice; and substituted "October 1" for "August 1" in (b)(4).

26-26-1903. Criteria for reappraisal.

The Assessment Coordination Department shall determine which counties shall be required to complete reappraisals in the years stated in § 26-26-1902(b), based on the following criteria:

- (1) The length of time since the last countywide reappraisal;
- (2) The level and quality of assessment within the county;
- (3) The parcel counts within each county; and
- (4) The cost of reappraisal.

History. Acts 1999, No. 1185, § 2; 2001, No. 1058, § 2.

Amendments. The 2001 amendment added (4) and made related changes.

26-26-1904. Objectives.

The objectives of this subchapter are as follows:

- (1) To establish and promote a uniform system of real property assessments within each county of the state and among the counties;
- (2) To provide for the certification of appraisers who perform services under this subchapter and to assure that each has the training determined by the Assessment Coordination Department to be necessary to perform accurate estimations of the valuation of market-value real property and to conduct countywide reappraisals which are of a high quality to aid the state in its realization of the objectives of this subchapter;
- (3) To establish planning and quality assurance guidelines in each county to ensure that all laws and regulations are met, standards of appraisal accuracy are maintained, work is finished on time, and staff and resources are used wisely;
- (4) To furnish materials to aid appraisers in assessing real property;
- (5) To pay the costs and expenses of reappraisals as determined by the department to be necessary, prudent, and reasonable in the implementation of this subchapter; and
- (6) To ensure that all funds expended by the state for reappraisal services are monitored by the department and only that progress and performance of those services as measured by the department to be within the guidelines established by the department are to be compensated by the state.

History. Acts 1999, No. 1185, § 3.

26-26-1905. Rules relating to reappraisal procedures.

(a) To carry out the provisions of this subchapter, the Assessment Coordination Department, as it deems necessary, appropriate, and consistent with the objectives of this subchapter, shall:

- (1) Develop and implement rules relating to reappraisal procedures to be followed by counties, specifying annual objectives with respect to the discovery, listing, and valuation of real property for assessment purposes;
- (2) (A) Develop and implement rules relating to training, experience, and testing requirements for determining whether a person is qualified to manage a reappraisal.
(B) Any department personnel responsible for approving reappraisal plans or property values resulting from those reappraisals shall be required to meet the same

criteria;

(3) (A) Enter into contracts with private entities for appraisal services on behalf of counties on such terms and conditions as the department deems are consistent with the provisions of this subchapter and are necessary and appropriate in its implementation.

(B) Section 19-11-101 et seq. shall not apply to a contract made under this subchapter and to the expenditure of funds from the Arkansas Real Property Reappraisal Fund.

(b) (1) Each county shall follow the reappraisal procedures established by the department and file a reappraisal management plan with the department no later than November 1 of the year preceding the commencement of the reappraisal.

(2) The reappraisal management plan shall specify a proposed budget, personnel needs, and projected annual progress with respect to the discovery, listing, and valuation of property.

(c) The department shall follow preestablished department rules to determine whether a reappraisal management plan is approved or rejected.

(d) (1) The department shall establish training, experience, and testing requirements, and such other criteria as it deems necessary to determine whether a person is qualified to manage a reappraisal performed under this subchapter.

(2) The department shall not approve a reappraisal management plan that does not name a qualified manager.

(e) (1) Employees of the county assessor may be used to reappraise the county and the county assessor or a designated employee may manage the reappraisal if the county assessor or the designated employee meets the qualifications established in this subchapter and the rules established under this subchapter.

(2) (A) If the initial reappraisal management plan required in subsection (b) of this section as submitted by the county assessor is rejected by the department, the county assessor shall be allowed to submit an alternate reappraisal management plan within thirty (30) days of the rejection of the initial reappraisal management plan.

(B) If the alternate reappraisal management plan is rejected by the department, the county shall employ and enter into a contract for professional services with a professional reappraisal company on behalf of all taxing units in the county as set forth in subsection (f) of this section.

(f) (1) The county assessor may enter into a contract for professional services with a professional reappraisal company when both the proposed contract and the reappraisal management plan submitted by the contractor have been approved by the department.

(2) (A) If the initial reappraisal management plan submitted by the contractor is rejected by the department, the contractor shall be allowed to submit an alternate reappraisal management plan.

(B) If the second reappraisal management plan is rejected by the department, the department shall write a reappraisal management plan that the county shall employ and enter into a contract for professional services with a professional reappraisal company on behalf of all taxing units in the county.

(3) The reappraisal contract must be accompanied by an approved reappraisal management plan.

History. Acts 1999, No. 1185, § 4; 2005, No. 1445, § 1.

Amendments. The 2005 amendment substituted "November 1" for "July 1" in (b)(1).

26-26-1906. Computer-assisted mass appraisal systems.

(a) County assessors or those otherwise responsible for the valuation of real property for assessment purposes shall employ computer-assisted mass appraisal systems approved by the Assessment Coordination Department.

(b) Information stored in the electronic database used in the computer-assisted mass appraisal system shall include, but not be limited to, pertinent physical characteristics and historical sales prices of each property in the county.

(c) The department shall have access to view and obtain the data stored in each county's computer-assisted mass appraisal system via common-use technologies as determined by the department, including without limitation:

- (1) The Internet;
- (2) Network technologies;
- (3) Phone line and modem technologies;
- (4) Compact disk technologies;
- (5) Magnetic tape technologies; or
- (6) Other similar common-use technologies.

History. Acts 1999, No. 1185, § 5; 2007, No. 685, § 1.

Amendments. The 2007 amendment, in (c), substituted “to view and obtain the data” for “and the capability to retrieve data” and “via common-use technologies as determined by the department including without limitation” for “via phone lines and a modem”; added (c)(1) through (c)(6); and made related changes.

26-26-1907. Arkansas Real Property Reappraisal Fund.

(a) (1) There is created a fund to be known as the “Arkansas Real Property Reappraisal Fund”.

(2) The proceeds of the fund shall be used to pay counties and professional reappraisal companies for the reappraisal of real property required by this subchapter and shall be in lieu of real property reappraisal funding by the local taxing units in each county of this state.

(b) For cause and after an opportunity for a hearing, the Director of the Assessment Coordination Department may suspend or terminate the contract of any appraisal firm or county.

(c) (1) The fund proceeds shall be distributed monthly, except when there is a determination by the Assessment Coordination Department that proper reappraisal procedures established by the department are not being followed.

(2) (A) (i) Upon a finding by the department that proper reappraisal procedures are not being followed, the county assessor or contractor shall be notified that the reappraisal is out of compliance with accepted guidelines as established in this subchapter and rules enacted pursuant to this subchapter.

(ii) The department shall notify the county assessor or contractor in writing that the county assessor or contractor has thirty (30) days in which to bring the reappraisal into compliance.

(B) If there is a further finding that proper reappraisal procedures are not being followed, the contract shall be promptly terminated and the department shall negotiate another contract and reappraisal management plan for the completion of the

reappraisal project.

(d) Based on its expertise and the criteria and requirements set forth in this subchapter, the department shall establish by rule the findings that indicate proper reappraisal procedures are not being followed.

(e) At the end of each countywide reappraisal, the department shall issue a report of the status of the county.

History. Acts 1999, No. 1185, § 6; 2001, No. 1553, § 57.

A.C.R.C. Notes. Acts 1999, No. 1185, § 6, is also codified, in part, as § 19-5-1096.

Acts 2009, No. 599, § 10, provided: "Failure by the preparer of the tax books to report the information necessary to comply with Rule 5.03 of the Rules of the Assessment Coordination Department by February 15 of each calendar year, shall result in the loss of all reappraisal funding provided under Arkansas Code § 26-26-1907 until the preparer of the tax books complies with Rule 5.03. Such funds shall be forfeited under the following provisions:

"(a) Failure to comply with this section shall result in the forfeiture of twenty percent (20%) of the total reappraisal funds every two (2) months of noncompliance;

"(b) After ten (10) months of noncompliance, the total amount of reappraisal funds shall be forfeited.

"(c) No county will be relieved of the requirement to reappraise property, and funding will be by local taxing unit sources until such time as the county comes into compliance with this section."

Amendments. The 2001 amendment added (a)(1) and redesignated former (a) as (a)(2); added (c)(2); and made stylistic changes.

26-26-1908. Applicability of relation to ad valorem tax.

The provisions of §§ 26-26-401 — 26-26-409 and 26-26-410 [repealed] relative to the adjustment or rollback of millage levied for ad valorem tax purposes shall be applicable when a countywide reappraisal of property is completed as provided in this subchapter.

History. Acts 1999, No. 1185, § 7.

A.C.R.C. Notes. Former § 26-26-410 referred to in this section, concerning revised millage rate forms produced by the former Assessment Coordination Division, was repealed by Acts 2003 (2nd Ex. Sess.), No. 28, § 5 and No. 105, § 7.

26-26-1909. Relation to previous requirements.

Implementation of this subchapter does not relieve a county of any previous requirement for a reappraisal.

History. Acts 1999, No. 1185, § 8.

26-26-1910. Scope.

The provisions of this subchapter shall not affect either the duties of the county equalization board or the county assessor's duties in relation to the assessment of personal property or any other responsibilities of the county assessors not directly addressed in this subchapter.

History. Acts 1999, No. 1185, § 9.

26-26-1911. Department authority.

The Assessment Coordination Department shall promulgate regulations for the

implementation of this subchapter.

History. Acts 1999, No. 1185, § 11.

Subchapter 20

— Coordination of Uniform Reporting of County Property Tax Information

26-26-2001. Uniform annual reporting requirement.

26-26-2002. Adoption and implementation of rules for reporting.

26-26-2003. Preliminary report — Annual report.

Effective Dates. Acts 2006 (1st Ex. Sess.), Nos. 26 and 27, § 4: Apr. 11, 2006. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Supreme Court declared the public school funding system to be inadequate and that the public schools are operating under a constitutional infirmity which must be corrected immediately; that to correct the constitutional infirmity and to ensure adequate funding for public education, the General Assembly must have more accurate and timely information regarding the assessment, settlement, and collection of property taxes by the counties; and that this act is necessary to allow the Assessment Coordination Department, the Department of Education, and the counties sufficient time to make all necessary rules, adjustments, calculations, and reports that will be necessary prior to the convening of the 86th General Assembly. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-26-2001. Uniform annual reporting requirement.

A county official who is the preparer of the tax books shall annually report to the Assessment Coordination Department and the State Board of Education his or her county's property tax assessment, settlement, and collection information as provided under this subchapter.

History. Acts 2006 (1st Ex. Sess.), No. 26, § 2; 2006 (1st Ex. Sess.), No. 27, § 2.

26-26-2002. Adoption and implementation of rules for reporting.

(a) By June 15, 2006, the Assessment Coordination Department shall adopt and implement by rules a statewide set of instructions for reporting county property tax assessment, settlement, and collection information.

(b) In developing the statewide set of instructions, the Assessment Coordination Department shall:

(1) Collaborate with the Division of Legislative Audit, the State Board of Education, the Department of Education, the Commissioner of State Lands, and the appropriate county officials;

(2) Consider the comments and suggestions from school districts and other interested parties; and

(3) Comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., which may include the adoption of emergency rules as necessary to comply with the June 15, 2006, deadline under subsection (a) of this section.

(c) (1) The statewide set of instructions shall address issues relating to the property tax

assessment, settlement, and collection processes to assure uniformity in reporting.

(2) In addition to any other instructions relevant to the processes, the statewide set of instructions shall include how to report items related to the county collector's original charge or assessed value used to determine state foundation funding aid under the Public School Funding Act of 2003, § 6-20-2301 et seq.

History. Acts 2006 (1st Ex. Sess.), No. 26, § 2; 2006 (1st Ex. Sess.), No. 27, § 2.

26-26-2003. Preliminary report — Annual report.

(a) (1) By November 15, 2006, the Assessment Coordination Department shall present its preliminary report to the House Interim Committee on Revenue and Taxation, the Senate Interim Committee on Revenue and Taxation, the House Interim Committee on Education, and the Senate Interim Committee on Education regarding the implementation of this subchapter.

(2) The preliminary report shall include:

(A) The proposed or promulgated rules;

(B) The status of implementing the rules; and

(C) If the rules have been implemented, a list of the counties that have complied with the rules.

(b) By December 15 of each following year, the department shall present an update to the preliminary report that shall include:

(1) Any changes to the rules;

(2) The status of implementing the rules;

(3) A list of the counties that have complied with the rules; and

(4) Any additional information requested by a chair of a committee to be included in the update.

History. Acts 2006 (1st Ex. Sess.), No. 26, § 2; 2006 (1st Ex. Sess.), No. 27, § 2.

Chapter 27 Equalization Of Assessments

Subchapter 1 — General Provisions

Subchapter 2 — State Equalization Board

Subchapter 3 — County Equalization Boards

Research References

ALR.

Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation. 9 A.L.R.4th 428.

Am. Jur. 72 Am. Jur. 2d, State Tax., §§ 831-833.

C.J.S. 84 C.J.S., Tax., § 489 et seq.

Subchapter 1 — General Provisions

[Reserved]

Subchapter 2 — State Equalization Board

- 26-27-201. Authority.
- 26-27-202. Meeting.
- 26-27-203. Rules for valuation.
- 26-27-204. Order of adjustment.

Effective Dates. Acts 1927, No. 129, § 38: approved Mar. 9, 1927. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Case Notes

Constitutionality.

Constitutionality.

Acts 1927, No. 129 held constitutional. *Arkansas Tax Comm'n v. Ashby*, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-27-201. Authority.

- (a) The Arkansas Public Service Commission shall constitute the State Equalization Board and shall equalize the assessment of property throughout the state.
- (b) For this purpose, in addition to the powers and duties conferred on the commission, it shall have power to equalize the assessment of all property in this state between districts, cities, and townships of the same county, between the different counties of this state, and of the property assessed by the commission in the first instance.

History. Acts 1927, No. 129, § 31; Pope's Dig., § 2057; A.S.A. 1947, § 84-714.

26-27-202. Meeting.

(a) The Arkansas Public Service Commission shall meet as the State Equalization Board on the first Monday in October of each year for the purpose of equalizing the taxable valuation of all real or personal property.

(b) The board shall:

- (1) Examine and compare the returns of the assessment of property in the counties of this state;
- (2) Summon and hear witnesses and make or cause to be made investigation relative thereto; and
- (3) Proceed to equalize the property, so that all the taxable property throughout this state shall be assessed uniformly at its true and full market or actual value, or at such percentage as has been duly certified by the commission.

History. Acts 1927, No. 129, § 31; Pope's Dig., § 2057; A.S.A. 1947, § 84-714.

26-27-203. Rules for valuation.

In the performance of its duties, the members of the State Equalization Board shall be governed by the following rules:

- (1) They shall add to the aggregate valuation of the real property of every county which they believe to be valued below its true and full market or actual value, or authorized percentage thereof, such percentage in each case as will bring it to its true and full market or actual value or authorized percentage thereof;
- (2) They shall deduct from the aggregate valuation of the real property of every

county which they believe to be valued above its true and full market or actual value, or authorized percentage thereof, such percentage in each case as will reduce it to its true and full market or actual value or authorized percentage thereof;

(3) They shall add to the aggregate valuation of any class of personal property of any county which they believe to be valued below the true and full market or actual value, or authorized percentage thereof, such percentage, in each case, as will raise it to its true and full market or actual value, or authorized percentage thereof;

(4) They shall take from the aggregate valuation of any class of personal property in any county which they believe to be valued above the true and full market or actual value, or authorized percentage thereof, such percentage as will reduce it to its true and full market or actual value or authorized percentage thereof;

(5) If they believe that the valuation of the real or personal property or any class of personal property of any district, city, town, or township of any county should be raised or reduced without raising or reducing the other real or personal property of the county or without raising or reducing it in the same ratio, they may, in every such case, add to or take from the valuation of the real or personal property or any class of personal property of any one (1) or more of the districts, cities, towns, or townships such percentage as they believe will raise or reduce it to its true and full market or actual value, or authorized percentage thereof;

(6) Before any percentage shall be added to or deducted from the total assessed valuation of any county, township, district, city, or town in this state by the board, it shall cause a notice to be served upon the county judge of the county, who shall cause notice to be published in some newspaper having a general circulation in the county, at least ten (10) days before the date of the proposed change. The notice shall give the date and place at which the board will sit and shall warn the county judge and all citizens of the county to appear at the time and place and show cause, if any they can, why the proposed change should not be made or the assessments increased or reduced.

History. Acts 1927, No. 129, § 32; Pope's Dig., § 2058; A.S.A. 1947, § 84-715.

26-27-204. Order of adjustment.

(a) A record of the proceedings of the State Equalization Board shall be kept by the secretary thereof.

(b) (1) A certified copy of the record or such part thereof as affects his county shall, on or before the third Monday in November, be furnished the county clerk of each county in which property, the assessed valuation of which has been ordered by the board increased or reduced, is situated.

(2) In carrying out the order of the board, the county clerk shall add to or deduct from the valuation of any property, as adjusted by the local assessment and equalization officials, such percentage or amount as the board might so order and shall enter the adjusted or equalized valuation in the proper record and extend taxes thereon.

History. Acts 1927, No. 129, § 33; Pope's Dig., § 2059; A.S.A. 1947, § 84-716.

Case Notes

Late Orders.

Late Orders.

Where State Board of Equalization does not complete its work by the third Monday in November

as required by this section, order of state board to a county equalization board to reconvene and make adjustments on properties for the taxable year is invalid. *Arkansas Tax Comm'n v. Ashby*, 217 Ark. 759, 233 S.W.2d 361 (1950).

Subchapter 3 **— County Equalization Boards**

- 26-27-301. Creation.
- 26-27-302. Qualifications.
- 26-27-303. Composition.
- 26-27-304. Selection of members.
- 26-27-305. Terms of office — Vacancies.
- 26-27-306. Oath of members.
- 26-27-307. Secretary of board.
- 26-27-308. Compensation.
- 26-27-309. Meetings.
- 26-27-310. Working groups.
- 26-27-311. Special sessions generally.
- 26-27-312. Special session for purpose of planning work.
- 26-27-313. Attendance by assessor.
- 26-27-314. Authority to classify and zone property.
- 26-27-315. Equalization of assessments.
- 26-27-316. Rights of examination.
- 26-27-317. Applications for adjustment.
- 26-27-318. Appeals to courts.
- 26-27-319. Resolution of valuation adopted.
- 26-27-320. Assessed values entered on record.
- 26-27-321. Abstract of tax books to be filed.
- 26-27-322. Change in market value — Board procedure.

Cross References. Basis of valuation determined by Public Service Commission, § 26-24-104. Employment of professional appraisers on petition, § 26-26-601 et seq. Publication of summary of proceedings, § 1-3-104.

Effective Dates. Acts 1919, No. 147, § 18: approved Mar. 1, 1919. Emergency clause provided: "That Act 234 of the Acts of 1917 and Act 124 of the Acts of 1913, and all other laws in conflict herewith, are hereby repealed, and this Act, being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage."

Acts 1929, No. 172, § 4: approved Mar. 22, 1929. Emergency clause provided: "It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1953, No. 10, §§ 5, 6: maximum salaries effective Jan. 1, 1953. Emergency clause provided: "It is hereby ascertained and declared that without immediate legislation the county officers affected by this act shall be without adequate deputies and assistants to properly carry out the duties of their offices, and that this act is necessary for the immediate preservation of the public peace, health and safety, and an emergency is hereby declared to exist and this act shall take effect and be in full force from and after its passage."

Acts 1953, No. 388, § 5: approved Mar. 28, 1953. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the provisions of this Act will result in more efficient and equitable administration of the tax laws of the State; and that undue delay in the effective date thereof will preclude such efficiency and equity in making the 1953 assessments. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1955, No. 230, § 8: Mar. 15, 1955. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that great inequalities and discriminations in property assessments now exist throughout the State, that there is urgent need to equalize property assessments and to make them uniform, that such equalization and uniformity of assessments cannot be obtained except with the aid of County Equalization Boards so established as to make possible such equalization and uniformity of property assessments, and that only by the enactment of this Bill can County Equalization Boards be so established. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from and after the date of its passage and approval."

Acts 1955, No. 371, § 3: Mar. 24, 1955. Emergency clause provided: "It has been found, and is hereby declared by the General Assembly of the State of Arkansas, that great inequalities and discrimination in property assessments now exist throughout the State; that there is urgent need for an impartial and equitable appraisal of certain types of classes of property in many taxing districts throughout the State to serve as an aid to the County Boards of Equalization in determining just and equitable assessments of such property for tax purposes; and that the enactment of this legislation will result in more efficient and equitable administration of the tax laws. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1959, No. 246, § 5: Mar. 25, 1959. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the laws of this State regarding the time for assessment of real and personal property and the equalization thereof have resulted and will continue to result in a great loss of revenues to the several taxing units in the State of Arkansas, that on account of such loss of revenues the cities, counties and school districts in the State of Arkansas are deprived of funds and are thereby to such extent handicapped in supplying their respective services to the citizens of this State, and that only by the immediate passage of this Act may such situation be corrected. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 164, § 3: Feb. 12, 1975. Emergency clause provided: "Whereas, in many counties it is difficult to secure a quorum of all the elected councilmen of the towns and cities in the county; and, therefore, the municipalities are often unable to duly appoint their representative on the County Equalization Board; and whereas, these appointments are to be made in May of odd numbered years, therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect immediately on its passage and approval."

Acts 1985, No. 294, § 3: Mar. 8, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that members of County Equalization Boards are appointed for staggered three (3) year terms; and that present law requires that members of County Equalization Boards be appointed in May of each odd numbered year, which results in confusion as to the dates of the beginning and expiration of their terms. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 891, § 5: Apr. 4, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly that the equalization board of each county should reflect the current population of the county in order to provide adequate service to the county; that current Arkansas law is outdated in this respect; and that if this problem is not immediately

corrected it will exist until the next biennium. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1999, No. 1326, § 12: Apr. 12, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that this law will change the working relations of the county equalization boards and will give citizens of the various counties in Arkansas better representation on those boards, and in order for the changes made by this law to have the least disruptive effect, it is necessary for this Act to take effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2009, No. 1189, § 2: July 31, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that several counties in the state are considering changing real estate values during a year the counties are not scheduled to complete reappraisal; that county equalization boards are empowered to make such changes; that county equalization boards have no guidance in the law on when to take action or the type of action that is appropriate under these circumstances. Without proper guidance, county equalization boards face the risk of unintentionally putting the county in noncompliance. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

26-27-301. Creation.

(a) There is created a county equalization board in each county of this state to be selected in the manner provided by §§ 26-27-302 — 26-27-305.

(b) The boards shall have all the powers and authority, and perform all of the duties which are conferred by law on the boards in this state.

History. Acts 1955, No. 230, § 2; A.S.A. 1947, § 84-701.

26-27-302. Qualifications.

The county equalization board of each county shall be composed of qualified electors of the county who have been real property owners for at least one (1) year.

History. Acts 1955, No. 230, § 3; 1957, No. 235, § 1; 1977, No. 287, § 1; A.S.A. 1947, § 84-702; Acts 1999, No. 1326, § 1.

Amendments. The 1999 amendment substituted “have been real property owners for at least one (1) year” for “are real estate owners and are familiar with property values in the county.”

26-27-303. Composition.

(a) The county equalization board of each county shall consist of five (5) members.

(b) However, in counties having a population in excess of seventy-nine thousand (79,000) persons, according to the most recent federal decennial census, the board may consist of nine (9) members.

History. Acts 1955, No. 230, § 3; 1957, No. 235, § 1; 1977, No. 287, § 1; A.S.A. 1947, § 84-702; Acts 1995, No. 891, § 1; 1999, No. 1326, § 2.

Amendments. The 1995 amendment substituted “the most recent federal decennial census, the board may” for “the 1970 Federal Decennial Census, the board shall”; and made a minor punctuation change.

The 1999 amendment substituted “five (5) members” for “three (3) members,” and deleted “in counties having two (2) judicial districts, the board shall consist of five (5) members, and” preceding “in counties having a population”; and made stylistic changes.

Case Notes

Improper Size Boards.

Improper Size Boards.

Although county board of equalization should have been composed of only three members instead of five by virtue of county's two districts being consolidated, lack of action to select new members of the board meant the five members of the board were serving as holdover members until their successors were duly selected or appointed and qualified. *Gilmore v. Lawrence County*, 246 Ark. 614, 439 S.W.2d 643 (1969).

Even though county may have had population large enough to authorize a nine member board of equalization, where record showed the county judge had difficulty in determining the population of the county from the census report, actions of three member board were not void. *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-27-304. Selection of members.

(a) (1) When the county equalization board consists of five (5) members:

(A) One (1) member shall be selected by the representatives of the several school districts in the county;

(B) One (1) member shall be selected by the representatives of all cities and incorporated towns in the county;

(C) One (1) member shall be appointed by the county judge; and

(D) Two (2) members shall be appointed by a majority vote of the county quorum court in the following manner:

(i) The quorum court shall appoint a licensed real estate appraiser to at least one (1) of these two (2) positions, but if a licensed real estate appraiser is not available or willing to serve, the quorum court may appoint a licensed real estate broker;

(ii) If a licensed real estate broker is not available or willing to serve, the quorum court may appoint a licensed real estate salesperson; and

(iii) If a licensed real estate salesperson is not available or willing to serve, the quorum court may appoint any qualified elector of the county.

(E) The five (5) members shall be selected from different sections of the county.

(2) When the county equalization board consists of nine (9) members:

(A) Two (2) members shall be selected by the representatives of the several school districts in the county;

(B) Two (2) members shall be selected by the representatives of all cities and incorporated towns in the county;

(C) Two (2) members shall be appointed by the county judge; and

(D) Three (3) members shall be appointed by a majority vote of the county quorum court in the following manner:

(i) The quorum court shall appoint a licensed real estate appraiser to at least one (1) of these three (3) positions, but if a licensed real estate appraiser is not

available or willing to serve, the quorum court may appoint a licensed real estate broker;

(ii) If a licensed real estate broker is not available or willing to serve, the quorum court may appoint a licensed real estate salesperson; and

(iii) If a licensed real estate salesperson is not available or willing to serve, the quorum court may appoint any qualified elector of the county.

(E) The selecting or appointing agency in each instance shall select or appoint the members from different sections of the county.

(b) (1) (A) (i) For the purpose of making the selection of its members of the county equalization board as provided in this section, the school district's superintendent or designee of each school district in each county shall serve as the representative of his or her respective school district.

(ii) The representatives of the several school districts of each county shall hold a meeting during the month of May of each year in which the term of any of their members of the county equalization board shall expire.

(B) The county judge shall serve as chair of the meeting and shall issue the call for the meeting, which shall specify the time, date, and place of the meeting.

(C) (i) The selection of members of the county equalization board shall be by majority vote of the school board representatives present, and no action shall be taken unless there is a quorum present.

(ii) A majority of all of the school board representatives in the county shall constitute a quorum.

(2) (A) (i) For the purpose of making the selection of their members of the county equalization board, the representatives of the cities and incorporated towns in the county shall hold a meeting during the month of May of each year in which the term of any of their members of the county equalization board shall expire.

(ii) The mayor of the city or town or his or her designee shall serve as the representative of his or her city or town.

(B) The mayor or his or her designee of the county seat city or town or, if there are two (2) county seats, the mayor or his or her designee of the larger county seat city or town shall serve as chair of the meeting and shall issue the call, which shall specify the time, date, and place of the meeting.

(C) (i) The selection of members of the county equalization board shall be by majority vote of the representatives of the cities and towns present, and no action shall be taken unless there is a quorum present.

(ii) A majority of all of the representatives of all cities and incorporated towns in the county shall constitute a quorum.

(iii) Each of the cities and incorporated towns within the county shall be entitled to one (1) vote.

(3) The county judge and the quorum court of each county shall make the appointment of their members of the county equalization board during the month of May of each year in which the term of any of their members of the county equalization board shall expire.

History. Acts 1955, No. 230, §§ 3, 4; 1957, No. 235, § 1; 1975, No. 164, § 1; 1977, No. 287, §§ 1, 2; 1985, No. 294, § 1; A.S.A. 1947, §§ 84-702, 84-702.1; Acts 1999, No. 1326, § 3; 2001, No. 505, § 1; 2007, No. 12, § 1.

Amendments. The 1999 amendment rewrote (a); and in (b)(3), inserted "and the quorum court,"

substituted "make the appointment" for "make his appointment," inserted "their" preceding "members," and substituted "of their members" for "of his members"; and made stylistic changes. The 2001 amendment substituted "representatives" for "members of the city and town councils" in (a)(1)(B) and (a)(2)(B); in (b)(1)(A)(i), deleted "county equalization" preceding "board," substituted "selection of its" for "selection of their," substituted "district's superintendent or designee" for "board members," and substituted "serve as the representative of his or her respective school district" for "select one (1) representative and one (1) alternate representative for each school district"; in (b)(2)(A), deleted "city and town councils of the" preceding "cities and incorporated" and added the last sentence; substituted "cities and towns" for "city and town councils" in (b)(2)(C)(i); deleted "of the city and town councils" in (b)(2)(C)(ii); and deleted (b)(2)(C)(iv)(a) and (b)(2)(C)(iv)(b).

The 2007 amendment inserted "or his or her designee" in (b)(2)(A)(ii) and twice in (b)(2)(B).

Case Notes

Improper Appointments.

Improper Appointments.

When improperly appointed members of a county board of equalization assume office under color of the appointments and act in good faith, their acts as such members are valid. *Pennington v. Oliver*, 245 Ark. 251, 431 S.W.2d 843 (1968).

26-27-305. Terms of office — Vacancies.

(a) The terms of office of the members of the county equalization boards shall be staggered as follows:

(1) (A) In those counties having a county equalization board composed of five (5) members, the members shall serve three-year staggered terms of office, with each expiring term to expire on the first Monday of June of each year, or until his or her successor is selected or appointed and qualified.

(B) However, on the first Monday in July, 1999, the terms of the present members of each county equalization board with three (3) or five (5) members shall expire and new members shall be appointed as is provided by law, and within thirty (30) days thereafter, the five (5) new members shall meet and determine by lot their respective staggered terms in such a manner that one (1) member's term should expire one (1) year thereafter, two (2) members' terms should expire two (2) years thereafter, and two (2) members' terms should expire three (3) years thereafter; and

(2) (A) In those counties having a county equalization board composed of nine (9) members, the members shall serve three-year staggered terms of office, with each expiring term to expire on the first Monday of June of each year, or until his or her successor is selected or appointed and qualified.

(B) However, on the first Monday in July, 1999, the terms of the present members of each county equalization board with nine (9) members shall expire and new members shall be appointed as is provided by law, and within thirty (30) days thereafter, the new members shall meet and determine by lot their respective staggered terms in such a manner that the terms of three (3) members each should expire one (1), two (2), and three (3) years, respectively, thereafter.

(b) (1) Upon the expiration of a member's term under the provisions of this section, the successor member shall be appointed or selected for a three-year term or until his or her successor is selected or appointed and qualified.

(2) Upon the expiration of the term of any member of any county equalization board or upon the vacancy of a membership of any county equalization board, the

member to fill the vacancy shall be selected by the same group, either the directors of the several districts of the county, the members of the city and town councils of the cities and incorporated towns in the county, the county judge, or the county quorum court that made the selection of the member whose term has expired or has been vacated.

History. Acts 1955, No. 230, §§ 3, 5; 1957, No. 235, §§ 1, 2; 1977, No. 287, § 1; A.S.A. 1947, §§ 84-702, 84-702.2; Acts 1999, No. 1326, § 4.

Publisher's Notes. The proviso to subsection (a)(1) of this section provided that, within thirty (30) days after July 6, 1977, the present members of each county equalization board should determine by lot their respective staggered terms.

The proviso to subsection (a)(2) of this section provided that, within thirty (30) days after July 6, 1977, the present members of each county equalization board should determine by lot their respective staggered terms in such a manner that one (1) member's term should expire one (1) year thereafter, two (2) members' terms should expire two (2) years thereafter, and two (2) members' terms should expire three (3) years thereafter.

The proviso to subsection (a)(3) of this section provided that, within thirty (30) days after July 6, 1977, the present members of each county equalization board should determine by lot their respective staggered terms in such a manner that one (1) member each appointed by the representatives of the school districts of the county, by the city and town councils, and by the county judge should expire one (1), two (2), and three (3) years, respectively, thereafter.

Amendments. The 1999 amendment rewrote this section.

26-27-306. Oath of members.

(a) Each member of a county equalization board, before entering upon the discharge of his duties, shall take the oath of office prescribed in Arkansas Constitution, Article 19, Section 20, and further, that he will fearlessly, impartially, and faithfully equalize the assessed value of all property assessed and subject to taxation.

(b) The oath shall be subscribed and sworn to by each member of the board before the clerk of the county court, and the clerk shall make it a matter of record in his office.

History. Acts 1929, No. 172, § 25; Pope's Dig., § 13643; A.S.A. 1947, § 84-705.

Case Notes

Cited: *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931); *Beard v. Wilcockson*, 184 Ark. 349, 42 S.W.2d 557 (1931).

26-27-307. Secretary of board.

(a) The clerk of the county court or his or her designee shall serve as secretary of the county equalization board of his or her county and shall keep a complete and accurate journal of its proceedings and perform such other duties as may be by law required by the county equalization board.

(b) In addition, within ten (10) days after the appointment of the county equalization board for the clerk of the county court's county, the clerk of the county court or his or her designee shall file from time to time with the Assessment Coordination Department a statement showing the name and address of each member of the county equalization board.

(c) When any change in the personnel of the county equalization board is made, the clerk of the county court shall immediately so advise the Arkansas Public Service Commission.

History. Acts 1929, No. 172, § 23; Pope's Dig., § 13641; A.S.A. 1947, § 84-703; Acts 2003, No. 202, § 1.

A.C.R.C. Notes. The Assessment Coordination division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by Acts 1997, No. 436, § 2.

Amendments. The 2003 amendment added the subdivision designations; in (a) and (b), inserted "or the clerk's designee" and substituted "the clerk's" for "his" preceding "county"; in (b), substituted "Department" for "Division of the Arkansas Public Service Commission"; and in (c), substituted "the clerk" for "he" and "Arkansas Public Service Commission" for "commission."

Case Notes

Journal.
Meetings.

Journal.

Acts 1883, No. 114, § 83, providing that the clerk of the county court should keep an accurate journal or record of proceedings was mandatory, and when such record was not kept, proceedings of county equalization board were without effect. *American Trust Co. v. Nash*, 111 Ark. 97, 163 S.W. 178 (1914) (decision under prior law).

Meetings.

This section does not require a county clerk to attend all special planning sessions of the county equalization board, even though, by virtue of this section, the county clerk must serve as the board's secretary. *Gilmore v. Lawrence County*, 246 Ark. 614, 439 S.W.2d 643 (1969).

26-27-308. Compensation.

(a) The members of the county equalization board and the secretary thereof of the counties of this state shall receive for their services an amount to be fixed by the quorum court of the county.

(b) All compensation, together with expenses necessarily incurred by reason of official action of the board, shall be audited and paid by the county as other claims against the county are audited and paid.

History. Acts 1929, No. 172, § 24; Pope's Dig., § 13642; Acts 1953, No. 10, § 4; 1961, No. 485, § 1; 1969, No. 245, § 1; 1977, No. 481, § 1; A.S.A. 1947, § 84-704.

26-27-309. Meetings.

(a) (1) The county equalization board shall meet on August 1 of each year at the office of either the clerk of the county court or the office of the county assessor.

(2) However, if August 1 falls on a Saturday, a Sunday, or a legal holiday, the meeting shall be held on the next business day which is not a Saturday, a Sunday, or a legal holiday.

(b) At the first meeting of the county equalization board, it shall organize by electing one (1) of its members as chair who, in addition to all other powers and duties conferred in this subchapter, shall have the power to administer oaths to witnesses appearing before the county equalization board.

(c) (1) In addition, the county equalization board shall exercise its functions as a board of equalization to equalize the assessed value of all acreage lands, city and town lots, other real property, and personal property subject to local assessment, regardless of the year in which the property was last assessed by the local county assessor.

(2) (A) Beginning August 1 of each year and continuing through October 1, the county equalization board shall meet as often as is necessary to consider the equalization of all property assessments and all requests for adjustments of assessments by taxpayers.

(B) (i) However, in a county where the assessed value of real and personal property has been found by the Assessment Coordination Department to be below the percentage of the true or fair market value as required by law, the meetings of the county equalization board shall continue until all property assessments are equalized and all requests for adjustments of assessments by taxpayers are considered.

(ii) However, the meetings shall not run later than the third Monday in November of each year.

(d) A majority of the members of the county equalization board shall constitute a quorum for the transaction of business.

History. Acts 1929, No. 172, §§ 25, 26; Pope's Dig., §§ 13643, 13644; Acts 1953, No. 388, § 4; 1959, No. 246, § 1; A.S.A. 1947, §§ 84-705, 84-706; Acts 1999, No. 1326, § 5.

A.C.R.C. Notes. The Assessment Coordination division of the Public Service Commission was transferred to the Assessment Coordination Department by a type 2 transfer under § 25-2-105 by Acts 1997, No. 436, § 2.

Amendments. The 1999 amendment, in (a), deleted "annually" following "shall meet," inserted "of each year" following "August 1," added the last sentence, and made a minor punctuation change; rewrote (c); and made stylistic changes.

Case Notes

Appraisers.
Assessments.

Appraisers.

Where the General Assembly has mandated payment from county funds for appraisal of property, neither the quorum court nor the county judge would have any discretion in whether the expenses should be paid; the expense of the appraisers must be paid by the county, regardless of the results of a referendum. *Quattlebaum v. Davis*, 265 Ark. 588, 579 S.W.2d 599 (1979).

Assessments.

A county equalization board has no authority to reduce or raise anybody's assessment after the third Monday in November. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

Cited: *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931); *Beard v. Wilcockson*, 184 Ark. 349, 42 S.W.2d 557 (1931); *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958); *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966); *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971).

26-27-310. Working groups.

County equalization boards consisting of nine (9) members may organize into working groups of three (3) members each for the purpose of making investigations and recommendations to be presented to and passed by the entire board sitting en banc. For this purpose, each group may select a group chairman who shall be vested with all the powers and duties pertaining to the work of his particular group as is vested in the chairman of the board.

History. Acts 1929, No. 172, § 26; Pope's Dig., § 13644; Acts 1959, No. 246, § 1; A.S.A. 1947, § 84-706.

Case Notes

Cited: *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958); *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966); *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971).

26-27-311. Special sessions generally.

(a) (1) (A) On petition of the county judge or the county quorum court or on the county equalization board's own motion at any time after adjournment of its regular monthly meeting or after its equalization meetings from August 1 each year through October 1 and before the third Monday in November of each year, the county equalization board of any county shall convene in special session for the purposes of:

(i) Completing its work of the equalization of property assessments; or

(ii) Reviewing or extending its work of the equalization of property assessments.

(B) (i) For these purposes, the county equalization board shall be vested and charged with all the powers and duties with which the county equalization board is vested and charged when meeting in regular session.

(ii) In addition, the county equalization board may employ qualified appraisers, abstractors, or other persons needed to appraise properties which the county equalization board may need in the discharge of its duties.

(2) The petition to the county equalization board shall specify the date on which the county equalization board shall convene, and the county equalization board may thereafter exercise its functions but not later than the third Monday in November next following.

(b) (1) An appeal from the action of the county equalization board when in special session shall be to the county court in the manner as provided by law.

(2) Any appeal shall be filed within ten (10) days from date of notice of action by the county equalization board and shall be heard and order made by the county court not later than forty-five (45) days prior to the date on which the tax books for the year are required to be delivered to the county collector.

(c) (1) The expense of any special session of the county equalization board including the expense for employment of appraisers, abstractors, and other persons needed shall be allowed and paid from the general fund of the county.

(2) (A) The general fund of the county shall be reimbursed by transfer to it from the funds of the respective taxing units of the county.

(B) The amount to be contributed by each taxing unit shall be in the proportion that the total of the ad valorem taxes collected for the benefit of each taxing unit bears to the total of the ad valorem taxes collected for the benefit of all taxing units during collection period next following the special session.

History. Acts 1951 (Ex. Sess.), No. 9, §§ 1-3; A.S.A. 1947, §§ 84-717 — 84-719; Acts 1999, No. 1326, § 6.

Amendments. The 1999 amendment rewrote (a)(1)(A).

Research References

U. Ark. Little Rock L.J.

Heller and Sallings, Survey of Public Law, 3 U. Ark. Little Rock L.J. 296.

Case Notes

Appeals.
Appraisers.
Assessments.

Appeals.

Where petition to reduce assessment had been denied by county equalization board, then this remedy had been exhausted before the board, but the right of appeal to the county court still remained, and the board's action or inaction did not preclude pursuing the statutory remedy for a hearing. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

Appraisers.

Where the General Assembly has mandated payment from county funds for appraisal of property, neither the quorum court nor the county judge would have any discretion in whether the expenses should be paid; the expense of the appraisers must be paid by the county, regardless of the results of a referendum. *Quattlebaum v. Davis*, 265 Ark. 588, 579 S.W.2d 599 (1979).

Assessments.

A county equalization board has no authority to reduce or raise anybody's assessment after the third Monday in November. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

Cited: *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971); *Prather v. Martin*, 257 Ark. 576, 519 S.W.2d 72 (1975); *Quattlebaum v. Davis*, 265 Ark. 588, 579 S.W.2d 599 (1979).

26-27-312. Special session for purpose of planning work.

(a) (1) The equalization board of any county, on petition of the county judge or on its own motion, shall, at any time, convene in special session for the purpose of planning its work of equalization of property assessments.

(2) For this purpose only, the board shall be vested and charged with all the powers and duties with which the board is vested and charged when meeting in regular session. In addition, the board shall be empowered to employ qualified appraisers, abstractors, or other persons needed to appraise properties, which appraisal the board may need in the discharge of its duties.

(b) (1) The expense of any special session of the board, including the expense for employment of appraisers, abstractors, and other persons needed shall be allowed and paid from the general fund of the county.

(2) The general fund of the county shall be reimbursed by transfer to it from the funds of the respective taxing units of the county, and the amount to be contributed by each taxing unit shall be in the proportion that the total of the ad valorem taxes collected for the benefit of each taxing unit bears to the total of the ad valorem taxes collected for the benefit of all taxing units during the collection period next following the special session.

History. Acts 1955, No. 371, §§ 1, 2; A.S.A. 1947, §§ 84-721, 84-722.

Case Notes

Appeals.

Appraisers.

County Clerks.

Appeals.

Where petition to reduce assessment had been denied by county equalization board, this remedy had been exhausted before the board, but the right of appeal to the county court still remained, and the board's action or inaction did not preclude pursuing the statutory remedy for a hearing. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

Appraisers.

Where the General Assembly has mandated payment from county funds for appraisal of property, neither the quorum court nor the county judge would have any discretion in whether the expenses

should be paid; the expense of the appraisers must be paid by the county, regardless of the results of a referendum. *Quattlebaum v. Davis*, 265 Ark. 588, 579 S.W.2d 599 (1979).

County Clerks.

The attendance of the county clerk is not required at all special planning sessions of a county equalization board convened pursuant to this section. *Gilmore v. Lawrence County*, 246 Ark. 614, 439 S.W.2d 643 (1969).

26-27-313. Attendance by assessor.

It is the imperative duty of the county assessor or his deputy to attend each session of the county equalization board and to furnish the board with all data and information in his possession pertaining to the location, amount, kind, and value of any property, the valuation of which is under consideration by the board.

History. Acts 1929, No. 172, § 29; Pope's Dig., § 13647; A.S.A. 1947, § 84-710.

26-27-314. Authority to classify and zone property.

The county equalization board of any county may classify the personal property and zone and classify the real property in the county and determine the average value of the property so classified or zoned, or units of them, and use the average value so determined as a guide in the equalization of assessments in the county. However, all property shall be assessed according to its value as provided by law.

History. Acts 1953, No. 197, § 1; A.S.A. 1947, § 84-720.

26-27-315. Equalization of assessments.

(a) Immediately after the county assessor files his or her report of the assessment of real and personal property in the office of the clerk of the county court as required by law, the clerk of the county court shall present the report of the assessment to the county equalization board, and the county equalization board shall proceed to equalize the assessed valuation of the properties.

(b) For this purpose, the county equalization board shall observe the following rules:

(1) (A) It shall raise or lower the valuation of any property to bring about a complete equalization.

(B) It shall not raise or lower the valuation of any property without documenting the reason for raising or lowering the valuation of the property, and the documentation shall be attached to the appropriate property record card or cards.

(C) The reasons for lowering or raising the valuation of property shall be limited to:

(i) The assessment is unfair compared with other properties of the same kind similarly situated, evidenced by the fact that the property is assessed higher than neighborhood properties of the same use, size, materials, and condition;

(ii) The assessment is clearly erroneous, evidenced by the fact that the appraisal relies on substantially inaccurate or insufficient information concerning the property; or

(iii) The assessment is manifestly excessive or greatly exceeds what willing and knowledgeable buyers will pay similarly motivated sellers for the property, evidenced by selling prices of similarly situated properties.

(D) (i) It shall not raise or lower the value of any property without reviewing values of similarly situated properties.

(ii) If the same reason for raising or lowering the value of the property exists for those similarly situated properties, the values for those properties shall also be raised or lowered, and the changes shall be documented.

(E) It shall not materially change the records of the county assessor's office, but may only direct that the assessed value of property be raised or lowered in keeping with its documented findings;

(2) (A) In each instance in which the county equalization board shall raise the valuation of any property, it shall immediately notify the owner or his or her agent by first class mail of the increase.

(B) However, all persons present before the county equalization board in person or by agent at the time the increase is ordered are there so notified and shall not be entitled to further notice.

(C) The notice shall state the valuation returned by the county assessor and the valuation fixed by the county equalization board and shall advise the owner or his or her agent that he or she may in person, by agent, petition, or letter apply for and receive consideration or hearing by or before the county equalization board if the application shall be made on or before the first Saturday next preceding the third Monday in September if in regular session for equalization or before the first Saturday next preceding the third Monday of November if meeting in special sessions; and

(3) In each instance in which an assessment is raised and the owner or his or her agent has applied for consideration or hearing for an adjustment of his or her assessment, if the county equalization board has failed to take action on his or her application before adjourning its regular session or if it fails to convene in special session to consider the application, then the county equalization board shall reduce all such increases to the assessed levels of the previous year.

History. Acts 1929, No. 172, § 27; Pope's Dig., § 13645; A.S.A. 1947, § 84-707; Acts 1999, No. 1326, § 7; 2001, No. 1567, § 1.

Amendments. The 1999 amendment added "if in regular session for equalization ... meeting in special sessions" in (b)(3); added (b)(4); and made stylistic changes. The 2001 amendment redesignated former (b)(1) as present (b)(1)(A) and made related changes; deleted "such figure as in the opinion of the board will" following "any property to" in (b)(1)(A); added (b)(1)(B)-(E); and made gender neutral changes and minor stylistic changes throughout.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

Case Notes

Notice.
Raise in Valuations.
Remedies.

Notice.

Alleged error in notices to taxpayers that showed the valuations fixed by the county equalization board, but omitted the valuations stated by the assessor, were rendered harmless as to taxpayers who appeared in ample time before the board. *Gilmore v. Lawrence County*, 246 Ark. 614, 439 S.W.2d 643 (1969).

Raise in Valuations.

A decision of a county board of equalization to increase generally the valuation of rural properties

made prior to the assessor's report of assessments was not in violation of this section where no specific valuations were increased until notices were mailed out on the date the assessor's report was delivered to the board. *Gilmore v. Lawrence County*, 246 Ark. 614, 439 S.W.2d 643 (1969). The decision of a county equalization board to raise rural valuations generally was not an illegal assessment but a proper action of tax equalization where the assessed valuation of all rural lands of the county were shown to have been about 13 percent of market value and other classes of properties had been assessed at approximately 20 percent of market value. *Gilmore v. Lawrence County*, 246 Ark. 614, 439 S.W.2d 643 (1969).

Remedies.

Where agent of taxpayer mistakenly made excessive assessment of property, taxpayer had remedy before county board of equalization and could not enjoin collection of the excessive taxes under § 16-113-306. *Beard v. Wilcockson*, 184 Ark. 349, 42 S.W.2d 557 (1931).

Where taxpayers complained about the failure of the assessor and the county board of equalization to assess and equalize all property in the county, an injunction to prevent the extension and collection of taxes was not the proper remedy where there were penalties provided by § 26-26-201. *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

Mandamus under § 26-26-301 to insure proper assessment and equalization would have been the proper remedy, rather than injunction of tax collection, to taxpayers' claim of denial of equal protection under U.S. Const. Amend. 14. *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973).

26-27-316. Rights of examination.

(a) The county equalization board, or any member thereof, shall have free access to the records of the office of the county clerk and of the office of the circuit clerk and ex officio recorder of the county.

(b) (1) The board or any member may enter upon and view property, and may require witnesses to appear before the board and testify regarding the location, amount, kind, and value of any or all items of any class or character of property in the county.

(2) The secretary of the board, in vacation or in session, at the direction of the board or any member thereof, shall summon witnesses for examination by the board.

History. Acts 1929, No. 172, § 28; Pope's Dig., § 13646; A.S.A. 1947, § 84-709.

26-27-317. Applications for adjustment.

(a) (1) Any property owner or an agent of a property owner may apply in person, by petition, or by letter to the secretary of the county equalization board on or before the third Monday in August of every year for the adjustment of the county assessor's assessment on the property owner's property or the property of another person.

(2) The county equalization board may not adjust any assessment other than the assessment made during the year it meets to consider an application made under subdivision (a)(1) of this section.

(b) (1) A property owner or an agent of the property owner may personally appear before the county equalization board or pursue the appeal by supplying written documentation as to the adjustment desired.

(2) The property owner or an agent of the property owner shall notify the secretary of the county equalization board, who shall schedule a hearing, and, if practicable, the hearing shall be held at the convenience of the property owner.

(c) (1) The county equalization board shall begin hearing appeals no later than the second Monday in August.

(2) On at least one (1) day each week, appeals shall be heard after normal

business hours to accommodate working property owners.

(d) (1) The county equalization board shall decide the merits of an adjustment of assessment application and notify the property owner of its decision in writing at least ten (10) business days after the hearing.

(2) The county equalization board's notification shall include:

(A) The county equalization board's decision;

(B) The right of the property owner to appeal the county equalization board's decision to the county court; and

(C) The deadline for petitioning the county court for a hearing.

History. Acts 1919, No. 147, § 11; C. & M. Dig., § 9911; Acts 1929, No. 172, § 30; Pope's Dig., § 13671; Acts 1951, No. 367, § 1; A.S.A. 1947, § 84-708; Acts 1999, No. 572, § 4; 1999, No. 1326, § 8; 2001, No. 1567, § 2; 2009, No. 276, § 1.

Amendments. The 1999 amendment by No. 572 rewrote this section.

The 1999 amendment by No. 1326 substituted "September" for "August" in (a); added "if in regular session for equalization; or" to the end of (b)(2)(A); added (b)(2)(B); added (c); and made stylistic changes.

The 2001 amendment rewrote the section.

The 2009 amendment inserted (a)(2) and redesignated the remaining subdivision as (a)(1).

Research References

Ark. L. Rev.

Acts of 1951 Affecting Property Taxation, 5 Ark. L. Rev. 368.

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

Case Notes

In General.

Assessments of Other Persons.

Burden of Proof.

Lowering of Assessments.

In General.

The opportunity to appeal to the county board of equalization is an essential part of the tract-by-tract procedure, for under the United States Constitution, a property owner is entitled, at some point, to notice and an opportunity to be heard on the fairness of his assessment, as compared with the assessment of other property. *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966).

Assessments of Other Persons.

This section evinces a legislative intention to permit a taxpayer to protest to the county equalization board against a conceived insufficiency in the amount of an assessment of another taxpayer. *Pulaski County v. Commercial Nat'l Bank*, 210 Ark. 124, 194 S.W.2d 883 (1946).

Burden of Proof.

In a proceeding to review an assessment of lands as discriminatory, the burden is on the petitioner to show that such assessment was unfair as compared with the assessment of other lands of the same kind and similarly situated. *Doniphan Lumber Co. v. Cleburne County*, 138 Ark. 449, 212 S.W. 308 (1919) (decision under prior law).

Lowering of Assessments.

Under Acts 1887, No. 92, § 52, where county court lowered assessment of a taxpayer, neither the state nor the tax commission was entitled to relief in equity against such assessment. *State v. Little*, 94 Ark. 217, 126 S.W. 713 (1910) (decision under prior law).

Cited: *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931); *Arkansas Tax Comm'n v. Ashby*, 217 Ark. 759, 233 S.W.2d 361 (1950); *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465

S.W.2d 693 (1971); Baldwin v. Rushing, 254 Ark. 1042, 497 S.W.2d 668 (1973); Rodgers v. Easterling, 270 Ark. 255, 603 S.W.2d 884 (1980).

26-27-318. Appeals to courts.

(a) (1) The county assessor or any property owner who may feel aggrieved at the action of the county equalization board may appeal from the action of the county equalization board to the county court by filing a petition of appeal with the clerk of the county court.

(2) The clerk of the county court shall summon the members of the county equalization board and issue such process as the county assessor, the county equalization board, or the county judge may request for witnesses and evidence of the amount and value of the property.

(b) No appeal to the county court shall be taken unless the petitioner:

(1) Has exhausted his or her remedy before the county equalization board; or

(2) Was not sent the notice of value change as required by § 26-23-203.

(c) (1) An appeal must be filed on or before the second Monday in October of each year and shall have preference over all matters before the county court and shall be heard and an order made on or before the fifteenth day of November.

(2) (A) The county court shall notify in writing the property owner or county assessor of its decision no later than twenty (20) working days after the property owner's appeal hearing.

(B) The notification shall state the county court's decision and that the property owner may appeal the decision to the circuit court.

(d) No reduction shall be allowed except on evidence corroborative of that of the property owner.

(e) Upon an appeal, any property owner in the county may appear and be heard in support of or in opposition to the appeal.

(f) (1) (A) The county court shall acquire no jurisdiction to hear the appeal unless the county clerk shall have first given notice of the appeal by publication by one (1) insertion published not less than one (1) week before the date fixed for the hearing of the appeal in a daily or weekly newspaper published and having a bona fide general circulation in the county or in any county in which no daily or weekly newspaper is published, by posting a notice at the courthouse and in four (4) other conspicuous places in the county seat of the county for a period of not less than one (1) week before the date fixed for the hearing of the appeal.

(B) The notice shall state:

(i) The name of the parties taking the appeal;

(ii) The assessment complained of, together with a definite description of the property so assessed;

(iii) The name of the supposed property owner;

(iv) The time and place fixed for the hearing of the appeal; and

(v) That any property owner in the county may appear at the hearing of the appeal and be heard in support of or in opposition to the appeal.

(2) The notice of appeal may be in the following form:

“NOTICE OF APPEAL FROM TAX ASSESSMENT

“Notice is hereby given that

hereby appeals to the County Court of -----

County from an assessment on property described as follows:

Name of Supposed
Owner

Description of
Property

“Such appeal will be heard by the county court at o'clock m. at the courthouse at, Arkansas, on the day of,, and any owner of property in said county may appear at said hearing in support thereof or in opposition thereto.”

County Clerk

(g) It shall be the duty of the prosecuting attorney or his or her deputy, when called upon by the county assessor, a member of the county equalization board, or the county court, to represent the county and the state in the prosecution of all appeals before the county courts and the circuit courts.

History. Acts 1919, No. 147, § 11; C. & M. Dig., § 9911; Acts 1929, No. 172, § 30; Pope's Dig., § 13671; Acts 1951, No. 367, § 1; A.S.A. 1947, § 84-708; Acts 1989, No. 34, § 1; 1999, No. 572, § 5; 2005, No. 1947, § 1; 2009, No. 276, § 2.

Amendments. The 1999 amendment substituted “The clerk shall” for “Except on appeals by the assessor, ten dollars (\$10.00) shall be paid as cost to the clerk, who shall” in (a)(2); added the second and third sentences in (c); and in (f)(1), substituted “in a daily or weekly newspaper” for “in some newspaper” and “there is no daily or weekly newspaper published” for “no newspaper is published”; and made stylistic changes.

The 2005 amendment substituted “fifteenth day of” for “first Monday in” in (c)(1); and deleted “or the second Monday in November, whichever is earlier” following “appeal hearing” in (c)(2)(A).

The 2009 amendment rewrote (b).

Research References

Ark. L. Rev.

Acts of 1951 Affecting Property Taxation, 5 Ark. L. Rev. 368.

U. Ark. Little Rock L.J.

Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 U. Ark. Little Rock L.J. 279.

Case Notes

In General.
Jurisdiction.
Necessary Parties.
Notice.
Publication.

In General.

A taxpayer must pursue the remedy providing for his relief or abide by the finding of the county board of equalization. *Clay County v. Brown Lumber Co.*, 90 Ark. 413, 119 S.W. 251 (1909) (decision under prior law).

This section evinces a legislative intention to permit a taxpayer protesting against a conceived insufficiency in the amount of an assessment of another taxpayer to appeal to the county court from an unfavorable disposition of his protest by the county equalization board. *Pulaski County v. Commercial Nat'l Bank*, 210 Ark. 124, 194 S.W.2d 883 (1946).

Where petition to reduce assessment had been denied by county equalization board, then this remedy had been exhausted before the board, but the right of appeal to the county court still remained, and the board's action or inaction did not preclude pursuing the statutory remedy for a hearing. *Jones v. Crouch*, 231 Ark. 720, 332 S.W.2d 238 (1960).

The opportunity to appeal to the courts is an essential part of the tract-by-tract procedure, for under the United States Constitution, a property owner is entitled, at some point, to notice and an opportunity to be heard on the fairness of his assessment, as compared with the assessment of other property. *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966).

Where statutory provisions for tract-by-tract assessment of property were so imperfectly executed that the assessment was not finalized until the landowner's time for appeal was past, it could not amount to substantial compliance with the law, as the landowner's essential constitutional rights to review are disregarded. *Dierks Forests, Inc. v. Shell*, 240 Ark. 966, 403 S.W.2d 83 (1966).

Subsection (a) of this section specifically provides for appeals on tax questions by either the property owner or the assessor; no further authorization for appeal is needed, for under § 16-67-201, all appeals from county court judgments are granted as a matter of right. *Pulaski County v. Jacuzzi Bros.*, 317 Ark. 10, 875 S.W.2d 496 (1994).

Jurisdiction.

Courts, whether of law or equity, held powerless to give relief against erroneous judgments of assessing bodies unless they are especially empowered by law to do so. *Clay County v. Bank of Knobell*, 105 Ark. 450, 151 S.W. 1013 (1912) (decision under prior law).

When only issue was alleged error of county assessor in fixing valuation of property, there was a statutory remedy by appearance before the county board of equalization, and the property owner having neglected to pursue this remedy, a court of equity had no jurisdiction to review the action of the assessor. *Arlington Hotel Co. v. Buchanan*, 110 Ark. 34, 160 S.W. 895 (1913) (decision under prior law).

Where county court adjourned before county equalization board assessed property so that the property owners were unable to appeal to the county court and at the next term, the court gave the owners the relief to which they would have been entitled at the preceding term, the judgment of the court would not be quashed on certiorari. *Arkadelphia Milling Co. v. Clark County Bd. of Equalization*, 136 Ark. 180, 206 S.W. 70 (1918) (decision under prior law).

Equity will grant relief against void tax assessments, but not against those assessments that are merely erroneous for overvaluation where a statutory remedy by appeal is afforded. *W.P. Brown & Sons Lumber Co. v. Sims*, 146 Ark. 253, 225 S.W. 322 (1920); *Little Red River Levee Dist. No. 2 v. State*, 185 Ark. 1170, 52 S.W.2d 46 (1932).

County court had no jurisdiction of appeal from assessment valuations where there was no publication of the statutory notice required by this section, and this defect was not cured by the fact that the county assessor appeared and contested the case in the county court. *Warren v. Wheatley*, 225 Ark. 901, 286 S.W.2d 334 (1956).

Taxpayer cannot enjoin an assessment where he has failed to exhaust his remedy of appeal from action or inaction by a county board of equalization. *New St. Mary's Gin, Inc. v. Moore*, 232 Ark. 24, 334 S.W.2d 683 (1960).

Necessary Parties.

A school district is not a necessary party to every proceeding for the determination of the assessed value of taxable property. *Pulaski County Bd. of Equalization v. American Republic Life Ins. Co.*, 233 Ark. 124, 342 S.W.2d 660 (1961).

Where taxpayer is granted an exemption from taxation filed in a county court pursuant to Ark. Const., Art. 7, § 28, the county may appeal to the circuit court from the order of the county court pursuant to Ark. Const., Art. 7, § 33, § 16-67-201 and this section, but the assessor should join in the appeal. *Pulaski County v. Jacuzzi Bros.*, 317 Ark. 10, 875 S.W.2d 496 (1994).

Notice.

Under § 26-26-910 and the constitutional requirement of due process of law, a taxpayer must be given notice both of a raised assessment and of his right to a review thereof by the county equalization board, and the provision of this section permitting a taxpayer to appeal to the county court without first having exhausted his remedy before the equalization board in cases where he shall have had no opportunity to appear before the board does not obviate the necessity for such notice. *Prather v. Martin*, 257 Ark. 576, 519 S.W.2d 72 (1975).

Publication.

Where statutory requirement of publication of appeal of assessment valuations was not complied with, order of county court reducing the assessed valuations was void and court could expunge such order even though the term had expired. *Warren v. Wheatley*, 225 Ark. 901, 286 S.W.2d 334 (1956).

Cited: *Tedford v. Vaulx*, 183 Ark. 240, 35 S.W.2d 346 (1931); *Arkansas Tax Comm'n v. Ashby*, 217 Ark. 759, 233 S.W.2d 361 (1950); *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971); *Baldwin v. Rushing*, 254 Ark. 1042, 497 S.W.2d 668 (1973); *Rodgers v. Easterling*, 270 Ark. 255, 603 S.W.2d 884 (1980).

26-27-319. Resolution of valuation adopted.

(a) Each county equalization board, immediately on the completion of its work of equalization and before final adjournment, shall adopt a resolution wherein it shall be stated the percentage of true market or actual value at which it has equalized the assessed values of the property of the county under its jurisdiction for the year.

(b) The resolution shall be signed by a majority of the members of the board. A copy of the resolution, together with an abstract of the adjusted assessment by total of items and value, shall be forwarded to the Arkansas Public Service Commission on or before the first Monday in October of each year.

History. Acts 1929, No. 172, § 31; Pope's Dig., § 13672; A.S.A. 1947, § 84-711.

26-27-320. Assessed values entered on record.

(a) It is the duty of the county clerk of each county to enter upon the assessment record of his county the adjusted or equalized assessed value of any and all property as found and fixed by the county equalization board.

(b) In making the tax books of the county, unless further adjustments are ordered by the county court or the State Equalization Board, the clerk shall extend the taxes on the adjusted or equalized values.

History. Acts 1929, No. 172, § 32; Pope's Dig., § 13673; A.S.A. 1947, § 84-712.

26-27-321. Abstract of tax books to be filed.

(a) The county clerk of each county shall, on or before the second Monday in November

of each year, unless otherwise ordered and directed by the State Equalization Board, file with the board, on such forms as it may prescribe, a "Final Abstract of the Tax Books."

(b) The abstract shall show, by total of items and value, the total assessment of his county after all adjustments as may be ordered by the county equalization board and the county court have been made.

History. Acts 1929, No. 172, § 33; Pope's Dig., § 13674; A.S.A. 1947, § 84-713.

Cross References. Time to equalize assessments and certify total assessed value, § 26-26-304.

Case Notes

Cited: Arkansas Tax Comm'n v. Ashby, 217 Ark. 759, 233 S.W.2d 361 (1950).

26-27-322. Change in market value — Board procedure.

(a) The purpose of this section is to:

(1) Set out the procedure for a county equalization board to follow when changing real property values in a year when a county is not completing reappraisal; and

(2) Require the county equalization board to consult with the Assessment Coordination Department to utilize data compiled under the department's sales ratio study.

(b) If in the judgment of the county equalization board or the county judge based upon current economic conditions a number of real estate parcels in a county may have decreased in market value since the last countywide reappraisal, then the county equalization board may by its motion or the county judge may petition for the county equalization board to enter into a special session to determine what action is needed under this section to address the decrease in market value.

(c) The county equalization board shall not take action as proposed in the special session under subsection (b) of this section until the county equalization board has:

(1) Consulted the county assessor on the proposed action in the special session;

(2) Consulted the department on the proposed action in the special session; and

(3) Analyzed the current real estate market in the county.

(d) The board may employ a professional appraisal manager to analyze the current real estate market in the county to fulfill its obligation under subdivision (c)(3) of this section.

(e) If the board determines in the special session that action is needed under this section, the board shall adjust market values of real estate in the county under the methodology established by the rules of the department.

(f) The department shall promulgate rules to:

(1) Set out the procedure for a county equalization board to make a determination whether action is needed under this section; and

(2) Establish the methodology to be used when adjusting the market values of real property.

(g) If the county equalization board fails to follow the methodology to adjust real estate values as set out in the department's rules, the county equalization board shall be subject to withholding of funds from the Arkansas Real Property Reappraisal Fund under § 26-26-1907.

(h) A special session convened under this section is subject to the procedures for a special session of the county equalization board under § 26-27-312.

History. Acts 2009, No. 1189, § 1.

Chapter 28

Tax Books And Records

Subchapter 1 — General Provisions

Subchapter 2 — Unit Tax Ledger System

Subchapter 3 — Computerized Tax Assessment and Collection

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 731 et seq.

C.J.S. 84 C.J.S., Tax., § 454 et seq.

Subchapter 1

— General Provisions

26-28-101. Form of tax books.

26-28-102. Electronic data processing equipment.

26-28-103. Extension of taxes.

26-28-104. Recapitulation of taxes.

26-28-105. Entry for omitted years.

26-28-106. Charging uncollected taxes.

26-28-107. Marking of forfeited lands.

26-28-108. Delivery of tax books to collector.

26-28-109. [Repealed.]

26-28-110. Public records — Preservation.

26-28-111. Correction of errors.

26-28-112. Books for two judicial districts.

26-28-113. Deposit of books in proper district.

26-28-114. Listing of the real estate parcels or personal assessments.

26-28-115. Emergency petition.

A.C.R.C. Notes. Acts 2003, No. 1443, § 3, provided:

“This act applies to any additional tax or fee levied by any entity that the county collector is required to collect beginning on and after January 1, 2004.”

Cross References. All lists, blanks, and records are to be furnished or approved by the Public Service Commission, § 26-26-701.

Preambles. Acts 1887, No. 13 contained a preamble which read:

“Whereas, 1st. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled ‘An Act to enforce the payment of Overdue Taxes,’ approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

“Whereas, 2d. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

“Whereas, 3d. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to

redeem;

"Now, therefore...."

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1899, No. 174, § 4: effective on passage.

Acts 1921, No. 481, § 4: effective on passage.

Acts 1975, No. 522, § 3: Mar. 19, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that a number of counties are finding it more convenient and economical, and to be of better service to the public, to use electronic data processing equipment to keep assessment records, and extend the taxes, and prepare the tax books, and prepare Collector's tax records and receipts by use of electronic data processing equipment, and that the immediate passage of this Act is necessary to establish an orderly procedure for the designation of the appropriate county office to be responsible for the maintenance and operation of such computer in preparing the tax books, and thereby removing duplication of handling taxing jurisdictions of the several counties with respect to preparation of tax books, and that the immediate passage of this Act is necessary to clarify this situation. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 122, § 2: Feb. 13, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that some counties in the State have acquired the use of electronic data processing equipment for use in assessing and collecting ad valorem taxes as authorized in Act 522 of 1975 and that such equipment could be used by those counties for several other appropriate county purposes; that Act 522 of 1975 is quite restrictive with respect to the purposes for which the computer equipment may be used by such counties; that this Act is designed to authorize counties which have acquired computer equipment for the purposes prescribed in Act 522 to use such equipment for other appropriate county purposes when the same is approved by the quorum court, and should be given effect immediately to enable those counties to make full use of their equipment. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-28-101. Form of tax books.

The preparer of the tax books shall make out in books prepared for that purpose a complete list or schedule of all the taxable property in his or her county and the value of the taxable property as equalized and arranged in the following form:

(1) Each separate tract of real property in the county shall be contained in lines opposite the names of the owners arranged in numerical order, and the tracts may be arranged further by school district and city; and

(2) The aggregate value of personal property of each person, company, or corporation within each county shall be placed in a column opposite the name of the owner, person, company, or corporation in whose name it is listed in alphabetical order, and the personal property may be arranged further by school district and city.

History. Acts 1883, No. 114, § 87, p. 199; C. & M. Dig., § 10009; Pope's Dig., § 13757; A.S.A. 1947, § 84-801; Acts 2003, No. 295, § 1.

A.C.R.C. Notes. As to annual list prepared by and procedures of the recorder of deeds and mortgages of Cross County, see Acts 1989, No. 255, § 1.

Amendments. The 2003 amendment rewrote the section.

Case Notes

Combining of Tracts.

Sufficiency of Record.

Combining of Tracts.

Tax sales were not invalidated by fact that two contiguous forty-acre tracts were listed separately in the assessment book while the county clerk, in making up the tax book, combined the two forty-acre tracts into one call of 80 acres. *Coulter v. Anthony*, 228 Ark. 192, 308 S.W.2d 445 (Ark. 1957).

Sufficiency of Record.

Tax record is not defective for not properly listing lands or extending taxes against them and for not correctly showing a valid extension of the taxes where any person of average information and understanding could not be mistaken as to tract assessed, its valuation, and amounts of tax assessed for the several purposes allowed by law. *Evans v. F.L. Dumas Store, Inc.*, 192 Ark. 571, 93 S.W.2d 307 (1936).

Cited: *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

26-28-102. Electronic data processing equipment.

(a) (1) If a county by appropriate action elects to acquire, lease, rent, or otherwise provide for the use of electronic data processing equipment, commonly referred to as a computer, to keep the assessment records, to prepare the tax books, to prepare the tax settlements, and to prepare the county collector's records and receipts for property taxes, the quorum court by ordinance may designate one (1) or more appropriate county officers to be responsible for the maintenance and operation of the computer, the keeping of the assessment records, the preparation of the tax books, the preparation of the county collector's records and receipts for property taxes, and the preparation of the tax settlements.

(2) (A) If any county officer other than the county clerk is designated to prepare the tax books or tax settlements, that county officer shall be reimbursed in the manner provided by law.

(B) If the county assessor is designated as the county officer to keep the assessment records, prepare the tax books, and prepare the county collector's receipts by use of electronic data processing equipment, the cost shall be prorated among the respective taxing units in the same manner as is provided by law for defraying the cost of operating the county assessor's office.

(b) When any county acquires, leases, rents, or otherwise provides for the use of electronic data processing equipment for the purposes prescribed in subsection (a) of this section, the quorum court may, by ordinance, authorize the use of the equipment for any other appropriate county purposes and may provide for prorating the costs thereof among the various county offices.

History. Acts 1975, No. 522, § 1; 1979, No. 122, § 1; A.S.A. 1947, § 84-801.1; Acts 2009, No. 721, § 1.

Amendments. The 2009 amendment, in (a)(1), inserted "to prepare the tax settlements," "the keeping of the assessment records," and "the preparation of the county collector's records and receipts for property taxes, and the preparation of the tax settlements"; in (a)(2)(A), substituted "county officer" for "county office" or similar language twice, and inserted "or tax settlements"; substituted "county officer" for "agency" in (a)(2)(B); and made related and minor stylistic changes.

26-28-103. Extension of taxes.

After receiving statements of the rates and sums of money to be levied for the current

year from the Auditor of State and from such other officers and authorities as shall be legally empowered to determine the rates or amount of taxes to be levied for the various purposes authorized by law, the preparer of tax books shall immediately determine the sums to be levied upon each tract or lot of real property in his or her county, adding the taxes of any previous year that may have been omitted and the sums to be levied upon the amount of personal property listed in his or her county in the name of each person, company, or corporation, which shall be assessed equally on all real and personal property subject to those taxes.

History. Acts 1883, No. 114, § 88, p. 199; C. & M. Dig., § 10010; Pope's Dig., § 13758; A.S.A. 1947, § 84-802; Acts 2003, No. 295, § 2.

Amendments. The 2003 amendment substituted "After" for "The clerk of the county court, after," inserted "the preparer of tax books," deleted "moneys, and credits" following "amount of personal property" and made minor stylistic and gender neutral changes.

Case Notes

In General.

Insufficient Extension.

Sufficient Extension.

In General.

Acts 1919, No. 147, § 3, as amended by Acts 1929, No. 172, § 8, codified as § 26-26-701, conferring authority to change the form of tax books so as to omit blank spaces for the extension of dollars and cents of the amounts due the state and its various subdivisions, amends, to that extent, this section by necessary implication. *Lambert v. Reeves*, 194 Ark. 1109, 110 S.W.2d 503 (1937), modified, 194 Ark. 1123, 112 S.W.2d 33 (Ark. 1938).

It is imperative upon the county clerk to determine the sums to be levied upon each tract or lot of real property in his county, adding the taxes of any previous years that may have been omitted. *Lambert v. Reeves*, 194 Ark. 1109, 110 S.W.2d 503 (1937), modified, 194 Ark. 1123, 112 S.W.2d 33 (Ark. 1938).

Insufficient Extension.

Where there is no proper extension of taxes against lands on the tax record, the state is without power to sell the lands for failure to pay taxes thereon, and a confirmation decree cannot perfect title in the state. *Lambert v. Reeves*, 194 Ark. 1109, 110 S.W.2d 503 (1937), modified, 194 Ark. 1123, 112 S.W.2d 33 (Ark. 1938).

County clerk's failure to extend in dollars and cents the total amount of taxes due rendered sale based thereon void, since the assessment was not complete. *Lambert v. Reeves*, 194 Ark. 1109, 110 S.W.2d 503 (1937), modified, 194 Ark. 1123, 112 S.W.2d 33 (Ark. 1938).

Where clerk extended taxes at a rate less than what the proper rate would have been, which resulted in a net loss of tax revenue, the clerk was negligent. *America Casualty Co. v. Quitman School Dist.*, 293 Ark. 457, 739 S.W.2d 144 (1987).

Sufficient Extension.

The section does not require the county clerk to extend upon the tax book the amount of taxes to be collected for the various purposes for which state and county levies were imposed; rather, it is proper to group all of the state taxes under one heading and all of the county taxes under one heading, and it is a sufficient extending of taxes if the amount is thus determined in dollars and cents based upon the assessed valuation. *Lambert v. Reeves*, 194 Ark. 1109, 110 S.W.2d 503 (1937), modified, 194 Ark. 1123, 112 S.W.2d 33 (Ark. 1938).

Various taxes such as county, school, city, and state taxes do not need to be broken up into their component parts and inserted in the particular subdivision of the tax book, if total taxes as required by the prescribed records be so extended. *Kansas City Life Ins. Co. v. Moss*, 196 Ark. 553, 118 S.W.2d 873 (1938); *Benham v. Davis*, 196 Ark. 740, 119 S.W.2d 743 (1938).

Cited: *Porter v. Ivy*, 130 Ark. 329, 197 S.W. 697 (1917); *Faulkner v. Binns*, 202 Ark. 457, 151 S.W.2d 101 (1941).

26-28-104. Recapitulation of taxes.

(a) It shall be the duty of the preparer of tax books to add each tax book delivered to the county collector, making the separate columns of values when added together amount to the sum of the column of total values when added up and, at the end of the tax book, recapitulate the additions of each page, so as to make it prove itself to be correct.

(b) A copy of the recapitulation under this section shall be a part of the tax books.

History. Acts 1883, No. 114, § 89, p. 199; C. & M. Dig., § 10011; Pope's Dig., § 13759; A.S.A. 1947, § 84-803; Acts 2003, No. 295, § 3.

Amendments. The 2003 amendment added the subdivision (a) designation, substituted "preparer of tax books" for "county clerk" and deleted "according to the form to be furnished by the Auditor of State" from the end; and added (b).

26-28-105. Entry for omitted years.

(a) In all cases in which any preparer of the tax books shall omit, by inadvertence or mistake, in any year to enter on the books of his or her county any lands or lots or parts of lots situated in his or her county subject to taxation, it shall be his or her duty to enter them on the tax books of the next succeeding year and to add to the taxes of the current year the simple taxes of each and every preceding year in which the lands or lots so escaped taxation.

(b) There shall be separate recapitulation of those lands and lots.

History. Acts 1883, No. 114, § 90, p. 199; C. & M. Dig., § 10012; Pope's Dig., § 13760; A.S.A. 1947, § 84-804; Acts 2003, No. 295, § 4.

Amendments. The 2003 amendment added the subsection (a) designation and substituted "in which any preparer of the tax books shall omit" for "where any clerk of the county court shall"; added (b) and made gender neutral changes.

Case Notes

Assessment.

Tax Sales.

Assessment.

Where lands have never been placed upon the assessment books until the current year, the county clerk is not authorized to extend against them taxes for the years in which the lands were omitted from the tax books based upon the assessment for the current year. *Saint Louis, I.M. & S. Ry. v. Miller County*, 67 Ark. 498, 55 S.W. 926 (1900).

Tax Sales.

Sale of land for taxes of 1910 was not invalid because taxes due on such land for previous years were not entered on tax books. *Cotton v. White*, 131 Ark. 273, 199 S.W. 116 (1917).

26-28-106. Charging uncollected taxes.

When, for any cause, the taxes in any county, for any year, shall not be collected, they shall be charged on the tax books for the next year and collected by the same officers and in the same manner as the taxes of that year.

History. Acts 1883, No. 114, § 91, p. 199; C. & M. Dig., § 10013; Pope's Dig., § 13761; A.S.A. 1947, § 84-805.

26-28-107. Marking of forfeited lands.

(a) (1) The preparer of the tax books shall mark opposite every tract, town lot, or city lot that may have been forfeited to the state for the nonpayment of taxes the word “forfeited”.

(2) (A) On that tract, town lot, or city lot there shall not be charged any taxes unless the Commissioner of State Lands shall officially advise the preparer that it has become subject to taxation.

(B) In that event, the same taxes shall be charged and collected on the tract, town lot, or city lot as may be allowed by law.

(b) The county assessor shall assess all the lands or lots, or parts of lands or lots, that may appear on the plats or lists furnished to the county assessor.

(c) If any clerk of the county court shall have lost or if the records of his or her office shall not contain a list of the lands forfeited to the state within his or her county, the clerk of the county court shall certify that fact to the Commissioner of State Lands, and the Commissioner of State Lands shall immediately furnish the clerk of the county court with that list.

History. Acts 1883, No. 114, § 93, p. 199; C. & M. Dig., § 10015; Pope's Dig., § 13762; A.S.A. 1947, § 84-806; Acts 2003, No. 295, § 5.

Amendments. The 2003 amendment inserted the subdivision designations; in (a)(1), substituted “preparer of the tax books” for “clerk of the county court”; substituted “preparer” for “clerk” in (a)(2); inserted “of State Lands” twice following “the Commissioner” in (c); and made stylistic and gender neutral changes.

Case Notes

Cited: Files v. Jackson, 84 Ark. 587, 106 S.W. 950 (1907).

26-28-108. Delivery of tax books to collector.

(a) On or before February 1 of each year, the preparer of tax books of each county shall make out and deliver the tax books of his or her county to the county collector with the preparer of tax books' warrant attached, under his or her hand and the seal of his or her office, authorizing the county collector to collect the taxes.

(b) The county collector shall give a receipt for the tax books, in which the amount of the different taxes shall be separately stated, and the county clerk shall file the receipt in the records of the county.

History. Acts 1883, No. 114, § 94, p. 199; 1887, No. 92, § 37, p. 143; C. & M. Dig., § 10016; Acts 1933 (1st Ex. Sess.), No. 16, § 3; Pope's Dig., § 13763; A.S.A. 1947, § 84-807; Acts 2003, No. 295, § 6.

Amendments. The 2003 amendment, in (a), substituted “on or before February 1 of each year the preparer of tax books” for “the clerk of the county court” and deleted “on or before the third Monday in February of each year” following “each county shall”; in (b), substituted “a receipt” for “duplicate receipt” and “file the receipt in the records of the county” for “forward one (1) of the receipts to the Auditor of State”; and made gender neutral changes.

Case Notes

Delivery.
Liability for Taxes.
Warrant.

Delivery.

A tax sale is invalid where the clerk does not deliver the tax books with his warrant within time prescribed, this section being mandatory. *Stade v. Berg*, 182 Ark. 118, 30 S.W.2d 211 (1930). Failure of county clerk to deliver to collector the tax books with his warrant amounts to nothing more than an irregularity, which can be cured by confirmation, although fatal prior thereto. *Kirk v. Ellis*, 192 Ark. 587, 93 S.W.2d 139 (1936).

Liability for Taxes.

Where the buyer was to receive no legal or equitable right under the contract until the purchase price had been paid in full, at which time the seller obligated himself to execute a special warranty deed conveying the lands free of all liens and encumbrances, and the contract was entered into some six weeks after the tax books had been delivered to the collector, the seller was liable for the payment of taxes under the warranty. *Broadhead v. McEntire*, 19 Ark. App. 259, 720 S.W.2d 313 (1986).

Warrant.

Collector is protected against improper entries in tax books by the warrant thereto attached.

Sanders v. Simmons, 30 Ark. 274 (1875) (decision under prior law).

Warrant directed to the sheriff instead of collector is not invalid when sheriff is also collector. *Keith v. Freeman*, 43 Ark. 296 (1884).

Failure of county clerk to attach to the tax book a warrant authorizing the collector to collect taxes assessed invalidates a tax sale. *Wildman v. Enfield*, 174 Ark. 1005, 298 S.W. 196 (1927); *Hirsch v. Dabbs*, 197 Ark. 756, 126 S.W.2d 116 (1939).

County clerk's warrant reading "You are commanded to collect on each and every lot and tract of land named in this book ... as follows:" and posted in front of real estate book complied with this section and was not open to objection that it directed collection of taxes on real estate alone where it was not shown that a similar warrant was not entered in the personal tax book. *Alphin v. Banks*, 193 Ark. 563, 102 S.W.2d 558 (1937).

Failure to attach warrant to tax books was an irregularity that was cured by Acts 1935, No. 142 (repealed Acts 1937, No. 264). *Gilley v. Southern Corp.*, 194 Ark. 1134, 110 S.W.2d 509 (1937); *Kansas City Life Ins. Co. v. Moss*, 196 Ark. 553, 118 S.W.2d 873 (1938).

Failure of county clerk to make warrant or to attach it to the tax books within the time required by law makes a tax sale invalid, although defect can be cured by confirmation decree. *Angels v. Redmon*, 198 Ark. 980, 132 S.W.2d 170 (1939).

Evidence showed clerk had not attached warrant to tax books in delivering books to collector. *Ensminger v. Sheffield*, 220 Ark. 598, 248 S.W.2d 877 (1952).

Cited: *Liddell v. Stone*, 101 Ark. 328, 142 S.W. 506 (1911); *Beloate v. State ex rel. Att'y Gen.*, 187 Ark. 17, 58 S.W.2d 423 (1933); *Jones v. Jones*, 236 Ark. 296, 365 S.W.2d 716 (1963).

26-28-109. [Repealed.]

Publisher's Notes. This section, concerning a list of delinquent lands, was repealed by Acts 2003, No. 295, § 11. The section was derived from Acts 1899, No. 174, § 1, p. 312; C. & M. Dig., § 10017; Acts 1921, No. 481, § 3; Pope's Dig., § 13764; A.S.A. 1947, §§ 84-808, 84-808n.

26-28-110. Public records — Preservation.

The tax books delivered to the collector shall be a public record. At the expiration of the collector's term of office, they shall be delivered to and deposited in the office of the county clerk, there to be preserved as other records of the county.

History. Acts 1883, No. 114, § 95, p. 199; C. & M. Dig., § 10018; Pope's Dig., § 13765; A.S.A. 1947, § 84-809.

Research References

Ark. L. Rev.

Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741 (1984).

Case Notes

Impeachment.

Impeachment.

Evidence insufficient to impeach verity of tax record. Slaton v. Pride, 195 Ark. 1055, 115 S.W.2d 547 (1938).

Cited: Reynolds v. Snyder, 121 Ark. 33, 180 S.W. 752 (1915).

26-28-111. Correction of errors.

(a) When, after the tax books have been delivered to the collector, it is ascertained that there is an error in the real or personal property tax books, the error shall be corrected in the following manner:

(1) (A) When the county assessor discovers an error in the real property tax books or any error is brought to the attention of the assessor by any person, the assessor shall cause the error to be corrected by completing the following pre-numbered form in triplicate, indicating thereon the correction to be made:

REAL PROPERTY TAX CORRECTION

No. -----

School Dist.

City

Name

Address _Date 19

Description of Property	SEC.	TWP.	RGE.	ACRES	100TH	LOT	BLK.	OLD VALUATION	CORRECTED VALUATION

REMARKS

I hereby certify that the above correction should be made by the Collector

I hereby certify that the above correction has been made

Assessor

(B) Upon completing and signing the above real property tax correction form in triplicate, the assessor shall retain the original in the assessor's records and shall transmit two (2) copies to the county collector. The collector shall sign the two (2) copies received from the assessor, shall retain one (1) copy in the collector's records, and shall transmit the remaining copy to the county clerk, who shall sign it and file it in the records of the clerk.

(2) (A) When the county assessor discovers an error in the personal property tax books or any error is brought to the attention of the assessor, he shall cause the error to be corrected by completing the following pre-numbered form in triplicate, indicating thereon the correction to be made:

REAL PROPERTY TAX CORRECTION No. _____

School Dist.

City

Name

Address _Date 19

Description of Property	Old Valuation	Corrected Valuation	Net Value CreditNet Value DebitMillN et Tax CreditNet Tax Debit.
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REMARKS

I hereby certify that the above correction should be made by the Collector

I hereby certify that the above correction has been made

Assessor

(B) Upon completing and signing the above personal property tax correction form in triplicate, the assessor shall retain the original in the assessor's records and shall transmit two (2) copies to the county collector. The collector shall sign the two (2) copies received from the assessor, shall retain one (1) copy in the collector's records, and shall transmit the remaining copy to the county clerk who shall sign it and file it in the records of the clerk.

(b) The real property tax correction forms and the personal property tax correction forms required by this section to be kept in the records of the assessor, collector, and clerk may be destroyed upon the expiration of one (1) year after the date on which the Legislative Joint Auditing Committee accepts and files the audit of the particular office performed by the Division of Legislative Audit.

(c) The provisions of this section shall be applicable only to the correction of actual and obvious errors on the tax books and related records, with such errors being restricted to extension errors, erroneous property descriptions, classifications, or listings, and shall not be utilized to make any change in the valuation of any real or personal property as shown on the tax books and related records other than a change in valuation necessitated by the correction of actual and obvious errors as provided in this section. In no case shall any reduction in the valuation of any real or personal property be made, except such as shall have been ordered by the county board of equalization, the county court, the circuit court, or the Supreme Court, or be caused by the correction of actual and obvious errors as provided in this section.

History. Acts 1883, No. 114, § 74, p. 199; C. & M. Dig., § 9938; Pope's Dig., § 13722; Acts 1983, No. 875, §§ 1-3; A.S.A. 1947, §§ 84-811, 84-811n, 84-811.1.

Cross References. Arkansas Governmental Compliance Act, § 10-4-301 et seq.

Case Notes

Cited: Miller Land & Lumber Co. v. Gurley, 137 Ark. 146, 208 S.W. 426 (1918).

26-28-112. Books for two judicial districts.

It shall be the duty of the county clerks of counties having two (2) judicial districts, except Prairie, Woodruff, and Lawrence, to make out, balance, and recapitulate as required by law one (1) set of tax books for each judicial district of the counties.

History. Acts 1907, No. 190, §§ 3, 7, p. 446; C. & M. Dig., §§ 2041, 8357; Pope's Dig., §§ 2588, 10953; A.S.A. 1947, § 84-812.

Cross References. Discontinuance of township visits, § 26-35-703.
Tax book at different sites, § 26-35-704.

26-28-113. Deposit of books in proper district.

After the completion of the collection of taxes for each year and the settlement of the collector with the county court, it shall be the duty of the county clerk to keep the tax

books deposited in the office of the district to which they belong.

History. Acts 1907, No. 190, § 5, p. 446; C. & M. Dig., §§ 2043, 8359; Pope's Dig., §§ 2590, 10955; A.S.A. 1947, § 84-813.

26-28-114. Listing of the real estate parcels or personal assessments.

(a) This section applies to a tax or fee on the county tax books that is levied by any entity that:

(1) Is not on the county tax books for the prior year;

(2) Applies to more than one-half of one percent (0.5%) of either the personal or real estate assessments in the county; and

(3) Requires the county collector to collect the tax or fee.

(b) (1) The entity that levies the tax or fee shall deliver to the preparer of the tax books of the county a complete listing of the real estate parcels or personal assessments on which the tax or fee is applied.

(2) The list shall include the following information:

(A) The name of the owner of the property;

(B) The county parcel and identifying number;

(C) If real property, the legal description; and

(D) The amount of taxes or fees due for each real estate parcel or personal assessment.

(3) The list shall be delivered to the preparer of the tax books no later than January 1 of the year the tax or fee is to be collected.

(4) If the county uses a computer and other electronic equipment to collect taxes, the list shall be given to the preparer of the tax books in an electronic format compatible with and useable by the county's computer or electronic equipment.

(c) All due dates, transfers of funds, and recordkeeping on the tax or fee shall be the same as those currently in use for real estate or personal property taxes.

History. Acts 2003, No. 1443, § 1.

A.C.R.C. Notes. Acts 2003, No. 1443, § 3, provided:

"This act applies to any additional tax or fee levied by any entity that the county collector is required to collect beginning on and after January 1, 2004."

26-28-115. Emergency petition.

(a) If an entity determines that an emergency exists, it may petition the quorum court of the county to allow the entity to place a tax or fee on the tax books of the county after January 1 and before July 31 of the year in which collection is to be made.

(b) If the quorum court agrees that an emergency exists:

(1) (A) The tax or fee will be added to the tax books if the entity complies with § 26-28-114.

(B) The January 1 deadline under § 26-28-114 shall become August 15 of the year to be collected; and

(2) (A) The entity shall pay the expense of adding the tax or fee to the tax books and any additional expense incurred by the county in collecting the tax or fee.

(B) The additional expense shall be determined by a committee consisting of the county judge, the preparer of the tax books or the county clerk, and the county

collector not later than October 1 of the collection year.

(C) The expense shall be withheld from the proceeds for the tax or fee by the county treasurer and be credited to the county collector's commission account.

History. Acts 2003, No. 1443, § 2.

A.C.R.C. Notes. Acts 2003, No. 1443, § 3, provided:

“This act applies to any additional tax or fee levied by any entity that the county collector is required to collect beginning on and after January 1, 2004.”

Subchapter 2 **— Unit Tax Ledger System**

26-28-201. Installation.

26-28-202. Prerequisites.

26-28-203. Effect of adoption.

26-28-204. Recorded real estate transfers certified to collector.

26-28-205. Assessments on forms furnished by collector.

Effective Dates. Acts 1945, No. 207, § 8: Mar. 20, 1945. Emergency clause provided: “It is hereby found and declared by the Fifty-fifth General Assembly of the State of Arkansas that the installation of the so-called ‘Unit Tax Ledger System’ will result in great savings of money, labor and material to the several counties of the State of Arkansas which might see fit, through their respective Quorum Courts, to adopt and authorize such system, and because several counties within the State of Arkansas now desire the installation of such a system because of savings in money, labor, materials and employment hours which will be affected thereby, an emergency is hereby declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval.”

26-28-201. Installation.

When any quorum court in any county in the State of Arkansas in regular or special session, by a majority vote, shall approve the installation of a unit tax ledger system, the county judge of the county shall, by court order, authorize the installation of the system if there are sufficient funds available, or which can be made available from the county general fund, to cover the cost of the installation.

History. Acts 1945, No. 207, § 1; A.S.A. 1947, § 84-814.

Case Notes

Computations.

Computations.

A tax sale for an overcharge of two cents caused by the inability of a machine used as authorized by this section to compute instalments in fractions of a cent is void. *Walsh v. Veazy*, 224 Ark. 773, 276 S.W.2d 71 (1955).

26-28-202. Prerequisites.

The “unit tax ledger system” shall be a system of tax accounting that covers the following prerequisites:

(1) A ledger account for each unit of real property in the county reflecting a

complete tax record for a ten-year period, beginning with the year the system is installed;

(2) The ledger accounts shall be housed in a steel locker that shall be closed and securely locked at the end of each day's business;

(3) The ledger account shall have sufficient space to enable the name of the record owner at the time of the installation of the system to be shown, and ten (10) lines for the names of subsequent owners, a correct legal description of the unit of property assessed, the year for which the tax is charged, the assessed valuation for state and county purposes, the tax charged and the total thereof, the assessed benefits against the property in special improvement districts, a symbol referring to designated special improvement districts in which the property is located, the date of payment of all taxes, the number of the receipt to be issued, and a two-year delinquent tax record;

(4) The system shall also provide an index which will enable a machine operator, the tax collector, clerk, or assessor, or any other individual to instantly refer to any unit of property by legal description or by the name of the record owner;

(5) The tax statement, installment receipt, total receipts, office copy of tax receipts, posting of tax ledgers, including the valuation and the tax charged, and the proof of work shall all be done by an accounting machine at one (1) time which shall enable the operator to mail a complete tax statement to the taxpayer and file a duplicate copy alphabetically in a steel locker for safekeeping;

(6) Collection statements shall be posted from office copies compiled from the unit tax ledger accounts; and

(7) Upon installation of such a system, a predetermined total of all valuation of the property in the county as assessed by the assessor for taxation and exemption shall be ascertained and constantly maintained through control accounts for each fund, and the purpose for which each tax has been levied, shall be charged.

History. Acts 1945, No. 207, § 2; A.S.A. 1947, § 84-815.

26-28-203. Effect of adoption.

(a) Under the unit tax ledger system, all counties in the State of Arkansas which shall adopt it shall cause the tax collector's office to be the exclusive tax collecting and accounting office of the county, and the collector shall collect current and delinquent taxes on real and personal property.

(b) All laws and parts of laws relating to real and personal tax collecting, recording, charging, billing, and accounting wherein reference is made to the county clerk, county treasurer, and delinquent tax collector shall mean "tax collector." However, the tax collector shall settle with the county treasurer of the counties which may adopt the system as is provided by law.

History. Acts 1945, No. 207, § 3; A.S.A. 1947, § 84-816.

Case Notes

Substitution of Collector.

Substitution of Collector.

In counties operating under the unit tax ledger system, the collector is substituted for the county clerk for purposes of redemption from delinquent tax sales. *Vanderbilt v. Washington*, 249 Ark. 1070, 463 S.W.2d 670 (1971).

26-28-204. Recorded real estate transfers certified to collector.

In all counties in the State of Arkansas wherein the unit tax ledger system is installed, the recorder of deeds, immediately upon recording any instrument of any kind that transfers or conveys title to real property from one (1) person, firm, corporation, organization, state, county, or municipality to another or whenever title to real property, by whatever means, passes on to another, shall certify to the tax collector the names and addresses of the grantors or devisors when known or when they can be ascertained and the name and address of the grantee or devisee when known or when he can be ascertained, the book number of the record and the page on which the instrument is recorded, the kind and character of the instrument, and the date thereof. Accordingly, all necessary forms and records required to perfect the installation of the tax system contemplated by this subchapter are authorized, and all laws and parts of laws relating to the manner of handling real and personal property taxes are amended, to conform to this system insofar as the collection thereof is concerned in the counties which, through their quorum courts, shall adopt the terms and provisions of this subchapter.

History. Acts 1945, No. 207, § 4; A.S.A. 1947, § 84-817.

26-28-205. Assessments on forms furnished by collector.

(a) All assessors in counties where the system contemplated by this subchapter is installed shall deliver to the tax collector real and personal property assessments on forms furnished by the tax collector. The tax collector shall then make proper posting of each assessment. As postings are made, the collector shall compile a proof journal list of the assessments showing the total valuation. The total valuation shall balance with the total of all real and personal property assessments as made by the assessor.

(b) Thereafter, the assessor shall verify the total and, when found to be correct, shall make a certificate of assessment of the real and personal property in the county showing a total valuation of all real and personal property assessed in the county, which shall conform with the total valuation assessed by the Arkansas Public Service Commission as certified down to the assessor, the assessor adding to the certificate required by law the following additional paragraph:

“The total valuation of all taxable real property as assessed by me for the year is \$; and the total valuation of all exempted property as exempted by me for the year is \$; and the total valuation of all taxable personal property as assessed by me for the year is \$”

(c) (1) The assessor shall make the certificate in triplicate and file one (1) copy with the commission, which shall be the assessor's abstract and which shall give the valuation of all assessments in the county by total and not by items, as provided by § 26-26-1103, and one (1) copy of the certificate shall be filed in the county clerk's office, and the assessor shall keep one (1) copy in the file in his office.

(2) All three (3) of the certificates shall be subscribed and sworn to as provided by law.

History. Acts 1945, No. 207, § 5; A.S.A. 1947, § 84-818.

Subchapter 3
— Computerized Tax Assessment and Collection

- 26-28-301. Use of alternative method.
- 26-28-302. Use of computer.
- 26-28-303. Duty of county assessor.
- 26-28-304. Duty of preparer of tax books.
- 26-28-305. Duty of tax collector.
- 26-28-306. Final tax settlements.
- 26-28-307. Permanent record — Commissions.
- 26-28-308. Distribution of taxes.

26-28-301. Use of alternative method.

It is the intent of this subchapter to provide an alternative method of assessment and collection of taxes in counties utilizing the unit tax ledger system where the use of a computerized system for assessment and collection is utilized. The quorum court may authorize, by ordinance, the use of this alternative method when it is determined to be in the best interest of the county. The provisions of this subchapter are supplemental to other applicable law.

History. Acts 1993, No. 849, § 1.

26-28-302. Use of computer.

(a) (1) The quorum court of any county in this state by ordinance may provide for the use of electronic data processing equipment, commonly referred to as a computer, to keep the assessment records, to prepare the tax books, and to prepare the county collector's records and receipts for property taxes.

(2) The quorum court by ordinance may designate the appropriate county officer to be responsible for the maintenance and operation of the computer.

(3) The quorum court by ordinance may designate the county clerk, the county assessor, or the county collector as preparer of the tax books.

(b) When a county acquires, leases, rents, or otherwise provides for the use of electronic data processing equipment for the purposes prescribed in subsection (a) of this section, the quorum court by ordinance may authorize the use of the electronic data processing equipment for any other appropriate county purposes and may provide for prorating the costs of the electronic data processing equipment among the various county offices.

History. Acts 1993, No. 849, § 2; 2009, No. 347, § 1.

Amendments. The 2009 amendment inserted "county clerk" in (a)(3); and made minor stylistic changes.

26-28-303. Duty of county assessor.

Under the system provided for in this subchapter:

(1) It is the duty of the county assessor of each county to enter upon the assessment record of the county the adjusted or equalized assessed value of any and all property as found and fixed by the county equalization board;

(2) In making the tax books of the county, unless further adjustments are ordered by the county court or the State Equalization Board, the preparer of the tax books shall extend the taxes on the adjusted or equalized values;

(3) The assessor shall deliver the assessment abstract to the State Equalization

Board by August 1 of each year;

(4) (A) The assessor shall make any changes to the abstract after the State Equalization Board finalizes its action.

(B) All changes in assessments, after the assessor prepares the final abstract of the tax books, shall be made as specified in § 26-28-305(1) and documented by means of a prenumbered two-part change form with the reason for the change noted; and

(5) (A) The county assessor of each county shall, on or before the third Monday in January of each year, unless otherwise ordered and directed by the State Equalization Board, file with the board, on such forms as it may prescribe, a final abstract of the tax books.

(B) The final abstract of the tax books shall show, by total of items and value, the total assessment of the county after all adjustments.

History. Acts 1993, No. 849, §§ 3-6.

26-28-304. Duty of preparer of tax books.

Under the system provided for in this subchapter:

(1) After receiving statements of the rates and sums of money to be levied for the current year from the Auditor of State and from such other officers and authorities, including special improvement districts, as shall be legally empowered to determine the rates or amounts of taxes to be levied for the various purposes authorized by law, and after levied by the quorum court, the preparer of the tax books shall immediately determine the sums to be levied upon personal property and each tract or lot of real property in the county;

(2) On or before February 1 of each year, the preparer of the tax books of each county shall make out and deliver the tax books of the county to the county collector, with the preparer of tax books' warrant attached, under his or her hand and the seal of his or her office, authorizing the county collector to collect the taxes; and

(3) The county collector shall give a receipt for the tax books, in which the amount of the different taxes shall be separately stated, and the preparer of the tax books shall file the receipt in the records of the county.

History. Acts 1993, No. 849, §§ 7, 8; 2003, No. 295, § 7.

Amendments. The 2003 amendment substituted "the preparer's" for "his or her" in (2); in (3), substituted "a receipt" for "duplicate receipt" and "file the receipt in the records of the county" for "forward one (1) of the receipts to the Auditor of State"; and made gender neutral changes.

26-28-305. Duty of tax collector.

Under the system provided for in this subchapter, the tax collector shall:

(1) Make changes to the tax books after the assessor files the final abstract of the tax books as authorized by the assessor by a two-part change form;

(2) Prepare the tax statements and tax receipts and collect the taxes; and

(3) Prepare and certify the monthly and final distributions of all current and delinquent taxes collected by the tax collector.

History. Acts 1993, No. 849, § 9.

26-28-306. Final tax settlements.

Under the system provided for in this subchapter:

(1) All county collectors' final tax settlements shall be made and filed with the county court on or before the fourth Monday of December each year;

(2) (A) It is the duty of the county court to pass upon the final tax settlement of the county collector and to approve, reject, or restate it on or before December 31 of each year.

(B) Failure of the county judge to so approve, reject, or restate the final tax settlement of the county collector within this period of time shall constitute a misfeasance in office and shall be a violation punishable by a fine of one hundred dollars (\$100) or removal from office;

(3) (A) If the final tax settlement shall be found to be correct, the county court shall order the final tax settlement spread in full upon the records of the county court.

(B) (i) The county clerk shall certify to the Auditor of State, without delay, the action of the county court on the final tax settlement, whether approved or rejected.

(ii) If rejected, the county collector shall at once proceed to restate the final tax settlement and again submit it to the county court; and

(4) On or before December 31 of each year, after the final tax settlement made by the county collector has been examined and acted upon by the county court as provided in this subchapter, the county collector shall make settlement with the county and its various subdivisions and with the Auditor of State for all state taxes collected.

History. Acts 1993, No. 849, §§ 10-12; 2005, No. 1994, § 168.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (2)(B).

26-28-307. Permanent record — Commissions.

Under the system provided for in this subchapter:

(1) The tax collector shall maintain a permanent record of all taxes collected and the tax book reflecting all valuation changes and the receipt number, date, and amount of collection under the authority of this subchapter; and

(2) The preparer of the tax books shall receive a commission of two percent (2%) for extending the improvement taxes, and the collector shall receive a commission of two percent (2%) for collecting them.

History. Acts 1993, No. 849, § 13.

26-28-308. Distribution of taxes.

Under the system provided for in this subchapter, the county treasurer shall distribute the taxes by December 31 of each year as authorized by the final tax settlement approved by the county judge.

History. Acts 1993, No. 849, § 14.

Chapters 29-33 [Reserved.]

[Reserved]

Subtitle 4.

Collection And Enforcement

Chapter 34 General Provisions
Chapter 35 Collection and Payment of Taxes Generally
Chapter 36 Collection Of Delinquent Taxes
Chapter 37 Sale Or Forfeiture Of Real Property
Chapter 38 Confirmation Of Tax Sales
Chapter 39 Settlement Of Moneys Collected
Chapters 40-49 [Reserved.]

Chapter 34 General Provisions

26-34-101. Preference of tax liens.
26-34-102. Ownership error in assessment.
26-34-103. Liability of executor or administrator.
26-34-104. Attorney General to conduct suits.
26-34-105. Limitation of actions on tangible property taxes.
26-34-106. Limitation of actions on intangible property taxes.
26-34-107. No proceedings after payment except for fraud.
26-34-108. Suits against local taxing authorities.
26-34-109. Common carriers not to carry goods on which tax not paid.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.
Acts 1911, No. 125, § 2: effective on passage.
Acts 1929, No. 174, § 4: effective on passage.
Acts 1931, No. 250, § 7: approved Mar. 31, 1931. Emergency clause provided: "It being determined that a great deal of tax due the State of Arkansas is being evaded, and that carriers are permitting goods upon which a tax has not been paid to be transported and sold, an emergency is hereby declared and this Act shall be in full force and effect from and after its passage."
Acts 1931, No. 281, § 4: effective on passage.
Acts 1941, No. 337, § 2: effective on passage.

Research References

ALR.

Estoppel of state or local government in tax matters. 21 A.L.R.4th 573.
Recovery of tax paid on exempt property. 25 A.L.R.4th 186.

Am. Jur. 72 Am. Jur. 2d, State Tax., § 866 et seq.

C.J.S. 84 C.J.S., Tax., § 640 et seq.

26-34-101. Preference of tax liens.

(a) Taxes assessed upon real and personal property shall bind them and be entitled to preference over all judgments, executions, encumbrances, or liens whensoever created.
(b) All taxes assessed shall be a lien upon and bind the property assessed from the first Monday of January of the year in which the assessment shall be made and shall continue until the taxes, with any penalty which may accrue thereon, shall be paid. However, as between grantor and grantee, the lien shall not attach until the last date fixed by law for the county clerk to deliver the tax books to the collector in each year after the tax lien attaches.

History. Acts 1883, No. 114, § 101, p. 199; 1911, No. 125, § 1; C. & M. Dig., § 10023; Pope's Dig., § 13770; Acts 1941, No. 337, § 1; 1943, No. 278, § 1; A.S.A. 1947, § 84-107.

Cross References. Lien for taxes due improvement districts continues indefinitely until paid, § 18-61-101.

Case Notes

Liability for Taxes.

Liens.

Personal Property.

Real Property.

Tax Sales.

Liability for Taxes.

Where the buyer was to receive no legal or equitable right under the contract until the purchase price had been paid in full, at which time the seller obligated himself to execute a special warranty deed conveying the lands free of all liens and encumbrances, and the contract was entered into some six weeks after the tax books had been delivered to the collector, the seller was liable for the payment of taxes under the warranty. *Broadhead v. McEntire*, 19 Ark. App. 259, 720 S.W.2d 313 (1986).

Liens.

Taxes and improvement assessments held "obligations secured by lien" within the meaning of Acts 1927, No. 195 (superseded by § 28-49-113). *Rose v. W.B. Worthen Co.*, 186 Ark. 205, 53 S.W.2d 15, 85 A.L.R. 212 (1932).

Personal Property.

Taxes are a lien on personal property and follow it into whosoever hands it goes. *Bridewell v. Morton*, 46 Ark. 73 (1885) (decision under prior law).

Where, prior to an application for a receiver in insolvency, an attachment was levied by the seller upon specific goods sold to the insolvent, upon which the seller owed taxes, the state's lien for taxes was payable from the amount allowed the attaching seller upon his preferred claim. *First Nat'l Bank v. Tribble*, 155 Ark. 264, 244 S.W. 33 (1922).

Real Property.

Taxes on land, due at the time of a sale, are a lien upon it and covered by the vendor's covenant against incumbrances suffered by him. *Crowell v. Packard*, 35 Ark. 348 (1880) (decision under prior law).

Where a lien for taxes attaches before date of sale and the sale contract contains no agreement for payment of taxes for the preceding year, the vendor is liable for the amount of the taxes under his warranty. *Hatch v. Lowrance*, 178 Ark. 274, 10 S.W.2d 358 (1928); *Tate v. Ellis*, 201 Ark. 1185, 147 S.W.2d 34 (1941).

A mortgagee discharging a lien for taxes on mortgaged property is not a volunteer for the reason that the payment is necessary to protect his interest, and ordinarily he would be subrogated to the state's lien for reimbursement. *Quarry Sav. Bank & Trust Co. v. First Nat'l Bank*, 185 Ark. 433, 47 S.W.2d 802 (1932).

A mortgagee who paid the taxes on mortgaged property between the date of the foreclosure decree and the sale of the property is not entitled to reimbursement from the purchaser. *Quarry Sav. Bank & Trust Co. v. First Nat'l Bank*, 185 Ark. 433, 47 S.W.2d 802 (1932).

Title derived from improvement district prevails over tax title from state where district instituted foreclosure proceedings prior to date on which tax lien is affixed. *Terry v. Starks*, 221 Ark. 870, 256 S.W.2d 545 (1953).

Property agreement providing that the family home would be sold and that net proceeds were to be paid to the wife was construed so that husband had to pay mortgage payment, taxes, and special assessments which were due and payable upon the day of the sale. *Jones v. Jones*, 236 Ark. 296, 365 S.W.2d 716 (1963).

Tax Sales.

The state's lien on land for taxes cannot be defeated by the owner's permitting it to be sold to the state for taxes at a void tax sale and then purchasing it from the state as land forfeited for taxes. *Texarkana Water Co. v. State*, 62 Ark. 188, 35 S.W. 788 (1896) (decision under prior law). Land transferred to improvement districts. *Terry v. Drainage Dist. Miller County*, 206 Ark. 940, 178 S.W.2d 857 (1943); *Deniston v. Burroughs*, 209 Ark. 436, 190 S.W.2d 623 (1945) (decisions prior to 1943 amendment).

Where taxes against mineral interests were not properly extended on tax books by the county clerk, but the mineral interests were duly ordered by the assessor and taxes lawfully levied by quorum court, a valid tax lien arose under this section, and allegation of willingness to pay tax had to be made before equitable relief would be granted in enjoining tax sale. *Schuman v. Ouachita County*, 218 Ark. 46, 234 S.W.2d 42 (1950).

Cited: *Miners' Bank v. Churchill*, 156 Ark. 191, 245 S.W. 829 (1922); *In re Wrigley*, 195 B.R. 914 (Bankr. E.D. Ark. 1996); *Worth v. City of Rogers*, 341 Ark. 12, 14 S.W.3d 471 (2000).

26-34-102. Ownership error in assessment.

It shall not be necessary to the validity of an assessment or of a sale of land for taxes that it be assessed to its true owner. Rather, the taxes shall be a charge upon the real and personal property taxed and, when sold, shall vest the title in the purchaser without regard to who owned the land or other property when assessed or when sold.

History. Acts 1883, No. 114, § 101, p. 199; C. & M. Dig., § 10025; Pope's Dig., § 13771; A.S.A. 1947, § 84-108.

Case Notes

Part Interests.

Part Interests.

Where mineral interest was assessed and taxed separately from the surface land and the owner of a one-half interest in the minerals failed to pay the taxes, his property rights in the one-half mineral interest, which were to terminate in 25 years, were immediately forfeited when his mineral interest was sold at a tax sale, and the tax deed vested complete title in a one-half mineral interest in the purchaser. *Edwards v. Hall*, 267 Ark. 1003, 593 S.W.2d 465 (1980).

Cited: *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

26-34-103. Liability of executor or administrator.

The personal property of any deceased person shall be liable in the hands of any executor or administrator for any tax due on the same by any testator or intestate.

History. Acts 1883, No. 114, § 101, p. 199; C. & M. Dig., § 10025; Pope's Dig., § 13771; A.S.A. 1947, § 84-108.

26-34-104. Attorney General to conduct suits.

All suits which may be brought under the provisions of this act shall be conducted by the Attorney General as other suits brought in the name of the State of Arkansas.

History. Acts 1931, No. 281, § 2; Pope's Dig., § 13900; A.S.A. 1947, § 84-111.

Meaning of "this act". Acts 1931, No. 281, codified as §§ 26-34-104 and 26-34-107.

26-34-105. Limitation of actions on tangible property taxes.

No suit shall be brought for the recovery of overdue taxes accruing because of the underassessment of tangible personal and real property resulting from an error of the

county assessor after three (3) years from the date on which the taxes should have been collected in regular course.

History. Acts 1929, No. 174, § 1; Pope's Dig., § 13901; A.S.A. 1947, § 84-112; Acts 1999, No. 572, § 7.

Case Notes

Cited: State ex rel. Holt v. New York Life Ins. Co., 198 Ark. 820, 131 S.W.2d 639 (1939).

26-34-106. Limitation of actions on intangible property taxes.

No suit shall be brought for the recovery of unpaid and overdue taxes accruing because of underassessment of intangible property after seven (7) years from the date on which the taxes should have been in regular course collected.

History. Acts 1929, No. 174, § 2; Pope's Dig., § 13902; A.S.A. 1947, § 84-113.

26-34-107. No proceedings after payment except for fraud.

After the assessment and full payment of any general property, privilege, or excise tax, no proceedings shall be brought or maintained for the reassessment of the value on which the tax is based, except for actual fraud of the taxpayer. Failure to assess taxes as required by law shall be prima facie evidence of fraud.

History. Acts 1931, No. 281, § 1; Pope's Dig., § 13899; A.S.A. 1947, § 84-110.

Case Notes

Applicability.

Assessment.

Fraud.

Applicability.

This section applied to suits pending at the time it became effective. State ex rel. Attorney Gen. v. Anderson-Tully Co., 186 Ark. 170, 53 S.W.2d 17, 85 A.L.R. 100 (1932).

This section applies to suits by the state to collect delinquent privilege, excise, and sales taxes. Arkansas-Louisiana Gas Co. v. Hardin, 206 Ark. 593, 176 S.W.2d 903 (1944).

It is the failure of collecting officials to invoke promptly the statutory remedies in collecting taxes, rather than any affirmative action on the part of such officials, that enables a taxpayer, who has made an honest disclosure and payment of taxes to take advantage of this section. Arkansas-Louisiana Gas Co. v. Hardin, 206 Ark. 593, 176 S.W.2d 903 (1944).

Assessment.

This section does not bar collection of tax where tax was never assessed, demanded, or paid. Southwestern Distilled Products Co. v. State, 199 Ark. 761, 136 S.W.2d 166 (1940); Terminal Oil Co. v. McCarroll, 201 Ark. 830, 147 S.W.2d 352 (1941), overruled in part, Foote's Dixie Dandy, Inc. v. McHenry, 270 Ark. 816, 607 S.W.2d 323, 21 A.L.R.4th 565 (1980).

If from time to time audits of corporation's business were made by state agents and in consequence of such audits corporation made an assessment of items claimed to be interstate transactions, but did not pay tax because of ruling by state that it was not to be included in the declaration, then the tax for disclosed and reported periods would not be assessable. Hollis & Co. v. McCarroll, 200 Ark. 523, 140 S.W.2d 420 (1940).

Where taxpayer, in reliance upon advice of state, failed to collect sales tax on interstate sales and filed monthly reports showing sales taxes were not being collected or paid on these sales, state was precluded from reassessment and collection of the taxes. McCarroll v. Hollis & Co., 201 Ark. 931, 148 S.W.2d 167 (1941).

Fraud.

A gross underassessment of a taxpayer's property is not evidence of fraud within the meaning of

this section. *State ex rel. Attorney Gen. v. Anderson-Tully Co.*, 186 Ark. 170, 53 S.W.2d 17, 85 A.L.R. 100 (1932).

A complaint by the state seeking to recover back taxes from a corporation, alleging that the corporation's personal property was grossly underassessed, without alleging that actual fraud was practiced by the corporation in making the underassessment, was subject to dismissal. *State ex rel. Attorney Gen. v. Chicago Mill & Lumber Corp.*, 187 Ark. 65, 58 S.W.2d 951 (1933).

State was not entitled to recover in suit against life insurance company for back taxes on annuity insurance premiums where insurance company made report of the premiums collected and paid the taxes due thereon, there being no element of fraud in its failure to report its annuity premiums, as the administrative officers of the state were of the opinion that such premiums were not taxable. *State ex rel. Holt v. New York Life Ins. Co.*, 198 Ark. 820, 131 S.W.2d 639 (1939).

Where taxpayer filed regularly and in due time returns which reflected a complete disclosure of all sales in controversy, under which disclosure the ascertainment of total liability was only a matter of calculation, and he paid promptly the amount to be due under its asserted theory of liability by the return and no concealment, fraud, or collusion in the matter was alleged or proved, suit for recovery of sales tax was barred by this section. *Arkansas-Louisiana Gas Co. v. Hardin*, 206 Ark. 593, 176 S.W.2d 903 (1944).

26-34-108. Suits against local taxing authorities.

(a) Whenever an action may be brought against any person holding the office of county collector, county assessor, or county clerk for performing or attempting to perform any duty or thing authorized by any of the provisions of this act or the laws of this state, for the collection of the public revenues, the collector, assessor, or clerk shall be allowed and paid out of the county treasury reasonable fees of counsel and other expenses for defending the action or suit and the amount of any damages or costs adjudged against him.

(b) The fees, expenses, damages, and costs shall be apportioned ratably by the county clerk among all the parties entitled to share the taxes so collected and shall be deducted by the clerk from the shares or portions of revenue at any time payable to each, including, as one of the parties, the state itself, as well as the counties, townships, towns, or cities, and other corporations or other organizations entitled thereto as indicated.

History. Acts 1883, No. 114, § 211, p. 199; C. & M. Dig., § 10182; Pope's Dig., § 13965; A.S.A. 1947, § 84-109.

Meaning of "this act". Acts 1883, No. 114, codified as §§ 14-15-201, 14-15-505, 16-20-106, 16-92-113 — 16-92-115, 16-96-401, 21-6-305, 25-16-517, 26-1-101, 26-2-101, 26-2-103, 26-2-108, 26-3-201, 26-3-204, 26-3-301, 26-25-101 — 26-25-103, 26-25-105, 26-26-702 — 26-26-704, 26-26-714, 26-26-716, 26-26-717, 26-26-903 — 26-26-909, 26-26-914, 26-26-1001, 26-26-1102, 26-26-1107, 26-26-1202 — 26-26-1205, 26-26-1505, 26-28-101 — 26-28-108, 26-28-110, 26-28-111, 26-34-102, 26-34-103, 26-34-108, 26-35-201, 26-35-301 — 26-35-303, 26-35-401, 26-35-402, 26-35-503, 26-35-504, 26-35-603, 26-35-604, 26-35-901, 26-35-1001 — 26-35-1004, 26-36-202, 26-36-204, 26-36-206 — 26-36-209, 26-36-211, 26-37-106, 26-37-206, 26-37-208, 26-37-209, 26-37-305, 26-37-307, 26-38-106, 26-38-107, 26-39-204 — 26-39-221, 26-39-302 — 26-39-305, 26-39-403, 26-39-406, 26-39-501 — 26-39-509, 26-76-102 — 26-76-108, 26-76-201, and 26-76-202.

Cross References. Illegal or unauthorized taxes or assessments by counties or cities may be enjoined, § 16-113-306.

Case Notes

Applicability.
Injunctions.

Applicability.

This section has no applicability to the right of an attorney employed by a county to represent the county in a suit to test the validity of an act of the General Assembly detaching certain land from one county and attaching it to another. *Spence & Dudley v. Clay County*, 122 Ark. 157, 182 S.W. 573 (1916).

Injunctions.

The collection of taxes partly illegal will not be enjoined without an offer to pay the legal part. *Bridewell v. Morton*, 46 Ark. 73 (1885).

Illegal taxes may be enjoined when the injunction will prevent a multiplicity of suits. *City of Little Rock v. Prather*, 46 Ark. 471 (1885).

A state court cannot enjoin a tax levied pursuant to a mandamus from a federal court. *Gaines v. Springer*, 46 Ark. 502 (1885).

26-34-109. Common carriers not to carry goods on which tax not paid.

(a) (1) It shall be unlawful for any railroad company, bus line company, truck line company, motor vehicle carrier, or any other common carrier, whether person, firm, or corporation, or the agent or receiver thereof, to knowingly transport, or permit to be transported, within the State of Arkansas any goods, wares, merchandise, or articles whatsoever upon the sale or possession for sale of which a tax is imposed by law when the tax has not been paid upon the goods, wares, merchandise, or articles. And it shall be unlawful for any carrier to sell, offer for sale, or deliver to any person, or permit the sale or delivery of any goods, wares, merchandise, or articles upon which the tax has not been paid as required by law.

(2) Each sale, offer for sale, or delivery shall constitute a separate offense.

(b) For each violation of this section, a fine of twenty-five dollars (\$25.00) shall be imposed, and the person, firm, corporation, or the agent or receiver thereof, violating any of the provisions of this section shall also be liable for the amount of tax due.

(c) All fines collected for the violation of any of the provisions of this section shall be paid into the State Treasury.

(d) All taxes due under this section may be recovered by a civil action brought at the instance of the Attorney General in the name of the Director of the Department of Finance and Administration of the State of Arkansas.

(e) This section is not to be construed to repeal any law, but it shall be cumulative to all present laws affecting the subject matter contained in this section.

History. Acts 1931, No. 250, §§ 3-6; Pope's Dig., §§ 13477-13480; A.S.A. 1947, §§ 84-1724 — 84-1727.

Chapter 35

Collection and Payment of Taxes Generally

- Subchapter 1 — General Provisions
- Subchapter 2 — Penalties and Enforcement
- Subchapter 3 — Liability Generally
- Subchapter 4 — Liability of Fiduciaries
- Subchapter 5 — Tax Payments
- Subchapter 6 — Tax Collectors
- Subchapter 7 — Tax Collection
- Subchapter 8 — Judicial Appeals
- Subchapter 9 — Tax Refunds

- Subchapter 10 — Records and Forms
- Subchapter 11 — Disaster Relief Income Tax Check-Off Program
- Subchapter 12 — Baby Sharon Act
- Subchapter 13 — Military Family Relief Check-Off Program

Research References

ALR.

Recovery of tax paid on exempt property. 25 A.L.R.4th 186.

Am. Jur. 72 Am. Jur. 2d, State Tax., § 834 et seq.

C.J.S. 84 C.J.S., Tax., § 607 et seq.

Subchapter 1 — General Provisions

26-35-101. Escrow funds for payment of real property taxes.

Effective Dates. Acts 1987, No. 739, § 3: Apr. 7, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that thousands of dollars of funds are being accumulated in escrow accounts being held by banks, savings and loan associations, and other financial institutions, or by persons, firms, or corporations who maintain such escrow accounts for the payment of real property taxes on lands belonging to others, and that it is in the public interest that whenever a full year's taxes have accumulated in the escrow account for payment of real property taxes during said year, the payment be remitted to the county collector within a reasonable time after said amount has been accumulated thereby enabling the cities, counties and school districts of this State to have the prompt benefit of the payment of taxes for which said escrow accounts are maintained; that many cities, counties and school districts are suffering a severe cash flow problem due to the lack of receiving said funds promptly upon the same being accumulated within the said escrow accounts; and that the immediate passage of this Act is necessary to assure that taxpayer funds accumulating in such escrow accounts be promptly remitted to the county collectors for distribution to the various taxing units of which said funds were intended. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

26-35-101. Escrow funds for payment of real property taxes.

(a) (1) All banks, savings and loan associations, and other financial institutions and all persons, firms, or corporations which are holders of escrow funds for payment of real property taxes, within thirty (30) days after sufficient funds have accumulated in each account for the payment of property taxes, shall notify the county collector.

(2) If sufficient funds for the payment of one (1) year's taxes on real estate have accumulated within an escrow account prior to the commencement of the period in which the collector may collect real property taxes for the year in which due, this notification shall be made within thirty (30) days after the collector is authorized by law to commence collecting real property taxes during the year.

(3) Further, those holders of escrow funds must remit payment for property taxes within sixty (60) days of receipt of the tax bills from the collector.

(4) (A) Any bank, savings and loan association, or other financial institution or any person, firm, or corporation holding escrow funds for the payment of real property taxes due on properties belonging to persons for whom the escrow accounts are being held, which fails to pay to the county collector the real property taxes on the property

within the time limitation imposed by this subsection, shall be subject to a penalty of ten percent (10%) of the amount of the total taxes due.

(B) The penalties shall be paid from funds belonging to the holder of the escrow account.

(b) In no event shall moneys paid as penalties for late payment of real property taxes under the provisions of subsection (a) of this section be charged against the escrow account.

(c) All penalties collected by the county collector under subsection (a) of this section shall be credited to the various taxing units of the county in the respective proportions that each taxing unit shares in real property taxes collected by the county.

History. Acts 1987, No. 739, § 1.

A.C.R.C. Notes. Acts 1987, No. 739, § 1, provided, in part, that in 1988 holders of escrow funds should remit payment of property taxes within 90 days of receipt of the tax bills but that the 60-day limitation in subdivision (a)(3) would apply in 1989 and thereafter.

Publisher's Notes. Acts 1987, No. 739, § 2, provided that the act was applicable to taxes payable in 1988 and thereafter.

Subchapter 2 — **Penalties and Enforcement**

26-35-201. Distraint when taxpayer about to move.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

26-35-201. Distraint when taxpayer about to move.

Whenever any collector shall have reason to believe that any person charged with taxes, other than those upon real estate, is about to remove from the county without paying his taxes, he may, at any time, levy and collect the taxes with costs by distress and sale.

History. Acts 1883, No. 114, § 121, p. 199; C. & M. Dig., § 10072; Pope's Dig., § 13833; A.S.A. 1947, § 84-914.

Cross References. Distraint of goods after delinquency, § 26-36-206.

Subchapter 3 — **Liability Generally**

26-35-301. Duty to pay taxes.

26-35-302. Life tenants and remaindermen.

26-35-303. Joint tenant ownership of property.

Cross References. Grantee in conveyance assumes payment of taxes, § 18-12-102.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

26-35-301. Duty to pay taxes.

(a) Every person shall be liable to pay tax for the lands, town, or city lots of which he may stand seized for life, by curtesy, or in dower, or may have the care of as guardian, executor, or administrator, or as agent or attorney, having the funds of the principal in his

hands.

(b) It shall be the duty of each person holding lands as indicated to pay the taxes which may be assessed thereon each year.

History. Acts 1883, No. 114, §§ 161, 162, p. 199; C. & M. Dig., §§ 10049, 10050; Pope's Dig., §§ 13808, 13809; A.S.A. 1947, §§ 84-921, 84-922.

Case Notes

Dower Rights.

Life Tenants.

Parents.

Dower Rights.

Surviving husband occupying land under dower right was under duty to pay taxes, and where he permitted land to be forfeited to state for taxes, a purchase from the state by his son-in-law, who permitted his father-in-law to continue to occupy the land with him, there being other evidence of close relationship, amounted to a mere redemption, and interests in land remained as they were before the tax forfeiture. *Smith v. Davis*, 200 Ark. 547, 140 S.W.2d 126 (1940).

Life Tenants.

Where statute imposed upon the life tenant the duty to pay taxes and daughter occupied property with her mother, who was life tenant, with free rent, after death of mother, daughter was not entitled to be reimbursed for taxes paid by her upon partition of real estate. *Kelley v. Acker*, 216 Ark. 867, 228 S.W.2d 49 (1950).

Since it is the duty of grantees of life tenant to keep taxes paid on lands so held, a purchase of a tax title resulting from failure to pay the taxes amounted to merely a redemption and did not give them title in fee. *Hutchison v. Sheppard*, 225 Ark. 14, 279 S.W.2d 33 (1955).

The duty to pay taxes under the statute applies to life tenants, who are charged with the responsibility of paying taxes on land, and persons who live with a life tenant, rent free. *Acord v. Acord*, 70 Ark. App. 409, 19 S.W.3d 644 (2000).

Parents.

Father is required to pay taxes on land of his minor children, and where he allows the land to become delinquent and sold for taxes, a conveyance to the father from one purchasing from state amounts to a redemption and title remains in the children. *Dedmon v. Hawkins*, 211 Ark. 840, 203 S.W.2d 183 (1947).

26-35-302. Life tenants and remaindermen.

If any person who shall be seized of lands for life shall neglect to pay the taxes thereon so long that the lands shall be sold for the payment of the taxes and shall not within one (1) year after the sale redeem them according to law, the person shall forfeit to the persons next entitled to the land in remainder or reversion all the estate which he, so neglecting as indicated, may have in the lands. The remainderman or reversioner may redeem the lands in the same manner that other lands may be redeemed after being sold for taxes. The person, so neglecting as indicated, shall be liable in an action to the next entitled to the estate for all damages that person may have sustained by the neglect.

History. Acts 1883, No. 114, § 165, p. 199; C. & M. Dig., § 10054; Pope's Dig., § 13813; A.S.A. 1947, § 84-925.

Case Notes

Applicability.

Forfeiture.

Life Tenants.
Redemption.
Remaindermen.

Applicability.

Where one brother purchased another brother's undivided one-third interest in lands from a stranger who had purchased the interest at a tax sale, this section does not apply in that the brothers were tenants in common. *Luster v. Arnold*, 249 Ark. 152, 458 S.W.2d 414 (1970).

Forfeiture.

A life tenant does not forfeit his estate where he procures another to purchase the land at the tax sale for his benefit. *Swan v. Rainey*, 59 Ark. 364, 27 S.W. 240 (1894); *Mercantile Trust Co. v. Adams*, 95 Ark. 333, 129 S.W. 1101 (1910).

A void tax sale does not work a forfeiture of the estate of a life tenant. *Magness v. Harris*, 80 Ark. 583, 98 S.W. 362 (1906); *Champion v. Williams*, 165 Ark. 328, 264 S.W. 972 (1924); *Kory v. Less*, 180 Ark. 342, 22 S.W.2d 25 (1929); *Miller v. Whyte*, 194 Ark. 203, 106 S.W.2d 207 (1937). A widow does not forfeit her life estate in husband's homestead through failure to pay taxes where she redeems the land before the question is raised. *Hill v. Schultz*, 181 Ark. 719, 27 S.W.2d 512 (1930).

Where proof on issue as to validity of tax sale was insufficient on appeal to pass on the question, chancellor's finding that life estate should not be forfeited raised a presumption that he regarded the tax sales under which remainderman claimed forfeiture as void or voidable. *Beloate v. Less*, 193 Ark. 907, 103 S.W.2d 633 (1937).

Equity had jurisdiction to declare forfeiture of life estate in realty at suit of remainderman who purchased realty from drainage district to which it was sold under foreclosure decree enforcing the district's lien for taxes; this decree protected remainderman's rights and did no harm to life tenant who had already lost title by failing to redeem. *Higginbotham v. Harper*, 206 Ark. 210, 174 S.W.2d 668 (1943).

Life Tenants.

This section has reference to a life tenant whose duty it is to pay the taxes; it has no applicability where occupancy and use of property during a wife's natural life is given to her by a decree in divorce action, where she is not under obligation to pay taxes. *Miller v. Whyte*, 194 Ark. 203, 106 S.W.2d 207 (1937).

Duty rests upon life tenant to pay all general taxes and all special assessments to protect his own interest and that of the remaindermen. *Higginbotham v. Harper*, 206 Ark. 210, 174 S.W.2d 668 (1943).

Redemption.

Where a life tenant permits lands to forfeit to the state for the nonpayment of taxes but later purchases the land from the state, the remainderman, not having redeemed, loses his right to work a forfeiture of the life estate by himself redeeming the land. *Galloway v. Battaglia*, 133 Ark. 441, 202 S.W. 836 (1918).

Life tenant cannot acquire the interest of the remainderman in realty by failure to discharge duty to pay taxes, thus permitting realty to be forfeited to the state, and then taking a conveyance from one who, at his request, purchases it from the state, as such purchases will be regarded as redemptions. *Higginbotham v. Harper*, 206 Ark. 210, 174 S.W.2d 668 (1943).

Where life tenant fails to redeem land from taxes, redemption from taxes by remainderman is for the benefit of all remaindermen. *Smith v. Kappler*, 220 Ark. 10, 245 S.W.2d 809 (1952).

Where life tenant purchased an outstanding drainage district tax title to the land, this purchase amounted only to a redemption, as it was her duty to pay taxes and special assessments. *Wheeler v. Harris*, 232 Ark. 469, 339 S.W.2d 99 (1960).

Remaindermen.

One who enters lands under a void sale is a trespasser, and the statute of limitations does not run against the remaindermen until the expiration of the life estate. *Jones v. Fowler*, 171 Ark. 594, 285 S.W. 363 (1926).

One whose color of title is derived from a deed from a life tenant, purporting to convey a fee simple, and who pays taxes during the life of the life tenant, does not affect the title of the remainderman because a failure to pay taxes would result in a forfeiture of the life estate. *Bradley*

Lumber Co. v. Burbridge, 213 Ark. 165, 210 S.W.2d 284 (1948).

Cited: Ward v. Ward, 120 Ark. 358, 179 S.W. 495 (1915); Holloway v. Bank of Atkins, 205 Ark. 598, 169 S.W.2d 868 (1943).

26-35-303. Joint tenant ownership of property.

(a) In all cases where any tract of land may be owned by two (2) or more persons as joint tenants, coparceners, or tenants in common, and one (1) or more proprietors shall have paid the tax or tax and penalty charged on his proportion of the tract, or one (1) or more of the remaining proprietors shall have failed to pay his proportion of his tax or tax and penalty charged on the land and partition of the land has or shall be made between them, then the tax or tax and penalty, paid as indicated, shall be deemed to have been paid on the proportion of the tract set off to the proprietor who paid his proportion of the tax or tax and penalty, and the proprietor so paying the tax or tax and penalty, as indicated, shall hold the proportion of the tract set off to him, as indicated, free from the residue of the tax or tax and penalty charged on the tract before partition, and the proportion of the tract set off to the proprietor who shall not have paid his proportion of the tax or tax and penalty, remaining unpaid, shall be charged with the tax or tax and penalty in the same manner as if the partition had been made before the tax or tax and penalty, had been assessed.

(b) Whenever any land so held by tenants in common shall be sold upon proceedings in partition or shall be taken by the election of any of the parties to such proceedings, or when any real estate shall be sold at judicial sale, or any administrator's, executor's, guardian's, or trustee's sale, the court shall order the taxes and penalties and the interest thereon, against the lands to be discharged out of the proceeds of the sale or election.

History. Acts 1883, No. 114, § 166, p. 199; C. & M. Dig., §§ 10055, 10056; Pope's Dig., §§ 9472, 10541, 13814, 13815; A.S.A. 1947, § 84-926.

Case Notes

Construction.

Judicial Sales.

Taxes.

Construction.

This section was copied from an Ohio statute, and it is presumed that the General Assembly adopted the interpretation of it theretofore made by the Ohio court of last resort. *Miners' Bank v. Churchill*, 156 Ark. 191, 245 S.W. 829 (1922).

This section, being in derogation of the common law, must be strictly construed. *McIlroy v. Fugitt*, 182 Ark. 1017, 33 S.W.2d 719, 73 A.L.R. 1223 (1930).

Judicial Sales.

Subsection (b) of this section relates to all judicial sales and not merely to sales in partition proceedings. *Miners' Bank v. Churchill*, 156 Ark. 191, 245 S.W. 829 (1922).

On a judicial sale the taxes are required to be satisfied from the proceeds, and if mortgagee, between date of decree of foreclosure and date of sale, paid taxes on land to preserve its interest, it should have secured reimbursement by amending its complaint in the case and could not recover for the taxes so paid from the purchaser at the foreclosure sale after confirmation of the sale. *Quarry Sav. Bank & Trust Co. v. First Nat'l Bank*, 185 Ark. 433, 47 S.W.2d 802 (1932).

Taxes.

This section, providing for payment of taxes out of proceeds, has reference to the date of the sale, meaning the day on which the land is bid in by the purchaser and not to the confirmation. It is not essential that original decree directing foreclosure should contain direction for such

payment; rather, the court may direct payment at any time before the fund is disbursed. *Miners' Bank v. Churchill*, 156 Ark. 191, 245 S.W. 829 (1922).

The word "taxes" as used in this section refers to the general revenues of the state and not to local assessments. *McIlroy v. Fugitt*, 182 Ark. 1017, 33 S.W.2d 719, 73 A.L.R. 1223 (1930).

Cited: *Miners' Bank v. Churchill*, 156 Ark. 191, 245 S.W. 829 (1922); *Goodrich v. Darr*, 161 Ark. 514, 256 S.W. 868 (1923).

Subchapter 4 **— Liability of Fiduciaries**

26-35-401. Liability generally.

26-35-402. Preference of reimbursement claims.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

26-35-401. Liability generally.

(a) Every person holding lands as guardian, executor, or administrator and neglecting or refusing to list or pay the taxes upon them, in the manner indicated, shall be liable to an action by his ward or devisee for any damage sustained by his neglect.

(b) Every person having the care of lands as agent or attorney as indicated having funds of the principal in his hands, for such purpose, and neglecting or refusing to list or pay the taxes on the lands shall be liable in an action to his principal for any damage the principal may have sustained by his neglect or refusal.

History. Acts 1883, No. 114, § 163, p. 199; C. & M. Dig., §§ 10051, 10052; Pope's Dig., §§ 13810, 13811; A.S.A. 1947, § 84-923.

26-35-402. Preference of reimbursement claims.

Every attorney, agent, guardian, executor, or administrator seized or having the care of lands, as indicated, who shall be put to any trouble or expense in listing or paying the taxes on the lands, shall be allowed a reasonable compensation for the time spent, the expenses incurred, and money advanced as indicated, which shall be deemed in all courts a just charge against the person for whose benefit the services shall have been advanced. The claim shall be preferred to all other debts or claims and be a lien on the real estate as well as the personal estate of the person for whose benefit the services shall have been advanced.

History. Acts 1883, No. 114, § 164, p. 199; C. & M. Dig., § 10053; Pope's Dig., § 13812; A.S.A. 1947, § 84-924.

Case Notes

Creation of Liens.

Priority of Liens.

Creation of Liens.

One who executed a note to his agent for money advanced in paying taxes on his land, in which he declared that he recognized the existence of a statutory lien, did not thereby create a lien where none existed by statute. *Peay v. Feild*, 30 Ark. 600 (1875) (decision under prior law).

To entitle an agent or attorney to a lien for taxes paid, he must show that he was seized of, or had care of, the land. *Peay v. Feild*, 30 Ark. 600 (1875); *Belleclair Planting Co. v. Hall*, 125 Ark. 203, 188 S.W. 574 (1916) (decision under prior law).

Voluntary payment of taxes on another's land by a stranger without any interest therein, in absence of the relationship of agent or attorney, creates no lien. *New York Life Ins. Co. v. Nichol*, 170 Ark. 791, 281 S.W. 21 (1926); *Person v. Cogbill*, 180 Ark. 664, 22 S.W.2d 161 (1929). A bank lending money to executors to pay taxes could have the estate's real property sold to foreclose a lien therefor, though the executors did not execute a mortgage to secure the loan. *Christian v. People's Trust Co.*, 185 Ark. 55, 45 S.W.2d 857 (1932).

Priority of Liens.

Lien of a mortgagee, executed by owners of land after taxes had been paid by agent at owner's request, is superior to agent's lien. *First Nat'l Bank v. Polk*, 171 Ark. 543, 284 S.W. 769 (1926). This section does not subrogate an agent paying taxes on lands to lien of state, but only gives lien to agent against owner. *First Nat'l Bank v. Polk*, 171 Ark. 543, 284 S.W. 769 (1926).

Cited: *First Nat'l Bank v. Wells River Sav. Bank*, 179 Ark. 834, 18 S.W.2d 370 (1929).

Subchapter 5 **— Tax Payments**

- 26-35-501. Time to pay — Installments.
- 26-35-502. Means of payment.
- 26-35-503. Interest on public debt.
- 26-35-504. Payment by warrants.
- 26-35-505. Collector to receive warrants at par.
- 26-35-506. Credit cards.

Preambles. Acts 1935, No. 326, contained a preamble which read:

"Whereas, as result of decision of the Supreme Court in *Arkansas Power & Light Co. v. Curlin*, 187 Ark. 562, 61 S.W.2d 73 (1933), confusion exists as to rights of taxpayers to pay their school taxes with school warrants; and

"Whereas, it being the sense of this Body that taxpayers shall have the privilege of paying their school taxes with legally drawn school warrants of the district to which such taxes are due...."

Effective Dates. Acts 1869 (Adj. Sess.), No. 40, § 5: effective on passage.

Acts 1883, No. 114, § 226: effective on passage.

Acts 1911, No. 415, § 3: approved May 31, 1911. Emergency declared.

Acts 1935, No. 282, § 9: effective on passage.

Acts 1935, No. 326, § 2: became law without Governor's signature, Apr. 4, 1935. Emergency clause provided: "This act being necessary for the peace, health and public safety, an emergency is hereby declared and this act shall be in full force and effect from and after its passage."

Acts 1977 (Ex. Sess.), No. 20, § 3: Aug. 15, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to clarify the law relating to payment methods and delinquency penalties for real and property taxes, and that public officials and taxpayers of the State of Arkansas are confused about the present law regarding the same. Therefore, to insure an equitable and efficient method for collection of real and personal property taxes, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 697, § 4: Mar. 20, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that current law encumbers the early payment of taxes by taxpayers in this state; that it is in the best interest of all persons in this state that taxes be collected for the benefit of the state at the earliest possible date; therefore, an emergency is hereby declared and this act being necessary for the preservation of the public health, welfare and safety, shall become effective immediately upon passage."

Research References

Am. Jur. 72 *Am. Jur. 2d*, *State Tax.*, § 834 et seq.

C.J.S. 84 *C.J.S.*, *Tax.*, § 607 et seq.

26-35-501. Time to pay — Installments.

(a) (1) All ad valorem taxes levied on real and personal property by the several county courts of the state when assembled for the purpose of levying taxes, except taxes on the property of utilities and carriers and all ad valorem taxes on real property held in escrow, shall be due and payable on and from the first business day in March to and including October 10 in the year succeeding the year in which the levy is made.

(2) (A) Every taxpayer other than a utility or carrier shall have the option to pay the taxes on real property of the taxpayer in installments as follows:

(i) The first installment of one-fourth ($\frac{1}{4}$) of the amount of the taxes shall be payable on and from the third Monday in February to and including the third Monday in April;

(ii) A second installment of one-fourth ($\frac{1}{4}$) or a first installment of one-half ($\frac{1}{2}$) if no payment was made before the third Monday in April shall be payable on and from the third Monday in April to and including the third Monday in July; and

(iii) The third installment of one-half ($\frac{1}{2}$) shall be payable on and from the third Monday in July to and including October 10.

(B) A taxpayer who does not submit installment payments in compliance with this schedule shall be deemed to have waived the option to pay in installments.

(b) All ad valorem taxes levied on the real and personal property of utilities and carriers shall be due and payable as follows:

(1) One-fourth ($\frac{1}{4}$) shall be due and payable on and from the third Monday in February to and including the third Monday in April;

(2) One-fourth ($\frac{1}{4}$) shall be due and payable on and from the third Monday in April to and including the second Monday in June; and

(3) One-half ($\frac{1}{2}$) shall be due and payable on and from the third Monday in April to and including October 10 in the year succeeding the year in which the levy is made.

(c) (1) It shall be the duty of the county collectors of the respective counties to assess a penalty of ten percent (10%) against all unpaid tax balances remaining after October 10 for every taxpayer other than a utility or carrier or after the prescribed dates listed in subsection (b) of this section for utilities and carriers.

(2) (A) No taxpayer paying in installments under subdivision (a)(2) of this section shall be assessed a penalty until such taxes become due and remain unpaid after October 10.

(B) However, if the last day for the payment of taxes on any installment is a Saturday, Sunday, or postal holiday, the last day to pay taxes without a penalty is the following business day.

(3) (A) A property tax balance payment is timely received under this subsection if mailed through the United States Postal Service and postmarked by October 10.

(B) If October 10 is a Saturday, Sunday, or postal holiday, a property tax balance payment is timely received if mailed and postmarked through the United States Postal Service the following business day.

History. Acts 1911, No. 415, § 1; C. & M. Dig., § 10066; Acts 1927, No. 340, § 3; 1933 (1st Ex. Sess.), No. 16, § 1; 1935, No. 282, § 3; Pope's Dig., § 13826; Acts 1975, No. 574, § 3; 1977 (Ex. Sess.), No. 20, § 1; 1979, No. 1050, § 1; A.S.A. 1947, § 84-913; Acts 1989, No. 697, § 1; 2003, No. 295, § 8; 2007, No. 215, § 1.

Publisher's Notes. Acts 1977 (Ex. Sess.), No. 20, § 2, provided that the General Assembly finds that a general state of confusion exists regarding the assessment of a delinquency penalty on the payment of real and personal property taxes, that it is the intent and purpose of this act that no taxpayer, regardless of choice of installment or single payment method, shall be assessed a ten percent (10%) delinquency penalty on any unpaid real or personal property tax balance except those balances remaining after the tenth day of October in the year in which the tax is due and payable, and that it is the intent of this act that any delinquency penalty will be assessed only against the unpaid tax balance remaining after the tenth day of October.

Amendments. The 2003 amendment replaced "third Monday in February" with "first business day in March" in (a)(1); inserted the subdivision designations in (c)(2); in present (c)(2)(B), inserted "postal holiday" and substituted "last day to pay taxes without a penalty is the following business day" for "taxes shall become due and payable without penalty the following Monday"; and made minor stylistic and related changes.

The 2007 amendment added (c)(3).

Case Notes

Construction.

Dates for Payment.

Construction.

This section, considered as a whole, is not ambiguous. *Tolleson v. McMillan*, 192 Ark. 111, 90 S.W.2d 990 (1936).

Dates for Payment.

If a taxpayer wishes to pay in instalments without penalty, he must do so within the times limited in this section, and if he wishes to pay the entire amount at one time without penalty, he must do so on or before the third Monday in April. *Tolleson v. McMillan*, 192 Ark. 111, 90 S.W.2d 990 (1936).

Property agreement providing that the family home would be sold and that net proceeds were to be paid to the wife was construed so that husband had to pay mortgage payment, taxes, and special assessments which were due and payable upon the day of the sale. *Jones v. Jones*, 236 Ark. 296, 365 S.W.2d 716 (1963).

Summary judgment was properly awarded to property owners in an action by a municipal water improvement district to collect delinquent municipal improvement district taxes where the foreclosure action was barred by the three-year statute of limitations; because subsection (a) of this section specified that the first installment of the general taxes was to be payable on and from the third Monday in February to and including the third Monday in April, the three-year statute of limitations began to run 90 days after the third Monday in April 2001, well before the district filed its foreclosure action on October 1, 2004. *Vimy Ridge Mun. Water Improvement Dist. No. 139 v. Ryles*, 373 Ark. 366, 284 S.W.3d 70 (2008).

Cited: *McCastlain v. Wylie*, 139 Ark. 326, 213 S.W. 743 (1919).

26-35-502. Means of payment.

The county taxes of any county of this state levied in pursuance of law shall only be payable in the lawful currency of the United States or scrip or warrants of the county by whose authority they were issued, drawn in pursuance of law and not inconsistent with this act.

History. Acts 1879, No. 77, § 11, p. 109; C. & M. Dig., § 1988; Pope's Dig., § 2533; A.S.A. 1947, § 84-927.

Publisher's Notes. Acts 1879, No. 77, § 14, provided that nothing in the act shall be so construed as to enlarge the functions or powers of the County Court of Sebastian County as under existing laws.

Meaning of "this act". Acts 1879, No. 77, codified as §§ 14-20-103, 14-20-104, 14-20-114, and 26-35-502.

26-35-503. Interest on public debt.

The tax levied to pay the interest on the public debt shall be collected in the United States currency and paid into the State Treasury in the currency collected.

History. Acts 1883, No. 114, § 112, p. 199; C. & M. Dig., § 10044; Pope's Dig., § 13803; A.S.A. 1947, § 84-928.

26-35-504. Payment by warrants.

(a) The collector of each county in the State of Arkansas shall receive county warrants in payment of county taxes, and the orders or warrants that may be payable on presentation of any town or city for their respective taxes.

(b) This section shall not be so construed as to compel the collector to accept any order or warrant that is by the laws of this state required to be refunded.

History. Acts 1883, No. 114, § 112, p. 199; C. & M. Dig., § 10045; Acts 1935, No. 326, § 1; Pope's Dig., § 13804; A.S.A. 1947, § 84-929.

Case Notes

Constitutionality.

Fines, Penalties, Etc.

Manner of Payment.

Redemption.

Special Law.

Warrants Receivable.

Constitutionality.

This section was held impliedly repealed by Ark. Const. Amend. 11 (now incorporated in Ark. Const., Art. 14, § 3). *Arkansas Power & Light Co. v. Curlin*, 187 Ark. 562, 61 S.W.2d 73 (1933). The reenactment of this section in 1935 did not free it of the constitutional objection that it offends against Ark. Const. Amend. 11 (now incorporated in Ark. Const., Art. 14, § 3), insofar as it relates to the payment of school taxes with school warrants. *McCall v. Armstrong*, 199 Ark. 1131, 137 S.W.2d 241 (1940).

Reenactment of this section in 1935 evidenced the legislative intent to reenact so much of this section, as it stood prior thereto, as was constitutional, and those provisions permitting the use of county, city, and town warrants to pay taxes due counties, cities, or towns, respectively, does not offend against Ark. Const. Amend. 11 (now incorporated in Ark. Const., Art. 14, § 3), which relates only to school taxes. *McCall v. Armstrong*, 199 Ark. 1131, 137 S.W.2d 241 (1940).

Fines, Penalties, Etc.

Under statute requiring fines, penalties, and forfeitures to be paid into the county treasury, fines, penalties, and forfeitures were to be treated as debts accruing to the county and were payable in county warrants. *McKibben v. State*, 31 Ark. 46 (1876); *Lusk v. Perkins*, 48 Ark. 238, 2 S.W. 847 (1887) (preceding decisions under prior law).

Manner of Payment.

Provision in § 89 of the Revenue Act of 1873, authorizing the payment of taxes with warrants issued by the state or any county, township, town, or city for their respective taxes, did not prohibit the receipt of other certificates for taxes, if otherwise authorized by law. *English v. Oliver*, 28 Ark. 317 (1873) (decision under prior law).

County collector could not refuse to take county scrip for taxes because barred by the statute of limitations, nor plead the statute as bar to a petition for mandamus to compel him to take it. *Daniel v. Askew*, 36 Ark. 487 (1880); *Whitthorne v. Jett*, 39 Ark. 139 (1882) (preceding decisions under prior law).

Notwithstanding a county levying court, in levying a special tax to build a new courthouse,

ordered it to be "receivable only in currency or proper warrants drawn by proper order on the courthouse fund," a tax levied for such purpose could be paid in county warrants drawn upon funds appropriated for ordinary county purposes. *Stillwell v. Jackson*, 77 Ark. 250, 93 S.W. 71 (1905).

Municipal ordinance providing for payment of a tax "in cash" will be construed to mean either in money or in municipal orders, warrants, or scrip. *Arkansas Pub. Util. Co. v. Incorporated Town of Heber Springs*, 151 Ark. 249, 235 S.W. 999 (1921).

One receiving judgment for face value of county warrant against a county cannot, by mandamus, require county authorities to collect a portion of the county taxes in cash instead of in county warrants, since the taxpayer can pay taxes in either cash or warrants. *United States ex rel. Jensen v. Criner*, 283 F. 774 (8th Cir. 1922).

Neither the federal nor the state courts can require a county to levy a tax payable in currency to satisfy a judgment rendered against it on county warrants. *Slayton v. Crittenden County*, 284 F. 858 (E.D. Ark. 1922).

Redemption.

On redemption of land sold to state for taxes, county treasurer is required to accept county warrants for portion of taxes owing the county. *Bradford v. Burrow*, 188 Ark. 380, 65 S.W.2d 554 (1933).

Special Law.

Acts 1917, No. 94, providing for the registration of warrants of Johnson County by treasurer and for their redemption by him in order of their presentation did not, expressly or impliedly, prohibit their acceptance by collector in payment of taxes. *Bartlett v. Willis*, 147 Ark. 374, 227 S.W. 596 (1921).

Warrants Receivable.

Where county warrants tendered in payment of taxes levied to pay county indebtedness existing at the adoption of the Arkansas Constitution of 1874 afforded no evidence that the allowance upon which they were issued was for county indebtedness prior to the adoption of the constitution, and were subsequent thereto, and drawn upon fund appropriated for county expenditures, collector was to refuse them. *Loftin v. Watson*, 32 Ark. 414 (1877); *Hughes v. Ross*, 38 Ark. 275 (1881) (preceding decisions under prior law).

A warrant issued in payment of a claim before it is due is not receivable for taxes until the claim is due. *Vale v. Buchanan*, 98 Ark. 299, 135 S.W. 848 (1911).

26-35-505. Collector to receive warrants at par.

(a) No county collector or deputy county collector shall, either directly or indirectly, contract for or purchase any orders or warrants issued by the county of which he is collector, or any state warrants, town orders, or the orders or warrants of any city, town, or other body politic for which he is the collector of taxes, at any discount whatever upon the sum due on those orders or warrants.

(b) If any collector or deputy collector, directly or indirectly, contracts for, purchases, or procures any orders or warrants at any discount whatever upon the sum for which they are respectively issued, he shall not be allowed, on settlement, the amount of the warrants or orders, or any part thereof, and shall also forfeit the whole amount due on the warrants or orders and the sum of one hundred dollars (\$100) for each and every breach of the provisions of this section, to be recovered in a civil action at the suit of the state for the use of the county.

(c) (1) The Treasurer of State or the person to whom the county collector of any county is required to return the state, county, city, town, village, school, or road tax is, respectively, prohibited from receiving from any county collector any warrants, orders, or bonds in payment of taxes collected by him or his deputies unless with the warrants, orders, or bonds, the county collector shall file his affidavit with the Treasurer of State or

the person entitled to receive the tax, stating therein that all warrants, orders, and bonds were received at their par value and that he has faithfully performed his duties as prescribed in this section.

(2) Whoever swears falsely in this affidavit is guilty of perjury and, upon conviction, shall be punished by confinement in the state penitentiary for not less than one (1) nor more than three (3) years.

History. Acts 1869, No. 40, § 2, p. 92; C. & M. Dig., § 10048; Pope's Dig., § 13807; A.S.A. 1947, § 84-930.

26-35-506. Credit cards.

(a) All county collectors may accept payment of county property taxes, penalties, and associated costs by an approved credit card or debit card.

(b) (1) As authorized by subsection (a) of this section, all county collectors may enter into contracts with credit card companies and may pay the fees normally charged by those companies for allowing the county collector to accept their cards as payment.

(2) (A) When a taxpayer pays his or her property taxes by an approved credit card, the county collector shall assess a service fee equal to the amount charged to the county collector by the credit card issuer.

(B) This charge may be added to and become part of any underlying obligation.

History. Acts 1999, No. 588, § 1.

Subchapter 6 — Tax Collectors

26-35-601. Personal property taxes to be collected with real estate taxes.

26-35-602. Tax money to be kept in separate account.

26-35-603. Moneys paid over upon resignation.

26-35-604. Death of collector — Duties of successor.

26-35-605. Extension of time.

26-35-606. Collection of real and personal property taxes.

26-35-607. [Repealed.]

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1931, No. 41, § 14: approved Feb. 18, 1931. Emergency clause provided: "Because of economic conditions and bank failures the county funds in many of the counties of the State are in the process of liquidation in failing banks, and many problems have arisen for proper protection of the public funds and the procuring of bonds for the officials in charge thereof, an acute situation has arisen wherein the counties and officials need immediate cooperation and advice and with the passage of this Act all the laws now in effect respecting the auditing of county officers are repealed, an emergency now exists seriously affecting the peace, health and safety of the people and this Act shall take effect and be in full force from and after its passage."

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 881 et seq.

C.J.S. 84 C.J.S., Tax., § 645 et seq.

26-35-601. Personal property taxes to be collected with real estate taxes.

(a) Each county collector in this state shall be charged with the responsibility of

collecting personal property taxes shown to be due by the taxpayer as reflected by the records in the county collector's office at the time the taxpayer pays the general taxes due on real estate.

(b) Any county collector willfully accepting payment of general real estate taxes without requiring the payment of personal property taxes due as reflected by the records in the county collector's office shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100).

(c) (1) Except as provided in subdivisions (c)(2)-(4) of this section, it is the intention of this section to require the collection of personal property taxes as reflected by the records in the office of the county collector and to prevent a taxpayer from paying and the county collector from receiving payment of general real estate taxes without payment of personal property taxes if any personal property taxes are shown to be due.

(2) The provisions of this section shall not prevent any person, firm, partnership, or corporation from paying general real estate taxes on property securing the payment of indebtedness due the person, firm, partnership, or corporation seeking to pay the taxes.

(3) Notwithstanding the other provisions of this section, a county collector shall accept payment of general real estate taxes on a parcel of property at the time the ownership of the property is being transferred if the taxpayer transferring title to the property has paid all delinquent personal property taxes.

(4) Furthermore, a purchaser in a foreclosure sale shall not be responsible for the payment of the personal property taxes required to be paid by this section.

History. Acts 1951, No. 243, §§ 1-3; A.S.A. 1947, §§ 84-937 — 84-939; Acts 1999, No. 994, § 1; 2001, No. 1286, § 1.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

Case Notes

Foreclosure Sales.

Foreclosure Sales.

A purchaser at a foreclosure sale is not responsible for the personal property taxes required to be paid by this section. *United States v. Massey*, 568 F. Supp. 1369 (W.D. Ark. 1983).

Cited: *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

26-35-602. Tax money to be kept in separate account.

(a) (1) The Director of the Division of Local Affairs and Audits of the Division of Legislative Audit shall require every county collector of taxes to keep any and all tax money collected in a separate account from all other money which the county collector may have in his or her possession.

(2) A county collector shall have no authority to check on this account except in favor of a treasurer or depository to whom he or she is required to pay the money or to himself or herself for commission or salary already earned.

(b) (1) (A) Failure to comply with this section on the part of a county collector shall be a violation and shall render him or her liable to a penalty of not less than twenty-five dollars (\$25.00).

(B) Each day's failure shall be considered a separate offense.

(2) Upon finding that public funds and private funds are being jointly deposited or improperly disbursed under this section, the director shall notify immediately the bondsmen of the offending officer and the public of the violation.

History. Acts 1931, No. 41, § 4; Pope's Dig., § 1722; A.S.A. 1947, § 84-936; Acts 2005, No. 1994, § 169.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (b)(1); and made gender neutral changes throughout.

26-35-603. Moneys paid over upon resignation.

(a) (1) Any collector who shall resign, be removed, or be disqualified shall pay over all moneys, which may be in his hands, due the state, county, city, town, or school district, to his successor in office and take duplicate receipts therefor.

(2) One of the receipts shall be filed with the clerk of the county court and the other retained by the collector.

(b) The county clerk shall certify to the Auditor of the State the amount of the receipt, and it shall be the duty of the collector charged therewith to pay it into the treasury in the same manner and at the same time as regular revenues are to be paid.

(c) In the receipts, it shall be specified particularly on what account the moneys mentioned were received, whether from taxes or from other sources.

History. Acts 1883, No. 114, §§ 109, 110, p. 199; C. & M. Dig., §§ 10040, 10041; Pope's Dig., §§ 13786, 13787; A.S.A. 1947, §§ 84-911, 84-912.

26-35-604. Death of collector — Duties of successor.

(a) Whenever any collector dies after he has received the tax books for any year and before he has collected the taxes charged therein, his legal representative shall hand at once to his successor, as soon as he is appointed and qualified, the tax books and pay at once all moneys, less his commission, which have been collected by the deceased collector from all sources then in his hands.

(b) (1) The new collector shall execute receipts in triplicate, to be attested by the clerk of the county court, for the tax books so delivered and showing the amount already collected upon them and the amount uncollected.

(2) (A) The new collector shall also execute receipts in triplicate for the amount of taxes collected by the deceased collector from all sources and paid over to him by the executor or administrator, one (1) of which shall be certified by the clerk to the Auditor of State, who shall charge the new collector with the balance of the state taxes due on the tax book and the amount paid over to him by the executor or administrator of the deceased collector.

(B) Another receipt shall be filed with the county clerk, who shall charge the new collector with the balance of taxes due on the tax books and with the amount paid over by the executor or administrator.

(c) The third receipt shall be given to the executor or administrator of the deceased collector.

History. Acts 1883, No. 114, §§ 107, 108, p. 199; C. & M. Dig., §§ 10038, 10039; Pope's Dig., §§ 13784, 13785; A.S.A. 1947, §§ 84-909, 84-910.

26-35-605. Extension of time.

(a) The Governor may, by proclamation, extend the time when the penalty shall attach for making distraint, returning delinquent list, advertising and selling delinquent lands, making settlement and paying over the revenue, and for the performance of any other duty by the collectors so that the taxpayer may have the same time to pay the taxes and the collector have the same time to perform the duties of his office as allowed by law in case the failure or vacancy had not occurred.

(b) The Governor shall, in his proclamation, fix the time for the performance of the acts mentioned in this section. A copy shall be filed in the office of the county clerk and recorded in the records of the court by the clerk.

(c) The proclamation shall be published in some newspaper in the county for two (2) weeks if a newspaper is published therein.

(d) All acts and duties performed in the time fixed in the proclamation shall be as valid and binding as if performed in the time fixed by the general law.

History. Acts 1875, No. 76, § 5, p. 165; C. & M. Dig., § 10037; Pope's Dig., § 13783; A.S.A. 1947, § 84-908.

26-35-606. Collection of real and personal property taxes.

(a) Any county tax collector may contract with one (1) or more financial institutions to act as his agents to receive real and personal property tax payments on his behalf.

(b) Tax payments received under a contract as provided for in this section shall be collected at the same time and in the same manner as all other property tax payments, and no payments shall be collected after the last payment day established by law.

(c) A financial institution receiving tax payments under a contract as provided for in this section, shall, on the first working day of each week, transmit to the county collector all property taxes received during the preceding week.

(d) As used in this section, "financial institution" means any organization or enterprise which receives deposits and forwards checks, drafts, or orders for collection and which is subject to state or federal regulation.

(e) Nothing in this section shall permit a tax collector to make any payment to a financial institution for receiving real and personal property taxes as provided in this section.

History. Acts 1991, No. 232, §§ 1-4.

26-35-607. [Repealed.]

Publisher's Notes. This section, concerning cost of collecting tax, was repealed by Acts 2009, No. 531, § 1. The section was derived from Acts 1991, No. 1165, § 1.

Effective Dates. Acts 2009, No. 531, § 2, provided: "Section 1 of this act is effective for tax years beginning on or after January 1, 2009."

Subchapter 7 — Tax Collection

26-35-701. [Repealed.]

26-35-702. Location — Notice.

26-35-703. Discontinuance of township visits.

- 26-35-704. Tax books at different sites.
- 26-35-705. Mailing tax statements.
- 26-35-706. Postage fee — Disposition.

Cross References. Collecting taxes not on books, penalty, § 26-2-110.

Payment of funds into county treasury, § 26-39-201.

Effective Dates. Acts 1929, No. 40, § 5: approved Feb. 21, 1929. Emergency clause provided: "It is ascertained and hereby declared that on account of the extreme bad weather on some of the days during the time of collection of taxes it is a hardship on the collector, and inconvenient for him to be in each township at specified times, and on account of this condition very few persons appear in the townships to pay their taxes, but if the collector remains at the county site, or sites, the taxpayers may select their time between the 1st of January and April 10th, to pay their taxes; therefore, an immediate operation of this Act is essential for a protection of the public safety and convenience, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1931, No. 324, § 6: became law without Governor's signature, Apr. 2, 1931. Emergency clause provided: "It is ascertained and hereby declared that on account of the extreme bad weather on some of the days during the time of collection of taxes it is a hardship on the collector, and inconvenient for him to be in each township at specified times, and on account of this condition very few persons appear in the townships to pay their taxes, but if the collector remains at the county site, or sites, the taxpayers may select their time between the 1st of January and April 10th, to pay their taxes; therefore, an immediate operation of this Act is essential for a protection of the public safety and convenience, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1969, No. 234, § 3: became law without Governor's signature, Mar. 11, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the requirement that the collector visit the various townships or precincts in his county for the purpose of collecting taxes is burdensome and costly; that with the present modes of rapid transportation this procedure is no longer necessary and causes undue inconvenience to the collector and to the taxpayers of the county; and that in order to remedy this situation, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall become effective from and after its passage and approval." Approved: March 11, 1969.

Acts 1987, No. 324, § 3: Mar. 19, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that many county tax collectors mail tax statements as a courtesy to taxpayers; that they should be allowed to recover the expense of processing and mailing the statements; that this Act allows for the recovery of those expenses and should be given effect immediately so that it may be implemented as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 372, § 4: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that sheriffs and collectors should mail tax statements no later than July 1 of each year; and that unless this emergency clause is adopted this Act may not go into effect before July 1 of this year, but it should go into effect as soon as possible in order to give notice to the sheriffs and collectors at the earliest date of requirements of this law. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 791, § 10: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws relating to the collection, redemption and sale of tax delinquent real property are in need of clarification; that Arkansas Courts have repeatedly voided tax deeds in instances where the county has not strictly complied with statutes; that such holdings have placed a cloud on tax deeds issued by the Commissioner of State Lands; that the present method whereby the Commissioner of State Lands disposes of tax delinquent land meets

due process requirements; consequently, when the Commissioner of State Lands complies with the statutes set forth for his office to follow, tax deeds issued should not be void or voidable due to defects in the county procedure, except in cases where taxes have actually been paid. Further, the present situation has a chilling effect on the collection of taxes and encourages the nonpayment of taxes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 866 et seq.

C.J.S. 84 C.J.S., Tax., § 640 et seq.

26-35-701. [Repealed.]

Publisher's Notes. Former § 26-35-701, concerning applicability of Acts 1929, No. 40, was repealed by Acts 1989, No. 372, § 2. The former section was derived from Acts 1929, No. 40, § 4; 1931, No. 324, § 5; 1941, No. 24, § 1; 1941, No. 115, § 1; 1957, No. 363, § 1; A.S.A. 1947, § 84-918.

26-35-702. Location — Notice.

Sheriffs and collectors shall be permitted to collect all taxes at the county seats of the respective counties, after having given notice to be published for four (4) weeks in some newspaper published in the county and by posting notices in three (3) public places in each township to the effect that taxes are due and payable at the time specified in § 26-35-501 and that the books will be kept at the county site of the county for the collection of taxes for the time mentioned.

History. Acts 1929, No. 40, § 1; 1931, No. 324, § 2; A.S.A. 1947, § 84-915.

Case Notes

Construction.

Location.

Notice.

Construction.

Provision in Acts 1887, No. 92, § 41, that collector should attend at his office at the county seat “from” the 10th day of April was a clerical error, and the word “from” should have read “until.” *Boles v. McNeil*, 66 Ark. 422, 51 S.W. 71 (1899) (decision under prior law).

Location.

It is not necessary for collector to maintain his office in courthouse to collect taxes. *McGregor v. Cain*, 177 Ark. 474, 7 S.W.2d 13 (1928) (decision under prior law).

Notice.

Evidence insufficient to show proper notice was given when it was not shown that witness was official who would have known about giving of the notice. *Schuman v. Allgood*, 214 Ark. 847, 218 S.W.2d 712 (1949).

26-35-703. Discontinuance of township visits.

(a) In all counties, including those having two (2) or more levying courts or two (2) or more judicial districts, in which the collector is required by law to visit each precinct or township in the county for the purpose of collecting taxes due, the collector shall not be required to make these visits but shall publish notice and collect the taxes as provided by § 26-35-702.

(b) In any county where the collector is required to go to the various townships, he shall publish a notice in a newspaper stating that his visits to the several townships will be discontinued. The notice shall state where the taxes may be paid, and, where there are two (2) or more county sites, the notice shall advise the dates upon which taxes may be paid at the respective sites.

History. Acts 1929, No. 40, § 2; 1931, No. 324, § 3; 1969, No. 234, § 1; A.S.A. 1947, §§ 84-915.1, 84-916.

26-35-704. Tax books at different sites.

(a) Where there are two (2) or more county sites, the tax books shall be kept at one site part of the time and at the other site part of the time, the time to be divided between the two (2) or more sites as in the judgment of the collector will be proper.

(b) Where there are two (2) or more sites, the notices shall state the dates between which the collector will be at each county site.

History. Acts 1929, No. 40, § 3; 1931, No. 324, § 4; A.S.A. 1947, § 84-917.

Case Notes

Multiple Sites.

Multiple Sites.

Collector held required to attend at both county sites where county was divided into two districts. Hare v. Carnall, 39 Ark. 196 (1882) (decision under prior law).

26-35-705. Mailing tax statements.

No later than July 1 of each year, the sheriff or collector shall be required to mail statements of taxes due by any taxpayer to the address provided by the taxpayer. In the event that the address of the taxpayer changes, the taxpayer has an obligation to furnish the correct address.

History. Acts 1929, No. 40, § 4; 1931, No. 324, § 5; 1941, No. 24, § 1; 1941, No. 115, § 1; 1957, No. 363, § 1; A.S.A. 1947, § 84-918; Acts 1989, No. 372, § 1; 1993, No. 791, § 1.

Amendments. The 1993 amendment added “to the address provided by the taxpayer” at the end of the first sentence; and added the second sentence.

Research References

U. Ark. Little Rock L. Rev.

Note, Constitutional & Property Law — Fourteenth Amendment Due Process Clause & Notice to Be Heard — It Felt So Right But Was All So Wrong: United States Supreme Court Rules Arkansas's Tax-Foreclosure Notice Procedure Fails to Satisfy Due Process Clause When Certified Mail Notice Returns “Unclaimed” (Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415, 2006 U.S. LEXIS 3451 (2006)), 30 U. Ark. Little Rock L. Rev. 179.

Case Notes

Notice.

Notice.

Tax forfeiture sale of the real property of a nonresident landowner was approved because the landowner moved its corporate office from Illinois to California and did not notify the Commissioner of State Lands of the change of address as required; thus, when the Commissioner mailed the landowner notice of the delinquency and notice of the tax forfeiture sale

to the landowner's old address, and published notice in newspapers, the Commissioner performed all the acts that it was required to perform. *Tsann Kuen Enters. Co. v. Campbell*, 355 Ark. 110, 129 S.W.3d 822 (2003).

The Commissioner of State Lands provided adequate notice to a prior owner of a tax deficiency and tax sale as required by § 26-37-301 where there was some confusion at the county level as to the last known address, the commissioner mailed the notice to the address certified by the county, and the former owner had not furnished its correct address as required by this section. *Mays v. St. Pat Props., LLC*, 357 Ark. 482, 182 S.W.3d 84 (2004), cert. denied, 543 U.S. 943, 125 S. Ct. 353 (2004).

Although this section provided strong support for the argument by the Commissioner of State Lands that mailing a certified letter to a property owner at the property's address was reasonable, it did not alter the reasonableness of the Commissioner's position that he was not required to do more when the notice was promptly returned "unclaimed." *Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).

Cited: *Jones v. Flowers*, 359 Ark. 443, 198 S.W.3d 520 (2004).

26-35-706. Postage fee — Disposition.

(a) Every county tax collector who mails tax statements may charge the taxpayers a postage fee not to exceed the cost of first-class postage to defray the expense of processing and mailing tax statements.

(b) The postage fee shall be noted on each tax statement and shall be paid at the same time or before the tax is paid.

(c) The taxpayer's receipt shall include the amount of postage fee paid.

(d) (1) Postage fees received shall be accounted for on the collector's final settlement.

(2) The collector may use the fees to purchase postage, and any amount of fees collected in any month which are not used for the purchase of postage that month shall be deposited into the county general fund.

History. Acts 1987, No. 324, § 1.

Subchapter 8 — Judicial Appeals

26-35-801. Appeals disposed of without delay.

26-35-802. Payment not required pending assessment appeal.

Effective Dates. Acts 1959, No. 258, § 5: Mar. 25, 1959. Emergency clause provided: "It has been found and is declared by the General Assembly that many appeals are pending in the courts of this State from orders of County Courts affecting the assessed value of property; that many such appeals will not be disposed of prior to the time now fixed by law for County Clerks to extend taxes; that doubt exists whether County Clerks are now authorized to correct assessments found by the courts of this State to be erroneous; that many taxpayers may therefore be deprived of relief to which they are found to be entitled; and that enactment of this measure will protect such taxpayers from excessive assessments. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

26-35-801. Appeals disposed of without delay.

The courts of this state shall expeditiously dispose of appeals from the county courts to the end that the revenues may be collected without unnecessary delay.

History. Acts 1959, No. 258, § 3; A.S.A. 1947, § 84-913.2.

26-35-802. Payment not required pending assessment appeal.

(a) No tract or lot of real property shall be returned as delinquent for nonpayment of taxes nor shall any penalty be added to taxes due while there is pending in the circuit court or the Arkansas Supreme Court an appeal from an order of the county court fixing the assessed value of property.

(b) In the event there has been no final disposition of an appeal prior to the last day fixed by law for the payment of the taxes without penalty, the owner shall have thirty (30) days after final disposition of the appeal within which to pay taxes without penalty.

History. Acts 1959, No. 258, § 2; A.S.A. 1947, § 84-913.1.

**Subchapter 9
— Tax Refunds**

26-35-901. Taxes erroneously assessed and paid.

26-35-902. Award of attorneys' fees — Disposition of residual funds.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1977, No. 822, § 3: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined that litigation pending in the circuit and chancery courts of this State may, upon final judgment, return or refund monies to taxpayers which were illegally exacted by counties, cities or towns and that the courts in which suits are pending need statutory authority to award a portion of the recovery to attorneys of record. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force from and after its passage and approval."

Acts 1993, No. 279, § 5: Feb. 26, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that significant confusion among the courts of the state exists concerning the disposition of residual funds of illegal exaction cases and in order to protect the interests of the State of Arkansas and the residents thereof, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax, § 1075.

26-35-901. Taxes erroneously assessed and paid.

(a) (1) When any person has paid taxes on any real property or personal property, erroneously assessed, as defined and described in § 26-28-111(c), upon satisfactory proof being adduced to the county court of this fact, the county court shall make an order directed to the county treasurer refunding to the person the amount of tax so erroneously assessed and paid.

(2) All erroneous assessment claims for property tax refunds shall be made within three (3) years from the date the taxes were paid.

(b) The general fund of the county shall be reimbursed by transfer to it from funds of the respective taxing units, and the amount contributed by each taxing unit shall be the amount of the erroneous payment received by the taxing unit.

History. Acts 1883, No. 114, § 209, p. 199; C. & M. Dig., § 10180; Pope's Dig., § 13963; A.S.A. 1947, § 84-935; Acts 1999, No. 572, § 8.

Case Notes

County Court.
Errors of Taxpayer.
Refunds Allowed.
Refunds Not Allowed.

County Court.

Circuit court was without jurisdiction and the claim against the county, tax assessor, city, and school district should have been filed in county court, pursuant to Ark. Const., Art. 7, § 28, because the taxpayers alleged that an erroneous assessment occurred for which they sought a refund of property taxes. *Muldoon v. Martin*, 103 Ark. App. 64, 286 S.W.3d 201 (2008).

Errors of Taxpayer.

To refund taxes “erroneously” paid refers to assessments that deviate from law and are invalid for jurisdictional defects, and not to a case where a taxpayer neglects to deduct credits to which he is entitled. *Ritchie Grocer Co. v. Texarkana*, 182 Ark. 137, 30 S.W.2d 213 (1930).

Refunds Allowed.

Taxes illegally collected may be recovered. *Magnolia v. Sharman & Co.*, 46 Ark. 358 (1885). A taxpayer who pays taxes in excess of what is due under a void order of county court has a remedy under this section to recover the excess payment. *First Nat'l Bank v. Norris*, 113 Ark. 138, 167 S.W. 481 (1914).

Proceeding of taxpayers for a refund is proper when a double assessment is unauthorized and erroneous. *Paschal v. Munsey*, 168 Ark. 58, 268 S.W. 849 (1925).

Refunds Not Allowed.

This section does not apply to an excessive valuation placed on property by a board of equalization. *Clay County v. Brown Lumber Co.*, 90 Ark. 413, 119 S.W. 251 (1909); *First Nat'l Bank v. Norris*, 113 Ark. 138, 167 S.W. 481 (1914).

Where a corporation's personal property was assessed in two different counties because of its failure to assess it, the corporation cannot complain of double taxation. *Beal-Doyle Dry Goods Co. v. Beller*, 105 Ark. 370, 150 S.W. 1033 (1912).

Section held not to apply to special road tax on lands belonging to nonresidents. *Walton v. Arkansas County*, 153 Ark. 285, 239 S.W. 1054 (1922).

If tax is voluntarily paid, excess amount cannot be recovered. *Williams v. Miller Levee Dist.*, 179 Ark. 299, 15 S.W.2d 986 (1929).

Cited: *Texarkana Special Sch. Dist. v. Ritchie Grocer Co.*, 183 Ark. 881, 39 S.W.2d 289 (1931); *Board of Conference Claimants v. Phillips*, 187 Ark. 1113, 63 S.W.2d 988 (1933).

26-35-902. Award of attorneys' fees — Disposition of residual funds.

(a) It is the public policy of this state that circuit and chancery courts may, in meritorious litigation brought under Arkansas Constitution, Article 16, § 13, in which the court orders any county, city, or town to refund or return to taxpayers moneys illegally exacted by the county, city, or town, apportion a reasonable part of the recovery of the class members to attorneys of record and order the return or refund of the balance to the members of the class represented.

(b) If, after expiration of a reasonable period of time for the filing of claims for the illegally exacted moneys as ordered by the court, residual funds exist, said residual funds shall be deemed abandoned and escheat to the county, city, or town which exacted same.

History. Acts 1977, No. 822, § 1; A.S.A. 1947, § 84-4601; Acts 1993, No. 279, § 1.

Amendments. The 1993 amendment added (b); and inserted “of the class members” in (a).

Research References

Ark. L. Rev.

Note, *Attorneys' Windfalls and Society's Pitfalls: Butt v. Evans Law Firm, P.A., Attorneys' Fees in Class Action Suits Against Government Entities*, 57 Ark. L. Rev. 627.

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Case Notes

Applicability.
Final Judgment.
Reconsideration.

Applicability.

This section clearly applies only to suits brought against counties, cities, or towns. *Bahil v. Scribner*, 265 Ark. 834, 581 S.W.2d 334 (1979).
Section held inapplicable to original decree entered before March 28, 1977. *Powell v. Henry*, 267 Ark. 484, 592 S.W.2d 107 (1980).
Attorney fees could not be awarded, in taxpayer's suit seeking an accounting and restitution of expense funds paid to a prosecuting attorney, since this section applies only to suits brought against any county, city, or town. *Munson v. Abbott*, 269 Ark. 441, 602 S.W.2d 649 (1980).
Where no refund of county or city money to taxpayers was ordered, this section did not apply. *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986).
Attorney's fees are not to be allowed in an illegal exaction case in which no refund is sought. *Hamilton v. Villines*, 323 Ark. 492, 915 S.W.2d 271 (1996).
Where attorneys represented taxpayers in a class action lawsuit, the circuit court abused its discretion by applying the percentage of the attorneys' settlement fee against the settlement pool instead of the total amount claimed by the taxpayers. *Butt v. Evans Law Firm, P.A.*, 351 Ark. 566, 98 S.W.3d 1 (2003).

Final Judgment.

Section 16-22-309 specifically requires that judgment for attorney's fees be included in the final judgment entered in the action, but no such requirement appears in this section. *Stewart Title Guar. Co. v. Cassill*, 41 Ark. App. 22, 847 S.W.2d 465 (1993).

Reconsideration.

Within 90 days after entry of order for attorneys' fees made by special judge, regular judge could vacate special judge's order and set matter down for reconsideration. *Henry v. Powell*, 262 Ark. 763, 561 S.W.2d 296 (1978).
Cited: *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982); *City of Little Rock v. Cash*, 277 Ark. 494, 644 S.W.2d 229 (1982); *Vachon v. City of Fort Smith*, 308 Ark. 636, 826 S.W.2d 277 (1992); *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993); *Stratton v. Priest*, 326 Ark. 469, 932 S.W.2d 321 (1996).

Subchapter 10 — Records and Forms

26-35-1001 — 26-35-1003. [Repealed.]
26-35-1004. Tax receipt form.
26-35-1005. Definition.

Cross References. Arkansas Governmental Compliance Act, § 10-4-301 et seq.
Furnishing of lists, blanks, and records by Arkansas Public Service Commission, § 26-26-701.
Tax books and records, § 26-28-101 et seq.
Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

26-35-1001 — 26-35-1003. [Repealed.]

Publisher's Notes. These sections, concerning record of tax receipts, delivery of record book to county court, and the tax record form, were repealed by Acts 2003, No. 295, § 12. The sections were derived from:
26-35-1001. Acts 1883, No. 114, § 116, p. 199; C. & M. Dig., §§ 10059-10064; Pope's Dig., §§

13818-13823; A.S.A. 1947, § 84-933.

26-35-1002. Acts 1883, No. 114, § 117, p. 199; C. & M. Dig., § 10065; Pope's Dig., § 13824; A.S.A. 1947, § 84-934.

26-35-1003. Acts 1883, No. 114, § 116, p. 199; C. & M. Dig., § 10058; Pope's Dig., § 13817; A.S.A. 1947, § 84-932.

26-35-1004. Tax receipt form.

The collector, whenever any taxes are paid, shall give the person paying them a receipt dated, numbered, and filled out so as to show by whom, on what, and amount of taxes paid, amount of land and personalty, and percentage rate at the foot of the receipts. The receipt shall be prepared for the purpose and, in case of land, distinctly specify it as it is described on the tax books. The receipt may be in the following form:

Click to view

History. Acts 1883, No. 114, § 115, p. 199; C. & M. Dig., § 10057; Pope's Dig., § 13816; A.S.A. 1947, § 84-931.

26-35-1005. Definition.

As used in this subchapter, “book” means either paper or computer storage and retrieval of tax information.

History. Acts 1999, No. 215, § 1.

Subchapter 11 **— Disaster Relief Income Tax Check-Off Program**

26-35-1101. Creation — Administration.

26-35-1102. Funding.

26-35-1103. Disaster Relief Program Trust Fund.

26-35-1104. Rules.

26-35-1101. Creation — Administration.

(a) (1) There is created the Arkansas Disaster Relief Program.

(2) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form and on all corporate income tax forms, a designation as follows:

(A) If you are entitled to a refund, check if you wish to designate \$1, \$5, \$10, \$20, \$_____ (write in amount), or all refund due, of your tax refund for the Arkansas Disaster Relief Program. Your refund will be reduced by this amount.

(B) If you owe an additional amount, check if you wish to contribute an additional \$1, \$5, \$10, \$20, \$_____ (write in amount) for the Arkansas Disaster Relief Program. If you wish to make a contribution to the program you must enclose a separate check for the amount of your contribution, payable to the Arkansas Disaster Relief Program.

(b) The Department of Finance and Administration shall quarterly certify to the Treasurer of State the amount contributed to the program through this state income tax

checkoff during the quarter as authorized by this subchapter, and the Treasurer of State shall deduct from the Individual Income Tax Withholding Fund the amount so certified.

(c) The Director of the Department of Finance and Administration shall have the authority to promulgate all rules and regulations and all income tax forms, returns, and schedules necessary to carry out this program.

History. Acts 1997, No. 1181, § 1; 2007, No. 827, § 205.

Amendments. The 2007 amendment, in (a), inserted present (1), redesignated the former introductory language as (2), and redesignated the following subdivisions accordingly; and made minor punctuation changes.

26-35-1102. Funding.

The Director of the Department of Finance and Administration is authorized to accept any gifts, grants, bequests, devises, and donations made to the State of Arkansas for the purposes of funding the Arkansas Disaster Relief Program. The director shall deposit any of these gifts, grants, bequests, devises, and donations so received into the Arkansas Disaster Relief Program Trust Fund. These gifts, grants, bequests, devises, and donations shall be used together with any other funds appropriated for funding the program provided for in this subchapter. All gifts, grants, bequests, devises, and donations shall be deposited, disbursed, budgeted, and regulated under the procedures prescribed by the Chief Fiscal Officer of the State under § 19-4-807.

History. Acts 1997, No. 1181, § 2.

26-35-1103. Disaster Relief Program Trust Fund.

(a) (1) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State an Arkansas Disaster Relief Program Trust Fund to be used by the Arkansas Department of Emergency Management for disaster relief.

(2) The Treasurer of State shall credit to the fund the amount certified each quarter in accordance with § 26-35-1101.

(b) (1) The moneys credited to this fund shall be held as trust funds in interest-bearing accounts only.

(2) All interest earned shall be credited to the fund and shall be used only for the purposes of that fund.

(c) All funds deposited into the fund and all interest earned on deposits and the fund balance in the fund may be disbursed as appropriated in each fiscal year of the biennium for the program created by this subchapter.

History. Acts 1997, No. 1181, § 3; 1999, No. 646, § 66.

A.C.R.C. Notes. This section, codified in 1997, would normally have been assigned a second Code section number in another chapter or title as affecting also that chapter or title. The section has been codified as a single Code section pursuant to § 1-2-303.

26-35-1104. Rules.

(a) The Revenue Division of the Department of Finance and Administration may establish any rule to effectively carry out the revenue producing provisions of this subchapter.

(b) The Director of the Department of Finance and Administration may promulgate rules

to carry out the provisions of this subchapter that allow the director to accept gifts, grants, bequests, devises, and donations.

History. Acts 1997, No. 1181, § 4; 2007, No. 827, § 206.

Amendments. The 2007 amendment substituted “Rules” for “Effective dates” in the section heading; and rewrote the section.

Subchapter 12 **— Baby Sharon Act**

26-35-1201. Title.

26-35-1202. Contribution to the Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund.

26-35-1203. Administration.

26-35-1204. Implementation.

26-35-1205. Baby Sharon's Children's Catastrophic Illness Grant Program Committee.

26-35-1206. [Repealed.]

26-35-1201. Title.

This subchapter shall be known and may be cited as the “Baby Sharon Act”.

History. Acts 2003, No. 279, § 1.

Cross References. Arkansas Children's Catastrophic Illness Grant Program Trust Fund, § 19-5-1123.

26-35-1202. Contribution to the Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund.

(a) There is created the Baby Sharon's Children's Catastrophic Illness Grant Program.

(b) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form, and on all corporate income tax forms, a designation as follows:

“(1) If you are entitled to a refund, check if you wish to designate \$1, \$5, \$10, \$20, \$_____ (write in amount), or all refund due, of your tax refund for Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund. Your refund will be reduced by this amount.

(2) If you owe an additional amount, check if you wish to contribute an additional \$1, \$5, \$10, \$20, \$_____ (write in amount) for the Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund. If you wish to make a contribution to the fund, you must enclose a separate check for the amount of your contribution, payable to the Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund.”

History. Acts 2003, No. 279, § 1; 2007, No. 827, § 207.

Amendments. The 2007 amendment added present (a), redesignated the former introductory language as (b), and corrected punctuation at the end of (b)(2).

26-35-1203. Administration.

(a) The Director of the Department of Finance and Administration may:

(1) Accept any gifts, grants, bequests, devises, and donations made to the State of Arkansas for the purpose of funding the Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund; and

(2) Deposit any gifts, grants, bequests, devises, and donations so received into the Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund.

(b) The Department of Finance and Administration shall quarterly certify to the Treasurer of State the amount contributed to the Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund through this state income tax checkoff during the quarter as authorized by this subchapter, and the Treasurer of State shall deduct from the Individual Income Tax Withholding Fund the amount so certified.

(c) The director shall promulgate all rules and regulations and all income tax forms, returns, and schedules necessary to carry out the revenue-producing provisions of this subchapter.

(d) The gifts, grants, bequests, devises, and donations made under this subchapter shall be used together with any other funds appropriated for funding the Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund.

History. Acts 2003, No. 279, § 1; 2005, No. 415, § 1.

Amendments. The 2005 amendment repealed former (e).

26-35-1204. Implementation.

(a) The Baby Sharon's Children's Catastrophic Illness Grant Program Committee shall be responsible for designating recipients of all funds established by the Baby Sharon's Catastrophic Illness Grant Program and the Department of Finance and Administration shall disburse the funds to the recipients.

(b) The committee shall annually provide to the Chief Fiscal Officer of the State documentation evidencing that funds have been used in accordance with the purposes of this subchapter.

History. Acts 2003, No. 279, § 3; 2005, No. 415, § 2.

Amendments. The 2005 amendment rewrote this section.

26-35-1205. Baby Sharon's Children's Catastrophic Illness Grant Program Committee.

(a) There is established an advisory committee to be known as the "Baby Sharon's Children's Catastrophic Illness Grant Program Committee".

(b) The committee shall consist of five (5) members as follows:

(1) One (1) person appointed by the Speaker of the House of Representatives;

(2) One (1) person appointed by the President Pro Tempore of the Senate; and

(3) Three (3) persons appointed by the Governor.

(c) The committee members shall be:

(1) Individuals who have knowledge of children with catastrophic illnesses or injuries; and

(2) Residents of the State of Arkansas at the time of appointment and throughout

their terms.

(d) (1) Except for initial appointments, the appointments to the committee shall be for a term of four (4) years.

(2) For initial appointments, the members shall draw lots to determine the length of their terms as follows:

(A) Two (2) members shall have terms of two (2) years;

(B) Two (2) members shall have terms of three (3) years; and

(C) One (1) member shall have a term of four (4) years.

(e) If a vacancy occurs during a term, the Governor shall appoint a replacement for the unexpired term.

(f) The Governor shall designate the chair.

(g) (1) The committee shall meet at times and places as the chair deems necessary, but no meetings shall be held outside the State of Arkansas.

(2) A majority of the members of the committee shall constitute a quorum for the purpose of transacting business.

(3) All action of the committee shall be by a majority vote of the full membership of the committee.

(h) The committee shall consult with the Arkansas Children's Hospital concerning grant applications related to the Baby Sharon's Children's Catastrophic Illness Grant Program.

(i) (1) Members of the committee shall serve without pay.

(2) Members of the committee shall not receive expense reimbursement under § 25-16-902.

History. Acts 2003, No. 279, § 1; 2005, No. 415, § 3.

Amendments. The 2005 amendment deleted "Advisory" following "Program" in (a); in (h), deleted former (2) and the subdivision (1) designation and made related changes; deleted former (i)(1); and redesignated former (i)(2)(A) and (i)(2)(B) as present (i)(1) and (i)(2).

26-35-1206. [Repealed.]

Publisher's Notes. This section, concerning effective dates, was repealed by Acts 2007, No. 827, § 208. The section was derived from Acts 2003, No. 279, § 1.

Subchapter 13 **— Military Family Relief Check-Off Program**

26-35-1301. Title.

26-35-1302. Contributions.

26-35-1303. Administration.

26-35-1304. Implementation of grant program.

26-35-1305. Effective dates.

Cross References. Military Family Relief Trust Fund, § 19-5-1127.

26-35-1301. Title.

This subchapter shall be known and may be cited as the "Military Family Relief Check-off Program".

History. Acts 2005, No. 1028, § 1.

26-35-1302. Contributions.

(a) There is created the Military Family Relief Check-off Program. (b) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form, and on all corporate income tax forms, a designation as follows:

“(1) If you are entitled to a refund, check if you wish to designate \$1, \$5, \$10, \$20, \$_____ (write in amount), or all refund due, of your tax refund for the Military Family Relief Check-off Program. Your refund will be reduced by this amount.

(2) If you owe an additional amount, check if you wish to contribute an additional \$1, \$5, \$10, \$20, \$_____ (write in amount) for the Military Family Relief Check-off Program. If you wish to make a contribution to the program, you must enclose a separate check for the amount of your contribution, payable to the Military Family Relief Check-off Program.”

History. Acts 2005, No. 1028, § 1; 2007, No. 827, § 209.

Amendments. The 2007 amendment added present (a), redesignated the former introductory language as (b), and corrected punctuation at the end of (b)(2).

26-35-1303. Administration.

(a) The Director of the Department of Finance and Administration may:

(1) Accept any gifts, grants, bequests, devises, and donations made to the State of Arkansas for the purpose of funding the Military Family Relief Check-off Program; and

(2) Deposit any gifts, grants, bequests, devises, and donations received under this subchapter into the Military Family Relief Trust Fund.

(b) The Department of Finance and Administration shall quarterly certify to the Treasurer of State the amount contributed to the Military Family Relief Trust Fund through the state income tax checkoff created under this subchapter, and the Treasurer of State shall deduct from the Individual Income Tax Withholding Fund the amount certified.

(c) The director shall promulgate rules and all income tax forms, returns, and schedules necessary to carry out the revenue-producing provisions of this subchapter.

(d) The gifts, grants, bequests, devises, and donations made under this subchapter shall be used together with any other funds appropriated for the Military Family Relief Trust Fund.

(e) The Adjutant General shall promulgate all rules necessary for implementing the grant program created under this subchapter for the Military Family Relief Trust Fund.

History. Acts 2005, No. 1028, § 1; 2007, No. 827, § 210.

Amendments. The 2007 amendment inserted “created under this subchapter” in (e).

26-35-1304. Implementation of grant program.

(a) The Adjutant General or his or her designee shall use funds from the Military Family

Relief Trust Fund to establish a grant program to assist the families of members of the National Guard and the reserve components of the armed forces.

(b) (1) The grant program created under this subchapter shall assist the families of members of the National Guard and the reserve components of the armed forces who serve on active duty for a minimum of thirty (30) days as a result of September 11, 2001.

(2) The eligibility criteria for receiving grants under the grant program shall include, but not be limited to, the following:

(A) The need of the family;

(B) The pay grade of the member of the National Guard and reserve components of the armed forces;

(C) The difference between the member's military salary and civilian salary; or

(D) Any other factors that establish the family's financial hardship.

History. Acts 2005, No. 1028, § 1.

26-35-1305. Effective dates.

(a) The checkoff for the Military Family Relief Check-off Program on state income tax returns shall be effective for tax years beginning on or after January 1, 2005.

(b) The provisions of this subchapter allowing the Director of the Department of Finance and Administration to accept gifts, grants, bequests, devises, and donations shall be effective on August 1, 2005.

History. Acts 2005, No. 1028, § 1.

Chapter 36 Collection Of Delinquent Taxes

Subchapter 1 — General Provisions

Subchapter 2 — Collection Generally

Subchapter 3 — Setoff Against State Tax Refund

Subchapter 1 — General Provisions

[Reserved]

Subchapter 2 — Collection Generally

26-36-201. Dates taxes due and payable.

26-36-202. Payment of delinquent taxes.

26-36-203. Publication of delinquent personal property tax list.

26-36-204. Striking of names on list.

26-36-205. List of delinquent officers.

26-36-206. Distraint of goods to pay delinquent personal property taxes.

26-36-207. Garnishment proceedings authorized.

26-36-208. Delinquent taxpayer relocating to another county.

26-36-209. Time and manner — Returns.

- 26-36-210. Counties under unit tax ledger system.
- 26-36-211. Liability of collector for property improperly sold.
- 26-36-212. Delinquent ad valorem taxes on interests in oil or gas.

Preambles. Acts 1887, No. 13 contained a preamble which read:

“Whereas, 1ST. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled ‘An Act to enforce the payment of Overdue Taxes,’ approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

“Whereas, 2D. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

“Whereas, 3D. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

“Now, therefore....”

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 26, § 2: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1925, No. 156, § 2: Mar. 11, 1925.

Acts 1935, No. 169, § 3: Mar. 21, 1935. Emergency clause provided: “Whereas the failure to pay personal property taxes has created a condition whereby it is difficult and almost impossible for many school districts and county and city governments to operate, and

“Whereas, the operation of the schools and the various units of government are necessary to the well being of the people of this State,

“Now, Therefore, an emergency is declared, and this Act being necessary for the immediate preservation of public peace, health and safety, it shall become effective immediately upon its passage and approval.”

Acts 1935, No. 282, § 9: effective on passage.

Acts 1965, No. 114, § 3: effective on passage.

Acts 1985, No. 1089, § 4: Apr. 18, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that under present procedures several years may elapse between the time ad valorem taxes on working interests, royalty interests or overriding-royalty interests in oil or gas become delinquent and the time when such taxes are actually collected, and that such unreasonable delay places a serious hardship on the various taxing units, particularly school districts; that it is urgent that a procedure be established whereby taxing units may bring suits against delinquent taxpayers to recover that portion of the delinquent taxes, penalty and interest to which the plaintiff taxing unit is entitled; that this Act is designed to recognize such cause of action and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1999, No. 1078, § 92: effective July 1, 2000.

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 866 et seq.

C.J.S. 84 C.J.S., Tax., § 640 et seq.

26-36-201. Dates taxes due and payable.

(a) (1) All taxes levied on real estate and personal property for the county courts of this

state, when assembled for the purpose of levying taxes, shall be deemed to be due and payable at the county collector's office any time from the first business day of March to and including October 10.

(2) All taxes unpaid after October 10 shall be considered as delinquent.

(b) (1) It is the duty of the county collector to extend a penalty of ten percent (10%) against all delinquent taxpayers that have not paid their taxes within the time limit specified, and the county collector shall collect this penalty.

(2) No penalty shall be assessed against any taxpayer who is a member of the United States armed forces, reserve component of the armed forces, or the National Guard during the taxpayer's deployment plus one (1) tax year after the deployment ends.

(c) When October 10 falls on a Saturday, Sunday, or a holiday observed by the United States Postal Service, the taxes shall become due and payable the following business day that is not a holiday observed by the United States Postal Service.

History. Acts 1935, No. 282, § 1; Pope's Dig., § 13843; Acts 1975, No. 574, § 5; A.S.A. 1947, § 84-1001; Acts 1993, No. 984, § 1; 2005, No. 135, § 1.

Amendments. The 1993 amendment substituted "first business day of March" for "third Monday in February" in (a); and in (c), inserted "or a holiday observed by the United States Postal Service" and substituted "business day that is not a holiday observed by the United States Postal Service" for "Monday."

The 2005 amendment redesignated former (b) as present (b)(1); and added (b)(2).

Cross References. Time to pay taxes — Installments, § 26-35-501.

Case Notes

Not Adopted by Ordinance.

Not Adopted by Ordinance.

Specific statute dealing with when special improvement taxes became delinquent, § 14-86-1204, was applicable to a municipal water improvement district's foreclosure action against a taxpayer because the District never adopted the general taxes provision of this section by an ordinance; thus, a portion of the District's foreclosure action was time barred. *Wilkins & Assocs. v. Vimy Ridge Mun. Water Improvement Dist.* No. 139, 373 Ark. 580, 285 S.W.3d 193 (2008).

26-36-202. Payment of delinquent taxes.

(a) No taxes returned delinquent shall be paid into the State Treasury except by the collector.

(b) It shall be the duty of the county clerk to add a penalty of ten percent (10%) upon all taxes returned delinquent, which shall be collected in the manner provided for the collection of delinquent taxes.

History. Acts 1883, No. 114, § 127, p. 199; C. & M. Dig., § 10083; Acts 1925, No. 156, § 1; Pope's Dig., § 13844; A.S.A. 1947, § 84-1002.

Case Notes

In General.

In General.

This section was not repealed by Acts 1911, No. 415, p. 361 (superseded by § 26-36-201). *Martels v. Wyss*, 123 Ark. 184, 184 S.W. 845 (1916).

Cited: *Rachels v. Stecher Cooperage Works*, 95 Ark. 6, 128 S.W. 348 (1910); *Tallman v. Bennett*, 154 Ark. 42, 241 S.W. 362 (1922).

26-36-203. Publication of delinquent personal property tax list.

(a) (1) (A) No later than December 1 in each year, the county collector shall prepare a list of delinquent personal property taxes and deliver a copy of the list to a legal newspaper of the county.

(B) (i) Within seven (7) days thereafter, the newspaper shall publish the list.

(ii) The newspaper shall publish the list in at least seven-point type.

(C) If the newspaper regularly publishes a total market coverage edition or supplement publication that has wider circulation within the county or district, the newspaper may publish the list in that edition or publication.

(2) If there is no newspaper in the county or district, the publication shall be in the nearest newspaper having a general circulation in the county or district for which the list is being published.

(b) The publication shall show, besides the name of the taxpayer, the taxpayer's school district and the total amount of taxes delinquent, including penalties. The publication shall be in substance as follows:

“DELINQUENT PERSONAL TAX LIST

The personal Tax Books of _____ County reflect the following list of personal property to be delinquent for nonpayment of taxes for the year

Name School District No.

(ACRON, R. J. C-11 \$21.35)

(B & B MFG. CO. S-1 \$167.06)

STATE OF ARKANSAS

COUNTY OF

I,, Collector of Revenue within and for County in the State of Arkansas, do hereby certify that the personal tax books of County reflect the foregoing list of personal property to be delinquent for nonpayment of taxes for the year Witness my hand this day of, 20

COLLECTOR FOR

.....County, Arkansas

.....”

(c) (1) The newspaper publishing this list shall receive as publication cost the sum of one dollar and twenty-five cents (\$1.25) per name, per insertion, which sum, together with fifty cents (50¢) per name for the county collector preparing and furnishing the list, shall be charged to the delinquent taxpayer and shall be paid by the county collector from any moneys in the county collector's possession derived from payment of personal property taxes.

(2) The receipt for the payment, verified by the certificate of the county clerk as to its correctness, shall entitle the county collector to a credit for the amount so paid.

(d) This section shall be cumulative to all existing laws relative to the collection of personal property taxes.

History. Acts 1935, No. 169, §§ 1, 2; 1937, No. 345, § 1; Pope's Dig., § 13834; Acts 1947, No. 379, § 3; 1949, No. 93, § 1; 1955, No. 81, § 1; 1969, No. 116, § 3; 1975, No. 574, § 4; 1981, No. 467, § 1; 1985, No. 953, § 1; A.S.A. 1947, §§ 84-1003, 84-1003n; Acts 1991, No. 1045, § 1; 1993, No. 986, § 1; 2001, No. 985, § 2.

Research References

Ark. L. Rev.

Rates for Legal Advertisements, 9 Ark. L. Rev. 394.

Case Notes

Cited: Newton v. Edwards, 203 Ark. 18, 155 S.W.2d 591 (1941).

26-36-204. Striking of names on list.

(a) The delinquent list, together with the fees allowed to any collector, shall be delivered to his successor, and it shall be returned to the county clerk by the outgoing collector for that purpose, and so on until the whole shall be collected.

(b) After the list has been returned two (2) years, the county court shall have power to strike all names of persons who, in the opinion of the court, own no property out of which the taxes due on the list can be made by sale or otherwise.

(c) The county court shall have the authority to strike off the delinquent and assessment list at any time the names of persons who own mobile homes which are assessed as real property, improvement only, who, in the opinion of the court, have vacated the jurisdiction or own no property out of which the taxes due can be made by sale or otherwise.

History. Acts 1883, No. 114, § 126, p. 199; C. & M. Dig., § 10080; Pope's Dig., § 13841; Acts 1983, No. 674, § 1; A.S.A. 1947, § 84-1004.

26-36-205. List of delinquent officers.

The collectors shall make a delinquent list of all delinquent clerks and other officers required to pay to the collectors the amount of revenue received by them, to be called a “list of delinquent officers.”

History. Rev. Stat., ch. 128, § 65; C. & M. Dig., § 10081; Pope's Dig., § 13842; A.S.A. 1947, § 84-1005.

Cross References. Failure of collectors to account, § 26-39-501 et seq.

26-36-206. Distraint of goods to pay delinquent personal property taxes.

(a) At any time after October 10 in each year, after taxes may be due, the county collector shall distraint sufficient goods and chattels belonging to the person charged with taxes levied upon the personal property, to pay the taxes due upon the personal property of the person and a penalty of twenty-five percent (25%) thereon, which shall be collected by the county collector and paid into the county school fund, and the costs that may accrue, and shall immediately proceed to advertise it in three (3) public places in the county, stating the time when and the place where the property shall be sold.

(b) (1) If the taxes for which property is distrained, and costs which shall accrue thereon are not paid before the day appointed for sale, which shall not be less than ten (10) days after taking the property, the county collector shall proceed to sell the same at public vendue, or so much thereof as will be sufficient to pay the taxes and the costs of the distress and sale.

(2) The county collector shall not distraint any goods and chattels for taxes levied on real property, except as provided in § 26-3-204.

(c) (1) The county collector is authorized and empowered to levy on and sell the goods and chattels of the person liable for taxes provided, in the same manner and under the same restrictions as goods and chattels are required to be levied and sold under execution on judgment at law, when not inconsistent with the provisions of this subchapter.

(2) No goods and chattels of any person shall be exempt from levy and sale.

(d) The county collector is allowed the same fees for making distress and sale of goods and chattels for the payment of taxes which are allowed by law to the county sheriff for making levy and sale of property on execution under § 21-6-307 for each delinquent taxpayer.

(e) (1) If a taxpayer operating a business in a county is delinquent in the payment of personal property taxes for personal property owned by or used in the business, then following the certification and publication of delinquency under § 26-36-203, the county collector may distraint goods or chattels of the taxpayer owned by or used in the business under subsection (a) of this section by publication of a Notice of Distraint and Tax Sale in three (3) public places in the county or in a newspaper of general circulation in the county.

(2) The Notice of Distraint and Tax Sale shall contain:

(A) The location, date, and time of the sale;

(B) The name of the taxpayer and business under which the goods or chattels to be sold is assessed;

(C) The principal sum of personal property taxes owed with a certification of the principal sum by the county collector;

(D) The following specific information:

“The goods or chattels of the taxpayer listed above located within _____ County, Arkansas, is under distraint and shall be sold to satisfy the delinquency in the payment of personal property taxes under Arkansas Code § 26-36-206. Under Arkansas Code § 26-34-101, the taxes assessed on real and personal property shall constitute a lien entitled to preference over all other judgments, executions, or encumbrances, or liens whensoever created. Under Arkansas Code § 4-1-201, a buyer in ordinary course of business does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.”; and

(E) A statement that it is a Class B misdemeanor to remove, destroy, or deface the Notice of Distraint and Tax Sale or to interfere or obstruct the sale of or the access to the goods or chattels on the date of the sale by the county collector, the county sheriff, or their deputies.

(3) The county collector shall provide a copy of the Notice of Distraint and Tax Sale to the taxpayer by regular mail or by posting a copy at the physical location where the goods or chattels are held.

(4) The Notice of Distraint and Tax Sale shall be posted conspicuously at the location of the sale.

(5) In lieu of physically securing the goods or chattels or storing or transporting the goods or chattels to another location for sale, the sale may be held at any place of business, warehouse, storeroom, or facility owned or under the possession of the taxpayer, including without limitation the current location of the goods or chattels to be sold.

(6) It is a Class B misdemeanor to knowingly remove, destroy, or deface a Notice of Distraint and Tax Sale posted under this section or to knowingly interfere or obstruct the sale or access of the county collector, the county sheriff, or their deputies to the goods or chattels on the date of the sale.

History. Acts 1883, No. 114, §§ 118, 120, p. 199; 1887, No. 26, § 1, p. 32; 1887, No. 92, § 42, p. 143; C. & M. Dig., §§ 10068, 10070; Pope's Dig., §§ 13829, 13831; A.S.A. 1947, §§ 84-1015, 84-1017; Acts 2009, No. 555, §§ 1, 2.

Amendments. The 2009 amendment rewrote (d); and added (e).

Cross References. Distraint before delinquency, § 26-35-201.
Publication of notices, § 16-3-101.

Case Notes

Cited: Boles v. McNeil, 66 Ark. 422, 51 S.W. 71 (1899); Martels v. Wyss, 123 Ark. 184, 184 S.W. 845 (1916); Arkansas County v. Burris, 308 Ark. 490, 825 S.W.2d 590 (1992).

26-36-207. Garnishment proceedings authorized.

(a) If the tax upon personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise of any person, association, or corporation shall remain unpaid after October 10 in any year and the collector is unable to find any personal property of the person, association, or corporation whereon to levy to make the taxes then due, then the collector shall present the account for taxes to any person who may be indebted to the person, association, or corporation, and demand the payment thereof. The person to whom it shall be presented shall pay over to the collector the amount of the taxes that he owes and take the collector's receipt therefor. The receipt shall be deemed and taken in all courts of this state as payment on his indebtedness to the full amount expressed on the collector's receipt.

(b) If the person should fail or refuse, on demand, to pay over the amount of the tax that he owes to the collector, the collector shall file a statement of the amount of the tax with the person so refusing, which shall operate as a garnishment upon the person so served. The collector shall proceed to collect the taxes in the manner fixed by law in cases of garnishment.

(c) No person shall be compelled to pay any debt before it may be due nor a greater amount than he may be owing the person, corporation, or association.

(d) The cost of garnishment shall be paid by the party refusing to pay the taxes when so requested.

History. Acts 1883, No. 114, § 119, p. 199; 1887, No. 92, § 43, p. 143; C. & M. Dig., § 10069; Pope's Dig., § 13830; A.S.A. 1947, § 84-1016.

26-36-208. Delinquent taxpayer relocating to another county.

(a) Each collector in making returns of the delinquent lists of personal property to the county clerk shall note on the margin of the returns the county in this state to which any delinquent taxpayer may have removed or resides in, with the date of his removal, if the collector is able to ascertain that fact.

(b) The county clerk shall immediately forward to the clerk of any county of this state, which any delinquent taxpayer has removed to or resides within, a certified statement or account of the taxes so assessed and not paid. The certified statement shall specify the value of the property on which the taxes were levied and the amount of the taxes levied thereon, with the penalty and cost. The collector shall proceed to collect the delinquent taxes in the same manner, and with like authority, as prescribed in this subchapter for collecting delinquent taxes upon personal property and shall make return thereof to the collector of the proper county.

History. Acts 1883, No. 114, § 125, p. 199; C. & M. Dig., §§ 10078, 10079; Pope's Dig., §§ 13839, 13840; A.S.A. 1947, § 84-1018.

26-36-209. Time and manner — Returns.

(a) The county collector may collect, at any time, all delinquent personal property tax in his or her county, or any that may be sent from another county, by the sale of property or otherwise, and the county collector shall make returns of the amount so collected to the proper counties and officers.

(b) (1) The county collector shall pay over to the county treasurer on the first day of each month or within five (5) working days after the first day of each month all amounts collected for his or her county under this section.

(2) However, upon a certificate of distribution of the amounts collected under this section being prepared by the county clerk, county collector, or other county officer designated pursuant to § 26-28-102(a), which certificate shall be issued on or before the thirtieth day of each month, the county treasurer shall transfer to the various funds the amount due each fund.

(c) (1) All costs associated with such delinquent personal property taxes shall be prorated to the original taxing entities.

(2) All penalties shall be divided fifty percent (50%) to the county general fund and fifty percent (50%) to the county common school fund if that county's common school fund was getting fifty percent (50%) at the time of the enactment of this subsection.

(d) For purposes of this section, the costs and penalties associated with delinquent personal property taxes shall not be considered a portion of the county collector's revenue in calculating excess commissions.

History. Acts 1883, No. 114, § 125, p. 199; C. & M. Dig., §§ 10078, 10079; Pope's Dig., §§ 13839, 13840; A.S.A. 1947, § 84-1018; Acts 1997, No. 213, § 1; 1999, No. 1078, § 88; 2009, No. 721, § 5.

A.C.R.C. Notes. Commas following the words “fund” in subsection (c) and “section” in subsection (d) could not be inserted pursuant to § 1-2-303.

Regarding the phrase “at the time of the enactment of this subsection” in subdivision (c)(2) of this section, Acts 1997, No. 213, was signed by the Governor on February 19, 1997.

Amendments. The 2009 amendment inserted “or other county officer designated pursuant to § 26-28-102(a)” in (b)(2), and made minor stylistic and punctuation changes.

26-36-210. Counties under unit tax ledger system.

The tax collector in any county of this state utilizing the unit tax ledger system for the collection of taxes, pursuant to § 26-28-201 et seq., may appoint a delinquent tax collector for the purpose of collecting the delinquent taxes in his county.

History. Acts 1965, No. 114, § 1; A.S.A. 1947, § 84-1020.

Cross References. Unit tax ledger system, § 26-28-201 et seq.

26-36-211. Liability of collector for property improperly sold.

Any collector of any county, city, or town in this state who returns to any person, personal property, or real estate delinquent, by whom or upon which taxes have been paid or advertises for sale, offers to sell, or sells any real or personal property upon which the taxes have been paid for the year for which they shall be returned delinquent, advertised, offered for sale, or sold shall forfeit and pay to the owner of the property, or any other person interested therein or who may be injured thereby, a sum equal to double the taxes, penalty, and costs charged on the personal property or land together with the actual damages as may have been sustained. For any sum so recovered, the officer and his sureties shall be liable on his official bond.

History. Acts 1883, No. 114, § 114, p. 199; C. & M. Dig., § 10047; Pope's Dig., § 13806; A.S.A. 1947, § 84-1019.

26-36-212. Delinquent ad valorem taxes on interests in oil or gas.

(a) (1) When the ad valorem taxes on working interests, royalty interests, or overriding royalty interests in oil or gas of any taxpayer is delinquent for a period of one hundred eighty (180) days or more, any one (1) or more taxing units which are entitled to a portion of the delinquent taxes when collected shall have a cause of action against the delinquent taxpayer for that portion of the delinquent taxes and costs of collection, including the penalty and interest thereon, to which the taxing units are entitled, plus a reasonable attorney's fee.

(2) (A) Any such action shall be brought in the chancery court of the county in which the delinquent taxpayer resides or in which property of the delinquent taxpayer is situated.

(B) Any judgment awarded a taxing unit in such cause of action shall be enforceable to the same extent and in the same manner as other civil judgments.

(b) (1) Any taxpayer offering to redeem tax-delinquent property after an action has been filed as authorized in this section shall be required to pay costs, including attorney fees, incurred by any taxing unit in pursuing its remedies under this section.

(2) When any judgment rendered against a delinquent taxpayer pursuant to this section is satisfied, the tax liability on the property and the amount required to be paid to

redeem the property shall be reduced by the amount of the taxes, penalty, and interest included in the judgment.

History. Acts 1985, No. 1089, §§ 1, 2; A.S.A. 1947, §§ 84-1022, 84-1023.

Subchapter 3 **— Setoff Against State Tax Refund**

- 26-36-301. Purposes.
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- 26-36-321. Setoff for debt to Internal Revenue Service.

Publisher's Notes. Acts 2003, No. 826, § 4: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that unreimbursed expenses are being withdrawn from the State Employees Benefits Trust Fund of the State and Public School Employees Insurance Fund; that this act is needed to prevent confusion and uncertainty concerning these funds; and that this act is immediately necessary to recover costs to the State Employees Benefits Trust Fund of the State and Public School Employees Insurance Fund as required by law. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Cross References. Claims for refunds, § 26-18-507.

Effective Dates. Acts 1983, No. 372, § 21: July 1, 1983.

Acts 1983 (1st Ex. Sess.), No. 82, § 2: Nov. 8, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to enable the Arkansas Student Loan Authority and the Student Loan Guarantee Foundation of Arkansas to expand their capability to collect outstanding loans owed to them by citizens of the State of Arkansas; that the collection of defaulted loans is essential to the viability of the Arkansas Student Loan Authority and the Student Loan Guarantee Foundation of Arkansas and to the continuation and extension of the programs of those agencies; and that the amendment of certain of the provisions of Act 372 of 1983 will serve to further and accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after

its passage and approval.”

Acts 1991, No. 1154, § 5: July 1, 1991. Emergency clause provided: “It is hereby found and determined by the Seventy-Eighth General Assembly that the effectiveness of this act on July 1, 1991 is essential to the operation of the all agencies within state and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential government programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991.”

Acts 2003, No. 1800, § 5: August 1, 2003.

26-36-301. Purposes.

(a) The purpose of this subchapter is to establish as policy that all claimant agencies and the Revenue Division of the Department of Finance and Administration shall cooperate in identifying debtors who:

(1) Qualify for refunds from the division; and

(2) Owe money to the state, to an Arkansas county, city, or town, or to a housing authority created under § 14-169-101 et seq., through its various claimant agencies.

(b) It is also the intent of this subchapter that procedures be established for setting off against any such refund the sum of any debt owed to the state, to an Arkansas county, city, or town, or to a housing authority created under § 14-169-101 et seq.

History. Acts 1983, No. 372, § 1; A.S.A. 1947, § 84-4901; Acts 2003, No. 1023, § 1; 2003, No. 1800, § 1.

Amendments. The 2003 amendment by No. 1023 inserted “or to a housing authority created under § 14-169-101 et seq.” in (a) and (b).

The 2003 amendment by No. 1800 inserted the subdivision designations in (a) and added (a)(2); inserted “to an Arkansas county, city, or town, or to a housing authority created under § 14-169-101 et seq.” in (a)(2) and (b); and deleted “and who qualify for refunds from the division” following “claimant agencies” in (a)(2).

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Set Off Against Tax Refunds for Debt Collections, 26 U. Ark. Little Rock L. Rev. 497.

26-36-302. Construction.

This subchapter shall be liberally construed so as to effectuate its purposes as far as legally and practically possible.

History. Acts 1983, No. 372, § 1; A.S.A. 1947, § 84-4901.

26-36-303. Definitions.

As used in this subchapter:

(1) (A) “Claimant agency” means:

(i) State-supported colleges, universities, and technical institutes;

(ii) The Department of Human Services;

(iii) The Arkansas Student Loan Authority;

(iv) The Student Loan Guarantee Foundation of Arkansas;

(v) The Auditor of State;

(vi) The Department of Higher Education;

(vii) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration;

(viii) Arkansas circuit, county, district, or city courts;

(ix) Housing authorities created under § 14-169-101 et seq.;

(x) The Employee Benefits Division of the Department of Finance and Administration;

(xi) The Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration; and

(xii) County collectors and county treasurers.

(B) No other entity may be added as a claimant agency under this subdivision (1) after July 16, 2003, unless the entity has an annual outstanding debt of two hundred thousand dollars (\$200,000);

(2) "Debt" means:

(A) Any liquidated sum due and owing any claimant agency, which has accrued through contract, subrogation, tort, operation of law, legal proceeding, or any other legal theory, regardless of whether there is an outstanding judgment for that sum;

(B) Accrued obligations due to an assignment of child support rights made to the state as a condition of eligibility for welfare assistance and those which have accrued from contract with the claimant agency by an individual who is not the recipient of welfare assistance;

(C) Money owed to a claimant agency as a result of a debtor's cashing both the original and the duplicate state warrants;

(D) All of the following that have been due and payable for more than one (1) year and that are not under appeal:

(i) Traffic fines;

(ii) Any court-imposed fine or cost, including fines related to the prosecution of hot checks under the Arkansas Hot Check Law, § 5-37-301 et seq.; and

(iii) Restitution ordered by a circuit, county, district, or city court related to the violation of any state law;

(E) Money owed to a claimant agency for all costs as a result of the debtor's use of state medical and pharmacy benefits for which he or she is not entitled;

(F) Money owed to a claimant agency for all costs resulting from an overpayment of wages or salaries, including a lump sum payment; and

(G) Money owed to a claimant agency for all delinquent taxes, all costs resulting from delinquent taxes, and any penalties assessed against a delinquent taxpayer under § 26-36-201;

(3) "Debtor" means any individual owing money to or having a delinquent account with any claimant agency, which obligation has not been adjudicated, satisfied by court order, set aside by court order, or discharged in bankruptcy;

(4) "Division" means the Revenue Division of the Department of Finance and Administration;

(5) "Refund" means the Arkansas income tax refund that the division determines to be due any individual taxpayer less any amounts determined by the division to be due to the division for payment of any state tax as defined in the Arkansas Tax Procedure Act, § 26-18-101 et seq.; and

(6) "Setoff" means the withholding of part or all of income tax refunds due

individuals who owe debts to the State of Arkansas, to a county, a city, or a town, or to a housing authority created under § 14-169-101 et seq.

History. Acts 1983, No. 372, § 2; 1983 (Ex. Sess.), No. 82, § 1; 1985, No. 987, §§ 1, 6; A.S.A. 1947, § 84-4902; Acts 1989, No. 698, § 1; 1993, No. 345, § 1; 1995, No. 1184, § 36; 1995, No. 1262, § 12; 1997, No. 1280, § 1; 2003, No. 826, § 1; 2003, No. 1023, §§ 2, 3; 2003, No. 1800, §§ 2, 3; 2005, No. 277, § 1; 2007, No. 553, § 1.

A.C.R.C. Notes. Acts 2003, No. 1023 contained another Section 2 which amended § 26-36-316(b)(1).

Amendments. The 1993 amendment added (1)(F); redesignated (3) as (2) and (2) as (3); and made minor punctuation and stylistic changes.

The 1995 amendment by No. 1184 deleted “State” preceding “Department” in (1)(F); added (1)(G); added “and” to the end of (5); and inserted “the” preceding “withholding” in (6).

The 1995 amendment by No. 1262 added (1)(H).

The 1997 amendment, in (1)(A), deleted “and” following “colleges,” added “and technical institutes” and made minor punctuation changes.

The 2003 amendment by No. 826 deleted “juvenile, and chancery” preceding “courts” in (1)(A)(viii); inserted (1)(A)(x) and (2)(E); deleted “as amended” preceding “§ 26-18-101” in (5); and made minor stylistic changes.

The 2003 amendment by No. 1023 redesignated former subdivisions (1) and (1)(A)-(1)(H) as present (1)(A) and (1)(A)(i)-(1)(A)(viii); added (1)(A)(ix), (1)(A)(x) and (1)(B); substituted “county, district, or city” for “juvenile, and chancery” in (1)(A)(viii); inserted “or to a housing authority created under § 14-169-101 et seq.” in (6); and made stylistic and related changes.

The 2003 amendment by No. 1800 substituted “county, district, or city” for “juvenile, and chancery” in (1)(A)(xiii); inserted “legal proceeding” in (2)(A); added (2)(D); inserted “to a county, a city, or a town, or to a housing authority created under § 14-169-101 et seq.” in (6); and made stylistic and related changes.

The 2005 amendment inserted (1)(A)(xi) and made related changes; in (2), substituted “‘Debt’ means: (A) Any liquidated” for “(A) ‘Debt’ means any liquidated”; deleted “‘Debt’ shall include” at the beginning of (2)(B); deleted “‘Debt’ shall also include” at the beginning of (2)(D); substituted “Money owed” for “‘Debt’ shall also include the owing of money” in (2)(C) and (2)(E); and added (2)(F).

The 2007 amendment added (1)(A)(xii); added (2)(G); and made related changes.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Set Off Against Tax Refunds for Debt Collections, 26 U. Ark. Little Rock L. Rev. 497.

26-36-304. Remedy cumulative.

The collection remedy under this subchapter is in addition to and not in substitution for any other remedy available by law.

History. Acts 1983, No. 372, § 3; A.S.A. 1947, § 84-4903.

26-36-305. Setoffs for claimant agencies.

Subject to the limitations contained in this subchapter, the division shall, upon request, render assistance in the collection of any delinquent account or debt owing to any claimant agency. This assistance shall be provided by setting off any refunds due the debtor from the division by the sum certified by the claimant agency as due and owing.

History. Acts 1983, No. 372, § 5; A.S.A. 1947, § 84-4905.

26-36-306. Minimum sum collectible.

A claimant agency shall not be allowed to effect final setoff and collect debts through use of the remedy established under this subchapter unless the debt is at least twenty dollars (\$20.00). However, the division may set off any lesser sum, regardless of this provision, which the Director of the Department of Finance and Administration shall establish as economically justifiable.

History. Acts 1983, No. 372, § 4; 1985, No. 987, § 2; A.S.A. 1947, § 84-4904.

26-36-307. Submission of claims — Information.

(a) All claimant agencies shall submit, for collection under the procedure established by this subchapter, all debts which they are owed, except in cases where the agencies are advised by the Attorney General not to submit a claim because the validity of the debt is legitimately in dispute, because an alternative means of collection is pending and believed to be adequate, or because such a collection attempt would result in a loss of federal funds.

(b) As a condition precedent to setoff, all claimant agencies shall obtain the full name and social security number and submit this information to the division and, whenever possible, also obtain and submit the address and any other identifying information required by rules promulgated by the division pursuant to the authority of § 26-36-320 for any person for which the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under the terms of this subchapter.

History. Acts 1983, No. 372, § 3; A.S.A. 1947, § 84-4903.

26-36-308. Procedure for setoff generally.

(a) (1) A claimant agency seeking to attempt collection of a debt through setoff shall notify, in writing, the division and supply the debtor's name, social security number, and any other information necessary to identify the debtor whose refund is sought to be set off.

(2) Notification to the division and the furnishing of identifying information must occur on or before December 1 in the year preceding the calendar year during which the refund would be paid. Additionally, subject to the notification deadline specified, the notification shall be effective only to initiate setoff for claims against refunds that would be made in the calendar year subsequent to the year in which notification is made to the division.

(b) (1) The division shall determine whether the debtor to the claimant agency is entitled to a refund.

(2) Upon determination by the division that a debtor specified by a claimant agency qualifies for such a refund and that a refund is pending, the division shall specify its sum and indicate the debtor's address as listed on the tax return.

(3) Each claimant agency must submit all claims for any year for collection under this subchapter to the division at one (1) time.

(4) Claims to be set off shall be submitted in a form compatible with the data processing equipment of the division, or the submitting agency shall pay the actual cost of converting their list of claims to a form which can be used by the division for effecting setoff.

(c) Unless stayed by court order, the division shall, upon certification as provided in this

subchapter, set off the certified debt against the refund to which the debtor would otherwise be entitled.

History. Acts 1983, No. 372, § 6; A.S.A. 1947, § 84-4906; Acts 1993, No. 403, § 22.

Amendments. The 1993 amendment inserted “and that a refund” in (b)(2).

26-36-309. Notification of debtor.

(a) The claimant agency shall provide written notice to the debtor whose debt has been certified to the division of its intention to intercept the debtor's tax refund.

(b) (1) The contents of the written notification to the debtor and the division's copy of the setoff claim shall clearly set forth:

(A) The basis for the claim to the refund;

(B) The intention to apply the refund against the debt to the claimant agency;

(C) The debtor's opportunity to give written notice of intent to contest the validity of the claim before the claimant agency within thirty (30) days of the date of the mailing of the notice;

(D) The mailing address to which the application for a hearing must be sent; and

(E) The fact that failure to apply for a hearing in writing within the thirty-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.

(2) The notification form shall be approved by the Director of the Department of Finance and Administration.

(c) The written application by the debtor for a hearing shall be effective upon mailing the application postage prepaid and properly addressed to the claimant agency.

History. Acts 1983, No. 372, § 7; 1985, No. 987, § 3; A.S.A. 1947, § 84-4907.

26-36-310. Hearing procedure.

(a) If a claimant agency receives written application of the debtor's intention to contest at hearing the claim upon which the intended setoff is based, it shall grant a hearing according to procedures established under the Arkansas Administrative Procedure Act, § 25-15-201 et seq. Additionally, it shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made.

(b) Pending final determination at hearing of the validity of the debt asserted by the claimant agency, no action shall be taken in furtherance of collection through the setoff procedure allowed under this subchapter.

(c) No issues may be considered at the hearing which have been previously litigated.

History. Acts 1983, No. 372, § 8; A.S.A. 1947, § 84-4908.

26-36-311. Appeals.

Appeals from action taken at hearing allowed under this subchapter shall be in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1983, No. 372, § 9; A.S.A. 1947, § 84-4909.

26-36-312. Certification of debt.

(a) Upon final determination, through hearing provided for by this subchapter, of the debt due and owing the claimant agency or upon the debtor's default for failure to contest the claimant agency's right to setoff as provided for in this subchapter, mandating timely request for review of the asserted basis for setoff, the division shall hold for setoff any refund as defined in this subchapter determined to be available to the individual debtor.

(b) Any changes to the original debt certified will be accepted only if the new amount is less than the debt originally certified. Such changes will be forwarded to the division in writing and in a format acceptable to the division. Debtors' names may be deleted from the debt certification listing upon written notice to the division by the claimant agency.

(c) Upon determination that a refund is available to a debtor who has previously been certified as owing a debt to the claimant agency, the division shall finalize the setoff by transferring the refund amount, up to the amount of the debt certified, to the claimant agency and by refunding any remaining balance to the debtor.

History. Acts 1983, No. 372, § 10; 1985, No. 987, § 4; A.S.A. 1947, § 84-4910.

26-36-313. Notice of final setoff.

Upon the finalization of setoff under the provisions of this subchapter, the division shall notify the debtor in writing of the action taken along with an accounting of the action taken on any refund. If there is an outstanding balance after setoff, the notice under this section shall accompany the balance when disbursed.

History. Acts 1983, No. 372, § 11; A.S.A. 1947, § 84-4911.

26-36-314. Priorities of claims.

Priority in multiple claims to refunds allowed to be set off under the provisions of this subchapter shall be corresponding to the order in time which a claimant agency has filed a written notice with the division of its intention to effect collection through setoff under this subchapter.

History. Acts 1983, No. 372, § 12; A.S.A. 1947, § 84-4912.

26-36-315. Joint refunds.

(a) When a taxpayer who is a debtor as defined in this subchapter has filed a joint return for which he or she is due a refund or has filed a separate return on the same form resulting in a joint refund, the entire amount of the refund shall be subject to setoff.

(b) (1) The Director of the Department of Finance and Administration shall notify each taxpayer due a joint refund of the amount and the date of a proposed setoff for a debt certified by a claimant agency to the Revenue Division of the Department of Finance and Administration.

(2) The notice under subdivision (b)(1) of this section shall be in writing and sent to the address listed on the taxpayer's most recently filed income tax return.

(c) (1) (A) A taxpayer who claims that he or she is not a debtor of a claimant agency may seek administrative relief by filing a written protest under oath within thirty (30) days after the notice under subdivision (b)(1) of this section is received.

(B) The written protest shall be signed by the nondebtor taxpayer or the nondebtor taxpayer's authorized agent and include the nondebtor taxpayer's reasons for

opposing the proposed setoff.

(2) The nondebtor taxpayer may request the director to consider his or her request for relief upon written documents furnished by the nondebtor taxpayer or upon the written document and the evidence produced by the nondebtor taxpayer at a hearing conducted under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(3) The nondebtor taxpayer's protest shall include documentation supporting the proportionate share of the nondebtor taxpayer's payment of tax and the resulting amount of the joint refund that the nondebtor taxpayer claims is not subject to setoff.

(d) A nondebtor taxpayer who requests the director to render his or her decision based on written documents is not entitled by law to any other administrative hearing before the director's rendering of his or her decision.

(e) Administrative relief shall not be available to a nondebtor taxpayer who fails to protest a proposed setoff within the thirty (30) days after the notice under subdivision (b)(1) of this section is received.

(f) (1) If a taxpayer requests a hearing in person rather than on written documents, a hearing officer shall set the time and place for hearing on the written protest and shall give the nondebtor taxpayer reasonable notice of the hearing.

(2) At the hearing, the nondebtor taxpayer may be represented by an authorized representative and may present evidence in support of his or her position.

(3) After the hearing, the hearing officer shall render his or her decision in writing and shall serve copies upon both the nondebtor taxpayer and the claimant agency.

(g) The hearings on written protests and determinations made by the hearing officer are not subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(h) (1) After the issuance and service on the taxpayer of a decision of the hearing officer to sustain the setoff of the joint refund, a nondebtor taxpayer may seek judicial relief from the decision by filing suit within thirty (30) days after the date of the final determination of the hearing officer.

(2) Jurisdiction for a suit to contest a determination of the hearing officer under this section shall be in the Pulaski County Circuit Court or the circuit court of the county where the nondebtor taxpayer resides, and the matter shall be tried de novo.

(i) This section is the sole means by which a nondebtor taxpayer may challenge a proposed setoff for the benefit of a claimant agency.

History. Acts 1983, No. 372, § 17; A.S.A. 1947, § 84-4917; Acts 2009, No. 713, § 1.

Amendments. The 2009 amendment inserted (b) through (i) and redesignated the remaining text accordingly; and in (a), inserted "or she" and deleted the last sentence.

Effective Dates. Acts 2009, No. 713, § 3, provided: "This act is effective for tax years beginning on or after January 1, 2009."

26-36-316. Disposition of proceeds collected.

(a) Upon effecting final setoff, the Revenue Division of the Department of Finance and Administration shall periodically write checks to the respective claimant agencies for the net proceeds collected on their behalf.

(b) (1) (A) For purposes of this subchapter, except as provided under subdivision (b)(1)(B) of this section, five percent (5%) of the proceeds collected by the division through setoff shall represent the division's cost of effecting setoff, and these costs shall be charged to the respective claimant agency as a collection assistance fee.

(B) If the claimant agency is a circuit, county, district, or city court, or a housing authority created under § 14-169-101 et seq., ten percent (10%) of the proceeds collected by the division through setoff shall represent the division's cost of effecting setoff and shall be charged to the respective circuit, county, district, or city court, or housing authority as a collection assistance fee.

(2) The collection assistance fees paid to the division shall be deposited into the State Treasury for credit to the Constitutional and Fiscal Agencies Fund.

History. Acts 1983, No. 372, § 13; 1985, No. 987, § 5; A.S.A. 1947, § 84-4913; Acts 1991, No. 1154, § 1; 2003, No. 1023, § 2[4]; 2003, No. 1800, § 4.

A.C.R.C. Notes. Acts 2003, No. 1023 contained another Section 2 which amended § 26-36-303(1).

Publisher's Notes. The Constitutional and Fiscal Agencies Fund referred to in subdivision (b)(2) of this section has been superseded by the Constitutional Officer's Fund and the State Central Services Fund. See § 19-5-205(c) and (e).

Amendments. The 2003 amendment by Nos. 1023 and 1800 were identical and inserted "except as provided under subdivision (b)(1)(B) of this section" in (b)(1)(A); and added (b)(1)(B).

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Set Off Against Tax Refunds for Debt Collections, 26 U. Ark. Little Rock L. Rev. 497.

26-36-317. Accounting of payments.

(a) (1) Simultaneously with the transmittal of a check for net proceeds collected to a claimant agency, the division shall provide the agency with an accounting of the setoffs finalized for which payment is being made.

(2) The accounting shall, whenever possible, include:

- (A) The full names of the debtors;
- (B) The debtors' social security numbers;
- (C) The gross proceeds collected per individual setoff;
- (D) The net proceeds collected per setoff; and
- (E) The collection assistance fee charged per setoff.

(b) Upon receipt by a claimant agency of a check representing net proceeds collected on a claimant agency's behalf by the division and an accounting of the proceeds as specified under this section, the claimant agency shall credit the debtor's obligation with the gross proceeds collected.

History. Acts 1983, No. 372, § 14; A.S.A. 1947, § 84-4914.

26-36-318. Interest.

Regardless of any other provision of law, no interest shall be paid any debtor on account of any amount set off under the provisions of this subchapter. Where a debtor receives a partial refund after setoff under this subchapter, he shall be entitled to interest only on that portion of the refund which he actually receives and only where such interest is otherwise provided by law.

History. Acts 1983, No. 372, § 18; A.S.A. 1947, § 84-4918.

26-36-319. Disclosure of information.

(a) Notwithstanding § 26-18-303 or any other provisions of law prohibiting disclosure by the division of the contents of taxpayer records or information and notwithstanding any confidentiality statute of any claimant agency, all information exchanged among the division, claimant agency, and the debtor which is necessary to accomplish and effectuate the intent of this subchapter is lawful.

(b) The information obtained by a claimant agency from the division in accordance with the exemption allowed by subsection (a) of this section shall only be used by a claimant agency in the pursuit of its debt collection duties and practices, and any person employed by or formerly employed by a claimant agency who discloses any such information for any other purpose, except as otherwise allowed by § 26-18-303, shall be penalized in accordance with the terms of that statute.

History. Acts 1983, No. 372, § 15; A.S.A. 1947, § 84-4915.

Cross References. Records and files to be confidential and privileged, § 26-18-303.

26-36-320. Rules and regulations.

The Director of the Department of Finance and Administration is authorized to prescribe forms and make all rules which he deems necessary in order to effectuate the intent of this subchapter.

History. Acts 1983, No. 372, § 16; A.S.A. 1947, § 84-4916.

26-36-321. Setoff for debt to Internal Revenue Service.

(a) As used in this subchapter, “claimant agency” also means the Internal Revenue Service.

(b) The Director of the Department of Finance and Administration may enter into an agreement with the Internal Revenue Service to setoff state income tax refunds to satisfy a past-due and legally enforceable debt to the Internal Revenue Service.

(c) This subchapter shall apply to the setoff authorized by this section, except to the extent that any provision conflicts with this section.

(d) In addition to the applicable requirements and procedures under this subchapter, a setoff is not allowed for debts to the Internal Revenue Service unless the Internal Revenue Service complies with all notice and procedural requirements under federal law concerning the levy of a state tax refund.

(d) The setoff and payment to the Internal Revenue Service of an income tax refund due to a taxpayer in this section shall be made from a refund amount due to the taxpayer after the setoff of the taxpayer's refund to claimant agencies other than the Internal Revenue Service.

History. Acts 2009, No. 713, § 2.

Effective Dates. Acts 2009, No. 713, § 3, provided: “This act is effective for tax years beginning on or after January 1, 2009.”

Chapter 37

Sale Or Forfeiture Of Real Property

Subchapter 1 — General Provisions

Subchapter 2 — Sale of Tax-Delinquent Lands

Subchapter 3 — Redemption of Realty to Be Sold for Taxes

Subchapter 1 — General Provisions

- 26-37-101. Transfer of tax-delinquent lands.
- 26-37-102. Publication of notice — Fee.
- 26-37-103. Verification by county assessor.
- 26-37-104. Costs of notices.
- 26-37-105. Collection fee.
- 26-37-106. Recording of delinquent list.
- 26-37-107. Publication of delinquent list.
- 26-37-108. [Repealed.]
- 26-37-109. Redemption of lands not transferred.

Publisher's Notes. Acts 1999, No. 42, § 1, provided:

"Disposition of Unclaimed Redemption Money. All funds derived in prior years for the redemption of land pursuant to § 139 of Act 114 of 1883 as amended, formerly compiled as Arkansas Statute 84-1205, shall be transferred, by county court order, to the county general fund."

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1967, No. 467, § 9: July 1, 1967. Emergency clause provided: "It is hereby found and determined that the General Assembly has, by a vote of two-thirds of the members elected to both houses, voted to extend the regular session of the 66th General Assembly, as authorized in the Constitution; that under the provisions of Amendment 7 to the Constitution, enactments of the General Assembly that do not have an emergency clause do not become effective until 90 days after the date of final adjournment of the General Assembly; that the extended session of the General Assembly may not adjourn in time for this Act to take effect prior to July 1, 1967, thereby depriving the agency for which funds are appropriated herein of necessary operating funds to commence the next fiscal biennium; and, in order that the appropriation made herein may be available on July 1, 1967, the General Assembly determines that the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval, provided that the appropriation authorized herein shall not be available until July 1, 1967."

Acts 1993, No. 791, § 10: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws relating to the collection, redemption and sale of tax delinquent real property are in need of clarification; that Arkansas Courts have repeatedly voided tax deeds in instances where the county has not strictly complied with statutes; that such holdings have placed a cloud on tax deeds issued by the Commissioner of State Lands; that the present method whereby the Commissioner of State Lands disposes of tax delinquent land meets due process requirements; consequently, when the Commissioner of State Lands complies with the statutes set forth for his office to follow, tax deeds issued should not be void or voidable due to defects in the county procedure, except in cases where taxes have actually been paid. Further, the present situation has a chilling effect on the collection of taxes and encourages the nonpayment of taxes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 714, § 7: Mar. 21, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the laws relating to the forfeiture, sale and redemption of tax delinquent lands are in need of clarification and that this act would clarify certain problems that have arisen. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and

safety shall be in full force from and after its passage and approval.”

Research References

ALR.

Application of requirement that newspaper be locally published for official notice publication, 85 A.L.R.4th 581.

Am. Jur. 72 Am. Jur. 2d, State Tax., § 904 et seq.

Ark. L. Rev.

Due Process: The Constitutional Requirements of Notice in Tax Sale Proceedings, 30 Ark. L. Rev. 73.

Note, Mennonite Board of Missions v. Adams: 11 Years After Fuentes v. Shevin, the Supreme Court Has Found That Creditors Also Have Notice Rights, 37 Ark. L. Rev. 971.

C.J.S. 85 C.J.S., Tax., § 744 et seq.

U. Ark. Little Rock L.J.

Notes, Property — Notice to Mortgagees in Tax Sales, 7 U. Ark. Little Rock L.J. 437.

Survey — Property, 10 U. Ark. Little Rock L.J. 605.

26-37-101. Transfer of tax-delinquent lands.

(a) (1) All lands upon which the taxes have not been paid for one (1) year following the date the taxes were due, October 10, shall be forfeited to the State of Arkansas and transmitted by certification to the Commissioner of State Lands for collection or sale.

(2) No tax-delinquent lands shall be sold at the county level.

(b) The county collector shall hold all tax-delinquent lands in the county for one (1) year after the date of delinquency, and, if the lands are not redeemed by the certification date, which shall be no later than July 1 of the following year, the collector shall transmit it to the state by certification, after notice as provided in this chapter, indicating all taxes, penalties, interest, and costs due and the name and last known address of the owner of record of the tax-delinquent lands.

(c) Upon receipt of the certification, title to the tax-delinquent lands shall vest in the State of Arkansas in care of the Commissioner of State Lands.

History. Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5; 1993, No. 791, § 2; 1995, No. 660, § 1.

A.C.R.C. Notes. Acts 1983, No. 626, § 2, as amended by Acts 1987, No. 814, § 5, provided that on December 31, 1985, the delinquent real property tax records of the county clerks should be transferred to the collectors, unless the clerks and collectors, by agreement, transferred such duties and responsibilities prior to that date, and that it would be the responsibility of the clerks to maintain said tax records until their duties and responsibilities are transferred to their respective collectors.

Acts 1989, No. 869, § 2, provided:

“All mobile homes and manufactured homes on the books of the Commissioner of State Lands on March 22, 1989 shall be certified back to the county which certified them to the Commissioner and shall not be sold by him.”

Acts 1983, No. 626, § 7, as amended by Acts 1985, No. 179, § 5, Acts 1987, No. 814, § 6, Acts 1991, No. 1080, § 1, and Acts 1993, No. 791, § 3, provided:

“(a) except as provided in subsection (b) of this section [Acts 1987, No. 814, § 6(b)], all tax delinquent land then held by the Commissioner of State Lands should be disposed of according to the provisions of Act 626 of 1983, as amended. For the purposes of Act 626 of 1983, as amended, the word ‘taxes’ should mean ad valorem taxes on real estate and the annual installments of the assessments of benefits levied by municipal improvement districts formed in second class cities under Act 84 of 1881, as amended, § 14-88-101 et seq., or Act 64 of 1929, as amended, § 14-88-203 et seq., for the sole purpose of acquiring, constructing, operating, or maintaining a recreational facility. The term ‘tax delinquent land’ when used in Act 626 of 1983,

as amended, should mean all land upon which the ad valorem property taxes have not been paid and the term should also include land subject to a lien for nonpayment of annual installments of the assessments of benefits levied by municipal recreation improvement districts created pursuant to § 14-88-101 et seq., or § 14-88-203 et seq.

“(b) All tax delinquent land which has been or will be forfeited to the State and conveyed to the Commissioner of State Lands by certification but which remains neither sold nor redeemed two (2) years from the date of the applicable public auction conducted in accordance with the provisions of Act 626 of 1983, as amended, may not be subject to the provisions of Act 626 of 1983, as amended, or any other Act relating to the sale of land by the Commissioner, but may be sold by the Commissioner at public sales or by negotiation for whatever price the Commissioner determines to be in the best interest of the State and its local taxing units.

“(c) The Commissioner of State Lands shall have the authority to promulgate such rules and regulations as may be necessary to effectively carry out the provisions of Act 626 of 1983, as amended, [and,] upon adoption, such rules and regulations shall have the full force and effect of law.”

Amendments. The 1993 amendment substituted “forfeited to the State of Arkansas and transmitted by certification” for “certified” in (a)(1); in (b), inserted “the lands are,” substituted “transmit it to the state by certification” for “certify it to the state”; and added (c).

The 1995 amendment substituted “one (1) year” for “two (2) years” in (a)(1) and (b).

Case Notes

In General.

Notice of Sale.

Promulgation of Rules and Regulations.

In General.

Summary judgment was properly awarded to a corporation in an action by guardians to redeem property that had been sold for delinquent taxes; at the time of the brother's death he no longer held title as it had vested to the State pursuant to subsection (c) of this section, however, his incapacitated sisters did inherit his right of redemption. *Givens v. Haybar, Inc.*, 95 Ark. App. 164, 234 S.W.3d 896 (2006).

Notice of Sale.

Title to property sold at a tax sale was properly quieted in the purchaser where the evidence showed that the state land commissioner sent notice of the deficiency and sale to the former owner at the address certified by the county. *Mays v. St. Pat Props., LLC*, 357 Ark. 482, 182 S.W.3d 84 (2004), cert. denied, 543 U.S. 943, 125 S. Ct. 353 (2004).

Buyer's tax deed was properly voided because the Commissioner of State Lands failed to notify the bank as an interested party since it held a recorded interest in the property at the time of certification, and the right to challenge the tax sale based on the failure to give notice to the bank passed to the mortgagor when it acquired an interest in the property through the foreclosure sale. *RWR Props. v. Mid-State Trust VIII*, 102 Ark. App. 115, 282 S.W.3d 297 (2008), review denied, *RWR Props. v. Mid-State Trust VIII*, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 582 (Sept. 4, 2008).

Promulgation of Rules and Regulations.

The Commissioner of State Lands has authority to promulgate rules and regulations concerning tax-forfeiture sales, notwithstanding that the provision granting such authority, which is referenced in subsection (c) of the notes to the statute, is not codified. *Carter v. Green*, 67 Ark. App. 367, 1 S.W.3d 449 (1999).

Cited: *Worth v. City of Rogers*, 341 Ark. 12, 14 S.W.3d 471 (2000); *Rylwell, L.L.C. v. Ark. Dev. Fin. Auth.*, 372 Ark. 32, 269 S.W.3d 797 (2007).

26-37-102. Publication of notice — Fee.

(a) The county collector in each county shall, not less than thirty (30) days nor more than forty (40) days prior to the certification of the land, cause to be published in a newspaper of general circulation in the county:

- (1) A list of real property not previously redeemed;
- (2) The names of the owners of record;
- (3) The amount of the taxes, penalties, interest, and cost necessary to be paid to redeem the property;
- (4) The date upon which such period of redemption expires; and
- (5) Notice that unless the property is redeemed prior to the expiration of the period of redemption, the lands will be forfeited to the state.

(b) Fees for the publication shall be the same as set forth in § 26-37-108 [repealed].

History. Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5.

Publisher's Notes. Section 26-37-108, referred to in subsection (b), was repealed by Acts 1993, No. 985, § 2. For present law, see § 26-37-107.

26-37-103. Verification by county assessor.

- (a) Prior to certification to the Commissioner of State Lands, the county assessor shall:
- (1) Verify the assessment to establish value on all parcels to be certified;
 - (2) Verify the name and last known address of the owner of record of the tax-delinquent land; and
 - (3) Determine whether the tax-delinquent land exists.
- (b) If the land is found to be nonexistent, the county assessor shall remove the delinquent entry from the assessment rolls.
- (c) No tax-delinquent lands shall be certified to the Commissioner of State Lands without the assessor's verification.

History. Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5.

26-37-104. Costs of notices.

- (a) All costs of notice shall be added to the costs to be collected from the purchaser or redeemer.
- (b) Costs of notice shall include, but not be limited to, certified mail costs, newspaper and catalog costs, and title work.

History. Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5; 2005, No. 1231, § 1.

Amendments. The 2005 amendment added (b).

26-37-105. Collection fee.

The Commissioner of State Lands shall charge a twenty-five dollar (\$25.00) collection fee for each deed issued by the Commissioner of State Lands, whether the land is redeemed or sold.

History. Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5; 1995, No. 714, § 1.

Amendments. The 1995 amendment rewrote this section.

26-37-106. Recording of delinquent list.

- (a) (1) The county collectors of this state shall cause a list of the delinquent lands in

their respective counties, as corrected by the county collectors, to be entered in a permanent record appropriately labeled.

(2) The list shall be a permanent public record and open to the inspection of the public at all times.

(b) The county clerk shall certify that the total amount of delinquent lands in this permanent record is equal to the credit allowed the county collector for delinquent lands on the current tax settlement.

(c) The record, so certified, shall be evidence of the facts contained in the list and certificate.

History. Acts 1883, No. 114, § 128, p. 199; 1887, No. 92, §§ 46, 47, p. 143; C. & M. Dig., §§ 10084, 10085; Acts 1933, No. 250, §§ 5, 6; 1933 (1st Ex. Sess.), No. 16, § 5; Pope's Dig., §§ 13846-13848; A.S.A. 1947, § 84-1102; Acts 1987, No. 814, § 1; 1993, No. 403, § 23; 2005, No. 1231, § 2.

Amendments. The 1993 amendment substituted "county collectors" for "collectors of the counties" in (a)(1).

The 2005 amendment deleted former (c)(1); and redesignated former (c)(2) as present (c).

Case Notes

Constitutionality.

In General.

Book of Delinquent Lands.

Certification of Collector.

Constitutionality.

The 1933 amendment (No. 250) to this section was not in violation of Ark. Const., Art. 5, § 21. *Matthews v. Byrd*, 187 Ark. 458, 60 S.W.2d 909 (1933).

The 1933 amendment (No. 250) to this section was not unconstitutional as taking property without due process of law. *Benham v. Davis*, 196 Ark. 740, 119 S.W.2d 743 (1938).

In General.

For decisions under prior law (Overdue Tax Act of 1881), see *Gallagher v. Johnson*, 65 Ark. 90, 44 S.W. 1041 (1898); *Wallace v. Hill*, 135 Ark. 353, 205 S.W. 699 (1918).

For decisions construing this section prior to 1933 amendment, see *Martin v. Allard*, 55 Ark. 218, 17 S.W. 878 (1891); *Cooper v. Freeman Lumber Co.*, 61 Ark. 36, 31 S.W. 981 (1895); *Taylor v. State*, 65 Ark. 595, 47 S.W. 1055 (1898); *Logan v. Eastern Ark. Land Co.*, 68 Ark. 248, 57 S.W. 798 (1900); *Hunt v. Gardner*, 74 Ark. 583, 86 S.W. 426 (1905); *Birch v. Walworth*, 79 Ark. 580, 96 S.W. 140 (1906); *Cook v. Ziff Colored Masonic Lodge*, 80 Ark. 31, 96 S.W. 618 (1906); *Brasch v. Western Tie & Timber Co.*, 80 Ark. 425, 97 S.W. 445 (1906); *Magness v. Harris*, 80 Ark. 583, 98 S.W. 362 (1906); *Earle Imp. Co. v. Chatfield*, 81 Ark. 296, 99 S.W. 84 (1907); *Osceola Land Co. v. Chicago Mill & Lumber Co.*, 84 Ark. 1, 103 S.W. 609 (1907); *Townsend v. Penrose*, 84 Ark. 316, 105 S.W. 588 (1907); *Frank Kendall Lumber Co. v. Smith*, 87 Ark. 360, 112 S.W. 888 (1908); *Leigh v. Trippe*, 91 Ark. 117, 120 S.W. 972 (1909); *Hewett v. Ozark White Lime Co.*, 120 Ark. 528, 180 S.W. 199 (1915); *Earl v. Harris*, 121 Ark. 621, 182 S.W. 273 (1915); *Hurst v. Munson*, 152 Ark. 313, 238 S.W. 42 (1922); *Bingham v. Powell*, 152 Ark. 484, 238 S.W. 597, 21 A.L.R. 1214 (1922); *Tedford v. Emison*, 182 Ark. 1054, 34 S.W.2d 214 (1931); *Hampton v. Dodd*, 184 Ark. 287, 42 S.W.2d 224 (1931); *Alphin v. Banks*, 193 Ark. 563, 102 S.W.2d 558 (1937); *Burbridge v. Crawford*, 195 Ark. 191, 112 S.W.2d 423 (1937); *McMillen v. East Ark. Inv. Co.*, 196 Ark. 367, 117 S.W.2d 724 (1938); *Hirsch v. Dabbs*, 197 Ark. 756, 126 S.W.2d 116 (1939). Since the 1933 amendment, which eliminated a sentence which provided that the county clerk should keep posted up in or about his office the delinquent list for one year, noncompliance with that requirement does not operate to invalidate tax sale on that account. *Hirsch v. Dabbs*, 197 Ark. 756, 126 S.W.2d 116 (1939).

Delinquent list must be recorded prior to the sale, but this section does not require that published

notice of sale also be recorded; rather, after publication has been made, there shall be appended, at the foot of the record of lands returned delinquent by the collector, a certificate showing in what newspaper the notice was published and the dates of publication. *Anthony v. Western & S. Life Ins. Co.*, 198 Ark. 445, 128 S.W.2d 1014 (1939).

Where lands were so sold during time that Acts 1935, No. 142 was in force, these sales would be made valid by the curative effects of this law. *Coulter v. Anthony*, 228 Ark. 192, 308 S.W.2d 445 (Ark. 1957).

Book of Delinquent Lands.

The 1933 amendments showed no intention to dispense with the requirement that a permanent record be made and kept of lands returned delinquent, nor as to the time of making such record, that is, prior to sale. *Hirsch v. Dabbs*, 197 Ark. 756, 126 S.W.2d 116 (1939).

The filing of lists of delinquent lands on sheets of paper pinned at one corner, which lists were never corrected or recorded in a book, did not meet the requirements necessary to constitute notice to property owners. *Smith v. Treadwell*, 211 Ark. 247, 200 S.W.2d 514 (1947).

Certification of Collector.

Clerk's (now collector's) certificate held in compliance with this section. *Benham v. Davis*, 196 Ark. 740, 119 S.W.2d 743 (1938).

County clerk's (now collector's) certificate of publication does not have to recite that the newspaper is qualified by law. *Anthony v. Western & S. Life Ins. Co.*, 198 Ark. 445, 128 S.W.2d 1014 (1939).

Acts 1935, No. 282, in amending Acts 1933 (Ex. Sess.), No. 16 and omitting such provisions, did not repeal the requirement that the county clerk (now collector) attach a certificate to the delinquent list of lands as recorded by him, showing in what newspaper the delinquent list was published, and the dates of publication. *Cecil v. Tisher*, 206 Ark. 962, 178 S.W.2d 655 (1944).

Tax sales void when certificate not executed prior to date of sale. *Standard Sec. Co. v. Republic Mining & Mfg. Co.*, 207 Ark. 335, 180 S.W.2d 575 (1944); *Hensley v. Phillips*, 215 Ark. 543, 221 S.W.2d 412 (1949); *Coulter v. Anthony*, 228 Ark. 192, 308 S.W.2d 445 (Ark. 1957). But see *Union Bank & Trust Co. v. Horne*, 195 Ark. 481, 113 S.W.2d 1091 (1938).

Tax sales of forfeited lands void when certificate not filed. *Cecil v. Tisher*, 206 Ark. 962, 178 S.W.2d 655 (1944); *Standard Sec. Co. v. Republic Mining & Mfg. Co.*, 207 Ark. 335, 180 S.W.2d 575 (1944); *Harrison v. Mobley*, 211 Ark. 772, 202 S.W.2d 756 (1947); *Browning v. King*, 214 Ark. 480, 216 S.W.2d 803 (1949); *Boyd v. Meador*, 10 Ark. App. 5, 660 S.W.2d 943 (1983).

Failure of clerk (now collector) to certify was irregularity that could be cured by confirmation proceedings under former § 26-38-108 (repealed). *Bowles v. Dierks Lumber & Coal Co.*, 217 Ark. 892, 233 S.W.2d 632 (1950); *Jenkins v. Incorporated Town of Caraway*, 219 Ark. 236, 242 S.W.2d 348 (1951) (decisions under prior law).

This section requires the certificate of the clerk (now collector) to be made prior to the sale, and where it is made on the date of the sale, the sale is void. *Broadhead v. McEntire*, 19 Ark. App. 259, 720 S.W.2d 313 (1986).

Cited: *Smith v. Cole*, 187 Ark. 471, 61 S.W.2d 55 (1933).

26-37-107. Publication of delinquent list.

(a) (1) (A) The county collectors of this state shall cause the list of the delinquent lands in their respective counties to be prepared and a copy of the list to be delivered to a legal newspaper of the county by no later than December 1 of each year.

(B) (i) Within seven (7) days thereafter, the newspaper shall publish the list.

(ii) The newspaper shall publish the list in at least seven-point type.

(C) If the newspaper regularly publishes a total market coverage edition or supplement publication that has wider circulation within the county or district, the newspaper may publish the list in that edition or publication.

(2) If there is no newspaper in the county or district, the publication shall be in

the nearest newspaper having a general circulation in the county or district for which the list is being published.

(3) The list of delinquent lands shall contain at least the name of the owner and the legal description of the property as was recorded on the tax book.

(b) The publication shall be in substance as follows:

“DELINQUENT REAL ESTATE TAX LIST

The Real Estate Tax Books of _____ County reflect the following list of real property to be delinquent for nonpayment of taxes for the year (The amount included in the “Tax, Penalty and Cost” column may not include all penalties and costs and will not include interest and special improvement assessments that may be due at the time of payment.)

NAME OF OWNER

LEGAL DESCRIPTION

Brown, Bill
Doe, John Lot Blk 5
Plainview
Add.\$31.25

Jones, John
Roe, Richard

NOTICE IS HEREBY GIVEN THAT said several tracts, lots or parts of lots, will be held as delinquent for a one-year period from this date and then certified to the State of Arkansas, Commissioner of State Lands, for collection or to be sold, unless the delinquent taxes, penalties, and costs are paid before the end of the one-year period.

(Date of Notice) Collector County.”

(c) (1) The legal fee for each required publication of delinquent real property tax lists shall be one dollar and fifty cents (\$1.50) per tract per insertion.

(2) The fee shall be added as costs of forfeiture and shall be paid by the county collector from any moneys in the county collector's possession derived from the payment of real property taxes.

(3) The receipts for the payment, verified by the certificate of the county clerk as to its correctness, shall entitle the county collector to a credit for the amount so paid.

History. Acts 1955, No. 80, §§ 1, 2; 1967, No. 467, § 1; 1975, No. 574, § 6; 1981, No. 305, § 1; 1985, No. 953, § 2; A.S.A. 1947, § 84-1103; Acts 1987, No. 814, § 2; 1991, No. 1045, § 2; 1993, No. 985, § 1; 1995, No. 660, § 2; 2001, No. 985, § 1.

Research References

U. Ark. Little Rock L. Rev.

Note, Constitutional & Property Law — Fourteenth Amendment Due Process Clause & Notice to Be Heard — It Felt So Right But Was All So Wrong: United States Supreme Court Rules Arkansas's Tax-Foreclosure Notice Procedure Fails to Satisfy Due Process Clause When Certified Mail Notice Returns "Unclaimed" (Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415, 2006 U.S. LEXIS 3451 (2006)), 30 U. Ark. Little Rock L. Rev. 179.

Case Notes

Constitutionality.

In General.

Listing.

Notice.

Publication.

Publication Fee.

Constitutionality.

Act of March 14, 1879, which provided for taking of land for taxes without notice by publication and a competitive sale either of the smallest quantity for the taxes or the best price for a whole tract, with provisions to save the excess to the purchaser, was unconstitutional. Bagley v. Castile, 42 Ark. 77 (1883) (decision under prior law).

Confirmation of tax sale cures irregularity of failure to give required notice of sale. Berry v. Davidson, 199 Ark. 276, 133 S.W.2d 442 (1939) (decision under prior law).

In General.

Acts 1933, No. 250 and 1933 (Ex. Sess.), No. 16 dispensed with the necessity of filing a list of lands; however, the omission from 1935, No. 282 of provision contained in Acts 1933 (Ex. Sess.), No. 16, limiting newspaper space for publication of delinquent tax list to six inches, double column, was evidence of legislative intention not to reenact the old law notwithstanding the word "notice" was used in Acts 1935, No. 282, since reference to publication of "the list as herein described" in former statute could only mean the delinquent list; therefore, it was proper to publish the delinquent list. Thomas v. Branch, 202 Ark. 338, 150 S.W.2d 738 (1941) (decision under prior law).

Where land involved was sold under description of lots 2-3, it fairly placed landowner of lot 3 on notice that his property had been sold for taxes even though lot 2 did not belong to landowner. Brown v. Masterson, 240 Ark. 880, 402 S.W.2d 666 (1966).

Listing.

Descriptions held sufficient. Evans v. F.L. Dumas Store, Inc., 192 Ark. 571, 93 S.W.2d 307 (1936); Northwest Land Co. v. Sugg, 227 Ark. 410, 299 S.W.2d 63 (1957) (decisions under prior law).

Acts 1935, No. 170, § 2, required contiguous city lots to be entered as one tract. Moses v. Gingles, 208 Ark. 788, 187 S.W.2d 892 (1945); Northwest Land Co. v. Sugg, 227 Ark. 410, 299 S.W.2d 63 (1957) (decisions under prior law).

Lots not listed as one tract. Pinkert v. Spoon, 210 Ark. 1025, 198 S.W.2d 838 (1947); Seligson v. Seegar, 211 Ark. 871, 202 S.W.2d 970 (1947) (decisions under prior law).

Notice.

Former statute held not to prevent a meritorious defense on ground that no notice was given. Townsend v. Martin, 55 Ark. 192, 17 S.W. 875 (1891) (decision under prior law).

Tax title based upon sale without legal notice is void. Woolfork v. Buckner, 60 Ark. 163, 29 S.W. 372 (1895) (decision under prior law).

Publication.

Acts 1869, § 14, required publication to be for at least three weeks. Pennell & Leverett v. Monroe,

30 Ark. 661 (1875) (decision under prior law).

Mere informalities or unimportant variances in publication held not to invalidate tax sales. *Thweatt v. Black*, 30 Ark. 732 (1875); *Evans v. F.L. Dumas Store, Inc.*, 192 Ark. 571, 93 S.W.2d 307 (1936) (decisions under prior law).

Publication required to be in newspaper printed in district. *Wolf & Bailey v. Phillips*, 107 Ark. 374, 155 S.W. 924 (1913) (decision under prior law).

Provisions requiring lists to be published for two weeks before tax sales. *Townsend v. Martin*, 55 Ark. 192, 17 S.W. 875 (1891); *Martin v. McDiarmid*, 55 Ark. 213, 17 S.W. 877 (1891); *Thweatt v. Howard*, 68 Ark. 426, 59 S.W. 764 (1900); *Byrne v. Less*, 92 Ark. 211, 122 S.W. 635 (1909); *Walter v. Swaim*, 107 Ark. 242, 154 S.W. 511 (1913); *Laughlin v. Fisher*, 141 Ark. 629, 218 S.W. 199 (1920); *McWilliams v. Clampitt*, 195 Ark. 908, 115 S.W.2d 280 (1938); *Schuman v. Metropolitan Trust Co.*, 199 Ark. 283, 134 S.W.2d 579 (1939); *Edwards v. Nall*, 200 Ark. 9, 137 S.W.2d 748 (1940); *Reynolds v. McHenry*, 200 Ark. 130, 140 S.W.2d 106 (1940); *Bolin v. Kelley*, 205 Ark. 538, 205 Ark. 539, 169 S.W.2d 865 (1943); *Brown v. Wall*, 206 Ark. 576, 176 S.W.2d 707 (1944).

Failure to publish list of delinquent lands as required voids tax sales. *Bennett v. Younes*, 189 Ark. 961, 76 S.W.2d 59 (1934); *Nunn v. Mitchell*, 210 Ark. 422, 196 S.W.2d 576 (1946) (decisions under prior law); *Booth v. Peoples Loan & Inv. Co.*, 248 Ark. 1213, 455 S.W.2d 868 (1970).

Publication need not be exact reproduction of delinquent list on file. *Evans v. F.L. Dumas Store, Inc.*, 192 Ark. 571, 93 S.W.2d 307 (1936) (decision under prior law).

Failure to comply strictly with requirement of publication held a mere irregularity cured by confirmation. *Giller v. Fouke*, 193 Ark. 644, 101 S.W.2d 783 (1937) (decision under prior law).

Publication required for two weeks in same paper. *Edwards v. Lodge*, 195 Ark. 470, 113 S.W.2d 94 (1938); *Anthony v. Western & S. Life Ins. Co.*, 198 Ark. 445, 128 S.W.2d 1014 (1939) (decisions under prior law).

Publication one week in one paper and following week in different paper was not mere irregularity that could be cured by a curative act. *Edwards v. Lodge*, 195 Ark. 470, 113 S.W.2d 94 (1938); *Union Bank & Trust Co. v. Horne*, 195 Ark. 481, 113 S.W.2d 1091 (1938) (decisions under prior law).

Publication in one issue of newspaper is not sufficient. *Union Bank & Trust Co. v. Horne*, 195 Ark. 481, 113 S.W.2d 1091 (1938) (decision under prior law).

Publication only once in newspaper held not cured by Acts 1935, No. 142 (repealed by Acts 1937, No. 264). *Union Bank & Trust Co. v. Horne*, 195 Ark. 481, 113 S.W.2d 1091 (1938) (decision under prior law).

It is no longer required that last publication be made two weeks before sale. *Anthony v. Western & S. Life Ins. Co.*, 198 Ark. 445, 128 S.W.2d 1014 (1939) (decision under prior law).

Requirement as to publication of notice is mandatory. *Berry v. Davidson*, 199 Ark. 276, 133 S.W.2d 442 (1939) (decision under prior law).

Acts 1935, No. 170 and Acts 1935, No. 282 were in conflict, both as to the time of publication and as to the duties of the collector. *Thomas v. Branch*, 202 Ark. 338, 150 S.W.2d 738 (1941) (decision under prior law).

Publication Fee.

County judge could make binding contract for publishing delinquent tax list at lower rate than the statutory one. *Hempstead County v. Star Publishing Co.*, 186 Ark. 594, 54 S.W.2d 699 (1932) (decision under prior law).

26-37-108. [Repealed.]

Publisher's Notes. This section, concerning list publication fees, was repealed by Acts 1993, No. 985, § 2. The section was derived from Acts 1955, No. 80, § 3; 1969, No. 116, § 2; 1981, No. 467, § 2; A.S.A. 1947, § 84-1104; Acts 1987, No. 814, § 3. For present law, see § 26-37-107.

26-37-109. Redemption of lands not transferred.

(a) (1) The county collectors of the various counties of the State of Arkansas are

authorized to charge a fee of two dollars and fifty cents (\$2.50) for the issuance of each certificate of land redemption for each parcel of tax-delinquent land redeemed in their office.

(2) This fee shall be deposited in the county general fund.

(b) Each county quorum court may authorize the county collector or the county treasurer to accept payment for the redemption of tax-delinquent land which has not been transferred to the Commissioner of State Lands.

(c) The county collector shall pay over to the county treasurer on the first of each month or within five (5) days thereafter all amounts collected under this section. However, upon a certificate of distribution of the amounts collected under this section being prepared by the county clerk or collector, which certificate shall be issued on or before the thirtieth day of each month, the county treasurer will transfer to the various funds the amount due each fund, such as the county, school, or municipality fund, from the amounts collected under this section.

History. Acts 1987, No. 361, § 1; 1989, No. 393, § 1; 1995, No. 232, § 10.

Amendments. The 1995 amendment added (a)(2).

Subchapter 2

— Sale of Tax-Delinquent Lands

- 26-37-201. Publication of notice — Fee.
- 26-37-202. Procedure to sell.
- 26-37-203. Conveyance to purchaser — Contest.
- 26-37-204. Sales set aside.
- 26-37-205. Distribution of funds.
- 26-37-206. Void sales.
- 26-37-207. Invalid donation by state.
- 26-37-208. Wrong name in tax book.
- 26-37-209. Compensation for improvements.
- 26-37-210. Sale of timber, oil, gas, or mineral rights.
- 26-37-211. Purchaser of timber rights.
- 26-37-212. Dedication of land as public park.
- 26-37-213. Record of lands forfeited.
- 26-37-214. Limitation on liability.

Cross References. Tax deeds and confirmation of tax sales, § 26-38-101 et seq.

Publisher's Notes. Acts 1999, No. 42, § 1, provided:

“Disposition of Unclaimed Redemption Money. All funds derived in prior years for the redemption of land pursuant to § 139 of Act 114 of 1883 as amended, formerly compiled as Arkansas Statute 84-1205, shall be transferred, by county court order, to the county general fund.”

Preambles. Acts 1941, No. 437 contained a preamble which read:

“Whereas, in some larger municipalities, the more desirable portions of tracts of land have been platted and utilized, frequently leaving deep ravines and steep hillsides that cannot be utilized with the result that the owners often abandon such property as worthless and cease to pay taxes on it; and for the same reason no one else is willing to buy it from the State, resulting in the property being built up with unsightly shacks and hovels as a squatter section, to the great detriment of the surrounding property and the city as a whole; and in many instances the property would be desirable as a public park and a way should be provided for the acquisition of such

tracts of land as public parks; and

"Whereas, in many instances before the depression, acreage tracts in larger municipalities were assessed for taxes on a highly speculative value, far in excess of the true value of the land, resulting in the forfeiture of the same to the State for taxes and which remains unredeemed, said property usually being undesirable tracts of land assessed on a very high basis, and under existing laws such city property cannot be sold at the acreage price as it is the case with rural property, with the result that this type of property remains unredeemed, thereby causing loss of taxes to the State, county, city and school districts;

"Now, therefore...."

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1905, No. 303, § 5: effective on passage.

Acts 1939, No. 269, § 3: approved Mar. 10, 1939. Emergency clause provided: "It is found that, where lands have forfeited for both the general taxes and the improvement district assessments, many persons are deterred from purchasing district assessments, by reason of uncertainty of a recovery of the assessments paid in the event of invalidity of the forfeiture for general taxes; and it is further found that such uncertainty results in loss of revenue both to the State and to the improvement districts. Accordingly an emergency is declared to exist, and this Act shall take effect and be in force from and after its passage."

Acts 1941, No. 437, § 4: became law without Governor's signature, Apr. 3, 1941. Emergency clause provided: "It is ascertained and hereby declared that the provisions of this Act are necessary to aid municipalities in preventing sections of towns and cities from building up in an unsanitary squatter areas, and that the funds derived from additional taxes that will be paid by getting property back on the tax books, which additional taxes are urgently needed by the counties and cities for the maintenance of public thoroughfares so as to keep same in a safe condition for the traveling public, and for other purposes that will protect the health of the community, therefore, the immediate operation of this Act is essential for the protection of the public health and safety. An emergency, therefore, is declared and this Act shall take effect and be in force from and after its passage."

Acts 1985, No. 1021, § 3: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the law relating to the distribution of proceeds received by the State Land Commissioner from the redemption of tax delinquent lands is confusing; that it is urgent that such confusion be corrected at the earliest date possible; and that this Act will provide clarification of such law and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1080, § 7: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws relating to the redemption and sale of tax-delinquent real property are in need of clarification. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991 or as otherwise specified in a particular section thereof."

Acts 1993, No. 791, § 10: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws relating to the collection, redemption and sale of tax delinquent real property are in need of clarification; that Arkansas Courts have repeatedly voided tax deeds in instances where the county has not strictly complied with statutes; that such holdings have placed a cloud on tax deeds issued by the Commissioner of State Lands; that the present method whereby the Commissioner of State Lands disposes of tax delinquent land meets due process requirements; consequently, when the Commissioner of State Lands complies with the statutes set forth for his office to follow, tax deeds issued should not be void or voidable due to defects in the county procedure, except in cases where taxes have actually been paid. Further, the present situation has a chilling effect on the collection of taxes and encourages the nonpayment of taxes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 714, § 7: Mar. 21, 1995. Emergency clause provided: "It is hereby found and

determined by the General Assembly of the State of Arkansas that the laws relating to the forfeiture, sale and redemption of tax delinquent lands are in need of clarification and that this act would clarify certain problems that have arisen. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force from and after its passage and approval.”

Acts 2003, No. 1215, § 5: effective for negotiated sales of tax-forfeited property that occur on or after October 1, 2003.

Acts 2005, No. 1880, § 2: July 1, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is currently confusion in the law concerning the disbursement of funds on sales of tax delinquent property by the Commissioner of State Lands; and that this act is immediately necessary because it will provide direction and clarification to determine the validity of claims concerning tax delinquent lands. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005.”

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 904 et seq.

C.J.S. 85 C.J.S., Tax., § 744 et seq.

26-37-201. Publication of notice — Fee.

(a) (1) The Commissioner of State Lands shall publish a notice of sale of land upon which the ad valorem property taxes have not been paid in a newspaper having general circulation in the county where the land is located.

(2) The publication fee for the notice shall be the same as set forth in § 26-37-107.

(b) The notice shall:

(1) Contain the assessed value of the land;

(2) Contain the amount of taxes, interest, penalties, and other costs due on the land;

(3) (A) Contain the name of the owner, the legal description, and parcel number of the land.

(B) A part or abbreviated legal description shall be sufficient in the notice if the name of the owner and parcel number are listed;

(4) Contain a list of all interested parties; and

(5) Indicate that the land will be sold to the highest bidder if the bid is equal to at least the assessed value of the land as certified to the Commissioner of State Lands.

(c) The highest bidder shall pay all taxes, interest, penalties, and other costs.

(d) Failure of the notice to contain the information required in subsection (b) of this section invalidates an auction sale of the land.

(e) As used in this section, “interested party” has the same meaning as in § 26-37-301.

History. Acts 1983, No. 626, § 3; A.S.A. 1947, § 84-1128; Acts 1987, No. 814, § 5; 1995, No. 714, § 2; 2005, No. 1231, § 3; 2007, No. 706, § 1.

Amendments. The 1995 amendment added the subsection designations in (1); substituted “§ 26-37-107” for “§ 26-37-108” in (a)(2); and deleted the former second sentence in (c).

The 2005 amendment rewrote (b)(3).

The 2007 amendment rewrote (b)(4), and added (d) and (e).

Research References

Ark. L. Rev.

Note, *Mennonite Board of Missions v. Adams: 11 Years After Fuentes v. Shevin, the Supreme Court Has Found That Creditors Also Have Notice Rights*, 37 Ark. L. Rev. 971.

U. Ark. Little Rock L.J.

Arkansas Law Survey, Robertson, Property, 7 U. Ark. Little Rock L.J. 245.

Notes, Property — Notice to Mortgagees in Tax Sales, 7 U. Ark. Little Rock L.J. 437.

Survey — Property, 10 U. Ark. Little Rock L.J. 605.

U. Ark. Little Rock L. Rev.

Note, Constitutional & Property Law — Fourteenth Amendment Due Process Clause & Notice to Be Heard — It Felt So Right But Was All So Wrong: United States Supreme Court Rules Arkansas's Tax-Foreclosure Notice Procedure Fails to Satisfy Due Process Clause When Certified Mail Notice Returns "Unclaimed" (Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415, 2006 U.S. LEXIS 3451 (2006), 30 U. Ark. Little Rock L. Rev. 179.

Case Notes

Interested Parties.

Interested Parties.

While this section does not define the term "interested parties" used in subsection (c), it defies logic to proceed on the assumption that potential heirs to lands that are part of an estate would not be parties who are interested in preserving the lands. Sanders v. Ryles, 318 Ark. 418, 885 S.W.2d 888 (1994).

There is no logical reason to include heirs in the definition of "interested persons" in § 28-1-102(a)(11), and then treat them differently for the purposes of the notice requirement in subsection (c) of this section. Sanders v. Ryles, 318 Ark. 418, 885 S.W.2d 888 (1994).

26-37-202. Procedure to sell.

(a) Bidders may bid at the sale or mail their bid to the office of the Commissioner of State Lands. Bids shall be delivered at the appropriate place before the deadline established in the notice of sale.

(b) If no one bids at least the assessed value, the Commissioner of State Lands may negotiate a sale. All negotiated sales shall have approval of the Attorney General.

(c) The Commissioner of State Lands shall conduct tax-delinquent sales in the county wherein the land is located, unless the Commissioner of State Lands determines that there are not enough parcels of land to justify a sale in one (1) county only. In that case, the Commissioner of State Lands may hold a tax-delinquent land sale in one (1) location and thereat sell land located in more than one (1) county if the counties wherein the lands are located are adjoining counties.

(d) The sales shall be conducted on the dates specified in the notices required by this subchapter.

(e) (1) After a sale of the land by the Commissioner of State Lands, including a negotiated sale, the Commissioner of State Lands shall notify the owner and all interested parties of the right to redeem the land within thirty (30) days after the date of the sale paying all taxes, penalties, interest, and costs due, including the cost of the notice.

(2) The notice under subdivision (e)(1) of this section shall be sent by regular mail to the last known address of the owner and all interested parties.

(3) If the land is not redeemed, a limited warranty deed will be issued by the Commissioner of State Lands to the purchaser.

(f) As used in this section, "interested party" has the same meaning as in § 26-37-301.

History. Acts 1983, No. 626, § 3; A.S.A. 1947, § 84-1128; Acts 1987, No. 814, § 5; 2007, No. 706, § 2.

Amendments. The 2007 amendment inserted "of State Lands" following "Commissioner" throughout the section; rewrote (e); and added (f).

Research References

U. Ark. Little Rock L.J.

Arkansas Law Survey, Robertson, Property, 7 U. Ark. Little Rock L.J. 245.

Survey — Property, 10 U. Ark. Little Rock L.J. 605.

U. Ark. Little Rock L. Rev.

Note, Constitutional & Property Law — Fourteenth Amendment Due Process Clause & Notice to Be Heard — It Felt So Right But Was All So Wrong: United States Supreme Court Rules Arkansas's Tax-Foreclosure Notice Procedure Fails to Satisfy Due Process Clause When Certified Mail Notice Returns "Unclaimed" (Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415, 2006 U.S. LEXIS 3451 (2006)), 30 U. Ark. Little Rock L. Rev. 179.

Case Notes

In General.

In General.

Where tax notices sent to landowner contained the sale dates and the tracts offered for sale at public auctions on those dates, but no legally-sufficient bid was received on the public sale date and a negotiated sale necessarily took place on a later date, the conveyance of each tract was in conformity with Arkansas law. Price v. Rylwell, LLC, 95 Ark. App. 228, 235 S.W.3d 908 (2006).

Cited: Donathan v. McDill, 304 Ark. 242, 800 S.W.2d 433 (1990).

26-37-203. Conveyance to purchaser — Contest.

(a) If the tax-delinquent land is not redeemed within the thirty-day period, the Commissioner of State Lands shall issue a limited warranty deed to the land.

(b) (1) Except as provided in subdivisions (b)(2) and (3) of this section, all actions to contest the validity of the conveyance shall be brought within one (1) year after the date of the conveyance or thereafter be barred.

(2) A cause of action by a person suffering a mental incapacity, a minor, or a person serving in the United States armed forces during time of war during the two-year period shall be brought within two (2) years after the disability is removed, the minor reaches majority, or the person is released from active duty with the armed forces.

(3) An action to challenge the conveyance to a purchaser of land that was sold at a negotiated sale under § 26-37-101 shall be brought within ninety (90) days after the date of the conveyance or thereafter be barred.

(c) No deed issued after January 1, 1987, by the Commissioner of State Lands shall be void or voidable on the ground that the county did not strictly comply with the laws governing tax-delinquent land if prior to the issuance of the deed the Commissioner of State Lands complied with the laws governing the disposition of tax-delinquent land.

(d) Nothing in this section shall prevent any taxpayer from attacking a deed issued by the Commissioner of State Lands on the ground that taxes have actually been paid.

History. Acts 1983, No. 626, § 4; A.S.A. 1947, § 84-1129; Acts 1987, No. 814, § 5; 1989, No. 938, § 1; 1993, No. 791, § 4; 2003, No. 1215, § 1; 2005, No. 1231, § 4; 2007, No. 1036, § 3.

Amendments. The 1993 amendment substituted "minors, or those serving" for "minority, or serving" in (b)(1); and added (c) and (d).

The 2003 amendment redesignated former (b)(1) as present (b)(1) and (b)(2); in (b)(1), added "except as provided in subdivisions (b)(2) and (3) of this section"; in (b)(2), substituted "causes" for "except as to causes" and inserted "shall be brought ... the armed forces"; deleted former (b)(2); and added (b)(3).

The 2005 amendment, in (b)(3), substituted "land" for "a subdivided lot" and "§ 26-37-101" for "§

26-37-202(b).”

The 2007 amendment substituted “one (1) year” for “two (2) years” in (b)(1).

Effective Dates. Acts 2003, No. 1215, § 5, provided: “This act shall apply to negotiated sales of tax forfeited property that occur on or after October 1, 2003.”

Research References

U. Ark. Little Rock L. Rev.

Survey — Property, 10 U. Ark. Little Rock L.J. 605.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Tax Forfeited Land Redemption, 26 U. Ark. Little Rock L. Rev. 497.

Case Notes

Statute of Limitations.

Statute of Limitations.

Since 50 U.S.C.S. § 525 (now codified at 50 U.S.C.S. app. § 526) tolled the statute of limitations for the time within which a husband and wife had to bring an action to set aside a default judgment that quieted title in favor of a purchaser who bought the husband and wife's property at a tax sale, the trial court erred in denying a motion to set aside the default judgment where the action was filed within two years of husband's retirement from the military, as required by this section. *Small v. Kulesa*, 90 Ark. App. 108, 204 S.W.3d 99 (2005), cert. denied, 126 S. Ct. 427, 163 L. Ed. 2d 325 (U.S. 2005).

Incapacitated sisters could not tack their disability onto their brother's disability for the purpose of extending the redemption period after the brother's land was certified to the Arkansas State Land Commissioner for failure to pay taxes; rather, the sisters had the right to redeem the land within two years after the brother's disability was removed by death. *Givens v. Haybar, Inc.*, 95 Ark. App. 164, 234 S.W.3d 896 (2006).

Debtor who claimed an equitable interest in the property based on an alleged oral rent-to-purchase agreement with the owner could challenge the tax sale and transfer of property to the subsequent purchaser because the state did not file an action in Chancery Court under § 26-38-206, to bar any subsequent claims. Further, § 26-37-203 gave the debtor two hears to contest the validity of the conveyance. *In re Paro*, 362 B.R. 419 (Bankr. E.D. Ark. 2007).

Cited: *Bill's Printing, Inc. v. Carder*, 82 Ark. App. 466, 120 S.W.3d 611 (2003).

26-37-204. Sales set aside.

(a) In the event the sale is set aside by legal action or if the land is proven to be nonexistent or double assessed, the purchaser shall be entitled to reimbursement of moneys paid.

(b) The Commissioner of State Lands shall have the authority to set aside any sale. In the event the Commissioner of State Lands determines that a sale shall be set aside, the purchaser may be entitled to reimbursement of moneys paid to the Commissioner of State Lands.

(c) In cases where sales may be set aside by the Commissioner of State Lands or by legal action by the record owner or the heirs or assigns of the record owner, the record owner or the heirs or assigns of the record owner shall pay all back taxes, penalties, interest, and costs charged against the land.

(d) If the Commissioner of State Lands determines that the owner and all interested parties did not receive the required notice of sale and right to redeem, the Commissioner of State Lands shall:

(1) Set aside the sale; or

(2) Notify the owner and interested parties of the reasons why the Commissioner of State Lands does not believe the sale should be set aside.

(e) As used in this section, “interested party” has the same meaning as in § 26-37-301.

(f) The Commissioner of State Lands shall not be liable for any monetary damages to any owner, interested party, or purchaser of tax delinquent land for any action taken or any omission of action related to the sale of tax delinquent land.

History. Acts 1983, No. 626, § 5; A.S.A. 1947, § 84-1130; Acts 1991, No. 1080, § 2; 2007, No. 706, § 3.

Publisher's Notes. Acts 1991, No. 1080, § 2, provided:

"It is hereby determined by the General Assembly that laws relating to the disposition of tax-delinquent real property are in need of clarification. Therefore, in order to facilitate the tax redemption and sale process and encourage use of the land, this section shall be in full force and effect on July 1, 1991."

Amendments. The 2007 amendment added (d) through (f).

Case Notes

Bona Fide Purchaser.
Reformation.
Reimbursement.
Sale.

Bona Fide Purchaser.

Where a diligent inquiry would not have disclosed tax sale buyers' prior interest in certain real property, since their limited-warranty deed had been cancelled by the Commissioner of State Lands, a vendee of that property was a bona fide purchaser; therefore, the trial court erred in quieting title in the tax sale buyers, even assuming arguendo that the Commissioner had not been authorized under this section to issue the cancellation deed. *Bill's Printing, Inc. v. Carder*, 357 Ark. 242, 161 S.W.3d 803 (2004).

Party claiming bona fide purchaser status is not obliged to make inquiry into the circumstances surrounding the legal legitimacy of a cancellation deed or redemption deed issued by the Commissioner of State Lands. *Bill's Printing, Inc. v. Carder*, 357 Ark. 242, 161 S.W.3d 803 (2004).

Reformation.

Reformation does not apply where land has been forfeited to and sold by the state under an incomplete and defective description. *Undernehr v. Sandlin*, 35 Ark. App. 207, 816 S.W.2d 635 (1991).

Reimbursement.

Where tax sale was void, the buyer was entitled to an order for refund of the amount paid for the tax deed. *Undernehr v. Sandlin*, 35 Ark. App. 207, 816 S.W.2d 635 (1991).

Sale.

Finding against a purchaser was proper where the sale of the property was conducted in accordance with the requirements of Arkansas law and no error existed that would have justified the cancellation of the limited-warranty deed; there were no irregularities or errors in the mailed notice or in the public sale and the "error" complained of was the omission of certain information that the State was not even required to provide. *Bill's Printing, Inc. v. Carder*, 82 Ark. App. 466, 120 S.W.3d 611 (2003), superseded, 357 Ark. 242, 161 S.W.3d 803 (2004).

26-37-205. Distribution of funds.

(a) All moneys collected by the Commissioner of State Lands from the sale or redemption of tax delinquent lands shall be distributed as follows:

(1) (A) First, to the Commissioner of State Lands, the penalties, the collection fees, the sale costs, and the other costs as prescribed by law.

(B) The sale costs shall include, but not be limited to, fees for title work;

(2) Second, to each county an amount equal to the taxes due plus interest and

costs to the county as certified by the county collector, which amount shall be held in an escrow fund administered by and remitted to the counties within one (1) calendar year of their receipt by the Commissioner of State Lands;

(3) (A) Third, to each county an amount equal to the delinquent personal property taxes, plus penalty, of the owner or owners of the delinquent land as certified by the county collector, which amount shall be held in an escrow fund administered by and remitted to the counties after one (1) calendar year of their receipt by the Commissioner of State Lands.

(B) The Commissioner of State Lands shall review the information provided by the county collector and any other interested party to ascertain:

(i) Whether the personal property tax and penalty qualifies to be withheld from the delinquent land sale proceeds; and

(ii) The amount of personal property tax and penalty that qualifies under this subdivision (a)(3) to be withheld.

(C) If the Commissioner of State Lands is required to make a refund of the personal property taxes withheld under subdivision (a)(3)(A) of this section to a purchaser of delinquent lands for any reason, the amount of the refund shall be recovered by the Commissioner of State Lands from the county or counties that originally received the proceeds under this subdivision (a)(3) of this section of the delinquent land sale.

(D) The Commissioner of State Lands shall promulgate rules and forms needed to administer this subdivision (a)(3).

(E) This section does not require the Commissioner of State Lands to search county records to determine whether an owner of tax delinquent land owes delinquent personal property taxes.

(F) This section does not grant a county a right to a lien against real property for the payment of delinquent personal property tax; and

(4) Fourth, to be placed in another escrow fund administered by the Commissioner of State Lands, the remainder, if any.

(b) If no actions are brought within the time limits prescribed under this subchapter, the remaining funds, if any, shall be distributed by the Commissioner of State Lands as follows:

(1) Ten percent (10%) of the remaining funds up to a maximum amount of five hundred dollars (\$500) shall be paid to the Commissioner of State Lands for the administration of the distribution of the funds;

(2) (A) After payment is made to the Commissioner of State Lands pursuant to subdivision (b)(1) of this section, the amount left in the remaining funds shall be paid to the former owners of the tax delinquent land.

(B) (i) "Former owner" means a person, partnership, corporation, or other legal entity capable of owning real property in the State of Arkansas and that holds record title to the real property on the date of sale by the Commissioner of State Lands.

(ii) "Former owner" does not include heirs or relations beyond the first degree of consanguinity.

(C) (i) A former owner must file an application with the Commissioner of State Lands requesting the release of the funds.

(ii) The application shall be provided by the Commissioner of State Lands and shall require proof of ownership of the tax delinquent land as well as

proof of authority to act on behalf of the owner.

(iii) The application may require other information the Commissioner of State Lands deems necessary before the release of the funds.

(D) (i) The former owner shall release and relinquish all rights, title, and interests in and to the tax delinquent land.

(ii) The Commissioner of State Lands shall provide a release deed to the former owner to execute.

(E) In the event of any dispute, claim, or multiple claims of ownership or controversy regarding the release of the funds, the Commissioner of State Lands may require the party or parties to provide a court order to resolve the issues and to establish the party or parties entitled to the remaining funds.

(F) An agreement by a former owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of remaining funds, is enforceable only if the agreement:

(i) Is in writing;

(ii) Clearly sets forth the nature of the property and the services to be rendered;

(iii) Provides a fee of not more than ten percent (10%) of the recovery;

(iv) Is signed by the former owner; and

(v) States the value of the remaining funds before and after the fee or other compensation has been deducted.

(G) (i) An agreement covered by subdivision (b)(2)(F) of this section that provides for compensation that is unconscionable is unenforceable except by the former owner.

(ii) A former owner who has agreed to pay compensation that is unconscionable may maintain an action to reduce the compensation to a conscionable amount.

(iii) The court may award reasonable attorney's fees to a former owner that prevails in the action.

(H) Subdivision (b)(2)(G) of this section does not preclude a former owner from asserting that an agreement covered by subdivision (b)(2)(F) of this section is invalid on grounds other than unconscionable compensation.

(I) (i) The Commissioner of State Lands shall make all funds payable to the former owner.

(ii) No funds shall be made payable to any other person or entity other than the former owner without a court order directing the payment to the other person or entity.

(iii) No interest shall be paid to the former owner on the funds.

(J) (i) Anyone filing a claim or assisting with the filing of a claim that results in the erroneous payment of a claim is responsible for the repayment of all funds paid.

(ii) Any claim filed fraudulently is punishable as a Class D felony; and

(3) (A) Any funds placed in escrow prior to July 1, 2005, shall be held in escrow for five (5) years and at the end of the five-year period, if the funds have not been

distributed, the escrow funds shall escheat to the county in which the property is located.

(B) Any funds placed in escrow on and after July 1, 2005, shall be held for three (3) years, and at the end of the three-year period, if the funds have not been distributed, the escrow funds shall escheat to the county in which the property is located.

(c) All funds distributed to each county by the Commissioner of State Lands from the redemption or sale of tax-delinquent lands, including any interest and costs, are to be distributed to the applicable taxing units where the delinquent land is located within the county in the manner and proportion that the taxes would have been distributed if they had been collected in the year due.

(d) All funds received by a county from the redemption of tax-delinquent land at the county level, including any penalty, interest, and costs, are to be distributed to the applicable taxing units where the delinquent land is located within the county in the manner and proportion that the taxes would have been distributed if they had been collected in the year due.

(e) This section shall be severable, and if any phrase, clause, sentence, or provision of this section is declared to be contrary to the laws of this state, the validity of the remainder of this section shall not be affected.

History. Acts 1983, No. 626, § 6; 1985, No. 1021, § 1; A.S.A. 1947, § 84-1131; Acts 1987, No. 814, § 7; 1989, No. 424, § 1; 1991, No. 1080, § 3; 2003, No. 1215, § 2; 2005, No. 1880, § 1; 2009, No. 400, § 1.

A.C.R.C. Notes. Act 1989, No. 424, § 1, purported to amend § 26-37-105, but actually amended this section.

Publisher's Notes. Acts 1991, No. 1080, § 3, provided:

"It is the intent of the General Assembly of the State of Arkansas that the provisions of this section be applied retroactively to sales taking place prior to the effective date of this act as well as sales taking place thereafter. Furthermore, it is hereby found and determined by the Seventy-Eighth General Assembly that current law excludes former owners from distribution of remaining funds and that such exclusion creates an unnecessary hardship on former owners at this time. Moreover, tax delinquent land sales are scheduled to commence prior to the regular effective date of acts passed by the Seventy-Eighth General Assembly, making this enacting date necessary in order to prevent additional hardships to former owners. Therefore, this section shall be in full force and effect from and after the passage and approval of this act."

Amendments. The 2003 amendment, in (b), substituted "the time limits prescribed under this subchapter" for "two (2) years after the date of conveyance as provided in § 26-37-202" and inserted "of State Lands"; redesignated former (b)(1) and (b)(1)(A) as (b)(1)(A)(i) and (b)(1)(A)(ii); in (b)(1)(A)(ii), inserted "of State Lands" twice and substituted "before" for "to obtain prior to"; and made minor stylistic changes.

The 2005 amendment added (a)(1)(B); rewrote (b); and added (e).

The 2009 amendment, in (a), inserted (a)(3), redesignated the subsequent subdivision accordingly, substituted "Fourth" for "Third" in (a)(4), and made a related change.

Effective Dates. Acts 2003, No. 1215, § 5, provided: "This act shall apply to negotiated sales of tax forfeited property that occur on or after October 1, 2003."

Research References

U. Ark. Little Rock L. Rev.

Survey — Property, 10 U. Ark. Little Rock L.J. 605.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Tax Forfeited Land Redemption, 26 U. Ark. Little Rock L. Rev. 497.

26-37-206. Void sales.

If the taxes charged on any land or lot, or part thereof, are regularly paid, and the land or

lot erroneously returned delinquent and sold for taxes, the sale of the land or lot shall be void and the money paid by the purchaser at such a void sale shall be returned to him by the officer having the money in charge, on the order of the county court that the land was erroneously returned delinquent and sold for taxes.

History. Acts 1883, No. 114, § 210, p. 199; C. & M. Dig., § 10181; Pope's Dig., § 13964; A.S.A. 1947, § 84-1116.

Cross References. Adverse claims to tax title, § 26-38-107.

Case Notes

In General.
Confirmation of Title.
Reformation.
Refund.
Transfer of Title.

In General.

Where owner attempts to pay his taxes and oversight or mistake of collector prevents him from doing so, sale of land for taxes is void. *Brown v. Bridges*, 227 Ark. 1006, 304 S.W.2d 939 (1957).

Confirmation of Title.

Although forfeiture of lands on which taxes had been paid was void, confirmation of title obtained under tax sale barred all controversy as to title. *Lonergan v. Baber*, 59 Ark. 15, 26 S.W. 13 (1894).

Where land upon which taxes had been paid was erroneously sold for taxes, owner who sold land before confirmation of tax title could show the invalidity of the tax sale as a defense to suit on his warranty of title, although confirmation barred all controversy as to title. *Lonergan v. Baber*, 59 Ark. 15, 26 S.W. 13 (1894).

Reformation.

Reformation does not apply where land has been forfeited to and sold by the state under an incomplete and defective description making it void. *Undernehr v. Sandlin*, 35 Ark. App. 207, 816 S.W.2d 635 (1991).

Refund.

Where tax sale was void, the buyer was entitled to an order for refund of the amount paid for the tax deed. *Undernehr v. Sandlin*, 35 Ark. App. 207, 816 S.W.2d 635 (1991).

Transfer of Title.

Plaintiff acquired no title by tax sale which was void. *Undernehr v. Sandlin*, 35 Ark. App. 207, 816 S.W.2d 635 (1991).

Cited: *Board of Conference Claimants v. Phillips*, 187 Ark. 1113, 63 S.W.2d 988 (1933).

26-37-207. Invalid donation by state.

If the title of any person holding lands by virtue of a donation deed from the state shall, for any cause, be determined to be invalid in any action brought by or against him at law or in equity, then such donor, his heirs, successors, and assigns, shall be entitled, in addition to all other available remedies, to a lien upon the lands for the amount of the taxes, penalty, and costs for which the lands were originally forfeited and sold, plus all taxes on the lands which have subsequently been paid by the purchaser, his heirs, successors, and assigns, together with all taxes and improvement district assessments which may have been paid on the lands following the donation, with interest on the amount paid for the lands and on the taxes and assessments from the respective dates of payment until repaid at the rate of six percent (6%) per annum. The court rendering judgment or decree against the validity of the donation shall declare and enforce the lien.

History. Acts 1939, No. 269, § 1; A.S.A. 1947, § 84-1119.

Publisher's Notes. Acts 1939, No. 269, § 2, provided that the provisions of this act shall be applicable both retroactively and prospectively.

Case Notes

Applicability.
Costs.
Quieting Title.

Applicability.

Where title to property was acquired by improvement district in 1938 under foreclosure proceedings for delinquent benefits assessments and while title was in the district property was sold to state for nonpayment of 1939 general taxes, deed from state in 1943 (title still being in district) was void, and this section had no applicability. *Baiers v. Cammack*, 207 Ark. 827, 182 S.W.2d 938 (1944).

Costs.

Where owner made valid tender of taxes due to holder of tax title, trial court did not err in assessing costs against holder of tax title where it determined tax title was void. *Schuman v. Mosley*, 220 Ark. 426, 248 S.W.2d 103 (1952).

Quieting Title.

Although tax sale is invalid, owners cannot obtain decree quieting title without paying taxes for intervening years. *Buschow Lumber Co. v. Witt*, 212 Ark. 995, 209 S.W.2d 464 (1948). Mortgagees who purchased mortgaged premises at a tax sale during the pendency of a foreclosure of the mortgage were merely paying taxes they were obligated to pay and were not entitled to reimbursement for the money expended by them in so purchasing the premises on the quieting of title in the mortgagee. *Booth v. Peoples Loan & Inv. Co.*, 248 Ark. 1213, 455 S.W.2d 868 (1970).

Cited: *Bell v. Board of Dirs.*, 109 Ark. 433, 160 S.W. 390 (1913); *Hutton v. King*, 134 Ark. 463, 205 S.W. 296 (1918).

26-37-208. Wrong name in tax book.

No sale of any land or lot for delinquent taxes shall be considered invalid on account of its having been charged on the tax book in any other name than that of the rightful owner if the land or lot is, in other respects, sufficiently described on the tax books and the taxes for which the land or lot is sold are due and unpaid at the time of the sale.

History. Acts 1883, No. 114, § 153, p. 199; C. & M. Dig., § 10118; Pope's Dig., § 13882; A.S.A. 1947, § 84-1120.

Case Notes

Cited: *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

26-37-209. Compensation for improvements.

(a) (1) No purchaser under this chapter of any land or town lot or city lot nor any person claiming under him or her shall be entitled to any compensation for any improvement that he or she shall make on the land or town lot or city lot within the time frame established in § 26-37-203.

(2) No purchaser of land that was sold at a negotiated sale under § 26-37-101 shall be entitled to any compensation for any improvement that he or she makes to the land within the time frame established in § 26-37-203.

(b) (1) For an improvement made after the expiration of the time frame established in §

26-37-203, the purchaser under this chapter shall be allowed the full cash value of the improvement, and the allowance shall be a charge upon the land.

(2) For an improvement made after the expiration of the time frame established in § 26-37-203 to a subdivided lot that was purchased at a negotiated sale under § 26-37-202(b), the purchaser shall be allowed the full cash value of the improvement, and the allowance shall be a charge upon the land.

History. Acts 1883, No. 114, § 155, p. 199; C. & M. Dig., § 10120; Pope's Dig., § 13884; A.S.A. 1947, § 84-1121; Acts 2003, No. 1215, § 3; 2005, No. 1231, § 5; 2007, No. 1036, § 4.

Amendments. The 2003 amendment redesignated former (a) as present (a)(1); added "Except as provided in subdivision (a)(2) of this section" in (a)(1); added (a)(2); redesignated former (b) as present (b)(1); added "Except as provided in subdivision (b)(2) of this section" in (b)(1); added (b)(2); and made minor stylistic changes throughout.

The 2005 amendment, in (a)(2), substituted "land" for "a subdivided lot" and "§ 26-37-101" for "§ 26-37-202(b)."

The 2007 amendment rewrote the section.

Effective Dates. Acts 2003, No. 1215, § 5, provided: "This act shall apply to negotiated sales of tax forfeited property that occur on or after October 1, 2003."

Cross References. Ejectment proceedings where land held by tax title, § 18-60-212.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Tax Forfeited Land Redemption, 26 U. Ark. Little Rock L. Rev. 497.

Case Notes

In General.

Applicability.

Date of Sale.

Purchasers — Claimants.

Value of Improvements.

In General.

An action to redeem lands is not subject to dismissal for failure to file affidavit of tender of taxes and value of improvements, but the recovery of such taxes and improvements is required before a writ of possession will issue. *Reynolds v. Plants*, 196 Ark. 116, 116 S.W.2d 350 (1938); *Farrell v. Sanders*, 204 Ark. 1068, 166 S.W.2d 889 (1942).

Nonpossessory suit in equity to cancel alleged void tax sale could not be converted into action in ejectment so as to deprive defendant of all rights to have compensation for his improvements. *Patterson v. McKay*, 202 Ark. 241, 150 S.W.2d 196 (1941).

Where land was redeemed under Acts 1934 (2nd Ex. Sess.), No. 2, it was proper for court to offset value of improvements with rents and profits. *Rodgers v. Massey*, 204 Ark. 225, 161 S.W.2d 378 (1942).

Applicability.

Provisions in Act of January 10, 1857, authorizing allowance for improvements had no applicability to lands sold by a county clerk before forfeiture to state. *Hershy v. Thompson*, 50 Ark. 484, 8 S.W. 689 (1887); *Alexander v. Capps*, 100 Ark. 488, 140 S.W. 722 (1911) (preceding decisions under prior law).

This section has no applicability to one who has redeemed forfeited land from the state. *Dedmon v. Hawkins*, 211 Ark. 840, 203 S.W.2d 183 (1947).

Date of Sale.

Where improvements are made before purchase from state, purchaser will not be compensated. *Anderson v. Williams*, 59 Ark. 144, 26 S.W. 818 (1894).

Provision that purchaser at tax sale is not entitled to compensation for improvements made within

two years of "sale" means the original sale (whether to state or individual), so that purchaser of land from state can be entitled to a lien for improvements although made less than two years after date of his deed, as this section runs from the time the state originally acquired the land. *Gulley v. Blake*, 214 Ark. 578, 217 S.W.2d 257 (1949).

Provision in this section prohibiting compensation to purchaser for improvements made on land acquired by tax title if made within two years from date of sale refers to date of sale to state, and not date of tax deed from state. *Topham v. Hodges*, 215 Ark. 407, 221 S.W.2d 27 (1949).

Where vacant lots were forfeited to state in 1933 for nonpayment of 1932 taxes, and state deeded lots to plaintiff in 1940, and state by mistake transferred same lots to defendants in 1946, who made improvements thereon, and plaintiff filed an action to cancel deeds to the defendant, defendants were entitled to recover cash value of improvements from plaintiff, as improvements were made over two years after sale to state in 1933. *Topham v. Hodges*, 215 Ark. 407, 221 S.W.2d 27 (1949).

Tax purchaser who makes improvements on property held under defective tax title is not entitled to recover for the improvements in absence of proof that they were made more than two years after date of tax sale. *Teer v. Plant*, 238 Ark. 92, 378 S.W.2d 663 (1964).

Purchasers — Claimants.

Tax purchaser has right to make and recover for improvements without exacting showing of belief in the integrity of his title as required by § 18-60-213. *Bender v. Bean*, 52 Ark. 132, 12 S.W. 180 (1889), modified, 52 Ark. 146, 12 S.W. 241 (1889); *Beloate v. State ex rel. Att'y Gen.*, 187 Ark. 17, 58 S.W.2d 423 (1933); *Wilkins v. Maggard*, 190 Ark. 532, 79 S.W.2d 1003 (1935).

If claimant asserts right to redeem, he must pay proper amount for improvements when ascertained; however, a court should not order land sold in aid of effort to redeem. *Waterman v. Irby*, 76 Ark. 551, 89 S.W. 844 (1905).

Occupying tax title purchaser may recover value of all improvements made by him, irrespective of his belief in the integrity of his tax title and regardless of color of title as reflected by his deed or other muniments of title. *Wilkins v. Maggard*, 190 Ark. 532, 79 S.W.2d 1003 (1935).

Assignee of a donation certificate is a trespasser and has no rights under this section. *Young v. Pumphrey*, 191 Ark. 98, 83 S.W.2d 84 (1935).

In redeeming lands under Acts 1934 (2nd Ex. Sess.), No. 2, § 3, a donee had right to bring action for improvements while still in possession. *Ragan v. Henson*, 192 Ark. 679, 94 S.W.2d 117 (1936).

Person in possession of land who made improvements under donation certificate had a right, upon redemption of the property, to recover lien declared for value of improvements made, regardless of whether land was homestead of the one redeeming it. *Page v. Francis*, 196 Ark. 822, 120 S.W.2d 161 (1938).

Agent of original owner of land was not entitled to recover for improvements where he permitted land to be sold for taxes and secured tax deed in his name. *Harris v. Gilmore*, 197 Ark. 641, 124 S.W.2d 810 (1939).

Where nephew of life tenant (being one of the heirs) obtained tax deed from state, it amounted to a redemption from tax sale, and he was not entitled to be paid for improvements. *Smith v. Davis*, 200 Ark. 547, 140 S.W.2d 126 (1940).

Where holder of donation certificate forfeited his rights, he could not recover for improvements from subsequent purchaser from state. *Ware v. Dazey*, 201 Ark. 116, 144 S.W.2d 463 (1940).

Purchaser from state under deed void because title to property was at the time in improvement district was not entitled to recover from subsequent purchaser from the district for improvements made while title was in the district. *Baiers v. Cammack*, 207 Ark. 827, 182 S.W.2d 938 (1944).

Provisions allowing cash value for improvements made on land acquired by tax deed does not require that purchaser making improvements be an innocent purchaser; so fact that another and prior purchaser recorded his deed does not prevent second purchaser from recovering cash value of improvements. *Topham v. Hodges*, 215 Ark. 407, 221 S.W.2d 27 (1949).

Where husband redeemed property from taxes for benefit of his wife, the life tenant, he was not entitled to claim title as against the remaindermen on the ground of improvements, since improvements were not made by the purchaser of a tax title. *Ingram v. Seaman*, 223 Ark. 414, 267 S.W.2d 6 (1954).

Deed conveying only life estate is not sufficient "color of title" to bring grantee under the benefits

of this section. *Perry v. Rye*, 223 Ark. 594, 267 S.W.2d 507 (1954).

Value of Improvements.

Provision that improvements shall be a "charge" upon the land means that they shall be a "lien" upon the land. *Page v. Francis*, 196 Ark. 822, 120 S.W.2d 161 (1938).

Evidence justified award for improvements made under defective tax title. *Topham v. Hodges*, 215 Ark. 407, 221 S.W.2d 27 (1949).

Purchaser held not entitled to recover for improvements in absence of proof of their value to property. *Teer v. Plant*, 238 Ark. 92, 378 S.W.2d 663 (1964).

Cited: *Patterson v. McKay*, 202 Ark. 241, 150 S.W.2d 196 (1941).

26-37-210. Sale of timber, oil, gas, or mineral rights.

(a) If a timber right, an oil right, a gas right, or a mineral right is owned or assessed separate from the fee in the land and the taxes due on the right are not paid, the timber right, oil right, gas right, or mineral right is subject to the tax laws governing forfeiture and sale of tax-delinquent land.

(b) Any timber right, oil right, gas right, or mineral right forfeited and certified to the Commissioner of State Lands is subject to disposition as provided in this chapter.

History. Acts 1929, No. 129, § 5; Pope's Dig., § 8633; A.S.A. 1947, § 84-1122; Acts 2007, No. 827, § 211.

Amendments. The 2007 amendment rewrote the section.

Case Notes

Cited: *Herford v. Scales*, 240 Ark. 436, 399 S.W.2d 653 (1966).

26-37-211. Purchaser of timber rights.

The sale of timber rights for delinquent taxes shall vest the purchaser with whatever right to enter, cut, and remove the timber that was possessed by the former owner.

History. Acts 1905, No. 303, § 4, p. 738; C. & M. Dig., § 10095; Pope's Dig., § 13858; A.S.A. 1947, § 84-1123.

26-37-212. Dedication of land as public park.

If an owner of land dedicates it to the city where the land is located for park purposes by a filed and recorded plat and bill of assurance and there are any delinquent general taxes of the state or a political subdivision of the state against the land, upon a showing that title to the land is dedicated to the city as a public park, the Commissioner of State Lands and the proper county officials of the county where the land lies shall cancel any delinquent general taxes.

History. Acts 1941, No. 437, § 1, A.S.A. 1947, § 84-1124; Acts 2007, No. 827, § 212.

Amendments. The 2007 amendment rewrote the section.

26-37-213. Record of lands forfeited.

(a) The Commissioner of State Lands shall keep a permanent record of all lands forfeited to the state for taxes and note in the record in whose name the forfeited land was listed, for what year or years it was taxed, the amount of tax due thereon, and when forfeited.

(b) The record shall be open to the inspection of anyone.

History. Acts 1987, No. 814, § 4.

Research References

U. Ark. Little Rock L.J.

Survey — Property, 10 U. Ark. Little Rock L.J. 605.

26-37-214. Limitation on liability.

Except as provided in § 26-37-204(a) and (b), the Commissioner of State Lands as well as the county from which the property is certified shall be immune from liability for damages, costs, fees, or compensation for improvements made to the property arising from the sale of tax delinquent property even if the sale is found to be invalid or void as a result of error by the Commissioner of State Lands or the county.

History. Acts 2003, No. 1215, § 4.

Effective Dates. Acts 2003, No. 1215, § 5, provided: “This act shall apply to negotiated sales of tax forfeited property that occur on or after October 1, 2003.”

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Homestead Owner Redemption, 26 U. Ark. Little Rock L. Rev. 502.

Subchapter 3

— Redemption of Realty to Be Sold for Taxes

- 26-37-301. Notice to owner.
- 26-37-302. Payment required.
- 26-37-303. Redemption deed.
- 26-37-304. [Repealed.]
- 26-37-305. Rights of persons under disability.
- 26-37-306. Procedure for redemption by persons under disability.
- 26-37-307. Joint tenant, tenant in common, or coparcener.
- 26-37-308. Portion of tract of land.
- 26-37-309. Uncertified sales to state.
- 26-37-310. Procedure for redeeming land certified to state.
- 26-37-311. Proceedings to redeem prior to sale by state.
- 26-37-312. Reassessment of unimproved land in municipality.
- 26-37-313. Reassessment of parcels of land upon depreciation since forfeiture.
- 26-37-314. Sale of tax delinquent severed mineral interests prohibited.
- 26-37-315. Redemption of homestead by taxpayer.
- 26-37-316. Notice requirement.

Publisher's Notes. Acts 1999, No. 42, § 1, provided:

“Disposition of Unclaimed Redemption Money. All funds derived in prior years for the redemption of land pursuant to § 139 of Act 114 of 1883 as amended, formerly compiled as Arkansas Statute 84-1205, shall be transferred, by county court order, to the county general fund.”

Cross References. Purchaser at delinquent sale of improvement district may redeem, § 14-86-1601 et seq.

Preambles. Acts 1887, No. 13 contained a preamble which read:

“Whereas, 1st. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled ‘An Act to enforce the payment of Overdue Taxes,’ approved March 12, 1881, when the taxes for the

alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

“Whereas, 2d. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

“Whereas, 3d. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

“Now, therefore....”

Effective Dates. Acts 1877, No. 34, § 7: effective on passage.

Acts 1883, No. 114, § 226: effective on passage.

Acts 1891, No. 151, § 9: effective on passage.

Acts 1893, No. 96, § 4: effective on passage.

Acts 1895, No. 31, § 2: effective on passage.

Acts 1919, No. 142, § 4: approved Mar. 1, 1919. Emergency declared.

Acts 1923, No. 302, § 2: effective 90 days after passage.

Acts 1925, No. 359, § 3: effective on passage.

Acts 1929, No. 129, § 9: Mar. 13, 1929. Emergency clause provided: “Due to the fact that many of the lands of this State have been forfeited for the nonpayment of taxes and have been certified to the State and dropped from the tax books of the respective counties, and experience has shown that such lands will not be bought under existing laws, now in order to augment the revenues of the State by encouraging the sale of such lands, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval.”

Acts 1943, No. 282, § 3: Mar. 23, 1943. Emergency clause provided: “It being desirable that forfeited lands be as speedily restored to taxation as is practicable and fair, in order that the revenues of the several towns, cities, counties and the State may be increased and immediate relief given those thereto entitled, an emergency is found and is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval.”

Acts 1993, No. 791, § 10: Mar. 30, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that the laws relating to the collection, redemption and sale of tax delinquent real property are in need of clarification; that Arkansas Courts have repeatedly voided tax deeds in instances where the county has not strictly complied with statutes; that such holdings have placed a cloud on tax deeds issued by the Commissioner of State Lands; that the present method whereby the Commissioner of State Lands disposes of tax delinquent land meets due process requirements; consequently, when the Commissioner of State Lands complies with the statutes set forth for his office to follow, tax deeds issued should not be void or voidable due to defects in the county procedure, except in cases where taxes have actually been paid. Further, the present situation has a chilling effect on the collection of taxes and encourages the nonpayment of taxes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 864, § 8: Apr. 2, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that numerous tax delinquent severed mineral interests exist on the records of the Commissioner of State Lands office; that current laws requiring the sale of such severed mineral interests are not feasible; consequently, it is imperative that a procedure be established whereby the state can collect benefits from tax delinquent severed mineral interests. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 714, § 7: Mar. 21, 1995. Emergency clause provided: “It is hereby found and

determined by the General Assembly of the State of Arkansas that the laws relating to the forfeiture, sale and redemption of tax delinquent lands are in need of clarification and that this act would clarify certain problems that have arisen. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force from and after its passage and approval.”

Acts 2003, No. 1376, § 4: January 1, 2004.

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 988 et seq.

C.J.S. 85 C.J.S., Tax., § 841 et seq.

Case Notes

In General.

Construction.

Right to Redeem.

Time to Redeem.

Unit Tax Ledger System.

In General.

There can be no such thing as an innocent purchaser at a tax sale. *Bradbury v. Johnson*, 104 Ark. 108, 147 S.W. 865 (1912); *Schuman v. Westbrook*, 207 Ark. 495, 181 S.W.2d 470 (1944). Where land included in tract forfeited for taxes had been assessed and taxes paid thereon for years thereafter, it was presumed that there was a redemption from the forfeiture. *Koonce v. Woods*, 211 Ark. 440, 201 S.W.2d 748 (1947).

Construction.

Redemption laws must be liberally construed. *Little v. McGuire*, 113 Ark. 497, 168 S.W. 1084 (1914).

Right to Redeem.

Attachment levied upon land that has been struck off to the state for nonpayment of taxes only binds such interest as the owner had at the time, which is a right of redemption within two years. *Merrick & Fenno v. Hutt*, 15 Ark. 331 (1854) (decision under prior law).

Burden of proof rests upon person seeking to redeem to sustain his title. *Waterman v. Irby*, 76 Ark. 551, 89 S.W. 844 (1905).

Right to redeem from tax sale is conferred by statute and does not exist independently of it; therefore, statutory requirements must be substantially complied with by one who seeks to redeem. *Cook v. Jones*, 80 Ark. 43, 96 S.W. 620 (1906); *Nelson v. Pierce*, 119 Ark. 291, 177 S.W. 899 (1915).

Right to redeem from a tax sale is governed by statute in force and effect at time the sale was made. *Hoggs v. Nichols*, 134 Ark. 280, 204 S.W. 211 (1918).

Statutory right to redeem is self-executing and requires no judicial proceeding to make it effective. *George v. Hefley*, 182 Ark. 678, 32 S.W.2d 445 (1930).

Redemption right is available in all cases, not only where the sale was defective, but where it was perfectly regular and valid. *George v. Hefley*, 182 Ark. 678, 32 S.W.2d 445 (1930).

Right of redemption is not enlarged nor diminished by the fact that state has sold and conveyed the interest acquired by it at tax sale. *Harris v. Harris*, 195 Ark. 184, 112 S.W.2d 40 (Ark. 1938).

Redemption provisions require a cotenant who wishes any portion of a tract to redeem the entire tract where the taxes thereon have been assessed in solido. *Harris v. Harris*, 195 Ark. 184, 112 S.W.2d 40 (Ark. 1938).

Right to redeem runs with the land, and any person who would otherwise acquire title takes with notice. *Koonce v. Woods*, 211 Ark. 440, 201 S.W.2d 748 (1947); *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

Time to Redeem.

Where certificate of tax sale was assigned, tender of redemption money to assignee was good; but after expiration of the time prescribed by statute for redeeming, no waiver or anything short of an acceptance of the redemption money would make it good. *Thweatt v. Black*, 30 Ark. 732 (1875) (decision under prior law).

Last day given for redemption of land sold for taxes is the second anniversary of the sale, with the

sale day excluded from the computation. *Hare v. Carnall*, 39 Ark. 196 (1882).
Action to redeem property sold to the state for nonpayment of taxes is a proceeding to enforce a legal right, and the doctrine of laches, being a defense in equity, has no applicability. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

Unit Tax Ledger System.

In counties operating under the unit tax ledger system, the collector is substituted for the county clerk for purposes of redemption from delinquent tax sales. *Vanderbilt v. Washington*, 249 Ark. 1070, 463 S.W.2d 670 (1971).

26-37-301. Notice to owner.

(a) (1) Subsequent to receiving tax-delinquent land, the Commissioner of State Lands shall notify the owner, at the owner's last known address as certified by the county, by certified mail, of the owner's right to redeem by paying all taxes, penalties, interest, and costs, including the cost of the notice.

(2) All interested parties shall receive notice of the sale from the Commissioner of State Lands in the same manner.

(3) If the notice by certified mail is returned unclaimed, the Commissioner of State Lands shall mail the notice to the owner or interested party by regular mail.

(4) If the notice by certified mail is returned undelivered for any other reason, the Commissioner of State Lands shall send a second notice to the owner or interested party at any additional address reasonably identifiable through the examination of the real property records properly filed and recorded in the office of the county recorder where the property is located as follows:

(A) The address shown on the deed to the owner;

(B) The address shown on the deed, mortgage, assignment, or other filed and recorded document to the interested party; or

(C) Any other corrected or forwarding address on file with the county collector or county assessor.

(b) (1) The notice to the owner or interested party shall also indicate that the tax-delinquent land will be sold if not redeemed prior to the date of sale.

(2) The notice shall also indicate the sale date, and that date shall be no earlier than one (1) year after the land is certified to the Commissioner of State Lands.

(c) As used in this section, "owner" and "interested party" means any person, firm, corporation, or partnership holding title to or an interest in the property by virtue of a bona fide recorded instrument at the time of certification to the Commissioner of State Lands.

(d) The Commissioner of State Lands shall not be required to notify, by certified mail or by any other means, any person, firm, corporation, or partnership whose title to or interest in the property is obtained subsequent to certification to the Commissioner of State Lands.

(e) (1) If the Commissioner of State Lands fails to receive proof that the notice sent by certified mail under this section was received by the owner of a homestead, then the Commissioner of State Lands or his or her designee shall provide actual notice to the owner of a homestead by personal service of process at least sixty (60) days before the date of sale.

(2) As used in this subsection:

(A) "Homestead" means the same as defined in § 26-26-1122; and

(B) “Owner of a homestead” means:

- (i)** Every owner if the homestead is owned by joint tenants; and
- (ii)** Either the husband or the wife if the homestead is owned by

tenants by the entirety.

(3) The owner of a homestead shall pay for the additional cost of the notice by personal service of process under this subsection.

History. Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5; 1993, No. 791, § 5; 1995, No. 714, § 3; 2003, No. 1376, § 2; 2005, No. 1231, § 6; 2007, No. 706, § 4; 2007, No. 827, § 213; 2007, No. 1036, § 5; 2009, No. 655, § 5.

Amendments. The 2003 amendment added subsection (e).

The 2005 amendment inserted “bona fide” in (c).

The 2007 amendment by No. 706 inserted “as certified by the county” in (a)(1); deleted “known to the Commissioner of State Lands” following “parties” in (a)(2); and added (a)(3) and (a)(4).

The 2007 amendment by No. 827, in (e), deleted “as defined under § 26-26-1118(b)” following homestead” in two places in (1), in (2) deleted “owner of a homestead” means” in the introductory paragraph, added (A) and (B), and subdivided the remainder of the text into (i) and (ii), and made related changes.

The 2007 amendment by No. 1036 substituted “one (1) year” for “two (2) years” in (b)(2).

The 2009 amendment substituted “county recorder where” for “circuit clerk in the county wherein” in (a)(4), and made minor stylistic changes.

Effective Dates. Acts 2003, No. 1376, § 4, provided: “This act shall become effective on January 1, 2004.”

Research References

U. Ark. Little Rock L. Rev.

Notes, Property — Notice to Mortgagees in Tax Sales, 7 U. Ark. Little Rock L.J. 437.

Survey — Property, 10 U. Ark. Little Rock L.J. 605.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Homestead Owner Redemption, 26 U. Ark. Little Rock L. Rev. 502.

Annual Survey of Caselaw, Tax Law, 26 U. Ark. Little Rock L. Rev. 975.

Note, Constitutional & Property Law — Fourteenth Amendment Due Process Clause & Notice to Be Heard — It Felt So Right But Was All So Wrong: United States Supreme Court Rules Arkansas's Tax-Foreclosure Notice Procedure Fails to Satisfy Due Process Clause When Certified Mail Notice Returns “Unclaimed” (Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415, 2006 U.S. LEXIS 3451 (2006)), 30 U. Ark. Little Rock L. Rev. 179.

Case Notes

Constitutionality.

Compliance.

Lack of Compliance.

Last Known Address.

Notice.

Constitutionality.

This section fulfills constitutional due process requirements and provides sufficient notice to nonresident landowners prior to their property being sold. Tsann Kuen Enters. Co. v. Campbell, 355 Ark. 110, 129 S.W.3d 822 (2003).

Compliance.

Trial court properly found that a state land commissioner strictly complied with this section where the commissioner sent notice by certified mail to the taxpayers concerning the impending sale of their property for delinquent taxes; the statute does not require a state land commissioner to take every step possible to see that the letter arrives in the property owner's hands. Jones v. Double “D” Props., 352 Ark. 39, 98 S.W.3d 405 (2003).

The Commissioner of State Lands provided adequate notice to a prior owner of a tax deficiency

and tax sale where there was some confusion at the county level as to the last known address, the commissioner mailed the notice to the address certified by the county, and the former owner had not furnished its correct address as required by § 26-35-705. *Mays v. St. Pat Props., LLC*, 357 Ark. 482, 182 S.W.3d 84 (2004), cert. denied, 543 U.S. 943, 125 S. Ct. 353 (2004).

Tax commissioner strictly complies with this section when, prior to a tax sale, it sends notice by certified mail to the last known address of the property owner; moreover, this section does not require the commissioner to take every step possible to ensure that the notice arrives in the property owner's hand. *Jones v. Flowers*, 359 Ark. 443, 198 S.W.3d 520 (2004), rev'd, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).

Where state had attempted to provide the property owners and delinquent tax payers with notice, both via certified mail and through publication in the newspaper, it had complied with the provisions of this section and the tax sale was valid. *Jones v. Flowers*, 359 Ark. 443, 198 S.W.3d 520 (2004), rev'd, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).

Where tax notices sent to landowner contained the sale dates and the tracts offered for sale at public auctions on those dates, the requirements of this section were satisfied. *Price v. Rylwell, LLC*, 95 Ark. App. 228, 235 S.W.3d 908 (2006).

Although debtor did not receive notice of a purchase of property that was sold pursuant to a tax sale because the debtor was not on record as having an interest in the property, the debtor had established that she nevertheless had an equitable interest in the property because she was in possession of it, she claimed to have an oral rent-to-purchase agreement with the owner, and she had made improvements on the property. The debtor was thus entitled to challenge the transfer through a tax sale made to the purchaser. *In re Paro*, 362 B.R. 419 (Bankr. E.D. Ark. 2007).

Taxpayer's action to set aside a limited warranty deed and to quiet title in the taxpayer's name was properly dismissed because the Arkansas Commissioner of State Lands strictly complied with the notice requirements in subdivisions (a)(1) and (b) of this section, and the notice of a tax sale of the taxpayer's real property provided by the Commissioner met federal due process constraints. *Morris v. Landnpulaski, LLC*, 2009 Ark. App. 356, — S.W.3d — (2009).

Lack of Compliance.

Buyer's tax deed was properly voided because the Commissioner of State Lands failed to notify the bank as an interested party since it held a recorded interest in the property at the time of certification, and the right to challenge the tax sale based on the failure to give notice to the bank passed to the mortgagor when it acquired an interest in the property through the foreclosure sale. *RWR Props. v. Mid-State Trust VIII*, 102 Ark. App. 115, 282 S.W.3d 297 (2008), review denied, *RWR Props. v. Mid-State Trust VIII*, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 582 (Sept. 4, 2008).

Last Known Address.

Where the Land Commissioner first sent certified notice to the wrong address, but then sent another certified notice to the correct address, the second notice satisfied the statutory notice requirement. *Wilson v. Daniels*, 64 Ark. App. 181, 980 S.W.2d 274 (1998).

Notice.

Negotiated tax sale to the purchasers was not void for lack of notice to the mortgage holder where it had received actual notice of the negotiated sale, but had taken no action, and the lack of notice of a public tax sale did not deprive it of due process because a public sale had not taken place and as a result, no property interest was lost and no objections to such a sale were necessary. *Citifinancial Mortg. Co. v. Matthews*, 372 Ark. 167, 271 S.W.3d 501 (2008).

Plain language of the statute only requires notice to a property owner "by certified mail." The statute does not require actual notice to the property owner. *Morris v. Landnpulaski, LLC*, 2009 Ark. App. 356, — S.W.3d — (2009).

Summary judgment was appropriate because there was no dispute that notice to the landowner of the pending tax sale was a single unclaimed letter sent by certified mail; some additional step reasonably calculated to give the landowner notice was required, and a mailing to the other landowners did not satisfy the requirements of due process. *RWR Props. v. Young*, 2009 Ark. App. 332, — S.W.3d — (2009).

Trial court erred in awarding summary judgment to a lender in its foreclosure action against a buyer of property at a tax sale because there was no requirement under subdivision (a)(1) of this section that the lender receive actual notice of the tax sale; there was a question as to whether

the Arkansas Commissioner of State Lands was required to take any additional steps to provide the lender with notice. *Jarsew, LLC v. Green Tree Servicing, LLC*, 2009 Ark. App. 324, — S.W.3d — (2009).

Cited: *Bill's Printing, Inc. v. Carder*, 82 Ark. App. 466, 120 S.W.3d 611 (2003).

26-37-302. Payment required.

(a) In order to redeem, whether with the county collector or the Commissioner of State Lands, and in order to purchase at the Commissioner's sale, the redeemer or purchaser of tax-delinquent land shall pay all delinquent taxes, plus:

- (1) Ten percent (10%) simple interest for each year of delinquency;
- (2) A ten percent (10%) penalty for each year of the delinquency; and
- (3) The costs incurred by the county and the Commissioner of State Lands.

(b) The penalties and interest shall accrue beginning on October 11 in the year of delinquency.

History. Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5.

Research References

U. Ark. Little Rock L.J.

Survey — Property, 10 U. Ark. Little Rock L.J. 605.

26-37-303. Redemption deed.

(a) If the owner redeems the tax-delinquent land, the Commissioner of State Lands shall issue a redemption deed and record it in the county wherein the land is located.

(b) The fee for the redemption deed and the fee for recording the deed shall be borne by the owner.

History. Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5.

Research References

U. Ark. Little Rock L.J.

Survey — Property, 10 U. Ark. Little Rock L.J. 605.

Case Notes

Bona Fide Purchasers.

Bona Fide Purchasers.

Party claiming bona fide purchaser status is not obliged to make inquiry into the circumstances surrounding the legal legitimacy of a cancellation deed or redemption deed issued by the Commissioner of State Lands. *Bill's Printing, Inc. v. Carder*, 357 Ark. 242, 161 S.W.3d 803 (2004).

26-37-304. [Repealed.]

Publisher's Notes. This section, concerning timber rights, was repealed by Acts 1993, No. 791, § 6. The section was derived from Acts 1905, No. 303, § 3, p. 738; C. & M. Dig., § 10097; Pope's Dig., § 13861; A.S.A. 1947, § 84-1202.

26-37-305. Rights of persons under disability.

(a) All land or a city lot or town lot belonging to an insane person, minor person, or person in confinement that is sold for taxes may be redeemed within two (2) years after

the expiration of the person's disability.

(b) (1) In redemption of any land described in subsection (a) of this section by any person after the expiration of a disability described in subsection (a) of this section, the purchaser shall be required to account for all timber, gas, oil, or mineral substance taken from the land while holding under the tax title and protect the rights of any person under disability as provided in this section.

(2) (A) A person desiring to take any timber, gas, oil, or mineral substance from any land held under tax title within ten (10) years after the sale for taxes shall first execute a bond in sufficient amount to cover the substance to be removed, with good and sufficient sureties, conditioned that the holder of the land will pay for all substances removed from the land if the land is redeemed under the provisions of this section.

(B) The bond shall be filed with and approved by the clerk of the county court in the county where the land is located.

(c) (1) Any person removing timber, gas, oil, or a mineral substance from any land contrary to the provisions of this section and without first executing the bond provided for in this section shall be guilty of a violation and shall be fined in any sum not less than twenty-five dollars (\$25.00) and not more than double the amount of the substance removed.

(2) A person may remove timber from land cleared in good faith for cultivation without becoming liable to the penalty provided in this section.

(d) (1) The county clerk shall keep a record of all certificates of redemption of lands or city lots or town lots, or parts of lands or city lots or town lots, which were sold for delinquent taxes and redeemed and shall retain the record of them for ten (10) years from the date on which the redemption certificates were issued.

(2) Thereafter, unless a court order shall have been issued with respect to any such redemption certificate, the county clerk may destroy the record.

History. Acts 1883, No. 114, § 136, p. 199; C. & M. Dig., § 10096; Acts 1923, No. 302, § 1; Pope's Dig., § 13860; Acts 1967, No. 428, § 1; A.S.A. 1947, § 84-1201; Acts 2005, No. 1994, § 170.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (c)(1).

Case Notes

In General.

Construction.

Insane Persons.

Minors.

In General.

Under the Overdue Tax Act of March 12, 1881 (Acts 1881, No. 39), allowing two years for redemption, no exception was made in favor of infants or other persons under disability. *Junction v. Burke*, 53 Ark. 430, 14 S.W. 622 (1890) (decision under prior law).

Under §§ 18-60-212 and 18-61-106, which provide that to recover land from a tax purchaser under a donation deed it must appear that the plaintiff was seized within two years next before the commencement of the suit, no exception can be made by a court in favor of infants or other persons under disability. *Sims v. Camby*, 53 Ark. 418, 14 S.W. 623 (1890).

Married women were limited to two years in which to redeem. *Sibly v. Cason*, 86 Ark. 32, 109 S.W. 1007 (1908) (decision prior to enactment of § 9-11-502).

Right of persons under disability to redeem is not a mere personal privilege to be enjoyed solely by those laboring under the disabilities mentioned in this section, which ceases with the death of

such persons, but is a right which inheres in the land itself. *Pulaski County v. Hill*, 97 Ark. 450, 134 S.W. 973 (1911).

Persons under disabilities may redeem land from a tax sale, and in doing so, these persons not only redeem the land for themselves, but for all interested cotenants, although the individual redeeming would not acquire full title to the land. *Mitchell v. Chester*, 208 Ark. 781, 187 S.W.2d 899, 159 A.L.R. 1462 (1945); *Williams v. Jones*, 239 Ark. 1032, 396 S.W.2d 286 (1965).

As to effect of this section on requirement in security instruments that debtor pay all taxes when due, see *Mahan v. Poling*, 2 Ark. App. 1, 616 S.W.2d 20 (1981).

Construction.

This section must be read in connection with other statutes prescribing conditions under which the right to redeem may be exercised. *Harris v. Harris*, 195 Ark. 184, 112 S.W.2d 40 (Ark. 1938).

Insane Persons.

Insane person whose interest in land is that of a cestui que trust has no legal title to land, and any redemption right is lost when the redemption right of the trustee expires. *Little v. McGuire*, 113 Ark. 497, 168 S.W. 1084 (1914).

Rights of insane person to redeem land held saved by § 16-56-116. *Schuman v. Westbrook*, 207 Ark. 495, 181 S.W.2d 470 (1944).

Insane person has two years after the removal of his disability to exercise his right of redemption and his heirs had the right to redeem within two years after his disability was removed by death, but they could not attach the disability of minority to that of their father and thereby extend the statute. *Tarrence v. Berg*, 202 Ark. 452, 150 S.W.2d 753 (1941).

In suit for redemption by insane person, court has authority to determine mental status irrespective of any previous adjudication of another court. *Schuman v. Westbrook*, 207 Ark. 495, 181 S.W.2d 470 (1944).

Right of insane person to redeem his property from a tax sale is not lost by lapse of statutory time for redemption. *Schuman v. Westbrook*, 207 Ark. 495, 181 S.W.2d 470 (1944).

Right of redemption in persons removed from disability of insanity is an absolute right and a statutory privilege, and it is not barred by limitations or adverse possession, nor is laches applicable. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

Statutory period within which a person removed from mental disability may redeem land sold to the state for nonpayment of taxes does not begin to run when a guardian is appointed for that person, as the right is a personal one in favor of the former incompetent. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

Right of redemption given to persons removed from disability of insanity is not an interest or estate in land, but is a statutory privilege to defeat a tax title within the time limited and is not enlarged or diminished by the fact that the state may have sold and conveyed the interest acquired by it at a tax sale. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

Right of persons removed from disability of insanity to redeem lands sold for taxes is available in all cases, not only where tax sale from which redemption is sought is defective, but from sales which are perfectly regular and valid. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969). Heirs of incompetent have right to redeem land within statutory period, which begins to run after death of incompetent has removed disability of insanity. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

Acquisition of land by payment of taxes under color of title for more than seven years under § 18-11-102 does not bar redemption of land from void tax sale by heirs of incompetent. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

Minors.

A minor can redeem from a tax sale at any time during his minority or for two years afterward, whether the purchase is by the state or by an individual, and alienation by the purchaser does not defeat the right. *Carroll v. Johnson*, 41 Ark. 59 (1883); *George v. Hefley*, 182 Ark. 678, 32 S.W.2d 445 (1930).

Where land of infant was forfeited to state and had been sold by state before time for redemption had expired, he could redeem from purchaser, and redemption money belonged to purchaser and not to state. *Keith v. Freeman*, 43 Ark. 296 (1884).

Minor's right to redeem is not an estate, but only a statutory privilege to defeat a tax title in a limited time. *Bender v. Bean*, 52 Ark. 132, 12 S.W. 180 (1889), modified, 52 Ark. 146, 12 S.W.

241 (1889); *Harris v. Harris*, 195 Ark. 184, 112 S.W.2d 40 (Ark. 1938).

Suit by infant to redeem land from tax sale is not an action for the recovery of land or for the possession thereof within §§ 18-60-212 and 18-61-106 requiring affidavit of tender of taxes.

Burgett v. McCray, 61 Ark. 456, 33 S.W. 639 (1896).

Where law in force at date of tax forfeiture gives infant owner right to redeem until two years after he should come of age, this right cannot be divested by subsequent legislation. *Moore v. Irby*, 69 Ark. 102, 61 S.W. 371 (1901).

This section is notice to all the world of a minor's right to redeem. *Hisey v. Sloan*, 180 Ark. 797, 22 S.W.2d 1005 (1930).

It is the duty of those representing minors to raise their right to redeem, and where they fail to do so, it is the court's duty to protect their rights. *Hisey v. Sloan*, 180 Ark. 797, 22 S.W.2d 1005 (1930).

Where parent conveys land to minor children before tax sale, children have right to redeem, the lien for taxes having attached before the conveyance to the children being immaterial, since the right of redemption is from the time of sale. *Chambers v. Burke*, 194 Ark. 665, 109 S.W.2d 117 (1937).

Minor is entitled to redeem not only his interest, but the interest of all others by paying taxes, penalty, and costs, plus taxes subsequently paid by purchaser, interest on the whole amount, and value of improvements, if any. *Reynolds v. Plants*, 196 Ark. 116, 116 S.W.2d 350 (1938).

Two years after a person reaches majority, his right to redeem is waived. *Bass v. John*, 217 Ark. 487, 230 S.W.2d 946 (1950).

Sale of land to pay debts could not be set aside by minor entitled to redeem from tax sale under this section where sale was made subject to taxes and redemption under § 26-37-310 by purchaser did not purport to convey title. *Norwood v. Heaslett*, 218 Ark. 286, 235 S.W.2d 955 (1951).

Former § 26-38-118 (repealed), which allowed a period of one year to attack determination by chancery court vesting title in state for nonpayment of taxes, did not cut off rights of minor to redeem property from tax sale within period of two years following sale of property to state. *Harvey v. Ledbetter*, 219 Ark. 27, 240 S.W.2d 18 (1951) (decision under prior law).

Minor's suit to redeem is not barred by decree in favor of holder of tax title in ejectment suit against heirs, since only right to possession is involved. *Hunt v. Ellis*, 219 Ark. 353, 242 S.W.2d 146 (1951).

Minor's suit to redeem is not barred by decree in foreclosure suit by bank where bank refuses to accept deed, since debt has been paid. *Hunt v. Ellis*, 219 Ark. 353, 242 S.W.2d 146 (1951).

Cited: *Gulley v. Blake*, 214 Ark. 578, 217 S.W.2d 257 (1949); *Alsobrook v. Taylor*, 254 Ark. 132, 491 S.W.2d 808 (1973); *Eubanks v. Zimmerman*, 255 Ark. 53, 498 S.W.2d 655 (1973); *Trustees of First Baptist Church v. Ward*, 286 Ark. 238, 691 S.W.2d 151 (1985).

26-37-306. Procedure for redemption by persons under disability.

(a) All lands and town or city lots, or parts thereof, which have been or may hereafter be forfeited to the state for nonpayment of taxes, which belong to minors, persons of unsound mind, and persons in confinement at the date of forfeiture, may be redeemed by such persons by application to the Commissioner of State Lands within the limitation prescribed by law and upon the terms and in the manner provided by law.

(b) (1) Persons of the class mentioned in subsection (a) of this section may, by themselves or by their guardians or next friend, present their petition to the Commissioner, setting forth the evidence of their title at the date of forfeiture and their right to redeem under this section and the facts set forth shall be sworn to by the petitioner.

(2) The oath shall be attested by the clerk of the circuit court of the county, or some notary public of the county and state in which the petitioner resides or before the Commissioner.

(c) The Commissioner may require other evidence than the petition to establish the facts therein set forth, and the petitioner may take proof by affidavit or otherwise as the Commissioner may prescribe.

(d) (1) If the Commissioner finds the facts set forth in the petition to be true, he shall cancel the forfeiture on his books and issue his certificate to the party redeeming the land or lot, setting forth the fact that the land or lot has been duly and legally redeemed by the payment of all taxes, penalties, and costs due thereon.

(2) Upon the presentation of the certificate to the clerk of the county in which the lands lie, the clerk shall mark on his record of lands forfeited to the state opposite to the tract described in the certificate the words "redeemed before the Commissioner of State Lands" and the time when so redeemed.

(e) The assignees of the persons mentioned in subsection (a) of this section shall have two (2) years after they shall have acquired title to redeem the lands or town or city lots, and under the same provisions and restrictions that their assignors had. In no case shall they have a longer time in which to redeem than the assignor had at the time of sale.

(f) The provisions of this section shall not apply to any land or town or city lots that have been in anywise disposed of by the state prior to the filing in the office of the Commissioner a petition for redemption.

History. Acts 1877, No. 34, §§ 1-6, p. 29; 1879, No. 59, § 10, p. 70; C. & M. Dig., §§ 6696-6701; Pope's Dig., §§ 8666-8671; A.S.A. 1947, No. §§ 84-1211 — 84-1216.

Case Notes

In General.
Construction.
Assignees.

In General.

No action of the state or its officers can destroy the statutory right of minors, or others under disability, to redeem. *Koonce v. Woods*, 211 Ark. 440, 201 S.W.2d 748 (1947).

Construction.

Right of minor to redeem his land from tax sale is absolute, and this section is to be liberally construed to effectuate its purpose in preventing a permanent forfeiture of the estate of a minor. *Bradbury v. Johnson*, 104 Ark. 108, 147 S.W. 865 (1912).

Assignees.

Quitclaim grantee of owner of lands sold for delinquent taxes has the same right to redeem the lands so sold and to attack the tax title of the purchaser as has the original owner. *Vanderbilt v. Washington*, 249 Ark. 1070, 463 S.W.2d 670 (1971).

Cited: *Waldon v. Holland*, 206 Ark. 401, 175 S.W.2d 570 (1943); *Buschow Lumber Co. v. Witt*, 212 Ark. 995, 209 S.W.2d 464 (1948).

26-37-307. Joint tenant, tenant in common, or coparcener.

When any joint tenants, tenants in common, or coparceners shall be entitled to redeem any land or lot, or part thereof, sold for taxes and any person so entitled shall refuse or neglect to join in the application for the certificate of redemption, or from any cause cannot be joined in the application, the clerk of the county court may entertain the application of any one (1) of these persons, or as many as shall join therein, and may make a certificate for the redemption of such portion of the land or lot, or part thereof, as the person making the application shall be entitled to redeem.

History. Acts 1883, No. 114, § 142, p. 199; C. & M. Dig., § 10103; Pope's Dig., § 13867; A.S.A. 1947, § 84-1208.

Case Notes

Minors.

Minors.

Minor cotenant of land sold for taxes may redeem entire interest in land, including interest owned by adult tenants in common, even though land does not constitute a homestead; this section merely relieves a tenant in common of the necessity of redeeming for all. *Smith v. Pettus*, 205 Ark. 442, 169 S.W.2d 586 (1943).

Cited: *Goodrich v. Darr*, 161 Ark. 514, 256 S.W. 868 (1923).

26-37-308. Portion of tract of land.

(a) (1) When a portion of a tract of land sold for general taxes or for any improvement district taxes extended by the county clerk on the county tax books is claimed by any person who desires to redeem the land, the person may apply to the county assessor setting forth in writing his or her claim to the land and demanding that the county assessor make a separate assessment upon the tract of land described by the claimant, showing what portion of the general taxes or of the local improvement taxes for which the land is forfeited is properly applicable to the portion of the land sought to be redeemed.

(2) (A) (i) Within two (2) weeks after the application is filed with the county assessor, the county assessor shall file with the county clerk a certificate in which he or she shall justly apportion the delinquent general or local improvement taxes between the portion of the land described in the demand of the complainant and the remaining portion of the land.

(ii) For the county assessor's services the claimant shall pay the county assessor the sum of one dollar (\$1.00).

(B) If the county assessor fails to file his or her certificate within the time prescribed he or she shall be subject to a penalty of twenty-five dollars (\$25.00).

(b) (1) The certificates shall be recorded by the county clerk in a book to be kept by him or her called the tax apportionment book, and the clerk shall write opposite the description of the lands in the assessment books or local improvement assessment books the words, "See Tax Apportionment Book".

(2) For each case in which the county clerk fails to do so, the county clerk shall be subject to a penalty of twenty-five dollars (\$25.00).

(c) (1) (A) At any time before the expiration of the period for redemption of the land and upon paying to the proper officer the sum necessary to redeem the portion of land claimed by the person, any person interested in the land, either as the purchaser at the sale for general or local improvement taxes or claiming the remaining portion of the land, or any part of the land, may file suit in the circuit court to review the justness of the apportionment made by the county assessor.

(B) If the plaintiff prevails in his suit, the circuit court shall make a decree charging the land of the defendant with the excess of taxes paid by the plaintiff, which charge shall be the first lien on the land.

(2) (A) If the first redemption is made less than three (3) months before the

expiration of the period of redemption, a remaining party interested in the land shall have a period of three (3) months from the time of the redemption in which to bring the suit provided for in this section.

(B) However, the three-month period shall not extend their time for redeeming.

(d) (1) The assessing officers of any improvement district may make a reassessment of the benefits annually.

(2) In any such reassessment the assessing officers may correct defective descriptions.

(3) (A) When a tract of land has been assessed as a whole, the tract may be divided according to its ownership at the time of the reassessment.

(B) This reassessment shall be made, advertised, and equalized in the same manner, and only subject to attack within the same period of time, as the original assessment of benefits.

History. Acts 1925, No. 359, § 1; Pope's Dig., § 13897; A.S.A. 1947, § 84-1209.

Case Notes

Constitutionality.

Mineral Interests.

Constitutionality.

This section, directing an assessor, upon request, to segregate any part of a tract claimed by petitioner and to certify to the county clerk what part of the entire tax the designated portion shall bear, does not deny due process. *Foggs v. Crutcher*, 216 Ark. 438, 226 S.W.2d 48 (1950).

Mineral Interests.

Title to mineral interest in land vested in levee district through purchase of land in foreclosure suits brought for the collection of delinquent levee assessments under Acts 1905, No. 106, where former owners, instead of applying for relief under this section, stood by for more than 10 years and permitted the land to be sold to the district and the period of redemption to expire. *Long Prairie Levee Dist. v. Wall*, 227 Ark. 305, 298 S.W.2d 52 (1957).

26-37-309. Uncertified sales to state.

(a) Any land sold to the state for the nonpayment of taxes since the year 1908 or thereafter, which sale has never been certified to the Commissioner of State Lands, may be redeemed by the person, firm, or corporation holding the lands under color of title by filing with the Commissioner a certificate from the clerk of the county in which the lands are situated, showing the sale of the land, the amount of taxes, penalty, and cost due thereon, if any, and the payment thereof and making a sworn statement in writing that he is the holder of the lands as aforesaid and entitled to redeem them.

(b) Upon compliance with subsection (a) of this section, the Commissioner shall issue to the person, firm, or corporation a quitclaim deed to the land, conveying to the person, firm, or corporation, as the case may be, all claim, right, and title the state acquired by the sale. The Commissioner shall make a record of the sale and of the issuance of the deed in a book kept by him for that purpose, showing the sale to the state, the date of the deed, to whom issued, and the description of the lands. The Commissioner shall file and preserve all of the original papers in connection with the redemption in his office. The papers and record shall be open at all times to public inspection.

History. Acts 1919, No. 142, §§ 2, 3; C. & M. Dig., §§ 10106, 10107; Pope's Dig., §§

8758, 8759, 13870, 13871; A.S.A. 1947, §§ 84-1217, 84-1218.

Cross References. Uncertified sales prior to 1908 canceled, § 26-38-102.

26-37-310. Procedure for redeeming land certified to state.

(a) All lands or town and city lots sold to the state under any decree or other proceedings had under the provisions of an act entitled “An act to enforce the payment of overdue taxes,” Acts 1881, No. 39, approved March 12, 1881 [repealed], and now owned by the state and all lands or town and city lots forfeited and sold to the state for nonpayment of taxes and certified to the Commissioner of State Lands which have not been sold or otherwise disposed of by the state, or which may hereafter be sold and forfeited to the state, and certified as aforesaid, may, until disposed of by the state, be redeemed by the person owning the land or lot at the time of forfeiture, or by his heirs or assigns, in the manner provided by subsections (b), (c), and (d) of this section.

(b) Any person, or his agent or attorney, desiring to redeem any land or town or city lots under the provisions of this section shall first pay to the Treasurer of State an amount or sum of money equal to the taxes for which the land or town or city lots desired to be redeemed were sold, together with penalties and costs and all expenses paid by the state in acquiring title to the land or town or city lots under such forfeiture for taxes and all state and county taxes that would have subsequently accrued thereon had they remained on the tax books subject to taxation.

(c) The Commissioner, upon application by any person desiring to redeem any lands or town or city lots under this section, shall furnish the person a statement, showing the amount of money that will be required to be paid to the State Treasurer under subsection (b) of this section for the redemption of the lands or town or city lots sought to be redeemed.

(d) Before any person shall be permitted to redeem any lands or town or city lots mentioned in subsection (a) of this section, the person, or his agent or attorney, shall present and file with the Commissioner a verified petition stating that they, or the parties under whom they hold, owned the lands or town or city lots desired to be redeemed at the time they were forfeited for taxes. They shall also file with the petition a receipt, in duplicate, from the State Treasurer showing the payment of the amount of money necessary to redeem the lands or town or city lots sought to be redeemed as required by subsection (b) of this section.

(e) The Commissioner may require other evidence than the petition to establish the facts therein set forth, and the petitioner may take proof by affidavit or otherwise as the Commissioner may direct.

(f) If the Commissioner finds the facts set forth in the petition to be true and that the amount of money necessary to redeem the lands sought to be redeemed has been paid to the State Treasurer as required by subsection (b) of this section, he shall, by deed of release and quitclaim under his hand and official seal, convey to the person redeeming the lands or town or city lots all of the right, title, and interest of the state in and to the lands or town or city lots acquired under any forfeiture, sale, or condemnation for taxes. For this deed, the Commissioner shall receive one dollar (\$1.00), to be paid by the party applying to redeem the lands or lots.

(g) The Commissioner shall file with the Auditor of State one (1) of the receipts

executed by the State Treasurer and presented with the petition required by subsection (d) of this section and shall keep the other receipt on file in his office. The Commissioner shall forward a copy of the deed executed by him under subsection (f) of this section to the clerk of the county court of the county in which the land or lot conveyed by the deed is situated.

(h) After the reception of the deed of the Commissioner, the clerk shall extend on the tax book against the land or lot the taxes other than state and county for the years that the taxes have not been paid since the sale of the land or lot to the state, and these taxes shall be charged and collected as other taxes.

(i) The proceeds of all redemptions of forfeited lands which may hereafter be made under subsections (a)-(e) of this section shall be divided equally between the county where the lands are situated and the state, and paid over in the manner as required and provided in this section.

History. Acts 1891, No. 151, §§ 1-8, p. 257; 1893, No. 96, §§ 1, 3, p. 35; 1895, No. 31, § 1, p. 35; C. & M. Dig., §§ 6741-6748; Acts 1929, No. 129, § 8; Pope's Dig., §§ 8672-8679; A.S.A. 1947, §§ 84-1219 — 84-1227.

Cross References. Deed fees, § 21-6-203.

Release of overdue tax lands sold to state under Act of 1881, § 26-38-103.

Case Notes

Disposition by State.

Overdue Tax Act of 1881.

Redemption of Lands.

Disposition by State.

Execution of donation certificate of tax forfeited lands to donee is a disposition of the land within the meaning of this section giving the owner right to redeem lands that have not been sold or otherwise disposed of by the state. *Waldon v. Holland*, 206 Ark. 401, 175 S.W.2d 570 (1943).

Where, at the time donation certificate was issued by state to donee, there was no law in existence that gave landowner any further right to redeem, subsequently enacted statute, providing that no pending donation shall bar redemption and remitting donee to courts for enforcement of any rights as to property because of betterments, impaired donee's right under the contract. *Waldon v. Holland*, 206 Ark. 401, 175 S.W.2d 570 (1943).

Law in force at the time concerning redemption also becomes a part of the contract as to a donation deed by state, as that law measures the respective rights. *Waldon v. Holland*, 206 Ark. 401, 175 S.W.2d 570 (1943).

Commissioner of State Lands had authority to cancel redemption deed issued to grantee because of worthless checks given by grantee in payment for deed, and subsequent sale of the lands to another person conveyed all title and interest of the state to that person. *Field v. Brown*, 206 Ark. 545, 176 S.W.2d 155 (1943).

Where state conveyed property to husband and wife and property was previously owned by husband and forfeited to state for nonpayment of taxes, it was a sale that vested the property in the husband and wife as tenants by the entirety and was not a redemption of tax forfeited lands; so that, upon husband's death, ownership vested in wife and, upon her death, intestate title passed to her heirs at law. *Herford v. Scales*, 240 Ark. 436, 399 S.W.2d 653 (1966).

Overdue Tax Act of 1881.

Where, after proper redemption of land that had been sold under Overdue Tax Act of 1881 (Acts 1881, No. 39), sale was confirmed, deed was executed, and writ of possession ordered in favor of purchaser, confirmation could be set aside and writ of possession quashed. *Adair v. Scott*, 53 Ark. 480, 14 S.W. 671 (1890) (decision under prior law).

Where land was forfeited to state under Overdue Tax Act of 1881 (Acts 1881, No. 39) after lands were returned delinquent, conveyance by state could not be attacked after confirmation of sale,

although collector's books showed tax had been paid. *Jefferson Land Co. v. Grace*, 57 Ark. 423, 21 S.W. 877 (1893) (decision under prior law).

Questions relating to regularity of assessment of lands for taxation, amount of taxes assessed against them, and payment thereof were concluded by decree of confirmation of lands in Overdue Tax Act of 1881 (Acts 1881, No. 39) suit. *Streett v. Reynolds*, 63 Ark. 1, 38 S.W. 150 (1896) (decision under prior law).

During pendency of Overdue Tax Act of 1881 (Acts 1881, No. 39) suit to set aside forfeiture of certain land for taxes, Commissioner of State Lands had no authority to issue donation certificate and deed based upon the forfeiture. *St. Louis Refrigerator & Wooden Gutter Co. v. Langley*, 66 Ark. 48, 51 S.W. 68 (1898) (decision under prior law).

Where lands were sold to state and conveyed under Overdue Tax Act of 1881 (Acts 1881, No. 39), but for years thereafter the state, through its county officers, assessed, levied, and collected taxes on these lands in the names of the original owners and their successors, it would be presumed that these lands had been redeemed from the Commissioner of State Lands by the original owners. *Wallace v. Hill*, 135 Ark. 353, 205 S.W. 699 (1918) (decision under prior law).

Where land was sold to state under Overdue Tax Act of 1881 (Acts 1881, No. 39), and was not redeemed within time allowed, person who was remote grantee of tax purchaser acquired a valid title. *Chicago Land & Timber Co. v. Dorris*, 139 Ark. 333, 213 S.W. 759 (1919) (decision under prior law).

Redemption of Lands.

Fact that Commissioner of State Lands permitted one to redeem land claimed by him from a tax sale cannot be held to be an adjudication of his ownership of the land in litigation with another person. *Meyer v. Snell*, 89 Ark. 298, 116 S.W. 208 (1909).

Redemption of land by owner from tax forfeiture, made after forfeited land has been sold by state, held merely a payment of taxes and not color of title. *Pyburn v. Campbell*, 158 Ark. 321, 250 S.W. 15 (1923).

Provisions that permitted state to retain all moneys paid for redemption held not subject to constitutional prohibition that no money arising from a tax levied for one purpose shall be used for any other purpose. *Page v. McCuin*, 201 Ark. 890, 148 S.W.2d 308 (1941).

Cited: *Field v. Brown*, 206 Ark. 545, 176 S.W.2d 155 (1943); *Buschow Lumber Co. v. Witt*, 212 Ark. 995, 209 S.W.2d 464 (1948).

26-37-311. Proceedings to redeem prior to sale by state.

(a) At any time before the lands referred to in this section have been sold by the state, the owners thereof may present their petition to the Commissioner of State Lands, setting forth the evidence of their title, or of those under whom they claim, to the lands, at the time of the sale of the lands to the state as stated in this section. The petition shall set forth the evidence of the taxes having been paid on the lands before such sale to the state, for the years for the alleged nonpayment of which taxes the lands were sold to the state under any proceedings or decrees rendered under laws to enforce the payment of overdue taxes, and the facts set forth shall be sworn to by the petitioner and such oath shall be attested by the clerk of the circuit court of the county, or some notary public of the county and state in which such petitioner resides, or before the Commissioner.

(b) The Commissioner may require other evidence than the petition to establish the facts therein set forth, and the petitioner may take proof by affidavit or otherwise as the Commissioner may prescribe.

(c) If the Commissioner finds the facts set forth in the petition to be true and that the taxes on the lands had been paid by the present owners of the lands, or by those under whom they claim the lands, for the years they were sold to the state, and before they were sold to the state, he shall, by deed of release and quitclaim under his hand and official seal, convey to the owner of the lands all of the rights, title, and interest of the state in and

to the lands acquired under any sale or other proceedings under provisions of an act to enforce the payment of overdue taxes, Acts 1881, No. 39, approved March 12, 1881. A copy of the deed shall also be sent by the Commissioner to the clerk of the county court of the county.

(d) After the reception of the deed from the Commissioner to the clerk, the clerk shall extend on the tax books against the lands the taxes for the years that the taxes have not been paid since the erroneous sale of the lands to the state under the overdue tax law. The taxes that have not been paid on the lands since the sale to the state shall be charged and collected as in other cases of lands of the state where the Commissioner has officially advised the clerk they have become subject to taxation.

History. Acts 1887, No. 13, §§ 1-4, p. 13; C. & M. Dig., §§ 6749-6752; Pope's Dig., §§ 8680-8683; A.S.A. 1947, §§ 84-1228 — 84-1231.

Case Notes

Cited: Buschow Lumber Co. v. Witt, 212 Ark. 995, 209 S.W.2d 464 (1948).

26-37-312. Reassessment of unimproved land in municipality.

(a) When an acreage tract of unimproved land, that is, land with no residence or other building on it, located in any incorporated municipality is in default to this state for nonpayment of taxes and when the owner of the acreage tract of unimproved land applies to the county assessor of the county where the acreage tract of unimproved land is located for reassessment, it shall be the duty of the county assessor to determine what would have been a fair assessment for the year for which the acreage tract of unimproved land forfeited.

(b) (1) In determining the amount at which the acreage tract of unimproved land should have been assessed, the county assessor should take into consideration how the acreage tract of unimproved land lies.

(2) If the value of the acreage tract of unimproved land is being considered as to its probability or possibility of being platted and sold off in lots or blocks, then due allowance should be made for the land that will be required for streets and alleys.

(3) In arriving at the valuation for reassessment purposes on the acreage tract of unimproved land, the county assessor shall take into consideration the assessed value of platted vacant lots in adjoining or nearby platted subdivisions.

(4) If the property that is platted into lots is served with water, lights, gas, and telephone lines, when there is no improvement district tax on the platted lots for those utility services, then that also should be taken into consideration.

(5) When compared with platted lots, if the streets serving the lots are paved and the paving tax is paid out, or nearly paid out, that, likewise, should be taken into consideration in determining the amount at which the acreage tract of unimproved land should have been assessed.

(c) (1) (A) If the county assessor finds that the acreage tract of unimproved land was valued on county assessor's records too high at the time it forfeited to the state, the county assessor shall make a written report to that effect to the Commissioner of State Lands and state what a fair and equitable assessed value should have been.

(B) It shall then be the duty of the Commissioner of State Lands to make reduction in the amount of taxes in accordance with the report of the county assessor.

(2) Any interested landowner may appeal to the circuit court for review of the findings of the county assessor.

(d) (1) If reduction in the amount of taxes against the acreage tract of unimproved land is made by the Commissioner of State Lands on the report of the county assessor or upon finding of the circuit court upon appeal from the county assessor's findings, then the Commissioner of State Lands shall allow the landowner to redeem the acreage tract of unimproved land or sell the acreage tract of unimproved land as provided by law, based on the corrected amount of taxes due.

(2) When the acreage tract of unimproved land, at the time it forfeited to the state for taxes, was assessed as one (1) tract but when it is now owned by two (2) or more owners, on petition to the Commissioner of State Lands of one (1) or more of the landowners, as shown by certificate of abstractor, the Commissioner of State Lands shall prorate the proportionate part of the reassessment against the respective parts of the acreage tract of unimproved land and the Commissioner of State Lands shall determine the amount of delinquent taxes to be charged against each part of the acreage tract of unimproved land and mark his or her records accordingly.

(3) Each part of the acreage tract of unimproved land may then be redeemed by the owner, the amount necessary to redeem being based on the corrected assessment and apportionment.

(4) If any portion of the acreage tract of unimproved land remains unredeemed for a period of ninety (90) days after the apportionment is made, the Commissioner of State Lands may then sell any portion of the acreage tract of unimproved land as remains unredeemed, or may sell the portion prior to the expiration of the ninety-day period with the consent of the owner.

History. Acts 1941, No. 437, § 2; A.S.A. 1947, § 84-1232.

26-37-313. Reassessment of parcels of land upon depreciation since forfeiture.

(a) (1) Town and city lots and blocks and acreage tracts, lots, blocks, divisions, and subdivisions that have been platted and sold as being outside of the corporate limits of towns and cities, and rural lots and parcels of land now, or which may hereafter be, forfeited to the state for nonpayment of taxes due thereon that have depreciated in value since forfeiture may be reassessed at their present value by the tax assessor of the county in which the lands are located, upon application being made in writing by the application to redeem or purchase them, setting forth the reasons for the reassessment. No application shall contain more than five (5) descriptive calls. Before any such reassessment shall be valid, it shall be presented to the county judge and the chief county school officer of the county in which the lands are located and approved by them in writing and made a matter of record in the county by the clerk of the county court.

(2) The fee of the assessor shall be one dollar (\$1.00) for each application. The fee shall be paid to the county treasurer and credited by him to the county general revenue fund. The fee of the county clerk shall be the regular fee allowed by law and shall be paid by the applicant seeking reassessment.

(b) (1) If the tax assessor deems the assessment for which parcels of land were forfeited to be too high, he shall prepare a certificate stating that a reassessment has been made under this section and shall state, under oath, the cause for the depreciation in the value of the lots or parcels of land.

(2) The assessor, the county judge, and the chief county school officer are prohibited from making any such reassessment as set out in this section except for the following causes:

- (A) Burned buildings not replaced and on which the applicant did not collect insurance;
- (B) Buildings removed and from which the applicant received no benefit;
- (C) Erosion;
- (D) Damage by flood;
- (E) Damage by tornado;
- (F) Removal of timber from which the applicant received no benefit; or
- (G) Any act of God.

(3) When the reassessment has been made, a complete record thereof, including a certified copy of the application, the reassessment, and the court order, shall be forwarded to the Commissioner of State Lands, who shall, upon its receipt, enter it upon a record to be kept by him in his office for that purpose, and he shall issue redemption deeds or sale deeds for forfeited lands in the manner and form provided by law, based upon the reassessment value.

History. Acts 1939, No. 282, §§ 1, 2; 1943, No. 282, §§ 1-3; A.S.A. 1947, §§ 84-1233, 84-1234.

Publisher's Notes. Acts 1939, No. 282, § 3 and 1943, No. 282, § 4, providing for a penalty for charging excessive fees or accepting money for reassessment were repealed by Acts 1975, No. 928, § 4, effective January 1, 1976; however, Acts 1975, No. 928, § 2, provided that, notwithstanding that all or part of a statute defining a criminal offense is amended or repealed by this act, the statute or part thereof so amended or repealed shall remain in force for the purpose of authorizing the prosecution, correction, and punishment of a person committing an offense under the statute or part thereof prior to the effective date of this act.

Case Notes

Cited: Buschow Lumber Co. v. Witt, 212 Ark. 995, 209 S.W.2d 464 (1948).

26-37-314. Sale of tax delinquent severed mineral interests prohibited.

(a) (1) When severed mineral interests are forfeited to the state and conveyed by certification to the Commissioner of State Lands for nonpayment of property taxes, title to the severed mineral interests shall vest in the State of Arkansas in the care of the Commissioner of State Lands.

(2) The Commissioner of State Lands shall so notify the owner of record by certified mail at his or her last known address.

(3) (A) Except as provided in subsection (b) of this section, the Commissioner of State Lands shall not sell the severed mineral interests but shall retain the severed mineral interests indefinitely for redemption.

(B) However, the severed mineral interests may be leased by the Commissioner of State Lands if he or she determines that a lease is in the best interest of the state.

(C) All benefits, including royalty and leasehold payments, accruing after title vests in the state and before redemption shall be payable to the Commissioner of State Lands.

(D) Upon receipt of any such benefits, the Commissioner of State Lands shall deposit the funds into financial institutions in this state.

(4) (A) The tax-delinquent severed mineral interests may be redeemed at any time in the manner prescribed for the redemption of tax-delinquent real property.

(B) However, upon redemption the owner shall not be entitled to any payments received by the Commissioner of State Lands before redemption.

(5) All funds derived from redemption shall be held in escrow by the Commissioner of State Lands for one (1) year, at which time they shall be distributed the same as funds derived from the redemption of real property.

(b) (1) After the expiration of the redemption period prescribed by this chapter, the Commissioner of State Lands shall sell the severed mineral interests to the surface owners if the surface owners opt to purchase the tax-delinquent severed mineral interests.

(2) The surface owner purchasing severed mineral interests under subdivision (b)(1) of this section shall be allowed to purchase the severed mineral interests for an amount equal to the delinquent taxes and shall not be required to pay any interest or penalties if the surface owner was not the owner of the severed mineral interests at the time the taxes became delinquent.

(c) All benefits, including royalty and leasehold payments, payable to the Commissioner of State Lands pursuant to this section are not subject to the provisions of § 18-28-201 et seq. and § 18-28-401 et seq.

(d) The provisions of this section shall be applicable to all tax-delinquent severed mineral interests currently forfeited to the state and certified to the Commissioner of State Lands as well as to all tax-delinquent severed mineral interests forfeited to the state in the future.

(e) (1) No deed issued under this section shall be void or voidable on the ground that the assessment of the property taxes on the severed mineral interests was not subjoined to the assessment of the property taxes on the surface realty.

(2) This subsection shall be retroactive to all certifications of delinquent severed mineral interests in the records of the office of the Commissioner of State Lands.

History. Acts 1993, No. 864, §§ 1-4; 2003, No. 1279, § 1.

Publisher's Notes. This section is being set out to change the reference of "subchapter" to "chapter" in (b)(1).

Amendments. The 2003 amendment inserted "of State Lands" throughout this section; in (a)(3)(A), substituted "retain the interests" for "retain the same"; inserted the subdivision designations in (a)(4); redesignated former (b) as present (b)(1) and rewrote the subdivision; added (b)(2); in (c), substituted "§ 18-28-201 et seq. and § 18-28-401 et seq." for "§§ 18-28-201 — 18-28-232 and §§ 18-28-401 — 18-28-403," respectively; added (e); and made stylistic and gender neutral changes.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Severed Mineral Rights, 26 U. Ark. Little Rock L. Rev. 500.

Well, Now, Ain't That Just Fugacious!: A Basic Primer on Arkansas Oil and Gas Law, 29 U. Ark. Little Rock L. Rev. 211.

26-37-315. Redemption of homestead by taxpayer.

(a) As used in this section, "homestead" means the same as defined in § 26-26-1122.

(b) If a taxpayer did not receive actual notice of the sale of his or her homestead by the Commissioner of State Lands or his or her designee by personal service of process at

least sixty (60) days before the date of the sale, then the taxpayer may redeem the tax-delinquent land by tendering all taxes, penalties, interests, and costs within thirty (30) days after the date of the sale.

History. Acts 2003, No. 1376, § 1; 2007, No. 827, § 214.

Amendments. The 2007 amendment added (a); deleted “as defined under § 26-26-1118(b)” following “homestead” in present (b); and made related changes.

Effective Dates. Acts 2003, No. 1376, § 4, provided: “This act shall become effective on January 1, 2004.”

26-37-316. Notice requirement.

(a) As used in this section, “homestead” means the same as defined in § 26-26-1122.

(b) When a homestead is certified to the Commissioner of State Lands, the county collector shall provide notice to the Commissioner of State Lands that the tax-delinquent land is a homestead.

History. Acts 2003, No. 1376, § 3; 2007, No. 827, § 215.

Amendments. The 2007 amendment added (a); and in present (b), deleted “as defined under § 26-26-1118(b)” following “homestead,” substituted “tax-delinquent land” for “property,” and made related changes.

Effective Dates. Acts 2003, No. 1376, § 4, provided: “This act shall become effective on January 1, 2004.”

Chapter 38 Confirmation Of Tax Sales

Subchapter 1 — General Provisions

Subchapter 2 — Title to Forfeited Lands

A.C.R.C. Notes. References to “this chapter” in subchapter 1 may not apply to subchapter 2 which was enacted subsequently.

Cross References. Confirmation of title by purchaser at tax sale, procedure, § 18-60-601 et seq. Tax delinquent lands certified to the state for sale by commissioner of state lands, § 26-37-101 et seq.

Preambles. Acts 1883, No. 16 contained a preamble which read:

“Whereas, In many cases, county clerks of different counties in this State have heretofore executed deeds for lands sold at delinquent tax sales, which said deeds are void by reason of showing upon their face that two or more tracts of land were sold together, as recently decided by the Supreme Court of this State, when, in fact, said tracts were sold separately, as required by law at the time of the sale, and

“Whereas, It is unjust that the purchasers of said lands should suffer because of the misprision of said county clerks.

“Therefore....”

Acts 1941, No. 408 contained a preamble which read:

“Whereas, Certain lands situate in the State of Arkansas were sold to the State of Arkansas under the provisions of an act of the General Assembly of said State, entitled, ‘An act to enforce the payment of overdue taxes,’ approved March 12, 1881, and an act amendatory thereto, approved March 22, 1881; and,

“Whereas, the title to a large per cent, if not all, of said lands has been released by said State under various Acts of the General Assembly thereof, and;

“Whereas, practically all, if not all, of said lands have been placed back upon the tax books of the Counties wherein said lands lie for a great number of years and taxes paid thereon by the

respective owners and claimants thereof;
“Now, Therefore....”

Effective Dates. Acts 1883, No. 16, § 3: effective on passage.
Acts 1919, No. 142, § 4: approved Mar. 1, 1919. Emergency declared.
Acts 1921, No. 112, § 3: approved Feb. 11, 1921. Emergency clause provided: “This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared, and it shall take effect from and after its passage.”

Research References

ALR.

Constitutionality, construction, and application of statute as to effect of taking appeal, or staying execution, on right to redeem from execution or judicial sale. 44 A.L.R.4th 1229.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party. 45 A.L.R.4th 447.

Easement or servitude or covenant as affected by sale for taxes. 7 A.L.R.5th 187.

Am. Jur. 47 Am. Jur. 2d Jud. Sales § 274.

72 Am. Jur. 2d, State Tax., § 973 et seq.

Ark. L. Rev.

Bills to Remove Cloud on Title and Quieting Title, 6 Ark. L. Rev. 83.

A Commentary on State and Improvement District Tax Sales, 8 Ark. L. Rev. 386.

Tax Forfeiture Problems in the Examination of Abstracts, 12 Ark. L. Rev. 333.

Due Process: The Constitutional Requirements of Notice in Tax Sale Proceedings, 30 Ark. L. Rev. 73.

C.J.S. 85 C.J.S., Tax., § 895 et seq.

Subchapter 1 **— General Provisions**

26-38-101. Uncertified sales to state prior to 1970 canceled.

26-38-102. Uncertified sales to state prior to 1908 canceled.

26-38-103. Release of overdue tax lands sold to state under Act of 1881.

26-38-104. Execution of duplicate tax deeds.

26-38-105. Reissuance of deed to show tracts sold separately.

26-38-106. Record of deeds made by county clerk.

26-38-107. Title claims adverse to tax title deeds.

26-38-108 — 26-38-123. [Repealed.]

26-38-124. [Repealed.]

Publisher's Notes. As § 26-38-201 et seq. have been added as subchapter 2 of chapter 38, § 26-38-101 et seq. is to be considered subchapter 1 of chapter 38.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

26-38-101. Uncertified sales to state prior to 1970 canceled.

All sales of lands to the state for nonpayment of taxes for the year 1970 and all years prior thereto, which have not been certified to the Commissioner of State Lands and respecting which sales there is no record in the office of the Commissioner of State Lands, are canceled. The state releases all of its right, title, or interest in and to:

(1) All lands sold to the state for nonpayment of taxes for the year 1970 and all years prior thereto, to which lands the Commissioner of State Lands has executed deeds in favor of the grantees in such deeds, their heirs, successors, and assigns; and

(2) All such lands as have not been disposed of by the Commissioner of State Lands as aforesaid, but which lands have been placed back on the tax books of the

counties wherein the lands lie, and the taxes have been paid thereon for more than seven (7) years since they were sold to the state.

The provisions of this section apply whether or not the lands were ever certified to the county clerk and whether or not the lands were certified by the county clerk to the Commissioner of State Lands.

History. Acts 1963, No. 126, § 1; A.S.A. 1947, § 84-1336; Acts 1997, No. 502, § 1.

A.C.R.C. Notes. The format of this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the formatting.

Amendments. The 1997 amendment rewrote the section.

26-38-102. Uncertified sales to state prior to 1908 canceled.

All sales of land to the State of Arkansas for the nonpayment of taxes for the year 1908 or prior thereto, which have not been certified to the Commissioner of State Lands and of which there is no record in the office of the Commissioner, are canceled and set aside, and the state shall not have or assert any claim, right, or title to the lands, or any part thereof.

History. Acts 1919, No. 142, § 1; C. & M. Dig., § 10105; Pope's Dig., §§ 8757, 13869; A.S.A. 1947, § 84-1333.

26-38-103. Release of overdue tax lands sold to state under Act of 1881.

(a) As to all lands in the State of Arkansas which were sold to the state under the provisions of an act to enforce the payment of overdue taxes, Acts 1881, No. 39, approved March 12, 1881 [repealed], and an act amendatory thereto, approved March 22, 1881, to which the Commissioner of State Lands has executed deeds of donation, deeds of sale, or deeds of relinquishment, the state does release its title in favor of the grantees in these deeds, their heirs, successors, and assigns forever. As to all these lands that have not been disposed of by the Commissioner as indicated but which have been placed back upon the tax books of the counties wherein the lands lie, and the taxes have been paid thereon for more than seven (7) years since they were sold to the state under the provisions of these acts, the state does release all of its title. These provisions apply whether the lands were certified by the commissioner of the court to the county clerk of the county, as required by these acts, or not, and also to apply whether the lands were certified by the county clerk to the Office of the Commissioner of State Lands, or not.

(b) Any person, firm, or corporation owning or claiming any of these lands may obtain evidence of his title thereto having been quieted under the provisions of this section by presenting to the Commissioner a certificate under the hand and seal of the clerk of the county wherein the lands lie, showing that he or his grantors, direct or by mesne conveyances, have paid the taxes on the lands for the number of years stated since sold to the State of Arkansas under the provisions of these acts of the General Assembly, accompanied by the affidavit of the claimant or his agent, showing that he is the present owner or claimant and has not sold or conveyed the lands to any other person, firm, or corporation. The certificate and affidavit being filed in the office of the Commissioner, the Commissioner shall execute a deed of relinquishment of all of the right, title, and interest of the state acquired under these acts to the claimant, or his successors and assigns, forever, upon the payment of a deed fee of one dollar (\$1.00).

History. Acts 1941, No. 408, §§ 1, 2; A.S.A. 1947, §§ 84-1334, 84-1335.

Publisher's Notes. Acts 1941, No. 408, § 3, provided for the repeal of all laws in conflict with this act and provided that this act was cumulative to all previous acts passed by the General Assembly.

For prior laws releasing overdue tax lands sold to state under Overdue Tax Act of 1881 (Acts 1881, No. 39), see Acts 1891, No. 68, § 1, and Acts 1895, No. 76, § 1.

Cross References. Procedure for redeeming land certified to state, § 26-37-310.

26-38-104. Execution of duplicate tax deeds.

(a) (1) The clerks of the county courts are authorized and empowered to execute duplicate tax deeds to land sold for delinquent taxes, to or in the name of the original grantee in any tax deed which has been lost, mislaid, or destroyed, upon the fact being shown to the county clerk.

(2) (A) If fully satisfied from the evidence of the existence and loss of the original deed, the clerk shall, on written application for that purpose, proceed to make, execute, and deliver, to or in the name of the original grantee, a good and sufficient deed of conveyance for any such tract of land or lot.

(B) The deed shall be good and valid in law to all intents and purposes as if the original had not been mislaid, lost, or destroyed.

(b) The clerks shall receive the sum of one dollar (\$1.00) as their fee for the execution of each duplicate deed, as provided in this section, from the person applying therefor.

History. Acts 1921, No. 112, §§ 1, 2; Pope's Dig., §§ 1654, 1655; A.S.A. 1947, §§ 84-1307, 84-1308.

26-38-105. Reissuance of deed to show tracts sold separately.

(a) Upon the presentation of any void tax deed, showing upon its face that two (2) or more tracts of land were sold together when in fact the tracts were sold separately, to the clerk of the county court of the county in which the lands were sold for taxes and the clerk being satisfied from the records of his office that the several tracts of land contained in the deed were sold separately, the clerk shall file the void deed in his office and cancel it. The clerk shall thereupon execute in lieu thereof a deed for the tracts of land, reciting the execution of the former deed, and the date thereof, the error therein, that each tract was sold separately, and the amount for which the land was sold, and, in all other respects, conform to the requirement of law.

(b) The deed when executed, as provided in subsection (a) of this section, shall relate back to the void deed and have the same force and effect, both in law and equity, as if executed on the same day.

History. Acts 1883, No. 16, §§ 1, 2, p. 14; C. & M. Dig., §§ 10121, 10122; Pope's Dig., §§ 13885, 13886; A.S.A. 1947, §§ 84-1309, 84-1310.

Case Notes

Clerk's Records.

Clerk's Records.

Clerk can reform tax deed only when he is satisfied from records in his office that the several tracts of land in question were sold separately. *Chatfield v. Iowa & Ark. Land Co.*, 88 Ark. 395, 114 S.W. 473 (1908).

26-38-106. Record of deeds made by county clerk.

The clerk of the county court shall enter in a book to be kept in his office a minute of all deeds made by him for lands and lots, and parts thereof, sold for taxes, naming therein:

- (1) The person who stood charged with the taxes at the time of the sale;
- (2) The name of the purchaser;
- (3) A brief description of the land or lot, or part thereof, sold;
- (4) The quantity sold;
- (5) The name of the grantee in the deed; and
- (6) The date of the execution.

History. Acts 1883, No. 114, § 150, p. 199, C. & M. Dig., § 10115; Pope's Dig., § 13879; A.S.A. 1947, § 84-1311.

26-38-107. Title claims adverse to tax title deeds.

(a) Under and by virtue of a deed executed substantially by the clerk of the county court, the party claiming title adverse to that conveyed by the deed shall be required to prove, in order to defeat the title, either that the real property was not subject to taxation for the years named in the deed, or that the taxes had been paid before the sale, that the property had been redeemed from the sale, according to the provisions of this act, and that such redemption was had or made for the use and benefit of persons having the right of redemption under the laws of this state; or that there had been an entire omission to list or assess the property, to levy taxes, to give notice of the sale, or to sell the property.

(b) No person shall be permitted to question the title acquired by a deed of the county clerk without first showing that he, or the person under whom he claims title to the property, had title thereto, at the time of the sale, or that title was obtained from the United States, or this state, after the sale, and that all taxes due upon the property have been paid by such person, or the person under whom he claims title as aforesaid.

(c) In any case where a person had paid his taxes, and through mistake, or otherwise, by the collector, the land upon which the taxes were paid was afterward sold, the deed of the county clerk shall not convey the title.

(d) In all cases where the owner of lands sold for taxes shall resist the validity of a tax title, the owner may prove fraud committed by the officer selling the land or in the purchaser to defeat the sale, and if fraud is so established, the sale and title shall be void.

History. Acts 1883, No. 114, § 146, p. 199; C. & M. Dig., § 10110; Pope's Dig., § 13874; A.S.A. 1947, § 84-1313.

Meaning of "this act". Acts 1883, No. 114, codified as §§ 14-15-201, 14-15-505, 16-20-106, 16-92-113 — 16-92-115, 16-96-401, 21-6-305, 25-16-517, 26-1-101, 26-2-101, 26-2-103, 26-2-108, 26-3-201, 26-3-204, 26-3-301, 26-25-101 — 26-25-103, 26-25-105, 26-26-702 — 26-26-704, 26-26-714, 26-26-716, 26-26-717, 26-26-903 — 26-26-909, 26-26-914, 26-26-1001, 26-26-1102, 26-26-1107, 26-26-1202 — 26-26-1205, 26-26-1505, 26-28-101, 26-28-103 — 26-28-108, 26-28-110, 26-28-111, 26-34-101 — 26-34-103, 26-34-108, 26-35-201, 26-35-301 — 26-35-303, 26-35-401, 26-35-402, 26-35-503, 26-35-504, 26-35-603, 26-35-604, 26-35-901, 26-35-1001 — 26-35-1004, 26-36-202, 26-36-204, 26-36-206 — 26-36-209, 26-36-211, 26-37-106, 26-37-206, 26-37-208, 26-37-209, 26-37-305, 26-37-307, 26-38-106, 26-38-107, 26-39-204 — 26-39-221, 26-39-302 — 26-39-305, 26-39-403, 26-39-406, 26-39-501 — 26-39-509, 26-76-102 — 26-76-108, 26-76-201, and 26-76-202.

Cross References. Limitation on actions of ejectment against persons holding under tax title, § 18-61-106.

Tax sale void when taxes paid, § 26-37-206.

Case Notes

Applicability.

Evidence to Defeat Tax Titles.

Proof of Title.

Standing.

Applicability.

This section is limited to deeds made by county court clerks and does not embrace deeds made by the Commissioner of State Lands. *Townsend v. Martin*, 55 Ark. 192, 17 S.W. 875 (1891); *St. Louis Refrigerator & Wooden Gutter Co. v. Thornton*, 74 Ark. 383, 86 S.W. 852 (1905); *Lightle v. Laws*, 123 Ark. 537, 186 S.W. 73 (1916); *Lockridge v. Stokes*, 133 Ark. 559, 199 S.W. 89 (1917); *Horne v. Howe Lumber Co.*, 209 Ark. 202, 190 S.W.2d 7 (1945); *Staton v. Moore*, 210 Ark. 416, 196 S.W.2d 573 (1946); *Dill v. Snodgrass*, 213 Ark. 526, 211 S.W.2d 440 (1948); *Booth v. Peoples Loan & Inv. Co.*, 248 Ark. 1213, 455 S.W.2d 868 (1970).

This section has no applicability to a tax title void upon its face. *Rhodes v. Covington*, 69 Ark. 357, 63 S.W. 799 (1901).

This section does not apply to a case of conflicting tax titles. *Rhea v. McWilliams*, 73 Ark. 557, 84 S.W. 726 (1905); *McDaniel v. Berger*, 89 Ark. 139, 116 S.W. 194 (1909); *Dill v. Snodgrass*, 213 Ark. 526, 211 S.W.2d 440 (1948).

Evidence to Defeat Tax Titles.

Where lands were erroneously sold for delinquent taxes, it is proper to permit collector to testify that taxes had been paid. *Davis v. Hare*, 32 Ark. 386 (1877) (decision under prior law).

Receipt for tax payment was of no validity where it was given after forfeiture of the land. *Thornton v. Smith*, 36 Ark. 508 (1880) (decision under prior law).

The levy and notice of sale referred to in this section refers to a levy or notice of sale made under authority of statute and not if made in any manner. *Allen v. Ozark Land Co.*, 55 Ark. 549, 18 S.W. 1042 (1892).

This section does not prevent a meritorious defense. *Cooper v. Freeman Lumber Co.*, 61 Ark. 36, 31 S.W. 981 (1895).

Burden of proof is upon person seeking to cancel tax title. *Newman v. Lybrand*, 130 Ark. 424, 197 S.W. 855 (1917).

Landowner who failed to pay taxes on land continuously since its forfeiture and sale for delinquent taxes was not precluded from asserting invalidity of tax sale for failure of county clerk to append to the recorded list of delinquent land the certificate of publication of the notice of sale. *Standard Sec. Co. v. Republic Mining & Mfg. Co.*, 207 Ark. 335, 180 S.W.2d 575 (1944).

Failure of the county clerk to execute and attach a certificate as to publication of delinquent list of lands prior to the date of sale is a meritorious defense to a tax deed issued by the clerk. *Hensley v. Phillips*, 215 Ark. 543, 221 S.W.2d 412 (1949).

Court erred in dismissing complaint where evidence showed that clerk had not attached warrant to tax books in delivering books to collector. *Ensminger v. Sheffield*, 220 Ark. 598, 248 S.W.2d 877 (1952).

Proof of Title.

To question a tax title one must show that he, or those under whom he holds, had title at the time of the sale. *Osceola Land Co. v. Chicago Mill & Lumber Co.*, 84 Ark. 1, 103 S.W. 609 (1907); *Knauff v. National Cooperage & Woodenware Co.*, 99 Ark. 137, 137 S.W. 823 (1911).

Landowner must show title or that title was obtained from United States or from this state after sale. *Massengale v. Brown*, 159 Ark. 566, 252 S.W. 588 (1923).

Deraignment of perfect title is not necessary to sufficiently support a title for the purpose of setting aside void tax deeds. *Fine v. Bucha*, 247 Ark. 1074, 449 S.W.2d 406 (1970).

Standing.

Parties did not lack standing to challenge tax sale where they proved that their predecessors in title had legal title to the property at the time of the tax sale. *Thorne v. Magness*, 34 Ark. App. 39, 805 S.W.2d 95 (1991).

Cited: *Trustees of First Baptist Church v. Ward*, 286 Ark. 238, 691 S.W.2d 151 (1985).

26-38-108 — 26-38-123. [Repealed.]

Publisher's Notes. These sections, concerning procedure for suits to confirm title to land in the state, listing of forfeited, sold, or donated lands, distribution of back taxes, and fees, were repealed by Acts 1993, No. 646, § 11. The sections were derived from the following sources:

26-38-108. Acts 1935, No. 119, § 1; Pope's Dig., § 8711; A.S.A. 1947, § 84-1315.

26-38-109. Acts 1943, No. 299, § 1; A.S.A. 1947, § 84-1316.

26-38-110. Acts 1943, No. 299, § 2; A.S.A. 1947, § 84-1317.

26-38-111. Acts 1935, No. 119, § 2; Pope's Dig., § 8712; A.S.A. 1947, § 84-1318.

26-38-112. Acts 1935, No. 119, § 3; Pope's Dig., § 8713; A.S.A. 1947, § 84-1319.

26-38-113. Acts 1935, No. 119, § 4; Pope's Dig., § 8714; A.S.A. 1947, § 84-1320.

26-38-114. Acts 1935, No. 119, § 5; Pope's Dig., § 8715; A.S.A. 1947, § 84-1321.

26-38-115. Acts 1935, No. 119, § 6; Pope's Dig., § 8716; A.S.A. 1947, § 84-1322.

26-38-116. Acts 1935, No. 119, § 7; Pope's Dig., § 8717; A.S.A. 1947, § 84-1323.

26-38-117. Acts 1935, No. 119, § 8; Pope's Dig., § 8718; A.S.A. 1947, § 84-1324.

26-38-118. Acts 1935, No. 119, § 9; Pope's Dig., § 8719; Acts 1939, No. 318, § 2; 1941, No. 423, § 1; A.S.A. 1947, § 84-1325.

26-38-119. Acts 1943, No. 299, § 5; A.S.A. 1947, § 84-1326.

26-38-120. Acts 1943, No. 299, § 4; A.S.A. 1947, § 84-1327.

26-38-121. Acts 1947, No. 375, § 2; A.S.A. 1947, § 84-1328.

26-38-122. Acts 1947, No. 375, § 3; A.S.A. 1947, § 84-1329.

26-38-123. Acts 1943, No. 299, § 6; A.S.A. 1947, § 84-1330.

For present law, see § 26-38-201 et seq.

26-38-124. [Repealed.]

A.C.R.C. Notes. This section as enacted by Acts 1989, No. 234, § 1, became effective Feb. 24, 1989, pursuant to an emergency clause. The section provided:

"No deed issued after January 1, 1987, by the Commissioner of State Lands is void or voidable on the ground that the assessment of the property taxes on the severed mineral interests was not subjoined to the assessment of property taxes on the surface realty." However, Acts 1989, No. 234 was subsequently repealed by Acts 1989, No. 904, § 2, effective July 3, 1989.

Subchapter 2 — Title to Forfeited Lands

26-38-201. Suit to confirm title to land in state.

26-38-202. Petition.

26-38-203. Publication of notice.

26-38-204. Parties to suit.

26-38-205. Decree.

26-38-206. Effect of the decree of confirmation.

26-38-207. Court costs and publication fees.

26-38-208. Severed mineral rights.

26-38-209. Application.

A.C.R.C. Notes. References to "this chapter" in subchapter 1 may not apply to this subchapter which was enacted subsequently.

Cross References. Forfeiture of property for criminal acts, § 5-5-301 et seq.

Effective Dates. Acts 1993, No. 646, § 14: Mar. 23, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that a method of strengthening and

validating the title of the state and its grantees to real property forfeited for nonpayment of taxes must be established; that, in order to accomplish this purpose, the state shall be authorized to file confirmation proceedings against real property that is forfeited and conveyed to the state for the nonpayment of taxes; that, the purpose of this act is to cure all irregularities, informalities, and defects connected with the procedures of forfeiture and sale. Further, a decree of confirmation shall act as a complete bar against any and all persons, firms, corporations, quasi-corporations, associations, trustees, and holders of beneficial interests who may claim the real property, subject only to the exceptions set forth in this act. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

26-38-201. Suit to confirm title to land in state.

(a) Whenever any real property, sectional or town or city lots, has been forfeited to the State of Arkansas and conveyed by certification to the Commissioner of State Lands for the nonpayment of taxes, the state may file a suit for confirmation of title in the chancery court wherein the real property lies, requesting that the title to the real property be confirmed and quieted in the State of Arkansas, in care of the Commissioner of State Lands, in fee simple.

(b) Suit to confirm title by the state may be filed at any time subsequent to the conveyance by certification. Further, the state may elect to file for confirmation subsequent to conveyance from the state to any purchaser, donee, or redemtor. In the event confirmation is filed following a conveyance from the state, the decree of confirmation shall inure to the benefit of the purchaser, donee, or redemtor of the lands.

History. Acts 1993, No. 646, § 1.

26-38-202. Petition.

(a) The Commissioner of State Lands, on behalf of the State of Arkansas, shall file in the office of the clerk of the circuit court of the county in which the forfeited real property is situated a petition requesting that title be confirmed in the real property described in the petition.

(b) The petition shall have a certified list attached to it, describing the real property and containing the years and the amounts for which each parcel was forfeited.

(c) The petition may include as many parcels of land as the Commissioner of State Lands deems proper, so long as all parcels lie within the county.

(d) The certified list shall be all the proof that shall be required to show prima facie title in the state.

History. Acts 1993, No. 646, § 2.

26-38-203. Publication of notice.

(a) Upon the filing of the petition, there shall be published for four (4) consecutive weeks, once per week, in a newspaper having general circulation in the county wherein the real property is located, a notice calling on all persons, firms, corporations, or improvement districts who can set up any right to the real property so conveyed and forfeited to show cause why the title to the real property should not be confirmed, quieted, and vested in the State of Arkansas in fee simple.

(b) The notice shall set forth the description of the real property and the name of the person, firm, or corporation last paying taxes thereon.

History. Acts 1993, No. 646, § 4.

26-38-204. Parties to suit.

(a) Any person, firm, corporation, or improvement district claiming any interest in any parcel of real property adverse to the state shall have the right to be made a party to a suit, and, if made a party, the claims of any such person, firm, corporation, or improvement district shall be adjudicated.

(b) If any person, firm, corporation, or improvement district sets up the defense that the conveyance to the state was void for any cause, the person, firm, corporation, or improvement district shall tender to the clerk of the court the amount of taxes, penalties, interest, and costs due and owing on the parcel.

(c) (1) In case any person, firm, corporation, or improvement district so made a party defendant to the proceeding, as provided in this section, shall establish a valid defense, a decree of the court shall be rendered in favor of the defendant, with respect to the parcel so affected, and the decree shall order the defendant to pay all taxes, penalties, interest, and costs due on the parcel. Thereafter, the Commissioner of State Lands shall issue a deed of redemption.

(2) In the event the defendant fails to establish a valid defense, an order so stating will be entered, and the defendant will be allowed to recover the funds tendered to the clerk pursuant to subsection (b) of this section.

History. Acts 1993, No. 646, § 3.

26-38-205. Decree.

The decree of a circuit court confirming the forfeiture and conveyance to the state of real property shall inure to the benefit of the purchaser, donee, or redemtor of the real property.

History. Acts 1993, No. 646, § 6.

26-38-206. Effect of the decree of confirmation.

(a) The decree of the chancery court confirming the forfeiture and conveyance to the state of real property shall operate, except only as expressly provided in this section, as a complete bar, both at law and in equity, against any and all persons, firms, corporations, quasi-corporations, associations, trustees, and holders of beneficial interests who may hereafter assert or defend claims to the real property and as a vesting of the complete and indefensible title to the real property in the state and its grantees in fee simple, free and clear of all such claims.

(b) It shall so operate, regardless of whether such forfeiture and conveyance may have been void or voidable because of defects or irregularities occurring in the proceedings therefor.

(c) (1) All parties shall have the right to appeal any decree of confirmation pursuant to the Arkansas Rules of Civil Procedure.

(2) (A) Any person, firm, corporation, quasi-corporation, association, trustee, or holder of a beneficial interest whose interest in the property is properly recorded but who is not properly served notice of the confirmation proceedings shall have one (1) year from and after rendition to attack the decree insofar as it relates to his real property.

(B) All attacks upon the decree made after the one (1) year period shall be

taken to be collateral attacks and shall be wholly ineffectual.

History. Acts 1993, No. 646, § 5.

Case Notes

Applicability.

Applicability.

Debtor who claimed an equitable interest in the property based on an alleged oral rent-to purchase agreement with the owner could challenge the tax sale and transfer of property to the subsequent purchaser because the state did not file an action in Chancery Court under § 26-38-206, to bar any subsequent claims. Further, § 26-37-203 gave the debtor two hears to contest the validity of the conveyance. In re Paro, 362 B.R. 419 (Bankr. E.D. Ark. 2007).

26-38-207. Court costs and publication fees.

(a) Fees and costs associated with the filing of confirmation suits may be charged to any purchaser, donee, or redemtor to whose benefit the decree of confirmation inures.

(b) The state shall be exempt from payment of court costs.

(c) Fees for publication of notices required under this subchapter shall be governed by § 26-37-108 [repealed].

History. Acts 1993, No. 646, §§ 6, 7.

26-38-208. Severed mineral rights.

The provisions of this subchapter shall be applicable to severed mineral interests that are forfeited and conveyed to the state for the nonpayment of taxes. Wherever the terms “real property”, “parcel(s)”, or “parcel of real property” appear, the same shall also mean severed mineral interests.

History. Acts 1993, No. 646, § 8.

26-38-209. Application.

The provisions of this subchapter are applicable to all forfeitures and conveyances to the state or from the state whether such forfeiture or conveyance occurred before or after March 23, 1993.

History. Acts 1993, No. 646, § 9.

Chapter 39 Settlement Of Moneys Collected

Subchapter 1 — General Provisions

Subchapter 2 — Payment of Funds Generally

Subchapter 3 — Report of Delinquent Taxpayers

Subchapter 4 — Settlement of County Collectors' Accounts

Subchapter 5 — Failure of County Collectors to Account

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 881 et seq.

C.J.S. 84 C.J.S., Tax., § 645 et seq.

Subchapter 1

— General Provisions

[Reserved]

Subchapter 2 — Payment of Funds Generally

- 26-39-201. Time for payment.
- 26-39-202, 26-39-203. [Repealed.]
- 26-39-204. Collector to pay in kind.
- 26-39-205. [Repealed.]
- 26-39-206. Settlement for other moneys received.
- 26-39-207. Taxes on convictions, etc.
- 26-39-208. Duplicate receipts given for funds received.
- 26-39-209. Charging of funds.
- 26-39-210. Record of settlement.
- 26-39-211. Deficit in settlement.
- 26-39-212. Failure to make settlement.
- 26-39-213. Failure to pay amount due.
- 26-39-214. Adjustment on failure to settle.
- 26-39-215. Failure of delinquent officer to pay.
- 26-39-216. Judgment for amount due.
- 26-39-217. Reexamination of settlement.
- 26-39-218. Lien for balance due.
- 26-39-219. Judgment against delinquent officers and securities.
- 26-39-220. Adjustment of errors.
- 26-39-221. Notice of reexamination.

Cross References. Arkansas Governmental Compliance Act, § 10-4-301 et seq.
Penalty for failure to settle, § 21-7-211.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.
Acts 1911, No. 415, § 3: approved May 31, 1911. Emergency declared.
Acts 1935, No. 282, § 9: effective on passage.

26-39-201. Time for payment.

(a) (1) The county clerk and probate clerk, circuit clerk, constables, county sheriff, county collector, and any other county official in the State of Arkansas are required to pay over to the county treasurer of each county on the first of each month, or within five (5) working days thereafter, all funds in each of their hands belonging to the county or its subdivisions that are by law required to be paid into the county treasury, whether taxes, fines, or any moneys that are collected for any purpose by law and belonging to the county.

(2) The county collector shall pay to the Treasurer of State all moneys belonging to the State of Arkansas on the day mentioned in subdivision (a)(1) of this section.

(b) (1) This section does not mean that the county collector shall make a distribution of taxes to all funds but that he or she shall settle with the county treasurer in a lump sum, and the county treasurer shall credit it to the county collector's unapportioned account.

(2) Upon the issuance of a certificate of the county clerk or other county officer

designated pursuant to § 26-28-102(a) that is issued on or before the thirtieth day of each month, the county treasurer shall transfer to the various funds ninety percent (90%) of the advance payments made by the county collector during the collecting period and, upon final settlement, the proper adjustments shall be made with the various accounts, and the balance remaining in the unapportioned account shall be distributed upon order of the county court approving the final settlement of the county collector.

History. Acts 1935, No. 282, § 7; Pope's Dig., § 13905; Acts 1973, No. 160, § 1; A.S.A. 1947, § 84-1401; Acts 1995, No. 856, § 1; 2009, No. 721, § 2.

Publisher's Notes. Acts 1883, No. 114, § 191, provided that all persons chargeable with moneys belonging to any county should render their accounts to, and settle with, the county court at each regular session.

Amendments. The 1995 amendment, in (a)(1), substituted "sheriff, collector, and any other county official" for "sheriff, and collector of each county" and substituted "working days" for "days." The 2009 amendment inserted "or other county officer designated pursuant to § 26-28-102(a)" in (b)(2), and made minor stylistic changes.

Case Notes

Audits.
Penalties.
Sureties.

Audits.

County court could employ expert accountant to audit books of county officers. *E.F. Leathem & Co. v. Jackson County*, 122 Ark. 114, 182 S.W. 570 (1916) (decision under prior law).

Penalties.

The illegal receipt of specific payments by county sheriff being within the scope of this section, a charge of the five percent penalty provided for in § 26-39-501 by the trial court is proper. *Thomas v. Williford*, 259 Ark. 354, 534 S.W.2d 2 (1976).

There are no criminal penalties for a collector's failure to comply with the deposit requirements of this section. *Mhoun v. State*, 277 Ark. 341, 642 S.W.2d 292 (1982).

Failure of tax collector to deposit his collections monthly with treasurer as required by this section does not constitute a misdemeanor subject to the penalty provisions of § 26-39-204, since the statutes concern two separate and distinct duties of the collector. *Mhoun v. State*, 277 Ark. 341, 642 S.W.2d 292 (1982).

A tax collector's failure to deposit his collections promptly is not in itself a criminal offense. *Mhoun v. State*, 277 Ark. 341, 642 S.W.2d 292 (1982).

Sureties.

A cause of action cannot accrue against surety until final judgment fixing county collector's liability has been entered. *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976). Statute of limitations on an action against surety on county collector's bond does not begin to run until collector actually files his settlement with county court or until county court adjusts collector's account following notice to the delinquent officer. *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

Cited: *Newton v. Edwards*, 203 Ark. 18, 155 S.W.2d 591 (1941).

26-39-202, 26-39-203. [Repealed.]

Publisher's Notes. These sections, concerning report of tax installments and collector charged for late filings, were repealed by Acts 2003, No. 295, § 13. The sections were derived from: 26-39-202. Acts 1933 (1st Ex. Sess.), No. 16, § 2; Pope's Dig., § 13904; A.S.A. 1947, § 84-1403. 26-39-203. Acts 1911, No. 415, § 2; C. & M. Dig., § 10067; Pope's Dig., § 13828; A.S.A. 1947, § 84-1404.

26-39-204. Collector to pay in kind.

(a) The county collector shall pay into the State Treasury and the county treasury, in kind, all money collected by him or her, whether specie, United States paper currency, national bank notes, silver or gold certificates, or warrants or scrip, or check drawn on the county collector's account, as authorized by law to be received.

(b) Every county collector or other officer who shall fail to comply with the provisions of this section shall:

(1) Be fined one hundred dollars (\$100) for each violation;

(2) Be held liable on his or her official bond for the difference in value between the funds received and those paid; and

(3) Not be eligible to hold any office of trust in this state.

History. Acts 1883, No. 114, § 113, p. 199; C. & M. Dig., § 10046; Pope's Dig., § 13805; A.S.A. 1947, § 84-1402; Acts 2003, No. 295, § 9.

Amendments. The 2003 amendment inserted "or check drawn on the collector's account" in (a); and made gender neutral changes.

Case Notes

Other Officers.
Payment in Kind.
Penalty.

Other Officers.

A county clerk comes within the designation "or other officer" under this section. *Newton County v. Phillips*, 181 Ark. 177, 25 S.W.2d 419 (1930).

Payment in Kind.

Where collector collected tax in currency and paid it to treasurer in county warrants, his official liability ceased since county warrants were legal tender. *Askew v. Columbia County*, 32 Ark. 270 (1877) (decision under prior law).

Where county clerk received money in payment of taxes, he was required to make his settlement "in kind" and could not make settlement in depreciated county warrants, although he would have been required to accept them if they had been offered in payment of taxes. *Newton County v. Phillips*, 181 Ark. 177, 25 S.W.2d 419 (1930).

Penalty.

Failure of tax collector to deposit his collections monthly with treasurer as required by § 26-39-201 does not constitute a misdemeanor subject to the penalty provisions of this section, since the statutes concern two separate and distinct duties of the collector. *Mhoon v. State*, 277 Ark. 341, 642 S.W.2d 292 (1982).

26-39-205. [Repealed.]

Publisher's Notes. This section, concerning settlement of accounts for blank licenses, was repealed by Acts 2003, No. 295, § 14. The section was derived from Acts 1883, No. 114, § 184, p. 199; C. & M. Dig., § 10146; Pope's Dig., § 13928; A.S.A. 1947, § 84-1425.

26-39-206. Settlement for other moneys received.

(a) In like manner and time as provided in § 26-39-205, the sheriff or collector shall be required to settle his accounts of all moneys received by him on account of taxes, fines, penalties, and judgments. They shall be entered of record, so as to show:

(1) What is due the state and county, respectively;

- (2) From what officer received;
- (3) From what branch of revenue; and
- (4) The particular fund, if any, to which it belongs.

(b) If any collector shall fail to make settlement with the county court at the time required, he shall be attached until he makes a settlement. Immediately after settlement with the county court, the county clerk shall certify to the Auditor of State the amount due the state. The collector shall, within fifteen (15) days, pay the sums into the State Treasury and, in ten (10) days, pay over to the county treasurer all sums due the county.

History. Acts 1883, No. 114, § 185, p. 199; C. & M. Dig., § 10147; Pope's Dig., § 13929; A.S.A. 1947, § 84-1426.

26-39-207. Taxes on convictions, etc.

The sheriff shall collect and account for all taxes due upon convictions and all fines, forfeitures, and other sums of money, by whatever name designated, owing to the state or any county by virtue of any order, judgment, or decree of a court of record.

History. Acts 1883, No. 114, § 186, p. 199; C. & M. Dig., § 10148; Pope's Dig., § 13930; A.S.A. 1947, § 84-1427.

26-39-208. Duplicate receipts given for funds received.

(a) Whenever the sheriff or collector shall receive the amount due from any officer by voluntary payment or by the sale of goods and chattels, he shall give the officer duplicate receipts for it, stating therein:

- (1) The whole amount received;
- (2) How much for the state;
- (3) How much for the county; and
- (4) The particular fund to which it belongs.

(b) The officer taking the receipts shall, without delay, deposit one (1) of the receipts with the county clerk.

History. Acts 1883, No. 114, § 187, p. 199; C. & M. Dig., § 10149; Pope's Dig., § 13931; A.S.A. 1947, § 84-1428.

26-39-209. Charging of funds.

(a) The county clerk shall charge the sheriff or collector and county treasurer with all moneys that may come into their hands by virtue of any of the provisions of this subtitle.

(b) (1) The money received for penalty and costs of advertising shall be first applied by the sheriff or collector to the cost of advertising delinquent lands, and the surplus, if any, paid into the county treasury at the time of his annual settlement.

(2) Should there not be sufficient penalty and costs of advertising to pay the cost of advertising delinquent lands, the balance shall be paid out of the county treasury.

History. Acts 1883, No. 114, § 188, p. 199; C. & M. Dig., § 10150; Pope's Dig., § 13932; A.S.A. 1947, § 84-1429.

26-39-210. Record of settlement.

(a) Whenever the court shall make a settlement with any officer, the substance thereof shall be entered of record so as to show separately:

- (1) The whole amount received by the officer;
 - (2) The amount of commission allowed him;
 - (3) How much remains due to the state and how much to the county; and
 - (4) On what account each sum of money was received and to what particular fund, if any, it belongs.
- (b) All officers who shall have made settlements with the courts as provided in this chapter shall immediately pay to the treasurer the full amount with which they shall stand charged on their settlement. In default thereof, the sheriff or collector shall enforce the payment in the manner and by the means prescribed in this subtitle for enforcing the collection of taxes.

History. Acts 1883, No. 114, §§ 192, 193, p. 199; C. & M. Dig., §§ 10154, 10155; Pope's Dig., §§ 13936, 13937; A.S.A. 1947, §§ 84-1431, 84-1432.

Case Notes

Cited: Fireman's Fund Ins. Co. v. Polk County, 260 Ark. 799, 543 S.W.2d 947 (1976).

26-39-211. Deficit in settlement.

If the settlement of the county collectors or sheriffs with the county clerks shows any other deficit than that authorized by the provisions of this chapter, it shall be the duty of the county court to immediately notify the prosecuting attorney for the county in which the collector or sheriff resides of that fact. Upon notice, it shall be the duty of the prosecuting attorney to immediately bring suit against the county collector or sheriff and his securities for the amount of the deficiency, and also to prosecute the collector or sheriff by indictment for malfeasance in office.

History. Acts 1883, No. 114, § 225, p. 199; C. & M. Dig., § 10196; Pope's Dig., § 13979; A.S.A. 1947, § 84-1433.

26-39-212. Failure to make settlement.

Every officer required to make settlement who shall fail to settle his accounts in the time and manner prescribed by law may be attached and imprisoned until settlement shall be made to the satisfaction of the court to which he is accountable.

History. Acts 1883, No. 114, § 194, p. 199; C. & M. Dig., § 10156; Pope's Dig., § 13938; A.S.A. 1947, § 84-1434.

26-39-213. Failure to pay amount due.

Every officer who shall fail to pay the amount due from him on settlement and who shall be returned by the collector or treasurer to the county court as a delinquent, so that the collector or treasurer shall be credited in their accounts with the amount of the delinquency, shall forfeit five percent (5%) per month on the amount due from the time it ought to have been paid, until collected, which may be collected by suit on his official bond.

History. Acts 1883, No. 114, § 195, p. 199; C. & M. Dig., § 10157; Pope's Dig., § 13939; A.S.A. 1947, § 84-1435.

26-39-214. Adjustment on failure to settle.

- (a) If any person chargeable shall neglect to render true accounts or settle as provided in

this chapter, the county court shall adjust the accounts of the delinquent officer according to the best information that can be obtained and ascertain the balance due the county.

(b) In these cases, the court may refuse to allow any commission to the delinquent officer, and he shall moreover, without delay, pay into the county treasury the balance found due as indicated.

History. Acts 1883, No. 114, §§ 196, 197, p. 199; C. & M. Dig., §§ 10158, 10159; Pope's Dig., §§ 13940, 13941; A.S.A. 1947, §§ 84-1436, 84-1437.

Case Notes

Notice.

Sureties.

Notice.

It was not necessary that delinquent officer have notice that a settlement of his accounts was to be made by the court under former statute, where no judgment could be rendered, the proceedings being preliminary. *Trice v. Crittenden County*, 7 Ark. 159 (1846); *Carnall v. Crawford County*, 11 Ark. 604 (1851) (decisions under prior law).

Sureties.

A cause of action cannot accrue against surety until final judgment fixing county collector's liability has been entered. *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

Cited: *E.F. Leathem & Co. v. Jackson County*, 122 Ark. 114, 182 S.W. 570 (1916).

26-39-215. Failure of delinquent officer to pay.

If a delinquent officer shall not pay the amount found due the county and produce the treasurer's receipt therefor within ten (10) days after the balance is ascertained, the clerk shall charge the delinquent, as a penalty for such failure, twenty-five percent (25%) on the amount then due.

History. Acts 1883, No. 114, § 198, p. 199; C. & M. Dig., § 10160; Pope's Dig., § 13942; A.S.A. 1947, § 84-1438.

26-39-216. Judgment for amount due.

Unless a delinquent officer shall appear upon the first day of the next succeeding session of the court and show good cause for setting aside the settlement, the court shall enter judgment for the amount due with the penalty added thereon, and fifty percent (50%) per annum, until it shall be paid and may issue execution thereon.

History. Acts 1883, No. 114, § 199, p. 199; C. & M. Dig., § 10161; Pope's Dig., § 13943; A.S.A. 1947, § 84-1439.

Case Notes

Interest.

Jurisdiction.

Notice.

Sureties.

Interest.

It is proper to adjudge interest at rate of 50 percent on both the amount found due and the penalty. *Carnall v. Crawford County*, 11 Ark. 604 (1851) (decision under prior law).

Jurisdiction.

County court was forum where liability of collector of the county revenue was to be ascertained

and evidenced by its records, and an adjudication in that forum was conclusive evidence against sureties as well as collector. *Jones v. State*, 14 Ark. 170 (1853) (decision under prior law). It was the province of the county court to adjust and settle the accounts of the collector, and they could not be settled in the circuit court in an action on the collector's bond. *Goree v. State*, 22 Ark. 236 (1860) (decision under prior law).

County court could render judgment against delinquent collector or his securities for county revenue that he has collected and failed to pay over, together with penalties. *Christian v. Ashley County*, 24 Ark. 142 (1863) (decision under prior law).

Notice.

Unless delinquent officer appeared at next term and showed cause for setting aside settlement, a court could render judgment against him, provided he had notice to appear; however, he could waive notice by appearing and moving to set aside the settlement. *Trice v. Crittenden County*, 7 Ark. 159 (1846) (decision under prior law).

If a collector was dead, notice could be given his administrator. *Goree v. State*, 22 Ark. 236 (1860) (decision under prior law).

Sureties.

In action upon collector's bond for collecting and failing to pay over county revenues, it had to be averred either that the collector had settled with the county court and had failed to pay the amount due or that he had failed to settle and the county court had proceeded to adjust his accounts and render judgment against him. *Jones v. State*, 14 Ark. 170 (1853); *State v. Croft*, 24 Ark. 550 (1867) (decisions under prior law).

A cause of action cannot accrue against surety until final judgment fixing county collector's liability has been entered. *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

26-39-217. Reexamination of settlement.

If good cause be shown for setting aside the settlement, the court may reexamine, settle, and adjust it according to law and may remit any penalty that may have been imposed.

History. Acts 1883, No. 114, § 200, p. 199; C. & M. Dig., § 10162; Pope's Dig., § 13944; A.S.A. 1947, § 84-1440.

Case Notes

Cited: *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

26-39-218. Lien for balance due.

The amount or balance of every account settled and due to the county shall be a lien from the date of the settlement of the account on the real estate and personal property of the delinquent officer situated in the county wherein each delinquent lives.

History. Acts 1883, No. 114, § 201, p. 199; C. & M. Dig., § 10163; Pope's Dig., § 13945; A.S.A. 1947, § 84-1441.

Case Notes

Applicability.

Appeals.

Priorities.

Applicability.

This section applies both to the original account of an officer and to his readjusted account.

Taylor v. Georgia State Sav. Ass'n, 141 Ark. 425, 218 S.W. 180 (1920).

Lien is coextensive with limits of whole county, notwithstanding county is divided into two districts.

Taylor v. Georgia State Sav. Ass'n, 141 Ark. 425, 218 S.W. 180 (1920).

Statute of limitations fixing period of three years on judgment liens (§ 16-65-117) is not applicable

to this section. Taylor v. Georgia State Sav. Ass'n, 141 Ark. 425, 218 S.W. 180 (1920).

Appeals.

Lien in favor of county on land of tax collector is not extinguished by supersedeas bond executed by collector on appeal to the Supreme Court from an adjustment of his account, the bond merely suspending enforcement during pendency of the appeal. Taylor v. Georgia State Sav. Ass'n, 141 Ark. 425, 218 S.W. 180 (1920).

Where a county obtained a lien under this section and the collector appealed to the Supreme Court and executed a supersedeas bond, the county could properly enforce the county's lien against the land without first exhausting its remedy against the sureties on the supersedeas bond. Taylor v. Georgia State Sav. Ass'n, 141 Ark. 425, 218 S.W. 180 (1920).

Priorities.

Where collector's land was sold under execution and purchased by surety on collector's bond, a junior mortgage lienholder could not subsequently ask that the surety be compelled to secure reimbursement for losses out of property other than that mortgaged. Taylor v. Georgia State Sav. Ass'n, 141 Ark. 425, 218 S.W. 180 (1920).

26-39-219. Judgment against delinquent officers and securities.

When any balance shall be found against any clerk, sheriff, collector, coroner, constable, or other officer for moneys accruing to the county treasury and it shall not be paid within the time prescribed by law, it shall be lawful for the county court, fifteen (15) days' notice being given to the delinquent officers and their securities, to render judgment against the delinquents and their securities for the amount of all moneys ascertained to be due the county and issue execution therefor.

History. Acts 1883, No. 114, § 202, p. 199; C. & M. Dig., § 10164; Pope's Dig., § 13946; A.S.A. 1947, § 84-1442.

Case Notes

Settlements.

Settlements.

Prosecuting attorney who had no notice of suit against county circuit clerk and his sureties for alleged indebtedness to county had authority to make a settlement and dismiss the case, and county judge or taxpayer could not intervene to prevent such action. Rothrock v. Walker, 197 Ark. 846, 125 S.W.2d 459 (1939).

Cited: Fireman's Fund Ins. Co. v. Polk County, 260 Ark. 799, 543 S.W.2d 947 (1976).

26-39-220. Adjustment of errors.

(a) (1) The county court has the duty to reconsider and adjust the settlement of any county officer made with the court, including, but not limited to, the final tax settlement and distribution for any error discovered within three (3) years from the date of the settlement.

(2) Adjustment of an error shall be made within the year of discovery.

(b) Upon discovery of any error in the settlement after three (3) years, but within five (5) years from the date of the settlement, the county judge has the duty to petition the chancery court to obtain an order to correct the errors.

History. Acts 1883, No. 114, § 203, p. 199; C. & M. Dig., § 10165; Acts 1927, No. 339, § 1; Pope's Dig., § 13947; Acts 1985, No. 239, § 1; A.S.A. 1947, § 84-1443.

Case Notes

Applicability.
Authority.
Equitable Relief.
Liens.
Time Limitations.

Applicability.

This section includes errors of law as well as errors of fact. *Haley v. Thompson*, 116 Ark. 354, 172 S.W. 880 (1915).

Making corrections will not invalidate proceedings already instituted against bondsmen. *Graham v. State*, 100 Ark. 571, 140 S.W. 735 (1911).

Authority.

County court has power to open and reexamine settlement of collector upon notice and without a petition. *White County v. Key*, 30 Ark. 603 (1875) (decision under prior law).

Court has power to reexamine, restate, and correct errors, and in doing so has power to look into the validity of credits and claims that have already been allowed. *White County v. Key*, 30 Ark. 603 (1875) (decision under prior law).

Equitable Relief.

Chancery court may, after expiration of period prescribed in this section, grant relief upon an allegation of fraud. *State ex rel. Marion County v. Perkins*, 101 Ark. 358, 142 S.W. 515 (1912); *Fuller v. State*, 112 Ark. 91, 164 S.W. 770 (1914); *Yates v. State*, 186 Ark. 749, 54 S.W.2d 981 (1932).

This section applies only to settlements of officers handling revenue and will not preclude equity from granting relief against illegal exactions from the county by the circuit court. *Johnson County v. Bost*, 139 Ark. 35, 213 S.W. 388 (1919).

The original jurisdiction of equity to correct mistakes was not divested by this section. *Big Gum Drainage Dist. v. Crews*, 158 Ark. 566, 250 S.W. 865 (1923).

Where county court approved settlement allowing credit to treasurer for funds lost in closed bank, it was a legal fraud against which equity would relieve. *State Use Crawfordville Special School Dist. v. Huxtable*, 178 Ark. 361, 12 S.W.2d 1 (1928).

Liens.

Balances found due under this section become a lien under provisions of § 26-39-218. *Taylor v. Georgia State Sav. Ass'n*, 141 Ark. 425, 218 S.W. 180 (1920).

Time Limitations.

Where proceedings were not commenced until after expiration of statutory period, it was too late, although, prior to expiration of such period, ex parte proceedings were taken with regard to such settlement, but not under the provisions of this section. *Bledsoe v. State*, 167 Ark. 160, 267 S.W. 571 (1925).

This section did not bar county's suit against treasurer for excessive fees after one year from date of treasurer's settlement with county court. *McCoy v. State*, 190 Ark. 297, 79 S.W.2d 94 (1935) (decision prior to 1985 amendment).

Exclusive remedy of county treasurer claiming credit against county for amount of unpaid check given to him by collector in settlement in October, 1932, was under this section, but having treated the check as a cash item and apportioned it to the several funds entitled thereto, treasurer could not correct it in his settlement of 1935. *Montgomery County v. Elder*, 192 Ark. 845, 96 S.W.2d 453 (1936) (decision prior to 1985 amendment).

Cited: *Gargill v. Matthews*, 137 Ark. 75, 207 S.W. 225 (1918); *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

26-39-221. Notice of reexamination.

Before any settlement shall be reexamined, it shall be the duty of the court to give the officer ten (10) days' notice of the time and place where the settlement will be adjusted.

History. Acts 1883, No. 114, § 204, p. 199; C. & M. Dig., § 10166; Pope's Dig., § 13948; A.S.A. 1947, § 84-1444.

Case Notes

In General.

In General.

Order of county court is not binding on officer without notice having been given as required. *Bledsoe v. State*, 167 Ark. 160, 267 S.W. 571 (1925).

Cited: *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

Subchapter 3 — Report of Delinquent Taxpayers

26-39-301. Penalty.

26-39-302 — 26-39-305. [Repealed.]

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1903, No. 141, § 3: effective on passage.

Acts 1905, No. 54, § 2: effective on passage.

Acts 1935, No. 282, § 9: effective on passage.

Acts 1941, No. 64, § 6: effective on passage.

26-39-301. Penalty.

Any county collector who shall fail to file with the county clerk a full and complete list of all delinquent personal taxes on the day required by law shall be guilty of a violation punishable by a fine of one hundred dollars (\$100) or removal from office.

History. Acts 1935, No. 282, § 2; Pope's Dig., § 13903; Acts 1941, No. 64, § 1; 1981, No. 846, § 1; A.S.A. 1947, § 84-1410; 2005, No. 1994, § 171.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor."

26-39-302 — 26-39-305. [Repealed.]

Publisher's Notes. These sections, concerning reporting delinquent and insolvent taxpayers, list to be under oath, collector given credit for unpaid taxes, and collection of delinquencies after credit of allowance, were repealed by Acts 2003, No. 295, § 15. The sections were derived from: 26-39-302. Acts 1883, No. 114, § 122, p. 199; 1887, No. 92, § 44, p. 143; 1903, No. 141, § 1, p. 241; 1905, No. 54, § 1, p. 153; C. & M. Dig., § 10073; A.S.A. 1947, § 84-1405.

26-39-303. Acts 1883, No. 114, § 124, p. 199; C. & M. Dig., § 10077; Pope's Dig., § 13838; A.S.A. 1947, § 84-1408.

26-39-304. Acts 1883, No. 114, § 122, p. 199; C. & M. Dig., §§ 10074, 10075; Pope's Dig., §§ 13835, 13836; A.S.A. 1947, § 84-1406.

26-39-305. Acts 1883, No. 114, § 123, p. 199; C. & M. Dig., § 10076; Pope's Dig., § 13837; A.S.A. 1947, § 84-1407.

Subchapter 4 — Settlement of County Collectors' Accounts

26-39-401. Penalty.

26-39-402. Review by county court.

- 26-39-403. Approval or rejection.
- 26-39-404. Settlement with county and county subdivisions.
- 26-39-405. [Repealed.]
- 26-39-406. Distribution to funds.
- 26-39-407. [Repealed.]

Cross References. Penalty for failure to settle, § 21-7-211.

Preambles. Acts 1887, No. 13 contained a preamble which read:

“Whereas, 1st. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled ‘An Act to enforce the payment of Overdue Taxes,’ approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

“Whereas, 2d. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

“Whereas, 3d. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

“Now, therefore....”

Effective Dates. Acts 1875, No. 77, § 53: effective on passage. Approved Feb. 25, 1875.

Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1935, No. 282, § 9: effective on passage.

Acts 1941, No. 64, § 6: effective on passage.

26-39-401. Penalty.

Any county clerk or other county officer designated pursuant to § 26-28-102(a) who fails to set up the settlement of the county collector setting forth the amount due the various funds on or before the fourth Monday of December of each year upon conviction is guilty of a violation punishable by a fine of one hundred dollars (\$100) or removal from office.

History. Acts 1935, No. 282, § 2; Pope's Dig., § 13904; Acts 1941, No. 64, § 1; 1981, No. 846, § 1; A.S.A. 1947, § 84-1410; Acts 2005, No. 1994, § 172; 2009, No. 721, § 3.

Amendments. The 2005 amendment substituted “violation” for “misdemeanor.”

The 2009 amendment inserted “or other county officer designated pursuant to § 26-28-102(a)” and substituted “upon conviction is” for “shall be.”

26-39-402. Review by county court.

(a) All county collectors' settlements shall be made and filed with the county courts on or before the fourth Monday of December each year.

(b) (1) It is the duty of the county courts to pass upon the settlements of the county collectors and to approve, reject, or restate them on or before December 31 of each year.

(2) Failure of the county judge to so approve, reject, or restate the settlements of the county collector within this period of time shall constitute a misfeasance in office and

shall be a violation punishable by a fine of one hundred dollars (\$100) or removal from office.

History. Acts 1935, No. 282, § 2; Pope's Dig., § 13903; Acts 1941, No. 64, § 1; 1981, No. 846, § 1; A.S.A. 1947, § 84-1410; Acts 2005, No. 1994, § 172.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (b)(2).

Case Notes

Sureties.

Sureties.

A cause of action cannot accrue against surety until final judgment fixing county collector's liability has been entered. *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

26-39-403. Approval or rejection.

(a) If the tax settlement shall be found to be correct, the county court shall order the tax settlement spread in full upon the records of the county court.

(b) (1) The county clerk or other county officer designated pursuant to § 26-28-102(a) shall certify to the Auditor of State, without delay, the action of the county court on the tax settlement, whether approved or rejected.

(2) If rejected, the county clerk or other county officer designated pursuant to § 26-28-102(a) shall immediately proceed to restate the tax settlement and again submit it to the county court.

History. Acts 1883, No. 114, § 168, p. 199; 1887, No. 92, § 55, p. 143; C. & M. Dig., § 10125; Pope's Dig., § 13909; A.S.A. 1947, § 84-1411; Acts 2009, No. 721, § 6.

Amendments. The 2009 amendment inserted "or other county officer designated pursuant to § 26-28-102(a)" in (b)(1) and (b)(2), and made minor stylistic changes throughout the section.

Case Notes

Cited: *Big Gum Drainage Dist. v. Crews*, 158 Ark. 566, 250 S.W. 865 (1923); *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

26-39-404. Settlement with county and county subdivisions.

After the tax settlement made with the county collector by the county clerk or other county officer designated pursuant to § 26-28-102(a) has been examined and acted upon by the county court, as provided in § 26-39-402, the county collector shall make settlement with the county and its various subdivisions on or before December 30 of each year.

History. Acts 1941, No. 64, § 5; A.S.A. 1947, § 84-1412; Acts 2003, No. 295, § 10; 2009, No. 721, § 7.

Amendments. The 2003 amendment substituted "the collector" for "him" and deleted "and with the Auditor of State for all state taxes collected by him" at the end of this section. The 2009 amendment inserted "tax" and "or other county officer designated pursuant to § 26-28-102(a)."

Case Notes

Cited: *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

26-39-405. [Repealed.]

Publisher's Notes. This section, concerning mileage of collectors, was repealed by Acts 2003, No. 295, § 16. The section was derived from Acts 1875, No. 77, § 25, p. 167; C. & M. Dig., § 4592; Pope's Dig., § 5680; A.S.A. 1947, § 84-1413.

26-39-406. Distribution to funds.

All taxes collected and arising under any law of this state shall be distributed by the Auditor of State if in possession of state authority or if in possession of county authority by the clerk of the county court or other county officer designated pursuant to § 26-28-102(a) to the several funds to which the taxes belong.

History. Acts 1883, No. 114, § 207, p. 199; C. & M. Dig., § 10178; Pope's Dig., § 13961; A.S.A. 1947, § 84-1414; Acts 2009, No. 721, § 4.

Amendments. The 2009 amendment inserted "or other county officer designated pursuant to § 26-28-102(a)" and made minor stylistic and punctuation changes.

26-39-407. [Repealed.]

Publisher's Notes. This section, concerning quarterly distribution of money received from land redemptions, was repealed by Acts 1995, No. 232, § 11. The section was derived from Acts 1935, No. 282, § 8; Pope's Dig., § 13906; A.S.A. 1947, § 84-1415.

Subchapter 5 **— Failure of County Collectors to Account**

26-39-501. Penalty for failing to pay county funds.

26-39-502. Penalty for failing to pay state funds.

26-39-503 — 26-39-509. [Repealed.]

Preambles. Acts 1887, No. 13 contained a preamble which read:

"Whereas, 1st. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled 'An Act to enforce the payment of Overdue Taxes,' approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

"Whereas, 2d. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

"Whereas, 3d. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

"Now, therefore...."

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.
Acts 1887, No. 92, § 58: effective on passage.

26-39-501. Penalty for failing to pay county funds.

(a) Every collector of the county revenue, having made settlement according to law of the county revenue received and collected by him, shall pay the amount found due from him into the county treasury, and the treasurer shall give duplicate receipts therefor, one (1) of which shall be filed by the collector in the office of the county clerk.

(b) Every collector or sheriff who shall fail to make payment of the amount due from him on settlement, in the time and manner prescribed in this section, shall forfeit and pay to the county the sum of five percent (5%) per month on the sum wrongfully withheld, to be computed from the time the payment ought to have been made until actual payment, which may be recovered by suit on his official bond.

History. Acts 1883, No. 114, §§ 189, 190, p. 199; C. & M. Dig., §§ 10151, 10152; Pope's Dig., §§ 13933, 13934; A.S.A. 1947, § 84-1416.

Case Notes

Illegal Receipts.

Illegal Receipts.

Illegal receipt of specific payments by county sheriff being within scope of this section, charge of five percent penalty was proper. *Thomas v. Williford*, 259 Ark. 354, 534 S.W.2d 2 (1976).

Cited: *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

26-39-502. Penalty for failing to pay state funds.

If any collector and others bound by law to pay money directly into the State Treasury shall fail to pay the amount so found due into the State Treasury and produce the State Treasurer's receipt to the Auditor of State therefor within fifteen (15) days after the settlement required in § 26-39-404, the delinquent collector shall forfeit:

(1) The commissions allowed him by law;

(2) The sum of twenty-five percent (25%) on the amount; and

(3) A penalty of five percent (5%) per month on the amount wrongfully withheld, to be computed from the time it ought to have been paid until actual payment. The Auditor of State shall charge the delinquent accordingly, and the amount of principal and forfeitures may be recovered as provided for in this subchapter.

History. Acts 1883, No. 114, § 171, p. 199; C. & M. Dig., § 10131; Pope's Dig., § 13915; A.S.A. 1947, § 84-1417.

Cross References. Time for bringing action by state to recover money, § 16-106-104.

26-39-503 — 26-39-509. [Repealed.]

Publisher's Notes. These sections, concerning distress warrant against collector, endorsement of warrant, lien on property of collector, sale of lands and tenements, payment of money collected, fees of officer executing warrant, and return of surplus moneys, was repealed by Acts 2003, No. 295, § 17. The sections were derived from:

26-39-503. Acts 1883, No. 114, § 172, p. 199; 1887, No. 92, § 57, p. 143; C. & M. Dig., § 10132; Pope's Dig., § 13916; A.S.A. 1947, § 84-1418.

26-39-504. Acts 1883, No. 114, § 175, p. 199; C. & M. Dig., § 10135; Pope's Dig., § 13919; A.S.A. 1947, § 84-1421.

26-39-505. Acts 1883, No. 114, § 174, p. 199; C. & M. Dig., § 10134; Pope's Dig., § 13918; A.S.A. 1947, § 84-1420.

26-39-506. Acts 1883, No. 114, § 173, p. 199; C. & M. Dig., § 10133; Pope's Dig., § 13917;

A.S.A. 1947, § 84-1419.

26-39-507. Acts 1883, No. 114, § 178, p. 199; C. & M. Dig., § 10138; Pope's Dig., § 13922;

A.S.A. 1947, § 84-1424.

26-39-508. Acts 1883, No. 114, § 177, p. 199; C. & M. Dig., § 10137; Pope's Dig., § 13921;

A.S.A. 1947, § 84-1423.

26-39-509. Acts 1883, No. 114, § 176, p. 199; C. & M. Dig., § 10136; Pope's Dig., § 13920;

A.S.A. 1947, § 84-1422.

Chapters 40-49 [Reserved.]

[Reserved]

Subtitle 5. State Taxes

Chapter 50 General Provisions

Chapter 51 Income Taxes

Chapter 52 Gross Receipts Tax

Chapter 53 Compensating Or Use Taxes

Chapter 54 Corporate Franchise Taxes

Chapter 55 Motor Fuels Taxes

Chapter 56 Special Motor Fuels Taxes

Chapter 57 State Privilege Taxes

Chapter 58 Severance Taxes

Chapter 59 Estate Taxes

Chapter 60 Real Property Transfer Tax

Chapter 61 Tax on Timberlands and Rangelands

Chapter 62 Alternative Fuels Tax

Chapter 63 Arkansas Special Excise Taxes

Chapters 64-71 [RESERVED.]

Chapter 50 General Provisions

26-50-101. Definitions.

26-50-102. Wholesaler to furnish list of retailers.

Cross References. No increase in tax except by election or vote of three-fourths of legislature, Ark. Const. Amend. 19, § 2 [Ark. Const., Art. 5, § 38].

Effective Dates. Acts 1949, No. 78, § 6: Feb. 11, 1949. Emergency clause provided: "It has been ascertained that the present enforcement of the collection of Gross Receipts taxes due this State has been hampered and delayed by reason of refusal of wholesalers to furnish requested information, and that the public institutions to which Gross Receipts and Use Taxes are allotted, are in dire need of such funds, therefore an emergency is hereby declared to exist, and that this Act is necessary for the preservation of the public peace, health and safety, and this Act shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 182, §§ 9, 10: Jan. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to the taxation of banks and savings and loan associations is somewhat vague and indefinite, that such institutions should pay the same taxes as other business corporations in the State, and this Act is immediately

necessary to clarify the laws with respect to the taxation of financial institutions and to assure that such institutions pay the same taxes as other business corporations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved February 22, 1973.

Research References

ALR.

Consideration of tax consequences in distribution of marital property. 9 A.L.R.5th 568.
Property taxation of residential time-share or interval-ownership units. 80 A.L.R.4th 950.

26-50-101. Definitions.

(a) As used in §§ 26-26-1501 — 26-26-1504, 26-51-303, 26-51-407, 26-51-408, 26-52-305, and 26-53-110, unless the context otherwise requires:

(1) "State bank" means a bank, trust company, or savings bank chartered under the banking laws of this state;

(2) "National bank" means a bank chartered under the banking laws of the United States;

(3) "Savings and loan association" or "building and loan association" means any financial institution or association established and operating under the authority of § 23-37-101 et seq., or § 23-37-706 and § 23-38-101 et seq., or under any other appropriate state or federal law;

(4) "Financial institution" means a state or national bank, a savings and loan association, or a building and loan association as defined above;

(5) "Business corporation" means a corporation incorporated under the Arkansas Business Corporation Act, § 4-26-101 et seq.

(b) (1) It is the purpose of §§ 26-26-1501 — 26-26-1504, 26-51-303, 26-51-407, 26-51-408, 26-52-305, and 26-53-110 to clarify the law relating to the taxation of state and national banks and savings and loan and building and loan associations chartered under state and federal law and to simplify and to broaden the tax base applicable to such financial institutions.

(2) It is the intent of §§ 26-26-1501 — 26-26-1504, 26-51-303, 26-51-407, 26-51-408, 26-52-305, and 26-53-110 to repeal the capital stock tax and, in lieu thereof, to tax state and national banks, savings and loan associations and building and loan associations, under the existing tax laws generally applicable to business corporations.

History. Acts 1973, No. 182, §§ 1, 2; A.S.A. 1947, §§ 84-487n, 84-2087.

Publisher's Notes. Acts 1973, No. 182, § 9, provided that this act shall be in effect on and after January 1, 1973, and shall apply to tax years after said date.

26-50-102. Wholesaler to furnish list of retailers.

(a) (1) It shall be the duty of all persons, firms, and corporations, and all business establishments of every kind engaged in the wholesale business of selling merchandise in this state to furnish, upon the request in writing of the Director of the Department of Finance and Administration of this state, the names of any retailers or other persons to whom sales have been made, together with the amount of the sales for any given period, to be used by the director or his agents for the purposes of collecting the gross receipts, use, or other tax as may be due this state, but for no other purpose.

(2) The information provided for shall be furnished to the director within thirty

(30) days.

(3) The authority given in this subsection is in addition to any and all authority existing by reason of any statute of this state.

(b) Any wholesale concern selling merchandise in this state failing and refusing to give the information in writing, as requested by the director, is declared to be liable for any and all tax and penalty found to be due by the retailer for such period of time as is determined by the director in event the tax is not collectible from the retailer.

(c) The provisions of this section shall apply to out-of-state wholesalers, their agents, solicitors, salesmen, or collectors. Any person, firm, corporation, solicitor, salesman, agent, or collector who fails, neglects, or refuses to give the information so requested, in addition to being liable for tax and penalty found due, shall be guilty of aiding in evasion of the payment of such tax and, upon conviction in any court of this state, shall be fined in any sum not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000) for each offense.

History. Acts 1949, No. 78, §§ 1-3; A.S.A. 1947, §§ 84-1920 — 84-1922.

Chapter 51

Income Taxes

- Subchapter 1 — General Provisions
- Subchapter 2 — Imposition of Tax
- Subchapter 3 — Exemptions and Reduced Tax Rates
- Subchapter 4 — Computation of Tax Liability
- Subchapter 5 — Tax Credits Generally
- Subchapter 6 — Property Tax Credit for Senior Citizens
- Subchapter 7 — Uniform Division of Income for Tax Purposes Act
- Subchapter 8 — Tax Returns
- Subchapter 9 — Arkansas Income Tax Withholding Act
- Subchapter 10 — Water Resource Conservation and Development Incentives
- Subchapter 11 — Donations or Sales of Equipment to Educational Institutions
- Subchapter 12 — Steel Mill Tax Incentives
- Subchapter 13 — Winnings Withholding Act
- Subchapter 14 — Apportionment and Allocation of Net Income of Financial Institutions.
- Subchapter 15 — Private Wetland and Riparian Zone Creation and Restoration Incentive
- Subchapter 16 — Youth Apprenticeship/Work-Based Learning Program Tax Credit
- Subchapter 17 — Low Income Housing Tax Credit
- Subchapter 18 — Small Business Capital Formation Act
- Subchapter 19 — Employee Tuition Reimbursement Tax Credit
- Subchapter 20 — Manufacturer's Investment Tax Credit
- Subchapter 21 — Gift of Life Act
- Subchapter 22 — Arkansas Historic Rehabilitation Income Tax Credit Act

A.C.R.C. Notes. References to “this chapter” in subchapters 1—14 may not apply to §§ 26-51-441, 26-51-442, 26-51-443 — 26-51-446, 26-51-451, 26-51-452 and 26-51-507—26-51-509 or subchapter 15 which were enacted subsequently.

Effective Dates. Acts 1997, No. 328, § 11, provided: "This Act shall be effective on and after November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10."

Acts 1997, No. 328, § 12, provided: "The withholding tables prescribed by the Director of the Department of Finance and Administration pursuant to Ark. Code Ann. § 26-51-907 shall not be amended for tax year 1998 to reflect the changes adopted by this Act. If this Act becomes effective on November 15, 1998, the effect of the various provisions of this Act for tax year 1998 shall be reflected on the income tax return filed for that year. For all subsequent years, the Director shall adjust the withholding tables as otherwise required by law."

Case Notes

Cited: Cheney v. East Tex. Motor Freight, Inc., 233 Ark. 675, 346 S.W.2d 513 (1961); Jefferson Coop. Gin, Inc. v. Milam, 255 Ark. 479, 500 S.W.2d 932 (1973); Shinn v. Heath, 259 Ark. 577, 535 S.W.2d 57 (1976); Mountain Home v. Drake, 281 Ark. 336, 663 S.W.2d 738 (1984); Land O'Frost, Inc. v. Pledger, 308 Ark. 208, 823 S.W.2d 887 (1992).

Subchapter 1 — General Provisions

26-51-101. Title.

26-51-102. Definitions.

26-51-103. Captions not to affect interpretation.

26-51-104. Administration.

26-51-105. Income tax director, officers, agents, and employees.

26-51-106. Publication of statistics.

26-51-107. Distribution of tax.

Preambles. Acts 1929, No. 118, contained a preamble which read:

"Whereas, this State has been neglectful of its Wards in the Charitable Institutions, which is a disgrace to the people of a Great Commonwealth, and it is imperative that additional Revenue should be provided to correct the fearful conditions which now exist; and

"Whereas, an equalization Fund should be provided to give equal Educational opportunities to the Boys and Girls of our Rural Communities; and

"Whereas, Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Ad Valorem Tax, thus penalizing and discouraging ownership of property, while many who enjoy the benefits of Government and have large incomes, pay almost nothing to support the Government; Therefore...."

Effective Dates. Acts 1929, No. 118, § 44: approved Mar. 9, 1929. Emergency clause provided:

"It is hereby ascertained and declared that the Hospital for Nervous Diseases is inadequate to properly care for all who should be confined therein, to the end there are many persons of unsound mind at large, who are a menace to the public safety, and that said Hospital as now equipped is inadequate to restrain those insane persons who are confined therein, so that there is danger of their escaping at any time and imperiling the safety of the public; that there are hundreds and hundreds of persons desiring to enter the Tuberculosis Sanitarium who cannot now be accommodated there, because that institution has neither room, beds nor facilities for additional people, as a result said consumptives at large are spreading the disease amongst their families and friends; that the funds to be raised by this Act will be used for the better care of the charitable wards of this State and to provide better for the rural schools of this State; and it is therefore ascertained and declared that it is necessary for the public peace, health and safety that

this Act go into immediate operation, and accordingly it is provided that this act shall take effect and be in force from and after its passage.”

Acts 1947, No. 135, § 9: approved Mar. 3, 1947. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the distribution of state revenues are such that a moderate diminution of certain of the revenues would have the effect of curtailing the activities of certain necessary agencies of the State Government, and that only the provisions of this Act will correct a situation which otherwise may deprive the citizens of this State from receiving the benefits which the operation of the State Government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage.”

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: “It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 785, § 20: amendments to subchapters 1, 4, 5, 9, and 10 effective for taxable years beginning on and after January 1, 1993.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Cross References. Biotechnology facilities and training tax credit, § 2-8-101 et seq.

Research References

Am. Jur. 71 Am. Jur. 2d, State Tax., § 443 et seq.

Ark. L. Rev.

Income Tax Amendments, 7 Ark. L. Rev. 346.

C.J.S. 85 C.J.S., Tax., § 1089 et seq.

26-51-101. Title.

This act shall be known and may be cited as the “Income Tax Act of 1929”.

History. Acts 1929, No. 118, Art. 1, § 1; Pope's Dig., § 14024; A.S.A. 1947, § 84-2001.

Publisher's Notes. Acts 1987, No. 382, § 1, provided that this act shall be known and may be cited as the “Income Tax Act of 1987.”

Acts 1987, No. 382, § 2, provided that the purpose of this act is to make technical amendments to the Income Tax Act of 1929, Acts 1929, No. 118, as amended, and to the Arkansas Tax Procedure Act, Acts 1979, No. 401, as amended, to make the Arkansas income tax and tax procedure statutes conform to several recent amendments to their counterparts in the federal income statutes, to eliminate procedural problems that have arisen since the enactment of these acts, and for other purposes.

Meaning of “this act”. Acts 1929, No. 118, codified as §§ 26-51-101 — 26-51-107, 26-51-201 — 26-51-204, 26-51-303, 26-51-401 — 26-51-406, 26-51-410 — 26-51-412, 26-51-415 — 26-51-417, 26-51-423 — 26-51-431, 26-51-436, 26-51-501, 26-51-801 — 26-51-804, 26-51-806 — 26-51-809, and 26-51-811 — 26-51-815.

Case Notes

Constitutionality.

Constitutionality.

The income tax imposed by this chapter is not a property tax, and this chapter is not violative of

the equality and uniformity clause of the Arkansas Constitution. *Stanley v. Gates*, 179 Ark. 886, 19 S.W.2d 1000 (1929).

Tax on net income of domestic corporations is not discriminatory in imposing tax on income derived from stocks owned in other corporations engaged in business in another state. *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

This chapter held unconstitutional and void insofar as it attempts to tax a domestic corporation's income from its plants located outside the state. *McCarroll v. Gregory-Robinson-Speas, Inc.*, 198 Ark. 235, 129 S.W.2d 254, 122 A.L.R. 977 (1939).

This chapter is not invalid on ground that a Senate amendment thereto was not concurred in by the House, since Senate Journal showing the adoption of the amendment was silent as to its withdrawal or any action receding therefrom and minutes and record of the Secretary of the Senate recited that amendment had been withdrawn. *Hardin v. Ft. Smith Couch & Bedding Co.*, 202 Ark. 814, 152 S.W.2d 1015 (1941).

Act 1931, No. 220, relieving domestic corporations doing business entirely outside the state of Arkansas from the payment of any income tax to the state, when read in connection with the General Income Tax Act of 1929, which imposes an income tax upon a domestic corporation doing business both within and outside the state on income derived from sources outside Arkansas, denied to such domestic corporation the equal protection of the laws and amounted to the taking of its property without due process. *Cheney v. Stephens, Inc.*, 231 Ark. 541, 330 S.W.2d 949 (1960).

26-51-102. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Director" means the Director of the Department of Finance and Administration;
- (2) "Taxpayer" includes any individual, fiduciary, or corporation subject to the tax imposed by this act;
- (3) "Individual" means a natural person;
- (4) "Person" includes individuals, fiduciaries, partnerships, limited liability companies, and corporations;
- (5) "Corporation" includes joint-stock companies or associations and insurance companies;
- (6) "Domestic," when applied to any corporation or association, including a partnership, means created or organized in the State of Arkansas;
- (7) "Foreign," when applied to any corporation or association, including a partnership, means created or organized outside of the State of Arkansas;
- (8) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate;
- (9) "Resident" means natural persons and includes, for the purpose of determining liability for the tax imposed by this act upon or with reference to the income of any taxable year, any person domiciled in the State of Arkansas and any other person who maintains a permanent place of abode within this state and spends in the aggregate more than six (6) months of the taxable year within this state;
- (10) "Nonresident," when used in connection with this act, shall apply to any natural person whose domicile is without the State of Arkansas and who maintains a place of abode without this state and spends in the aggregate more than six (6) months of the taxable year without this state;
- (11) "Tax year" means "taxable year" as herein defined;

(12) "Income year" means "taxable year" as herein defined;

(13) The term "fiscal year" means an accounting period of twelve (12) months ending on the last day of any month other than December;

(14) "Paid," for the purposes of the deductions under this act, means "paid or accrued" or "paid or incurred," and the words "paid or accrued" or "paid or incurred" shall be construed according to the methods of accounting upon the basis of which the net income is computed under this act. The word "received" for the purpose of computation of the net income under this act means "received or accrued," and the words "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act;

(15) "Foreign country" means any jurisdiction other than one embraced within the United States;

(16) "United States," when used in a geographical sense, includes the states, the District of Columbia, and the possessions of the United States;

(17) (A) The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which taxable income is computed;

(B) "Taxable year" means, in the case of a return made for a fractional part of a year, the period for which such return is made; and

(18) The term "year" means "taxable year".

History. Acts 1929, No. 118, Art. 1, § 2; Pope's Dig., § 14025; A.S.A. 1947, § 84-2002; Acts 1993, No. 785, §§ 2-5; 1995, No. 1160, § 17.

Publisher's Notes. Acts 1993, No. 785, § 20, provides that the 1993 amendment is effective for taxable years beginning on and after January 1, 1993.

Amendments. The 1993 amendment rewrote (11) and (12); substituted "an accounting period of twelve (12) months" for "an income year" in (13); and added (17) and (18).

The 1995 amendment inserted "limited liability companies" in (4).

Meaning of "this act". See note to § 26-51-101.

Case Notes

Fiscal Year.

Paid.

Resident.

Fiscal Year.

Under the income tax law, a fiscal year must begin in one year and end in the next succeeding year, so there can be no fiscal year wholly within a calendar year. *Cook v. Arkansas State Rice Milling Co.*, 213 Ark. 396, 210 S.W.2d 511 (1948).

Paid.

The word "received," for the purpose of computing net income, means either "received" or "accrued," depending on whether the taxpayer is on a cash basis or an accrual basis. *F & M Bank v. Skelton*, 266 Ark. 680, 587 S.W.2d 561 (1979).

Resident.

A congressman is presumed to have been an inhabitant of the state when elected to congress from Arkansas; his legal domicile is in Arkansas, although he sojourns in Washington during the year, and he is liable for income taxes to the State of Arkansas. *Cravens v. Cook*, 212 Ark. 71, 204 S.W.2d 909 (1947).

Although taxpayers were physically located outside Arkansas, they were residents of Arkansas, since numerous documents, such as federal income tax returns prepared by them, listed Arkansas as their address, they had Arkansas driver's licenses, they owned a house in Arkansas that they did not rent but later sold, and they had registered to vote in Arkansas in 1970, declaring that Arkansas had been their residence for the eight previous years and that they had lived at no

place outside of Arkansas with the intent of staying there. *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976).

Cited: *Hardin v. Ft. Smith Couch & Bedding Co.*, 202 Ark. 814, 152 S.W.2d 1015 (1941); *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976).

26-51-103. Captions not to affect interpretation.

No caption of any section or set of sections shall in any way affect the interpretation of this act or any part thereof.

History. Acts 1929, No. 118, Art. 9, § 42; Pope's Dig., § 14065; A.S.A. 1947, § 84-2048n.

Meaning of "this act". See note to § 26-51-101.

26-51-104. Administration.

The Director of the Department of Finance and Administration shall administer and enforce the tax imposed by this act.

History. Acts 1929, No. 118, Art. 8, § 33; Pope's Dig., § 14056; A.S.A. 1947, § 84-2039.

Meaning of "this act". See note to § 26-51-101.

26-51-105. Income tax director, officers, agents, and employees.

(a) The Director of the Department of Finance and Administration, with the approval of the Governor, may appoint and remove a person to be known as the Income Tax Director who, under the director's supervision, shall have the direction and control of the assessment and collection of the taxes imposed by this act.

(b) The Income Tax Director, with the approval of the Governor, may appoint such other officers, agents, deputies, clerks, and employees as he may deem necessary, such appointees to have the duties and powers which the director may from time to time prescribe.

(c) The salaries of all such officers, agents, and employees shall be fixed by the director not to exceed the amounts appropriated by the General Assembly; and the director and such officers, agents, and employees shall be allowed reasonable and necessary traveling and other expenses incurred in the performance of their duties not to exceed the amounts appropriated by the General Assembly.

(d) The director may require such of the officers, agents, and employees as he may designate to give bond for the faithful performance of their duties and in such sum and with such sureties as he may determine, and all premiums on these bonds shall be paid by the director out of moneys appropriated for the purposes of this act.

History. Acts 1929, No. 118, Art. 8, § 37; Pope's Dig., § 14060; A.S.A. 1947, § 84-2043.

A.C.R.C. Notes. The operation of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The section may again become effective upon cessation of coverage under that program. See § 21-2-703.

Publisher's Notes. Part of this section may be superseded by the Uniform Classification and Compensation Act, § 21-5-201 et seq., with regard to the Governor.

Meaning of "this act". See note to § 26-51-101.

26-51-106. Publication of statistics.

The director shall prepare and publish annually statistics reasonably available, with respect to the operation of this act, including amounts collected, classifications of taxpayers, income, exemptions, and such other facts as are deemed pertinent and valuable.

History. Acts 1929, No. 118, Art. 8, § 39; Pope's Dig., § 14062; A.S.A. 1947, § 84-2045.

Meaning of "this act". See note to § 26-51-101.

26-51-107. Distribution of tax.

(a) All taxes, interest, penalties, and costs collected under the provisions of this act shall be general revenues and shall be deposited in the State Treasury to the credit of the State Apportionment Fund.

(b) The State Treasurer, on or before the fifth of the month next following the month during which the revenues shall have been received by him, shall allocate and transfer them to the various State Treasury funds in the proportions to each as provided by law, after first transferring to the General Revenue Fund an amount equivalent to the cost of collection and other pro rata charges as also provided by law.

History. Acts 1929, No. 118, Art. 9, § 41; Pope's Dig., § 14064; Acts 1947, No. 135, § 6; A.S.A. 1947, § 84-2047.

Meaning of "this act". See note to § 26-51-101.

Case Notes

Cited: Stanley v. Gates, 179 Ark. 886, 19 S.W.2d 1000 (1929); Collins v. Humphrey, 181 Ark. 609, 27 S.W.2d 102 (1930).

Subchapter 2 — Imposition of Tax

26-51-201. Individuals, trusts, and estates.

26-51-202. Nonresidents.

26-51-203. Fiduciaries.

26-51-204. Railroads and public utilities.

26-51-205. Corporations — Work Force 2000 Development Fund.

26-51-206. Commercial ventures by churches — Exceptions.

26-51-207. Income tax surcharge.

Cross References. Additional gross receipts tax in lieu of individual income tax in border cities and towns, § 26-52-601 et seq.

Preambles. Acts 1929, No. 118, contained a preamble which read:

"Whereas, this State has been neglectful of its Wards in the Charitable Institutions, which is a disgrace to the people of a Great Commonwealth, and it is imperative that additional Revenue should be provided to correct the fearful conditions which now exist; and

"Whereas, an equalization Fund should be provided to give equal Educational opportunities to the Boys and Girls of our Rural Communities; and

"Whereas, Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Ad Valorem Tax, thus penalizing and discouraging ownership of property, while many who enjoy the benefits of Government and have large incomes, pay almost nothing to support the Government;

“Therefore....”

Effective Dates. Acts 1929, No. 118, § 44: Mar. 9, 1929. Emergency clause provided: “It is hereby ascertained and declared that the Hospital for Nervous Diseases is inadequate to properly care for all who should be confined therein, to the end there are many persons of unsound mind at large, who are a menace to the public safety, and that said Hospital as now equipped is inadequate to restrain those insane persons who are confined therein, so that there is danger of their escaping at any time and imperil the safety of the public; that there are hundreds and hundreds of persons desiring to enter the Tuberculosis Sanitarium who cannot now be accommodated there, because that institution has neither room, beds nor facilities for additional people, as a result said consumptives at large are spreading the disease amongst their families and friends; that the funds to be raised by this Act will be used for the better care of the charitable wards of this State and to provide better for the rural schools of this State; and it is therefore ascertained and declared that it is necessary for the public peace, health and safety that this Act go into immediate operation, and accordingly it is provided that this act shall take effect and be in force from and after its passage.”

Acts 1941, No. 129, § 8: approved Mar. 11, 1941. Emergency clause provided: “Because of the various social problems caused by the failure of the State to provide adequate relief for its aged citizens, and it appearing that there is a dire need for additional funds to meet the requirements of the Social Security Act and give additional revenue to this State and because the old folks in this State are suffering by reason of the failure of the State to secure funds with which to pay Old Age Pensions, an emergency is hereby found to exist and is so declared by the Legislature of Arkansas; that this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage.”

Acts 1947, No. 135, § 9: approved Mar. 3, 1947. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the distribution of state revenues are such that a moderate diminution of certain of the revenues would have the effect of curtailing the activities of certain necessary agencies of the State Government, and that only the provisions of this Act will correct a situation which otherwise may deprive the citizens of this State from receiving the benefits which the operation of the State Government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage.”

Acts 1967, No. 46, § 5: Feb. 7, 1967. Emergency clause provided: “The General Assembly hereby finds and determines that there are many banks and financial institutions in this state that transact substantial trust business involving out-of-state settlors and out-of-state beneficiaries, that such are an integral part of the business of said institutions, that to require the out-of-state beneficiaries to pay Arkansas income tax on income of such in-state trust earned from out-of-state sources would seriously handicap Arkansas financial institutions transacting a substantial trust business and would make it highly unprofitable for out-of-state settlors or testators to appoint an Arkansas trustee of such trusts, and that under present Arkansas law such out-of-state beneficiaries would be required to pay income taxes on any income derived from such a trust twice. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval.”

Acts 1969, No. 392, § 6: Apr. 11, 1969. Emergency clause provided: “The General Assembly finds that the State of Arkansas is in immediate need of additional funds for general revenue purposes. Accordingly, an emergency is declared to exist, and this act, being necessary for the preservation of the public health, peace, and safety, shall be effective from and after its passage and approval.”

Acts 1971, No. 221, § 2: effective for all income tax years beginning on or after Jan. 1, 1971.

Acts 1973, No. 215, § 5: Mar. 2, 1973. Emergency clause provided: “The General Assembly hereby finds and determines that there are many banks and financial institutions in this State that transact substantial trust business involving out-of-state settlors and out-of-state beneficiaries, that such are an integral part of the business of said institutions, that to require the out-of-state beneficiaries to pay Arkansas income tax on income of such in-state trust earned from out-of-state sources would seriously handicap Arkansas financial institutions transacting a substantial

trust business and would make it highly unprofitable for out-of-state settlors or testators to appoint an Arkansas trustee of such trusts, and that under present Arkansas law such out-of-state beneficiaries would be required to pay income taxes on any income derived from such a trust twice. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval.”

Acts 1987, No. 1040, § 7: Apr. 14, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that many churches have engaged in the practice of investing in real and personal property, or have received donations of commercial or rental property which is not now assessed for ad valorem tax purposes and are not paying tax thereon as required by law, thereby depriving the local taxing units of thousands of dollars of much needed revenues; that under the Arkansas Constitution of 1874, Article 16, Sections 5 and 6, such property is not exempt from the provisions of the ad valorem property tax; that in many instances such churches do not report for Arkansas Income Tax purposes income derived from investments or profits derived from rental income or other commercial or business activities and do not pay taxes thereon; that this reduces the amount of revenues available for funding of State services; and that only by the immediate passage of this Act can this situation be remedied. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 1052, § 9: Apr. 9, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that additional funds are necessary to provide higher quality educational program which are accessible by all segments of the population in this state; that recent studies have shown that in the year 2000, workers must have a minimum of fourteen (14) years of education to function in the work force; that the state is in desperate need of training, retraining and upgrading the work force; that this act will provide the funding necessary to provide every citizen with an opportunity to participate in vocational-technical training or college transfer programs; and that it is necessary for this act to become effective immediately to provide the funding needed for these programs as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 171, § 6: Feb. 14, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas, that the provisions of this Act are of critical importance to the stability of the educational programs funded from the Educational Excellence Trust Fund and the workforce development and training programs funded from the Workforce 2000 Development Fund, the same being an appropriate use of the state's resources. Therefore an emergency is declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1997, No. 328, § 11, effective on and after November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10.

Acts 1999, No. 1315, § 8: July 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that the changes required by this act must take effect at the beginning of the state fiscal year and not to do so will disrupt the flow of funds for vocational education. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999.”

Acts 2003 (1st Ex. Sess.), No. 38, § 4: May 8, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that revenue available for the support of necessary state services has declined significantly as a result of the nationwide economic slowdown; that without additional revenue some state services will be reduced or eliminated; that some Arkansas residents will suffer as a result of service reductions or cuts; and that this bill will provide the necessary revenue to avoid state service reductions or cuts. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Research References

Am. Jur. 71 Am. Jur. 2d, State Tax., § 483 et seq.

Ark. L. Rev.

Taxation — Limits of State Income Taxation upon Nonresidents, 3 Ark. L. Rev. 478.

C.J.S. 85 C.J.S., Tax., § 1090 et seq.

Case Notes

Constitutionality.

Constitutionality.

Acts 1929, No. 118, § 4, relating to income received in 1928, held constitutional. *Stanley v. Gates*, 179 Ark. 886, 19 S.W.2d 1000 (1929); *Collins v. Humphrey*, 181 Ark. 609, 27 S.W.2d 102 (1930).

26-51-201. Individuals, trusts, and estates.

(a) A tax is imposed upon, and with respect to, the entire income of every resident, individual, trust, or estate. The tax shall be levied, collected, and paid annually upon the entire net income as defined and computed in this chapter at the following rates, giving effect to the tax credits provided hereafter, in the manner set forth:

(1) On the first two thousand nine hundred ninety-nine dollars (\$2,999) of net income or any part thereof, one percent (1%);

(2) On the next three thousand dollars (\$3,000) of net income or any part thereof, two and one-half percent (2½%);

(3) On the next three thousand dollars (\$3,000) of net income or any part thereof, three and one-half percent (3½%);

(4) On the next six thousand dollars (\$6,000) of net income or any part thereof, four and one-half percent (4½%);

(5) On the next ten thousand dollars (\$10,000) of net income or any part thereof, six percent (6%);

(6) On net income of twenty-five thousand dollars (\$25,000) and above, seven percent (7%).

(b) However, no state income tax shall be due this state from a trust or estate created by a nonresident donor, trustor, or settlor, or by a nonresident testator even though administered by a resident trustee or personal representative except on income derived from:

(1) Lands situated in this state, including gains from any sale thereof;

(2) Any interest in lands situated in this state, including, without limitation, chattels real, including gains from any sale thereof;

(3) Tangible personal property located in Arkansas, including gains from any sale thereof; and

- (4) Unincorporated businesses domiciled in Arkansas.
- (c) No income tax shall be due the State of Arkansas from a nonresident beneficiary on income received from a trust being administered by a resident trustee except on income derived by the trust from:
- (1) Lands situated in this state, including gains from any sale thereof;
 - (2) Any interest in lands situated in this state, including, without limitation, chattels real, including gains from any sale thereof;
 - (3) Tangible personal property located in Arkansas, including gains from any sale thereof; and
 - (4) Unincorporated businesses domiciled in Arkansas.

(d) (1) Not later than December 15 of 1998, and each subsequent calendar year, the director shall prescribe a table which shall apply in lieu of the table contained in § 26-51-201(a) with respect to taxable years beginning in the succeeding calendar year. The director shall increase the minimum and maximum dollar amounts for each rate bracket (rounding to the nearest \$100) for which a tax is imposed under such table by the cost-of-living adjustment (COLA) for such calendar year and by not changing the rate applicable to any rate bracket as adjusted. The yearly COLA increase in each rate bracket as provided in subdivision (d)(2) of this section shall apply to the brackets as contained in § 26-51-201(a) as in effect on January 1, 1998.

(2) For purposes of subdivision (d)(1) of this section, the cost-of-living adjustment for any calendar year is the percentage (if any) by which the CPI for the calendar year preceding the taxable year exceeds the CPI for the calendar year 1997, not to exceed three percent (3%). The CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year. "Consumer Price Index" means the last Consumer Price Index for all urban consumers published by the Department of Labor.

(3) The new tables, as adjusted, shall apply for tax returns filed for taxable year 1999 and thereafter, and shall be used by the director in preparing the income tax withholding tables pursuant to § 26-51-907.

History. Acts 1929, No. 118, Art. 2, § 3; Pope's Dig., § 14026; Acts 1957, No. 20, § 1; 1961, No. 34, § 1; 1967, No. 46, § 1; 1971, No. 221, § 1; 1973, No. 215, §§ 1, 2; A.S.A. 1947, § 84-2003; Acts 1997, No. 328, § 5.

A.C.R.C. Notes. Acts 1997, No. 328, § 11, provided:

"This act shall be effective on and after November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10."

Acts 1997, No. 328, § 12, provided:

"The withholding tables prescribed by the Director of the Department of Finance and Administration pursuant to Ark. Code Ann. § 26-51-907 shall not be amended for tax year 1998 to reflect the changes adopted by this Act. If this Act becomes effective on November 15, 1998, the effect of the various provisions of this Act for tax year 1998 shall be reflected on the income tax return filed for that year. For all subsequent years, the Director shall adjust the withholding tables as otherwise required by law."

Amendments. The 1997 amendment added (d).

Case Notes

Applicability.
Federal Reservations.
Partnerships.

Applicability.

This section is applicable to the entire income of every resident of Arkansas, regardless of the source of his income, whether derived from inside or outside the state. *Morgan v. Cook*, 211 Ark. 755, 202 S.W.2d 355 (1947).

This section does not exempt income earned outside the state. *Morgan v. Cook*, 211 Ark. 755, 202 S.W.2d 355 (1947).

Federal Reservations.

Tax on incomes levied uniformly against all citizens could extend to lessee of personalty on federal reservation, since state income tax, although classified as an excise, is treated by the courts as having many of the characteristics of a property tax. *Superior Bath House Co. v. McCarroll*, 200 Ark. 233, 139 S.W.2d 378 (1940), *aff'd*, 312 U.S. 176, 61 S. Ct. 503, 85 L. Ed. 721 (1941) Criticized by *Foote's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323, 21 A.L.R.4th 565 (1980).

Hot Springs Reservation of the federal government is within the state for purpose of taxation. *Superior Bath House Co. v. McCarroll*, 200 Ark. 233, 139 S.W.2d 378 (1940), *aff'd*, 312 U.S. 176, 61 S. Ct. 503, 85 L. Ed. 721 (1941) Criticized by *Foote's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323, 21 A.L.R.4th 565 (1980).

Partnerships.

An Arkansas resident partner of an out-of-state partnership owes income tax on all income received from any source while residing in Arkansas, subject to the double taxation relief provided by § 26-51-504. *Collins v. Skelton*, 256 Ark. 955, 512 S.W.2d 542 (1974).

Cited: *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976); *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003).

26-51-202. Nonresidents.

(a) A tax is imposed and shall be assessed, levied, collected, and paid annually at the rates specified in § 26-51-201 upon and with respect to the entire net income as defined in this chapter, except as provided in this section, from all property owned and from every business, trade, or occupation carried on in this state by individuals, corporations, partnerships, trusts, or estates not residents of the State of Arkansas.

(b) (1) Each nonresident as defined in § 26-51-102 shall file income tax returns with the State of Arkansas and pay the tax without distinction, or incident to the laws of the nonresident's resident state.

(2) It is the specific intention of the General Assembly that the tax shall be collected from property owned and from the conduct of every business, trade, or occupation, whether or not the individuals, corporations, partnerships, trusts, or estates are qualified to do business in the State of Arkansas and whether or not such business, trade, or occupation shall be conducted in interstate commerce.

(c) However, the payment of the tax shall be based upon net income properly allocated as net income arising from the ownership of property and the conduct of a business, trade, or occupation in the State of Arkansas.

(d) Additionally, no income tax shall be due the State of Arkansas from a nonresident beneficiary on income received from a trust or estate being administered by a resident trustee or personal representative except on income derived by the trust or estate from:

(1) Lands situated in this state, including gains from any sale of the lands situated in this state;

(2) Any interest in land situated in this state, including, without limitation, chattels real, including gains from any sale of an interest in land situated in this state;

(3) Tangible personal property located in Arkansas, including gains from any sale of the tangible personal property located in Arkansas; and

(4) Unincorporated businesses domiciled in Arkansas.

(e) (1) No income tax shall be due the State of Arkansas from a nonresident partner with respect to that partner's distributive share of dividends, interest, or gains and losses from qualifying investment securities owned by an investment partnership, whether or not the partnership has a usual place of business located in this state.

(2) As used in this subsection:

(A) "Investment partnership" means a partnership that meets both of the following requirements:

(i) No less than ninety percent (90%) of the value of the partnership's total assets consists of qualifying investment securities and office space and equipment reasonably necessary to carry on its activities as an investment partnership; and

(ii) No less than ninety percent (90%) of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities; and

(B) (i) "Qualifying investment securities" includes all of the following:

(a) Common stock, including preferred or debt securities convertible into common stock, and preferred stock;

(b) Bonds, debentures, and other debt securities;

(c) Deposits and any other obligations of banks and other financial institutions;

(d) Stock and bond index securities, futures contracts, options on securities, and other similar financial securities and instruments; and

(e) Other similar or related financial or investment contracts, instruments, or securities.

(ii) Qualifying investment securities shall not include an interest in a partnership unless that partnership is itself an investment partnership.

(3) (A) The provisions of subdivision (e)(1) of this section shall not apply to income derived from investment activity that is interrelated with any trade or business activity of the nonresident or an entity in which the nonresident owns an interest in this state, whose primary activities are separate and distinct from the acts of acquiring, managing, or disposing of qualified investment securities, or if those securities were acquired with working capital of a trade or business activity conducted in this state in which the nonresident owns an interest.

(B) Likewise, the provisions of subdivision (e)(1) of this section shall not apply to corporate partners of an investment partnership except as provided by regulations adopted by the Director of the Department of Finance and Administration.

History. Acts 1929, No. 118, Art. 2, § 3; Pope's Dig., § 14026; Acts 1947, No. 135, § 1; 1967, No. 46, § 2; A.S.A. 1947, § 84-2003; Acts 1999, No. 1283, § 1.

Interstate Commerce.
Salaries.

Interstate Commerce.

This section had no relation to profits gained from interstate transactions by a corporation conducting a business in another state. *Temple v. Gates*, 186 Ark. 820, 56 S.W.2d 417 (1933) (decision prior to 1947 amendment).

Income of foreign corporation derived solely from contracts made in other states for the hire or lease of refrigerated cars and used by the contractees in interstate transportation of perishable products was subject to tax under this section. *Commissioner of Revenues v. Pacific Fruit Express Co.*, 227 Ark. 8, 296 S.W.2d 676 (1956).

Salaries.

Salaries of nonresident secretary-treasurer and president of domestic corporation were not subject to income tax of Arkansas where secretary-treasurer spent all of her time for the company in Tennessee, and president spent only six days a month in Arkansas on business for the company, as the statute makes no provision or method for allocating that portion of the income earned by nonresidents in Arkansas. *Cook v. Ayres*, 214 Ark. 308, 215 S.W.2d 705 (1948).

Cited: *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976).

26-51-203. Fiduciaries.

(a) The tax imposed by this act shall be imposed upon resident fiduciaries, which tax shall be levied, collected, and paid annually with respect to:

(1) That part of the net income of estates or trusts which has not been distributed or become distributable to beneficiaries during the income year. In the case of two (2) or more joint fiduciaries, part of whom are nonresidents of this state, such part of the net income shall be treated as if each fiduciary had received an equal share;

(2) The net income received during the income year by deceased individuals who at the time of death were residents and who have died during the tax year without having made a return;

(3) The entire net income of resident insolvent or incompetent individuals, whether or not any portion thereof is held for the future use of the beneficiaries, where the fiduciary has complete charge of the net income.

(b) The tax imposed upon a fiduciary by this act shall be a charge against the estate or trust.

History. Acts 1929, No. 118, Art. 2, § 5; Pope's Dig., § 14028; A.S.A. 1947, § 84-2005.

Meaning of "this act". Acts 1929, No. 118, codified as §§ 26-51-101 — 26-51-107, 26-51-201 — 26-51-204, 26-51-303, 26-51-401 — 26-51-406, 26-51-410 — 26-51-412, 26-51-415 — 26-51-417, 26-51-423 — 26-51-431, 26-51-436, 26-51-501, 26-51-801 — 26-51-804, 26-51-806 — 26-51-809, and 26-51-811 — 26-51-815.

Research References

Ark. L. Rev.

Tax Problems of the Personal Representative, 16 Ark. L. Rev. 364.

26-51-204. Railroads and public utilities.

Every railroad or other public utility, whether organized under the laws of this state or any other state or the federal government, shall be subject to the provisions of this act and shall pay the state income tax levied by § 26-51-201 et seq. upon that proportion of its entire net income applicable to the State of Arkansas.

History. Acts 1929, No. 118, Art. 2, § 3; Pope's Dig., § 14026; A.S.A. 1947, § 84-2003;

Acts 2007, No. 218, § 10.

Amendments. The 2007 amendment inserted “et seq.”

Meaning of “this act”. See note to § 26-51-203.

Case Notes

Constitutionality.

Carriers.

Effect of Subsequent Legislation.

Railroads.

Constitutionality.

This section, fixing the method of determining taxable income of interstate utilities, was not shown to be discriminatory against railroads or the taking of its property without due process. *Cook v. Kansas City S. Ry.*, 212 Ark. 253, 205 S.W.2d 441 (1947), cert. denied, *Kansas City Southern R. Co. v. Cook*, 333 U.S. 873, 68 S. Ct. 902 (1948).

As to unconstitutional delegation of power to federal agency expressly reserved to state legislature by Arkansas Constitution, see *Cheney v. St. Louis S. R. Co.*, 239 Ark. 870, 394 S.W.2d 731 (1965).

Carriers.

Income assessments made against interstate passenger bus companies based on the statutory formula prescribed by this section were neither oppressive nor discriminatory and did not deprive them of any constitutional right. *Commissioner of Revenues v. Transcontinental Bus Sys.*, 227 Ark. 811, 301 S.W.2d 569 (1957).

A Texas corporation engaged in interstate and intrastate transportation of property as a common carrier, in figuring its net income for a year, could not claim as a deduction the amount of retail sales taxes it had paid in the taxable year to the state of Texas on motor vehicle purchases.

Cheney v. East Tex. Motor Freight, Inc., 233 Ark. 675, 346 S.W.2d 513 (1961).

Corporation engaged in interstate and intrastate transportation of property as a common carrier held not free to calculate and claim depreciation as it desired under § 26-51-428. *Cheney v. East Tex. Motor Freight, Inc.*, 233 Ark. 675, 346 S.W.2d 513 (1961).

Effect of Subsequent Legislation.

Section 84-2003(e) [unconstitutional] has not been superseded by or amended by § 26-51-428, which was added to the Income Tax Law by Acts 1957, No. 156, § 1. *Cheney v. East Tex. Motor Freight, Inc.*, 233 Ark. 675, 346 S.W.2d 513 (1961).

Railroads.

Right of state to value property of a unitary enterprise, including railroads, as a unit, has been recognized, and the apportionment to state of its fair ratable portion of such value by using revenue ratio in apportioning income and operating expenses has been held not improper. *Cook v. Kansas City S. Ry.*, 212 Ark. 253, 205 S.W.2d 441 (1947), cert. denied, *Kansas City Southern R. Co. v. Cook*, 333 U.S. 873, 68 S. Ct. 902 (1948).

Cited: *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976).

26-51-205. Corporations — Work Force 2000 Development Fund.

(a) Every corporation organized under the laws of this state shall pay annually an income tax with respect to carrying on or doing business on the entire net income of the corporation, as now defined by the laws of the State of Arkansas, received by such corporation during the income year, on the following basis:

- (1) On the first \$3,000 of net income or any part thereof 1 %
- On the second \$3,000 net income or any part thereof 2 %
- On the next \$5,000 of net income or any part thereof 3 %
- On the next \$14,000 of net income or any part thereof 5 %
- On the next \$75,000 of net income or any part thereof, but not exceeding \$100,000

6 %

(2) On net income exceeding \$100,000, a flat rate of six and one-half (6 ½ %) percent shall be applied to the entire net income.

(b) Every foreign corporation doing business within the jurisdiction of this state shall pay annually an income tax on the proportion of its entire net income as now determined by the income tax laws of Arkansas, on the following basis:

- (1) On the first \$3,000 of net income or any part thereof 1 %
- On the second \$3,000 of net income or any part thereof 2 %
- On the next \$5,000 of net income or any part thereof 3 %
- On the next \$14,000 of net income or any part thereof 5 %
- On the next \$75,000 of net income or any part thereof, but not exceeding \$100,000 6 %

(2) On net income exceeding \$100,000, a flat rate of six and one-half percent (6½%) shall be applied to the entire net income.

(c) (1) (A) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “Work Force 2000 Development Fund.”

(B) The Work Force 2000 Development Fund shall consist of those special revenues as specified in § 26-51-205(c)(2) and all other revenues as may be authorized by law.

(2) (A) The Revenue Division of the Department of Finance and Administration shall deposit the funds collected under the provisions of this section for corporate income tax into the State Treasury, there to be credited to the Revenue Holding Fund Account of the State Apportionment Fund.

(B) (i) (a) For each of the state's fiscal years, the Chief Fiscal Officer of the State shall determine as an annual allocation available under the provisions of this section an amount based on the total net revenues, as enumerated in § 26-51-205(a) and (b), which were collected in the immediate past year, multiplied by a factor of six hundred seventy-eight ten thousandths (.0678).

(b) On the last day of each month of the respective fiscal year, the Chief Fiscal Officer of the State shall certify to the Treasurer of State an amount based on one-twelfth ($1/12$) of the annual allocation provided in this section for transfer as specified in § 26-51-205(c)(2)(B)(ii).

(ii) The Treasurer of State shall then transfer the amount so certified to the Special Revenue Fund Account as part of the gross special revenues.

(iii) After the deductions as set out in § 19-5-203 have been made, the remaining amount shall be credited to the Work Force 2000 Development Fund.

(iv) The remaining corporate income tax collections remaining in the Revenue Holding Fund Account shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections for that month in accordance with the provisions of § 19-5-201 et seq.

(d) (1) All proceeds derived from the additional tax levied by this section shall be used exclusively for the authorized educational activities of:

(A) Any postsecondary vocational-technical school, technical institute, comprehensive lifelong learning center, technical college, community college; or

(B) Any postsecondary vocational-technical school, technical institute, comprehensive lifelong learning center, or technical college that merges with a two-year branch of a four-year institution, a four-year institution, a technical college, or a community college.

(2) (A) The distribution of the proceeds shall be supervised by the State Board of Career Education for the postsecondary vocational-technical schools, technical institutes, and comprehensive lifelong learning centers.

(B) The distribution of the proceeds for technical colleges, community colleges, or any postsecondary vocational-technical school, technical institute, comprehensive lifelong learning center, or technical college that merges with a two-year branch of a four-year institution, a four-year institution, a technical college, or a community college shall continue at the same proportion as those distributions made in fiscal year 1996-97, excluding one-time capital disbursements and professional development disbursements made in fiscal year 1996-97 equal to the amount of funds distributed in fiscal year 1998-99.

(C) Any increase in the amount of funds in the Work Force 2000 Development Fund above the amount distributed in fiscal year 1998-99 shall be supervised by the Arkansas Higher Education Coordinating Board and shall be distributed after a review of needs including, but not limited to, equity considerations and workforce development and after consultation with the presidents and chancellors of the technical and former technical colleges.

History. Acts 1941, No. 129, § 2; 1969, No. 392, §§ 1, 2; A.S.A. 1947, § 84-2004; Acts 1991, No. 1052, §§ 1-4; 1997, No. 171, § 2; 1999, No. 1315, §§ 2, 3.

A.C.R.C. Notes. The State Board of Vocational Education was abolished and transferred to the State Board of Workforce Education and Career Opportunities by a type 3 transfer under § 25-16-106 by Acts 1997, No. 803, § 2.

The State Board of Higher Education was abolished and transferred to the Arkansas Higher Education Coordinating Board by Acts 1997, No. 1114, § 1.

Acts 2009, No. 1499, § 91, provided: "After the amounts to be made available to the various technical institutes or comprehensive lifelong learning centers have been determined as set out in Arkansas Code 26-51-205(d)(2), such documents as may be necessary shall be processed so that funds may be transferred from the Work Force 2000 Development Fund to the State Treasury fund or fund account from which the technical institute or comprehensive lifelong learning center draws its general revenue support. Such funds as may be transferred shall not exceed 6.309% of the total funds available from the Work Force 2000 Development Fund during each fiscal year." "In the event that a technical college, community college or educational institution which receives support from the Work Force 2000 Development Fund as determined by law transfers from the Arkansas Technical College and Community College System for which Work Force 2000 Development Fund monies are determined by law, then the actual amount of support from the Work Force 2000 Development Fund in the preceding fiscal year for such educational institution shall be made available irrespective of any other provision of law which sets out maximum levels of support from such fund." "The provisions of this section shall be in effect only from July 1, 2009 through June 30, 2010."

Publisher's Notes. Acts 1991, No. 1052, § 5, provided:

"This act shall be effective for income years beginning on and after January 1, 1991."

Acts 1991, No. 1052, § 2, is also codified as § 19-6-467.

Research References

Ark. L. Rev.

Constitutional Law — Corporate Income Taxation Classification for Income Tax Purposes, 14 Ark. L. Rev. 168.

Note, Is the Professional Association Dead after TEFRA? — The Continuing Saga of Hunter and Hunted, 36 Ark. L. Rev. 508.

U. Ark. Little Rock L.J.

Survey, Taxation, 14 U. Ark. Little Rock L.J. 401.

Case Notes

Constitutionality.

Construction.

Doing Business.

Outside Income.

Constitutionality.

Former statutory provisions held unconstitutional and void insofar as they attempted to tax domestic corporation's income from its plants located outside state. *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935); *McCarroll v. Gregory-Robinson-Speas, Inc.*, 198 Ark. 235, 129 S.W.2d 254, 122 A.L.R. 977 (1939) (decision under prior law).

The emergency clause in Acts 1991, No. 1052, § 9, stated an emergency, inadequate support of education, sufficient to meet the requirements of Ark. Const., Art. 5, § 38, to impose the tax provided in this section. *ACW, Inc. v. Weiss*, 329 Ark. 302, 947 S.W.2d 770 (1997).

Construction.

The phrase "to the entire net income" in subdivision (a)(2), as amended in 1991, rendered this section internally inconsistent and ambiguous; to give effect to the legislative intent and to be consistent with judicial decisions relating to the interpretation of tax measures, this section was held to impose a graduated tax applying to all corporations for the first \$100,000 of net income, and a flat tax of 6½% on the entire net income above \$100,000. *ACW, Inc. v. Weiss*, 329 Ark. 302, 947 S.W.2d 770 (1997).

Doing Business.

Corporation's sale of its assets for purpose of distributing proceeds of sale to shareholders pursuant to a program of liquidation is not "doing business" within the meaning of this section, and any profit realized from such sale is taxable to the shareholders, and not to the corporation. *Larey v. Mountain Valley Spring Co.*, 245 Ark. 689, 434 S.W.2d 820 (1968).

Outside Income.

Income of a corporation derived entirely from sources outside the state is not subject to the state income tax. *Cheney v. Stephens, Inc.*, 231 Ark. 541, 330 S.W.2d 949 (1960).

Cited: *Hardin v. Ft. Smith Couch & Bedding Co.*, 202 Ark. 814, 152 S.W.2d 1015 (1941); *United States Tobacco Co. v. Martin*, 304 Ark. 119, 801 S.W.2d 256 (1990).

26-51-206. Commercial ventures by churches — Exceptions.

(a) All income derived from the operation of any business or commercial enterprise or the sale, rental, or other disposition of any property used by a church in its operation of a business or commercial enterprise in this state shall be subject to the Arkansas income tax, except where the income is reinvested in similar property, and shall be reported and the Arkansas income tax paid thereon.

(b) (1) Income from the interest on the savings and investments from dedicated funds, from the sale of dedicated church property, and from the rental of dedicated church property shall be excluded from the provisions of this section.

(2) It is not the intent of this section to impose the Arkansas income tax on rentals or gains on sales of dedicated property held only as a passive investment by a church.

(c) The Director of the Department of Finance and Administration is authorized to promulgate reasonable rules and regulations to carry out the provisions of this section.

History. Acts 1987, No. 1040, §§ 3, 4.

26-51-207. Income tax surcharge.

(a) In addition to the taxes levied by §§ 26-51-201 et seq., 26-51-301, and 26-51-302, there is levied an income tax surcharge of three percent (3%) of the tax liability of every person required to file an Arkansas income tax return.

(b) (1) If an individual is a resident of an Arkansas border city described in § 26-52-601 et seq., the individual shall be liable for the income tax surcharge levied in subsection (a) of this section.

(2) The surcharge shall be computed on the tax liability that would have been due had the income tax exemption of § 26-52-601 et seq. not been available.

(3) The income tax exemption of § 26-52-601 et seq. shall not apply to the income tax surcharge levied in subsection (a) of this section.

(c) The revenues derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections.

(d) As used in this section, "tax liability" means the taxes imposed pursuant to §§ 26-51-201 et seq., 26-51-301, and 26-52-302 before the application of any tax credits.

(e) This section shall apply only to tax years beginning in calendar years 2003 and 2004.

History. Acts 2003 (1st Ex. Sess.), No. 38, § 3; 2005, No. 63, § 1.

Amendments. The 2005 amendment inserted "only" in (e); and deleted former (f).

Subchapter 3 — Exemptions and Reduced Tax Rates

26-51-301. Individuals exempt from taxation or qualifying for the low income tax credit.

26-51-302. [Repealed.]

26-51-303. Exempt organizations.

26-51-304. Income from investments made by nonprofit organizations.

26-51-305. [Repealed.]

26-51-306. Compensation and benefits from military service.

26-51-307. Retirement or disability benefits.

26-51-308. Trusts for qualified deferred compensation plans exempt.

26-51-309. Charitable remainder trusts.

26-51-310. Foreign income exclusion.

26-51-311. Qualified windmill blade manufacturing exemption.

26-51-312. Qualified windmill blade and windmill component manufacturing exemption.

Preambles. Acts 1929, No. 118, contained a preamble which read:

"Whereas, this State has been neglectful of its Wards in the Charitable Institutions, which is a disgrace to the people of a Great Commonwealth, and it is imperative that additional Revenue should be provided to correct the fearful conditions which now exist; and

"Whereas, an equalization Fund should be provided to give equal Educational opportunities to the Boys and Girls of our Rural Communities; and

"Whereas, Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Ad Valorem Tax, thus penalizing and discouraging ownership of property, while many who enjoy the benefits of Government and have large

incomes, pay almost nothing to support the Government;

"Therefore...."

Effective Dates. Acts 1929, No. 118, § 44: approved Mar. 9, 1929. Emergency clause provided: "It is hereby ascertained and declared that the Hospital for Nervous Diseases is inadequate to properly care for all who should be confined therein, to the end there are many persons of unsound mind at large, who are a menace to the public safety, and that said Hospital as now equipped is inadequate to restrain those insane persons who are confined therein, so that there is danger of their escaping at any time and imperil the safety of the public; that there are hundreds and hundreds of persons desiring to enter the Tuberculosis Sanitarium who cannot now be accommodated there, because that institution has neither room, beds nor facilities for additional people, as a result said consumptives at large are spreading the disease amongst their families and friends; that the funds to be raised by this Act will be used for the better care of the charitable wards of this State and to provide better for the rural schools of this State; and it is therefore ascertained and declared that it is necessary for the public peace, health and safety that this Act go into immediate operation, and accordingly it is provided that this act shall take effect and be in force from and after its passage."

Acts 1941, No. 129, § 8: approved Mar. 11, 1941. Emergency clause provided: "Because of the various social problems caused by the failure of the State to provide adequate relief for its aged citizens, and it appearing that there is a dire need for additional funds to meet the requirements of the Social Security Act and give additional revenue to this State and because the old folks in this State are suffering by reason of the failure of the State to secure funds with which to pay Old Age Pensions, and [an] emergency is hereby found to exist and is so declared by the Legislature of Arkansas; that this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage."

Acts 1943, No. 61, § 5: approved Feb. 17, 1943. Emergency clause provided: "The object of this bill being to relieve members of the armed services of the United States of the payment of State income taxes on compensation or allowances received for services rendered in the armed forces, in order to preserve the public peace, health and safety of the State of Arkansas, an emergency is declared to exist and this bill shall be in full force and effect from and after its passage."

Acts 1959, No. 202, § 7: Jan. 1, 1959.

Acts 1965, No. 149, §§ 2, 3: Jan. 1, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current status of the Income Tax Law relating to non-profit organizations is such as to raise a technical question as to the exemption of investment income of foreign and domestic nonprofit organizations where such income is for the purpose of pension and annuity benefits for their members; and in order to attract foreign investment capital and to encourage pension and annuity plans for the benefit of residents of this State, and these things being found necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval." Approved March 9, 1965.

Acts 1973, No. 4, § 4: effective for all tax years beginning on or after Jan. 1, 1973.

Acts 1973, No. 182, §§ 9, 10: Jan. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to the taxation of banks and savings and loan associations is somewhat vague and indefinite, that such institutions should pay the same taxes as other business corporations in the State, and this Act is immediately necessary to clarify the laws with respect to the taxation of financial institutions and to assure that such institutions pay the same taxes as other business corporations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved February 22, 1973.

Acts 1983, No. 379, § 27: Dec. 31, 1982. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the State's income and estate tax laws that have counterparts in the Federal tax laws do not coincide with recent amendments and changes to the Federal tax laws; and that this Act is immediately necessary to make the Arkansas tax laws conform with the Federal tax laws to clarify any possible question of confusion caused by such differences. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be

in full force and effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.”

Acts 1989 (3rd Ex. Sess.), No. 27, § 7: Nov. 6, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain inequities have evolved through the years concerning the taxation of retirement and disability income in this state; that such inequities have no just or sound basis and are creating an undue burden on some taxpayers within this state; that this act should be given effect immediately to stop these inequities and to limit continued potential legal costs to taxpayers under the current tax structure. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 95, § 9: Feb. 11, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain low income working taxpayers and senior citizens bear a disproportionate share of the state tax burden; that unless this act becomes effective immediately upon passage irreparable harm will occur to low income taxpayers of this state; and that this act should become effective immediately upon passage. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 1123, § 25: Apr. 9, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety all provisions of this Act other than Section 22 shall be in full force and effect from and after July 1, 1991 and Section 22 shall be in full force and effect from and after the passage and approval of this Act.”

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: “It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 1147, § 1705: January 1, 1994.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 328, § 11: effective on and after November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10.”

Acts 1997, No. 951, § 34, provided: “Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.”

Acts 1997, No. 951, § 38: March 31, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by

Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2001, No. 773, § 12: effective for tax years beginning on and after January 1, 2001.

Acts 2005, No. 29, § 2: effective for tax years beginning on and after January 1, 2005.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Acts 2005, No. 2187, § 3: effective for tax years beginning on and after January 1, 2005.

Acts 2007, No. 195, § 3: effective for tax years beginning on and after January 1, 2007.

Acts 2007, No. 990, § 2: effective for tax years beginning on or after 2007.

Research References

Am. Jur. 71 Am. Jur. 2d, State Tax., § 475 et seq.

C.J.S. 85 C.J.S., Tax., § 1098.

26-51-301. Individuals exempt from taxation or qualifying for the low income tax credit.

(a) As used in this section:

(1) “Head of household” means the same as defined in 26 U.S.C. § 2(b) of the Internal Revenue Code of 1986, as in effect on January 1, 2007; and

(2) “Qualifying widow or widower” means the “surviving spouse” as defined in 26 U.S.C. § 2(a) of the Internal Revenue Code of 1986, as in effect on January 1, 2007.

(b) Beginning with tax year 2007, the following taxpayers are exempt from state individual income tax:

(1) A single individual whose gross income does not exceed ten thousand two hundred dollars (\$10,200) for any income year;

(2) A married couple filing jointly with one (1) or fewer dependents whose gross income does not exceed seventeen thousand two hundred dollars (\$17,200) for any income year;

(3) A married couple filing jointly with two (2) or more dependents whose gross income does not exceed twenty thousand seven hundred dollars (\$20,700) for any income year; and

(4) A head of household or qualifying widow or widower with one (1) or more dependents whose gross income does not exceed fourteen thousand five hundred dollars (\$14,500) for any income year.

(c) Beginning with tax year 2007, the following taxpayers are eligible for a low income tax credit:

(1) A single individual whose gross income for the taxable year is more than ten thousand two hundred dollars (\$10,200) but less than thirteen thousand five hundred dollars (\$13,500);

(2) A married couple filing jointly with one (1) or fewer dependents whose gross income for the taxable year is more than seventeen thousand two hundred dollars (\$17,200) but less than twenty-one thousand four hundred dollars (\$21,400);

(3) A married couple filing jointly with two (2) or more dependents whose gross income for the taxable year is more than twenty thousand seven hundred dollars (\$20,700) but less than twenty-six thousand seven hundred dollars (\$26,700); and

(4) A head of household or a qualifying widow or widower with one (1) or more dependents whose gross income for the taxable year is more than fourteen thousand five hundred dollars (\$14,500) but less than nineteen thousand dollars (\$19,000).

(d) For income tax year 2007, the low income tax credit in subsection (c) of this section shall be determined in accordance with the tables below, based upon the taxpayer's filing status:

Single Taxpayer

From	But Less Than
\$10,201	\$10,300
\$10,301	\$10,400
\$10,401	\$10,500
\$10,501	\$10,600
\$10,601	\$10,700
\$10,701	\$10,800
\$10,801	\$10,900
\$10,901	\$11,000
\$11,001	\$11,100
\$11,101	\$11,200
\$11,201	\$11,300
\$11,301	\$11,400
\$11,401	\$11,500
\$11,501	\$11,600
\$11,601	\$11,700
\$11,701	\$11,800
\$11,801	\$11,900
\$11,901	\$12,000
\$12,001	\$12,100
\$12,101	\$12,200
\$12,201	\$12,300
\$12,301	\$12,400
\$12,401	\$12,500
\$12,501	\$12,600
\$12,601	\$12,700
\$12,701	\$12,800
\$12,801	\$12,900
\$12,901	\$13,000
\$13,001	\$13,100
\$13,101	\$13,200
\$13,201	\$13,300
\$13,301	\$13,400
\$13,401	\$13,500

Married Filing Jointly With One or Fewer Dependents

From	But Less Than
\$17,201	\$17,300
\$17,301	\$17,400
\$17,401	\$17,500
\$17,501	\$17,600
\$17,601	\$17,700
\$17,701	\$17,800
\$17,801	\$17,900
\$17,901	\$18,000
\$18,001	\$18,100
\$18,101	\$18,200
\$18,201	\$18,300
\$18,301	\$18,400
\$18,401	\$18,500
\$18,501	\$18,600
\$18,601	\$18,700
\$18,701	\$18,800
\$18,801	\$18,900
\$18,901	\$19,000
\$19,001	\$19,100
\$19,101	\$19,200
\$19,201	\$19,300
\$19,301	\$19,400
\$19,401	\$19,500
\$19,501	\$19,600
\$19,601	\$19,700
\$19,701	\$19,800
\$19,801	\$19,900
\$19,901	\$20,000
\$20,001	\$20,100
\$20,101	\$20,200
\$20,201	\$20,300
\$20,301	\$20,400
\$20,401	\$20,500
\$20,501	\$20,600
\$20,601	\$20,700
\$20,701	\$20,800
\$20,801	\$20,900
\$20,901	\$21,000
\$21,001	\$21,100
\$21,101	\$21,200
\$21,201	\$21,300
\$21,301	\$21,400
Married Filing Jointly With Two or More Dependents	
From	But Less Than
\$20,701	\$20,800

\$20,801	\$20,900
\$20,901	\$21,000
\$21,001	\$21,100
\$21,101	\$21,200
\$21,201	\$21,300
\$21,301	\$21,400
\$21,401	\$21,500
\$21,501	\$21,600
\$21,601	\$21,700
\$21,701	\$21,800
\$21,801	\$21,900
\$21,901	\$22,000
\$22,001	\$22,100
\$22,101	\$22,200
\$22,201	\$22,300
\$22,301	\$22,400
\$22,401	\$22,500
\$22,501	\$22,600
\$22,601	\$22,700
\$22,701	\$22,800
\$22,801	\$22,900
\$22,901	\$23,000
\$23,001	\$23,100
\$23,101	\$23,200
\$23,201	\$23,300
\$23,301	\$23,400
\$23,401	\$23,500
\$23,501	\$23,600
\$23,601	\$23,700
\$23,701	\$23,800
\$23,801	\$23,900
\$23,901	\$24,000
\$24,001	\$24,100
\$24,101	\$24,200
\$24,201	\$24,300
\$24,301	\$24,400
\$24,401	\$24,500
\$24,501	\$24,600
\$24,601	\$24,700
\$24,701	\$24,800
\$24,801	\$24,900
\$24,901	\$25,000
\$25,001	\$25,100
\$25,101	\$25,200
\$25,201	\$25,300
\$25,301	\$25,400

\$25,401	\$25,500
\$25,501	\$25,600
\$25,601	\$25,700
\$25,701	\$25,800
\$25,801	\$25,900
\$25,901	\$26,000
\$26,001	\$26,100
\$26,101	\$26,200
\$26,201	\$26,300
\$26,301	\$26,400
\$26,401	\$26,500
\$26,501	\$26,600
\$26,601	\$26,700
Head of Household/Qualifying Widow or Widower	
From	But Less Than
\$14,501	\$14,600
\$14,601	\$14,700
\$14,701	\$14,800
\$14,801	\$14,900
\$14,901	\$15,000
\$15,001	\$15,100
\$15,101	\$15,200
\$15,201	\$15,300
\$15,301	\$15,400
\$15,401	\$15,500
\$15,501	\$15,600
\$15,601	\$15,700
\$15,701	\$15,800
\$15,801	\$15,900
\$15,901	\$16,000
\$16,001	\$16,100
\$16,101	\$16,200
\$16,201	\$16,300
\$16,301	\$16,400
\$16,401	\$16,500
\$16,501	\$16,600
\$16,601	\$16,700
\$16,701	\$16,800
\$16,801	\$16,900
\$16,901	\$17,000
\$17,001	\$17,100
\$17,101	\$17,200
\$17,201	\$17,300
\$17,301	\$17,400
\$17,401	\$17,500
\$17,501	\$17,600

\$17,601	\$17,700
\$17,701	\$17,800
\$17,801	\$17,900
\$17,901	\$18,000
\$18,001	\$18,100
\$18,101	\$18,200
\$18,201	\$18,300
\$18,301	\$18,400
\$18,401	\$18,500
\$18,501	\$18,600
\$18,601	\$18,700
\$18,701	\$18,800
\$18,801	\$18,900
\$18,901	\$19,000

(e) (1) For tax years beginning on or after January 1, 2008, for purposes of determining the exemptions from income tax in subsection (b) of this section and determining eligibility for the low income tax credit in this section, the gross income amounts in subsections (b) and (c) of this section shall be adjusted annually by the cost-of-living adjustment for the current calendar year, rounded to the nearest whole dollar.

(2) For purposes of this subsection, the cost-of-living adjustment for any calendar year is the percentage, if any, not to exceed three percent (3%) by which the Consumer Price Index for the current calendar year exceeds the Consumer Price Index for the preceding calendar year.

(3) The Consumer Price Index for any calendar year is the average of the Consumer Price Index as of the close of the twelve-month period ending on August 31 of that calendar year.

(4) As used in this subsection, "Consumer Price Index" means the last Consumer Price Index for All Urban Consumers published by the United States Department of Labor.

(f) For tax years beginning on or after January 1, 2008, following the cost-of-living adjustment for the Consumer Price Index as provided in subsection (e) of this section, the low income tax credit in this section and the gross income limitations outlined in the tables in subsection (d) of this section shall be adjusted annually using the following method:

(1) For a single individual, the amount of the low income tax credit allowable shall be eighty percent (80%) of the income tax due upon the amount of gross income in subdivision (c)(1) of this section, indexed as provided in subsection (e) of this section, and reduced, but not below zero dollars (\$0.00), by four dollars (\$4.00) for each one hundred dollars (\$100), or fraction thereof, that the taxpayer's gross income exceeds the indexed amount;

(2) For a married couple filing jointly with one (1) or fewer dependents, the amount of the low income tax credit allowable shall be eighty percent (80%) of the income tax due upon the amount of gross income in subdivision (c)(2) of this section,

indexed as provided in subsection (e) of this section, and reduced, but not below zero dollars (\$0.00), by seven dollars (\$7.00) for each one hundred dollars (\$100), or fraction thereof, that the taxpayer's gross income exceeds the indexed amount;

(3) For a married couple filing jointly with two (2) or more dependents, the amount of the low income tax credit allowable shall be eighty percent (80%) of the income tax due upon the amount of gross income in subdivision (c)(3) of this section, indexed as provided in subsection (e) of this section, and reduced, but not below zero dollars (\$0.00), by seven dollars (\$7.00) for each one hundred dollars (\$100), or fraction thereof, that the taxpayer's gross income exceeds the indexed amount; or

(4) For a head of household or qualifying widow or widower with one (1) or more dependents, the amount of the low income tax credit allowable shall be eighty percent (80%) of the income tax due upon the amount of gross income in subdivision (c)(4) of this section, indexed as provided in subsection (e) of this section, reduced, but not below zero dollars (\$0.00), by six dollars (\$6.00) for each one hundred dollars (\$100), or fraction thereof, that the taxpayer's gross income exceeds the indexed amount.

(g) For the purpose of determining eligibility for the low income tax credit in this section, income from all sources shall be used in determining the gross income of the taxpayer regardless of whether the income is taxable in Arkansas.

(h) A taxpayer is not eligible for the low income tax credit in this section if the taxpayer claims an exemption in § 26-51-306 or § 26-51-307, or if the taxpayer itemizes deductions.

History. Acts 1973, No. 4, §§ 1, 3; A.S.A. 1947, §§ 84-2090, 84-2092; Acts 1991, No. 95, § 2; 1993, No. 785, § 6; 1995, No. 1160, § 15; Acts 1997, No. 328, § 2; 2005, No. 675, § 1; 2005, No. 2187, § 1; 2007, No. 195, § 1.

A.C.R.C. Notes. Acts 1997, No. 328, § 11, provided:

"This Act shall be effective on and after November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10."

Acts 1997, No. 328, § 12, provided:

"The withholding tables prescribed by the Director of the Department of Finance and Administration pursuant to Ark. Code Ann. § 26-51-907 shall not be amended for tax year 1998 to reflect the changes adopted by this Act. If this Act becomes effective on November 15, 1998, the effect of the various provisions of this Act for tax year 1998 shall be reflected on the income tax return filed for that year. For all subsequent years, the Director shall adjust the withholding tables as otherwise required by law."

Publisher's Notes. Acts 1973, No. 4, § 4 provided that this act shall be effective for all tax years beginning on or after January 1, 1973.

Acts 1991, No. 95, § 5, provided that "the provisions contained in this act shall be effective for tax years beginning on and after January 1, 1991."

Amendments. The 1997 amendment rewrote this section.

The 2005 amendment by No. 675 substituted "January 1, 2005" for "January 1, 1991" in (c).

The 2005 amendment by No. 2187 inserted "exemption provided for in § 26-51-306 or the" and deleted "either §§ 26-51-306 or" preceding "§ 26-51-307."

The 2007 amendment rewrote the section.

Effective Dates. Acts 2005, No. 675, § 17: effective for tax years on and after January 1, 2005.

Acts 2005, No. 2187, § 3: applicable to tax years beginning on and after January 1, 2005.

Acts 2007, No. 195, § 3: applicable to tax years beginning on and after January 1, 2007.

U.S. Code. Section 2(b) of the federal Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 2(b).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev.

Annual Survey of Caselaw: Tax Law, 27 U. Ark. Little Rock L. Rev. 751.

Case Notes

In General.

In General.

Supreme Court of Arkansas declined to address state finance director's argument that the trial court erred when it concluded that subsection (d) of this section was unconstitutional because Acts 1995, No. 1160, repealed the subsection; a constitutional challenge to a repealed statute raises a moot issue that will not be considered on appeal. *Weiss v. Chavers*, 357 Ark. 607, 184 S.W.3d 437 (2004).

26-51-302. [Repealed.]

Publisher's Notes. This section, concerning reduced tax tables, was repealed by Acts 2007, No. 195, § 2. The section was derived from Acts 1973, No. 4, § 2; A.S.A. 1947, § 84-2091; Acts 1991, No. 95, § 3; Acts 1997, No. 328, § 3.

Effective Dates. Acts 2007, No. 195, § 3: applicable to tax years beginning on and after January 1, 2007.

26-51-303. Exempt organizations.

(a) The following organizations shall be exempt from taxation under the Income Tax Act of 1929, § 26-51-101 et seq.:

(1) Fraternal benefit societies, orders, or associations:

(A) Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and

(B) Providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

(2) Domestic life and disability insurance companies and foreign insurance companies;

(3) Cemetery corporations;

(4) Business leagues, chambers of commerce, or boards of trade not organized for profit and no part of the net earnings of which inures to the benefit of any private stockholders or individuals;

(5) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;

(6) Farmers' or other mutual hail, cyclone, or fire insurance companies, or other domestic insurance companies writing lines of insurance other than those specified in subdivisions (a)(1) and (2) of this section, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character, but only if eighty-five percent (85%) or more of the income of the organization consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting losses and expenses;

(7) Farmers', fruit growers', or like organizations organized and operated as sales

agent for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

(8) Labor, agricultural, or horticultural organizations, no part of the net earnings of which inures to the benefit of any private stockholder or member;

(9) Corporations, trusts, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate in, or intervene in, including the publishing or distributing of statements, any political campaign on behalf of or in opposition to any candidate for public office; and

(10) A political organization that does not have political organization taxable income for the tax year under 26 U.S.C. § 527, as in effect on January 1, 2009.

(b) (1) Every organization claiming exemption under this act shall notify the Revenue Division of the Department of Finance and Administration of its exempt status.

(2) Each such organization shall provide such additional information as the division shall also reasonably require for verification of the organization's exempt status.

(3) Provided, however, that any organization which is determined to be exempt from income taxation under the provisions of the Internal Revenue Code of 1986 for any one (1) or more of the purposes set forth in subsection (a) of this section shall verify its exempt status hereunder by delivery to the division of a copy of the document declaring its exempt status under the Internal Revenue Code of 1986.

History. Acts 1929, No. 118, Art. 2, § 6; Pope's Dig., §§ 7979, 14029; Acts 1941, No. 129, § 4; 1957, No. 259, § 1; 1973, No. 182, § 3; A.S.A. 1947, § 84-2006; Acts 1987, No. 1033, § 6; 1991, No. 1123, § 18; 1993, No. 1147, § 1804; 2009, No. 372, § 1.

Publisher's Notes. For definitions applicable to, and legislative intent concerning, this section, see §§ 26-26-1502 and 26-50-101.

Acts 1973, No. 182, § 9, provided that this act shall be in effect on and after January 1, 1973, and shall apply to tax years after said date.

Acts 1987, No. 1033, § 10, provided that the provisions of this act as to premium taxes shall apply to all premiums which are collected in calendar year 1987 upon which the premium tax is reported and paid in 1988, and the provisions of this act as to income taxes shall apply to all income years beginning on or after January 1, 1987.

Amendments. The 1993 amendment substituted "benefit" for "beneficiary" in (a)(1); substituted "or" for "of" following "association" in (a)(1)(B); rewrote (a)(3); added (a)(9) and (b); and made punctuation changes.

The 2009 amendment inserted (a)(10).

Meaning of "this act". Acts 1929, No. 118, codified as §§ 26-51-101 — 26-51-107, 26-51-201 — 26-51-204, 26-51-303, 26-51-401 — 26-51-406, 26-51-410 — 26-51-412, 26-51-415 — 26-51-417, 26-51-423 — 26-51-431, 26-51-436, 26-51-501, 26-51-801 — 26-51-804, 26-51-806 — 26-51-809, and 26-51-811 — 26-51-815.

Cross References. Exemption for capital development corporations, § 15-4-1025.

Effective Dates. Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

26-51-304. Income from investments made by nonprofit organizations.

Income derived from investments made by nonprofit organizations, whether or not the organization is organized or exists under the laws of this state, shall be exempt from state income tax where the income is for the sole purpose of providing pension and annuity benefits to members of the nonprofit organizations.

History. Acts 1965, No. 149, § 1; A.S.A. 1947, § 84-2006.1.

26-51-305. [Repealed.]

Publisher's Notes. This section is repealed by Acts 1997, No. 328, § 8, effective November 15, 1998.

U.S. Code. Section 121 of the Internal Revenue Code referred to in this section is codified as 26 U.S.C. § 121.

Research References

Ark. L. Notes.

Beard, Transfers of Property between Spouses and Former Spouses — An Overview of Income Tax Issues and a Suggested Analytical Approach to Such Issues, 1990 Ark. L. Notes 1.

26-51-306. Compensation and benefits from military service.

(a) (1) (A) For tax years beginning before January 1, 2007, no member of the armed services of the United States shall be liable for or required to pay any income tax on the first six thousand dollars (\$6,000) of service pay or allowances.

(B) (i) For tax years 2005 and 2006, enlisted personnel of the armed services of the State of Arkansas or of the United States shall not be liable for or required to pay any income tax on the first nine thousand dollars (\$9,000) of service pay or allowances.

(ii) For tax years 2005 and 2006, an officer or a warrant officer of the armed services of the State of Arkansas or of the United States is only entitled to the exemption in subdivision (a)(1)(A) of this section and is not entitled to the exemption in subdivision (a)(1)(B)(i) of this section.

(C) For tax years beginning on and after January 1, 2007, any member of the armed services of the State of Arkansas or the United States is not liable for or required to pay any income tax on the first nine thousand dollars (\$9,000) of service pay or allowance.

(2) The compensation and benefits are declared exempt, to the extent of the amounts provided in subdivision (a)(1) of this section, from the state income tax.

(3) All service pay or allowances of members of the armed services of the State of Arkansas or the United States in excess of the amounts provided in subdivision (a)(1) of this section shall be subject to the state income tax, unless otherwise provided for in this section.

(4) (A) Sections 112 and 692 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, regarding combat zone compensation of members of the armed forces and income taxes of members of the armed forces on death are adopted.

(B) The provisions contained in § 112 of the Internal Revenue Code are in addition to all other provisions contained in this section.

(b) Nothing in this section shall exempt from taxation the income of members of the armed services derived from other sources than their service pay and allowances.

(c) As used in this section, “armed services” means any and all members of the National

Guard, reserve components of the armed forces, United States Army, Navy, Marine Corps, Coast Guard, Air Force, and any and all other branches of the military and naval forces or auxiliaries.

History. Acts 1943, No. 61, §§ 1-3; 1971, No. 226, § 1; 1973, No. 587, § 1; A.S.A. 1947, §§ 84-2009 — 84-2011; Acts 1989 (3rd Ex. Sess.), No. 27, § 2; 1991, No. 386, § 1; 1997, No. 951, § 19; 2005, No. 29, § 1; 2005, No. 2187, § 2; 2007, No. 160, § 1; 2007, No. 218, § 11.

Publisher's Notes. Acts 1989 (3rd Ex. Sess.), No. 27, § 6, provided that the act shall be applicable to income years beginning on or after January 1, 1989.

Acts 1997, No. 951, § 34: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 1997 amendment substituted "January 1, 1997" for "January 1, 1991" in (a)(4).

The 2005 amendment by No. 29, in (4), substituted "2005" for "1997" and "zone compensation" for "pay."

The 2005 amendment by No. 2187 added (a)(1)(B) and (C); substituted "amounts provided in subdivision (a)(1) of this section" for "first six thousand dollars (\$6,000) thereof" in (a)(2); substituted "the amounts provided in subdivision (a)(1) of this section" for "six thousand dollars (\$6,000) per year" in (a)(3); substituted "2005" for "1997" in (a)(4); and inserted "National Guard, Reserves" in (c).

The 2007 amendment by No. 160 added "For tax years beginning before January 1, 2007" in (a)(1)(A) and made a related change; added (a)(1)(C) and redesignated the preceding subsections; substituted "tax years 2005 and 2006" for "tax years beginning on and after January 1, 2005" in present (a)(1)(B)(i); substituted "For tax years 2005 and 2006, an officer or a warrant officer" for "Officers" in present (a)(1)(B)(ii); and substituted "January 1, 2007" for "January 1, 2005" in (a)(4)(A).

The 2007 amendment by No. 218 substituted "January 1, 2007" for "January 1, 2005" in (a)(4)(A).

U.S. Code. Sections 112 and 692 of the Internal Revenue Code, referred to in this section, are codified as 26 U.S.C. § 112 and 26 U.S.C. § 692, respectively.

Effective Dates. Acts 2005, No. 29, § 2: applicable to tax years beginning on and after January 1, 2005.

Acts 2005, No. 2187, § 3: applicable to tax years beginning on and after January 1, 2005.

Research References

Ark. L. Rev.

The Federal Soldiers' and Sailors' Civil Relief Act, 17 Ark. L. Rev. 16.

26-51-307. Retirement or disability benefits.

(a) (1) The first six thousand dollars (\$6,000) of benefits received by any resident of this state from an individual retirement account or the first six thousand dollars (\$6,000) of retirement benefits received by any resident of this state from public or private employment-related retirement systems, plans, or programs, regardless of the method of funding for these systems, plans, or programs, shall be exempt from the state income tax.

(2) (A) Only individual retirement account benefits received by an individual retirement account participant after reaching fifty-nine and one-half (59½) years of age qualify for the exemption.

(B) The only other distributions or withdrawals from an individual retirement account that qualify for the exemption before the individual retirement account

participant reaches fifty-nine and one-half (59½) years of age are those made on account of the participant's death or disability.

(C) All other premature distributions or early withdrawals including, but not limited to, those taken for medical-related expenses, higher education expenses, or a first-time home purchase do not qualify for the exemption.

(b) (1) (A) Except as provided in subdivision (b)(2) of this section, the exemption provided for in subsection (a) of this section for benefits received from an individual retirement account or from a public or private employment-related retirement system, plan, or program shall be the only exemption from the state income tax allowed for benefits received from an individual retirement account or from any publicly or privately supported employment-related retirement system, plan, or program, excepting only benefits received under systems, plans, or programs which are by federal law exempt from the state income tax.

(B) No taxpayer shall receive an exemption greater than six thousand dollars (\$6,000) during any tax year under the provisions of this section.

(2) The provisions of this section shall not apply to retirement or disability benefits received under a plan, system, or fund described in § 26-51-404(b)(6).

(c) (1) Section 72 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, is the sole method by which a recipient of benefits from an individual retirement account or from public or private employment-related retirement systems, plans, or programs may deduct or recover his or her cost of contribution to the plan when computing his or her income for state income tax purposes.

(2) A taxpayer shall not be allowed to deduct or recover any portion of the taxpayer's cost of contribution to the plan that the taxpayer:

(A) Has once deducted or recovered; or

(B) Would have been allowed to deduct or recover under any provision of law or court decision.

(d) (1) An individual who is sixty-five (65) years of age or older and who does not claim an exemption under subsection (a) of this section shall be entitled to an additional state income tax credit of twenty dollars (\$20.00).

(2) This credit is in addition to all other credits allowed by law.

History. Acts 1985, No. 486, §§ 1, 2; A.S.A. 1947, §§ 84-2008.5, 84-2008.6; Acts 1987, No. 521, § 3; 1989, No. 512, § 1; 1989 (3rd Ex. Sess.), No. 27, § 1; 1999, No. 817, § 1; 2001, No. 773, §§ 1, 2; 2005, No. 189, § 3; 2007, No. 218, § 12; 2009, No. 372, § 2.

A.C.R.C. Notes. Acts 2005, No. 189, § 1, provided:

"The purpose of this act is to clarify current law regarding cost recovery for annuitants under the Income Tax Act of 1929, Arkansas Code § 26-51-101 et seq."

Amendments. The 2005 amendment redesignated former (c) as present (c)(1); in (c)(1), substituted "Section 72 of the Internal Revenue Code of 1986, as in effect on January 1, 2005, shall provide the sole method by which a" for "No" and "may deduct" for "shall be allowed to deduct," and inserted "or her" twice; and added (c)(2).

The 2007 amendment substituted "January 1, 2007" for "January 1, 2005" in (c)(1).

The 2009 amendment substituted "January 1, 2009, is" for "January 2007, shall provide" in (c)(1).

Cross References. Exemption of certain retirement benefits from state and local taxes, § 24-3-105.

Effective Dates. Acts 1989 (3rd Ex. Sess.), No. 27, § 6, provided that the act shall be applicable to income years beginning on or after January 1, 1989.

Acts 1999, No. 817, § 2 provided: "The provisions of this act shall be effective for tax years

beginning on or after January 1, 2000.”

Acts 2001, No. 773, § 12, provided: “The provisions of this act shall become effective for tax years beginning on and after January 1, 2001.”

Acts 2009, No. 372, § 25, provided: “This act is effective for tax years beginning on and after January 1, 2009.”

Research References

U. Ark. Little Rock L. Rev.

Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

Survey, Taxation, 14 U. Ark. Little Rock L.J. 401.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

Case Notes

Constitutionality.

Construction.

Constitutionality.

The state income tax discriminated against retirees of the governments of other states and military retirees based upon the source of the payment; therefore the tax violated 4 U.S.C. § 111 and the doctrine of intergovernmental tax immunity. *Pledger v. Bosnick*, 306 Ark. 45, 811 S.W.2d 286 (1991), cert. denied, 509 U.S. 921, 113 S. Ct. 3034 (1993), overruled, *State, Dep't of Fin. & Admin. v. Staton*, 325 Ark. 341, 942 S.W.2d 804 (1996) (decision under prior law).

Finding that the state income tax was unconstitutional, as applied to the retirees of the governments of other states and military retirees, was applied retroactively. *Pledger v. Bosnick*, 306 Ark. 45, 811 S.W.2d 286 (1991), cert. denied, 509 U.S. 921, 113 S. Ct. 3034 (1993), overruled, *State, Dep't of Fin. & Admin. v. Staton*, 325 Ark. 341, 942 S.W.2d 804 (1996).

Because the returns of after-tax contributions to a retirement plan were property, pursuant to Ark. Const. art. XVI, § 5, not income, the Department of Finance and Administration attempted tax of the returns under this section was unconstitutional given the prohibition in Ark. Const. amend. 47 that prohibited an ad valorem tax being levied on property; thus, the trial court properly granted partial summary judgment in favor of the taxpayers. *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003).

Emergency Income Tax Rule, which was enacted by the Department of Finance and Administration in response to the declaration that § 26-51-307(c) was unconstitutional, was also unconstitutional because it was clear that the General Assembly never intended I.R.C. § 72 be applied to recover of after-tax contribution in employment-related retirement plans. *Weiss v. Maples*, 369 Ark. 282, 253 S.W.3d 907 (2007).

Construction.

Subsection (c) of this section clearly provides that cost of contributions to a retirement plan may not be deducted in computing income for State tax purposes, and § 26-51-404(b)(24)(B) provides that annuity income from retirement plans is subject to this section rather than § 26-51-404(b); a retirement plan could contain pre-tax contributions upon which no income tax has ever been paid, employer contributions upon which no income tax has ever been paid, after-tax contributions upon which income tax has been paid, and the gain from pre-tax contributions and after-tax contributions upon which no income tax has ever been paid, and the above quoted statutes speak to income. *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003).

Cited: *Weiss v. McFadden*, 356 Ark. 123, 148 S.W.3d 248 (2004).

26-51-308. Trusts for qualified deferred compensation plans exempt.

An organization or trust described in section 401(a) of the Internal Revenue Code, as in effect on January 1, 2009, is exempt from income taxation under the Income Tax Act of 1929, § 26-51-101 et seq.

History. Acts 1959, No. 202, § 6; 1983, No. 379, § 14; A.S.A. 1947, § 84-2053; Acts 2007, No. 218, § 13; 2009, No. 372, § 3.

Publisher's Notes. The 1983 amendment to this section took effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.

Amendments. The 2007 amendment substituted "January 1, 2007" for "January 1, 1983, and as that section is modified by the applicable provisions of Public Law 97-248," and substituted "the Income Tax Act of 1929, § 26-51-101 et seq." for "the Arkansas Income Tax Act of 1929, § 26-51-101 et seq., as amended."

The 2009 amendment substituted "2009" for "2007" and made minor stylistic changes.

U.S. Code. Section 401(a) of the Internal Revenue Code referred to in this section is codified as 26 U.S.C. 401(a). Public Law 97-248 referred to in this section is codified primarily throughout Titles 26 and 42 of the United States Code.

Effective Dates. Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

26-51-309. Charitable remainder trusts.

(a) Section 664 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, and the regulations of the Secretary of the Treasury promulgated under § 664 of the Internal Revenue Code of 1986 and in effect on January 1, 2007, are adopted for the purpose of computing the tax liability of charitable remainder trusts and their beneficiaries under the Income Tax Act of 1929, § 26-51-101 et seq.

(b) Furthermore, any other provision of the federal income tax law and regulations which are necessary for interpreting and implementing 26 U.S.C. § 664 are adopted to the extent as in effect on January 1, 2007.

History. Acts 1993, No. 1147, § 1805; 1999, No. 1126, § 14; 2007, No. 218, § 14.

Publisher's Notes. Former § 26-51-309, concerning separate exclusion for portion of military retirement pay was repealed by Acts 1989 (3rd Ex. Sess.), No. 27, § 3. The former section was derived from Acts 1987, No. 521, §§ 1, 2.

Amendments. The 2007 amendment substituted "January 1, 2007" for January 1, 1999" in three places.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

26-51-310. Foreign income exclusion.

Sections 911 and 912 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, 26 U.S.C. § 911 regarding citizens or residents of the United States living abroad, and 26 U.S.C. § 912 regarding certain allowances for citizens or residents of the United States living abroad, are adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1989, No. 826, § 2; 1999, No. 1126, § 15; 2007, No. 218, § 15.

Publisher's Notes. As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-305.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-305.

Amendments. The 2007 amendment substituted "January 1, 2007" for January 1, 1999."

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

26-51-311. Qualified windmill blade manufacturing exemption.

(a) A qualified windmill blade manufacturer that meets the criteria found in subsection

(b) of this section is exempt from income taxes levied under the Income Tax Act of 1929, § 26-51-101 et seq., until December 31, 2033.

(b) A windmill blade manufacturer shall meet the following criteria in order to claim the income tax exemption provided in subsection (a) of this section:

(1) Shall be classified in the North American Industry Classification System (NAICS) Code 333611, as in effect January 1, 2007;

(2) Shall locate in the state before December 31, 2007;

(3) Shall expend a minimum of one hundred fifty million dollars (\$150,000,000) in the state within six (6) years of signing a financial incentive agreement with the Arkansas Economic Development Commission; and

(4) Shall hire a minimum of one thousand (1,000) employees in the state within six (6) years of signing a financial incentive agreement with the commission.

(c) If any of the criteria under subsection (b) of this section are not met, the income tax exemption in subsection (a) of this section shall expire in the year that the failure to meet any of the criteria for qualification occurs.

History. Acts 2007, No. 990, §§ 1, 2; 2009, No. 736, § 1.

Amendments. The 2009 amendment, in (b), deleted (b)(4), redesignated the subsequent subdivision accordingly, substituted “six (6)” for “four (4)” in (b)(3), substituted “Commission” for “Council” in (b)(3) and present (b)(4), substituted “six (6)” for “five (5)” in present (b)(4), and made a minor stylistic change.

Effective Dates. Acts 2007, No. 990, § 2: effective for tax years beginning on or after 2007. Acts 2009, No. 736, § 3 provided: “This act is effective for tax years beginning on or after 2008.”

26-51-312. Qualified windmill blade and windmill component manufacturing exemption.

(a) A qualified windmill blade or windmill component manufacturer that meets the criteria under this section is eligible for a limited exemption from the income taxes levied under the Income Tax Act of 1929, § 26-51-101 et seq.

(b) To qualify for a limited exemption under this section from income taxes, a windmill blade or windmill component manufacturer shall:

(1) Be classified in the North American Industrial Classification System (NAICS) Code 333611 as in effect January 1, 2009;

(2) Locate in the state after January 1, 2008; and

(3) Sign a financial incentive agreement with the Arkansas Economic Development Commission after January 1, 2008.

(c) The limited income tax exemption allowed under this section is calculated based on the formula in subsection (d) of this section that comprises the following variables:

(1) Investment;

(2) Job creation;

(3) Tier status; and

(4) Wages.

(d) The number of years that a limited income tax exemption is granted to a qualified windmill blade or windmill component manufacturer is calculated as follows:

(1) Divide the proposed number of jobs to be created by one thousand (1,000);

(2) (A) Multiply the number calculated under subdivision (d)(1) of this section by thirty-five hundredths (0.35).

(B) The number calculated under subdivision (d)(2)(A) of this section is the weighting factor for job creation under subdivision (c)(2) of this section;

(3) Divide the proposed hourly wage by the lesser of the state or county average wage;

(4) (A) Multiply the number calculated under subdivision (d)(3) of this section by thirty-five hundredths (0.35).

(B) The number calculated under subdivision (d)(4)(A) of this section is the weighting factor for wages under subdivision (c)(4) of this section;

(5) Divide the proposed investment amount by one hundred fifty million dollars (\$150,000,000);

(6) (A) Multiply the number calculated under subdivision (d)(5) of this section by twenty hundredths (0.20).

(B) The number calculated under subdivision (d)(6)(A) of this section is the weighting factor for investment under subdivision (c)(1) of this section;

(7) Divide the tier number of the county in which the business locates by four (4);

(8) (A) Multiply the number calculated under subdivision (d)(7) of this section by ten hundredths (0.10).

(B) The number calculated under subdivision (d)(8)(A) of this section is the weighting factor for tier status that is associated with location under subdivision (c)(3) of this section;

(9) Take the sum of the numbers in subdivisions (d)(2)(A), (d)(4)(A), (d)(6)(A), and (d)(8)(A) of this section and multiply the sum by twenty-five (25); and

(10) The number calculated in subdivision (d)(9) of this section is the number of years of income tax exemption granted to the qualified windmill blade or windmill component manufacturer.

(e) If a qualified windmill blade or windmill component manufacturer that signs a financial incentive agreement with the commission after January 1, 2008, has employed a minimum of one thousand (1,000) persons during the last year of the income tax exemption provided for in the initial signed financial incentive agreement with the commission, then additional years of income tax exemption may be authorized by the commission.

(f) An income tax exemption allowed by this section shall not exceed twenty-five (25) years from the year that the exemption is first granted.

History. Acts 2009, No. 736, § 2.

Effective Dates. Acts 2009, No. 736, § 3, provided: "This act is effective for tax years beginning on and after January 1, 2008."

Subchapter 4

— Computation of Tax Liability

26-51-401. Tax year — Accounting method.

26-51-402. Tax year — Basis for determining liability.

26-51-403. Income generally.

26-51-404. Gross income generally.

26-51-405. Partnership income.

26-51-406. Income to beneficiaries of trusts and estates.

26-51-407. Financial institutions.
26-51-408. Dividends of financial institutions taxable.
26-51-409. Federal Subchapter S adopted.
26-51-410. Inventory.
26-51-411. Gain or loss — Sales of property.
26-51-412. Gain or loss — Exchange of property.
26-51-413. Corporate liquidations.
26-51-414. Deferred compensation plans.
26-51-415. Deductions — Interest.
26-51-416. Deductions — Taxes.
26-51-417. Deductions — Alimony or separate maintenance.
26-51-418. Deductions — Disabled children.
26-51-419. Deductions — Charitable contributions.
26-51-420. Deductions — Education service cooperative contributions.
26-51-421. [Repealed.]
26-51-422. Deductions — Fair market value of donated artistic, literary, and musical creations.
26-51-423. Deductions — Expenses.
26-51-424. Deductions — Losses.
26-51-425. Deductions — Worthless debts.
26-51-426. Deductions — Reserve for bad debts or liabilities.
26-51-427. Deductions — Net operating loss carryover.
26-51-428. Depreciation — Deductions — Expensing of property. [Effective until contingency in Acts 2007, No. 613, § 2 is met.]
26-51-428. Depreciation — Deductions — Expensing of property. [Effective if contingency in Acts 2007, No. 613, § 2 is met.]
26-51-429. Deductions — Depletion allowances.
26-51-430. Deductions — Standard deduction.
26-51-431. Items not deductible in net income computation.
26-51-432 — 26-51-434. [Repealed.]
26-51-435. Nonresidents or part-year residents.
26-51-436. Deductions — Limitations.
26-51-437. Miscellaneous itemized deductions.
26-51-438. [Repealed.]
26-51-439. Capitalization of certain expenses.
26-51-440. Federal Subchapter M adopted.
26-51-441. Contribution to Olympic Committee Program.
26-51-442. Sale of property to comply with conflict-of-interest requirements.
26-51-443. Allocation of unstated interest — Foregone interest.
26-51-444. Deductions — Soil and water conservation.
26-51-445. Adoption expenses.
26-51-446. Long-term intergenerational security.
26-51-447. Deductions — Tuition to post-secondary educational institutions.
26-51-448. Educational individual retirement accounts.
26-51-449. Contribution to the Arkansas School for the Blind and the Arkansas School for the Deaf.

- 26-51-450. Deductions — Small business guaranty fees.
- 26-51-451. Voluntary contributions to Organ Donor Awareness Education Trust Fund.
- 26-51-452. Organ Donor Awareness Education Trust Fund — Rules and regulations.
- 26-51-453. Health savings accounts.
- 26-51-454. Contribution to Arkansas Area Agencies on Aging.
- 26-51-455. Income tax check-off program for contributions to the Newborn Umbilical Cord Blood Initiative.
- 26-51-456. Contribution to Arkansas Tax-Deferred Tuition Savings Program account.

A.C.R.C. Notes. References to “this subchapter” in §§ 26-51-401 through 26-51-450 may not apply to §§ 26-51-451 and 26-51-452, which were enacted subsequently.

Cross References. Family Savings Initiative Act, § 20-86-101 et seq.
Deductions for medically necessary foods, § 23-79-701 et seq.

Preambles. Acts 1929, No. 118, contained a preamble which read:

“Whereas, this State has been neglectful of its Wards in the Charitable Institutions, which is a disgrace to the people of a Great Commonwealth, and it is imperative that additional Revenue should be provided to correct the fearful conditions which now exist; and

“Whereas, an equalization Fund should be provided to give equal Educational opportunities to the Boys and Girls of our Rural Communities; and

“Whereas, Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Ad Valorem Tax, thus penalizing and discouraging ownership of property, while many who enjoy the benefits of Government and have large incomes, pay almost nothing to support the Government;

“Therefore....”

Acts 1967, No. 62, contained a preamble, which read:

“Whereas, contributions to political campaigns by taxpaying citizens is an effort on the part of the taxpayer to promote good government and democracy, and

“Whereas, it is believed that many more citizens would participate in government by offering campaign contributions to candidates of their choice if some tax relief could be obtained under the State income taxing system, and

“Whereas, it is also believed that the interests of many citizens in government may be aroused by allowing such deduction for political campaign contributions and the State and all of its political subdivisions would profit by the interest and participation of many more people....”

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 1999, No. 1217, § 16: July 1, 1999.

Acts 1929, No. 118, § 44: approved Mar. 9, 1929. Emergency clause provided: “It is hereby ascertained and declared that the Hospital for Nervous Diseases is inadequate to properly care for all who should be confined therein, to the end there are many persons of unsound mind at large, who are a menace to the public safety, and that said Hospital as now equipped is inadequate to restrain those insane persons who are confined therein, so that there is danger of their escaping at any time and imperil the safety of the public; that there are hundreds and hundreds of persons desiring to enter the Tuberculosis Sanitarium who cannot now be accommodated there, because that institution has neither room, beds nor facilities for additional people, as a result said consumptives at large are spreading the disease amongst their families and friends; that the funds to be raised by this Act will be used for the better care of the charitable wards of this State and to provide better for the rural schools of this State; and it is therefore ascertained and declared that it is necessary for the public peace, health and safety that this Act go into immediate operation, and accordingly it is provided that this act shall take effect and be in force from and after its passage.”

Acts 1939, No. 140, § 8: Feb. 25, 1939. Emergency clause provided: “It having been ascertained that this Act is necessary to better enforce the collection of the Income Tax Law, which will result in increased financial benefits to the people of this State, an emergency is hereby declared to

exist, and this Act being necessary for the immediate preservation for the public peace, health and safety, shall take effect and be in full force from and after its passage and approval.”

Acts 1939, No. 324, § 4: Mar. 15, 1939. Emergency clause provided: “It is hereby found and declared that this Act shall be necessary to preserve the peace, health and safety of the people of this State, and that therefore, an emergency exists, and this Act shall be in effect, subject to the limitations contained in Section 2 hereof, immediately upon its passage and approval.”

Acts 1941, No. 129, § 8: approved Mar. 11, 1941. Emergency clause provided: “Because of the various social problems caused by the failure of the State to provide adequate relief for its aged citizens, and it appearing that there is a dire need for additional funds to meet the requirements of the Social Security Act and give additional revenue to this State and because the old folks in this State are suffering by reason of the failure of the State to secure funds with which to pay Old Age Pensions, and [an] emergency is hereby found to exist and is so declared by the Legislature of Arkansas; that this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage.”

Acts 1947, No. 135, § 9: approved Mar. 3, 1947. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the distribution of state revenues are such that a moderate diminution of certain of the revenues would have the effect of curtailing the activities of certain necessary agencies of the State Government, and that only the provisions of this Act will correct a situation which otherwise may deprive the citizens of this State from receiving the benefits which the operation of the State Government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage.”

Acts 1947, No. 335, § 8: Mar. 28, 1947. Emergency clause provided: “It has been ascertained by the Legislature that adjustments and revisions of the present income tax laws are necessary to correct the method of computing and reporting income to the State for purposes of taxation thereof and to facilitate the enforcement of present laws relating thereto, and this law being necessary to remedy this situation and to provide for the public peace, health and safety and well being, an emergency is hereby declared to exist and this Act shall be in full force and effect after its passage and approval.”

Acts 1949, No. 234, § 4: Mar. 3, 1949. Emergency clause provided: “Whereas, it has been ascertained that the increased cost of living has placed heavier demands upon the funds of the State of Arkansas than are presently available, and that unless these available funds are increased and supplemented, the necessary functions of our state government are in serious danger of not providing for the necessary protection and benefit for which it is so designed and intended; and

“Whereas, it has been ascertained that the provisions of this Act will correct this situation, “Now therefore, in order to maintain the present facilities of our government, and in order to provide for necessary funds therefor, and this Act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.”

Acts 1951, No. 124, § 3: Feb. 20, 1951. Emergency clause provided: “Whereas, it has been ascertained that considerable confusion exists among the citizens of this State regarding the computation of their Federal and State income taxes, and there is much duplication of time and effort in computing their taxes for these respective branches of the government, and

“Whereas, the desirability of making uniform the preparation of Federal and State income tax returns is evidenced by the fact that it would result in a more expeditious and efficient method of filing and handling tax returns,

“Now, Therefore, in order to increase the efficiency of our government and render aid to the citizens of this State, this Act being necessary for the preservation of public peace, health, and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.”

Acts 1959, No. 202, § 7: Jan. 1, 1959.

Acts 1965, No. 499, §§ 2, 3: Jan. 1, 1965. Emergency clause provided: “Whereas, it has been found that great inequities will exist in situations where the owner of property containing mineral deposits upon which there is a depletion allowance provided by the Arkansas Income Tax Law

where such owner incorporates and transfers the property to a corporate entity, and which might cause the loss of the depletion allowance, and this Act being necessary to remedy such, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage." Approved March 20, 1965.

Acts 1965, No. 570, §§ 2, 3: Jan. 1, 1965. Emergency clause provided: "Whereas it is necessary to remedy inequitable situations existing in the Income Tax Law as to dividends received by a parent corporation from a subsidiary corporation in which it owns at least ninety-five percent (95%) of the stock, and this Act being necessary for the preservation of the public peace, health and safety, an emergency is found to exist, and this Act shall be in full force and effect from and after its passage and approval." Approved March 24, 1965.

Acts 1967, No. 25, § 6: Feb. 1, 1967. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds and determines that considerable confusion exists among the citizens of this State regarding the computation of their Federal and State Income Taxes; that there is much duplication of time and effort in computing their income taxes for these respective branches of the government; that the desirability of making uniform the preparation of Federal and State income tax returns is evidenced by the fact that it would result in a more expeditious and efficient method of filing and handling tax returns and that in order to increase the efficiency of our government and render aid to the citizens of this State, this Act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 95, § 5: Feb. 14, 1967. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds and determines that considerable confusion exists among the citizens of this State regarding the computation of their Federal and State income taxes; that there is much duplication of time and effort in computing their income taxes for these respective branches of the government; that the desirability of making uniform the preparation of Federal and State income tax returns is evidenced by the fact that it would result in a more expeditious and efficient method of filing and handling tax returns and that in order to increase the efficiency of our government and render aid to the citizens of this State, this Act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval."

Acts 1968 (1st. Ex. Sess), No. 22, § 5: Jan. 1, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 95 of 1967 was enacted and became effective on February 14, 1967, and provided for the application of Section 213 of the Federal Internal Revenue Code of 1954, amended and in effect on December 1, 1966, in computing the Arkansas Income Tax; that since December 1, 1966, there have been substantial changes in the application of Section 213 of the Federal Internal Revenue Code of 1954, as amended; and that only by the immediate passage of this Act can the relevant Arkansas Income Tax provisions be brought into conformity with the federal income tax provisions. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from and after January 1, 1967."

Acts 1969, No. 462, § 4: Jan. 1, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the imposition of an income tax on the above funds would create a hardship on the injured and unemployed. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after January 1, 1969."

Acts 1971, No. 226, § 5: Mar. 4, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that present laws exempt service pay of members of the Armed Forces from the State Income Tax and that in order to properly recognize and regard members of the Armed Forces for their loyal services it is essential that such exemption also be extended to include retirement pay and disability benefits of retired service members, and that the immediate passage of this Act is necessary to accomplish such purpose. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 457, § 4: Mar. 30, 1971. Emergency clause provided: "It is hereby found and

determined by the General Assembly that at present contributions made to a self-employed person's retirement system are not deductible under Arkansas Income Tax; that under a qualified pension and profit sharing plan the contributions made by an employer to such a plan would be deductible in the year in which such contribution is made; that many self-employed persons have established Keogh or H.R. 10 plans but at present receive no deduction for the contributions made to such plans; and that only by the passage of this Act can these contributions be made deductible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1973, No. 182, §§ 9, 10: Jan. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to the taxation of banks and savings and loan associations is somewhat vague and indefinite, that such institutions should pay the same taxes as other business corporations in the State, and this Act is immediately necessary to clarify the laws with respect to the taxation of financial institutions and to assure that such institutions pay the same taxes as other business corporations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved February 22, 1973.

Acts 1975, No. 271, § 5: Feb. 28, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that at present contributions made to a self-employed person's retirement system are not deductible under Arkansas Income Tax; that under a qualified pension and profit sharing plan the contributions made by an employer to such a plan would be deductible in the year in which such contribution is made; that many self-employed persons have established Keogh or H.R. 10 plans but at present receive no deduction for the contributions made to such plans; and that only by the passage of this Act can these contributions be made deductible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1975, No. 676, § 4: Mar. 31, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present corporate income tax law does not permit one domestic corporation which acquires the assets of another domestic corporation to succeed to the net operating loss carryover of the acquired corporation under any circumstances; that the absence of any such authority creates a serious hardship on some acquiring corporators and that provision should be made as soon as possible for permitting such acquiring corporations to succeed to the net operating loss carryover of the acquired corporations under specified conditions, and that this Act is designed to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 683, § 4: Apr. 1, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law exempts annuities received by residents of this State from any federal retirement system or any state, county, municipal or school district retirement system in the State of Arkansas to the extent of the first Six Thousand Dollars (\$6,000.00) thereof, from the Arkansas Income Tax but does not provide a similar exemption for annuities received by residents of this State from state, county, municipal and school district retirement systems in other states; that there are many citizens in this State who have retired from publicly-supported retirement systems in other states and have moved to the State of Arkansas who are now required to pay Arkansas income tax on the annuity income received by such citizens from the publicly-supported retirement systems in other states, and that this is a serious inequity and creates an undue hardship on our retired citizens who move to Arkansas from other states; that this Act is designed to give equal treatment to annuity income derived from publicly supported retirement systems of other states as is given to annuity income derived from publicly supported retirement systems in the State of Arkansas, and that this Act should be given effect immediately. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 414, § 5: Mar. 20, 1979. Emergency clause provided: "It is hereby found and

determined by the General Assembly that under Act 55 of 1972, unlike under the Federal Internal Revenue Code of 1954, as amended, small business corporations having more than ten (10) but fifteen (15) or fewer shareholders are required to file a corporate income tax return under Arkansas Income Tax Law and pay a corporate income tax on income earned by the corporation during the taxable year; that the shareholders of such corporations also are required to pay a personal income tax on the dividends received by such shareholders from such corporations; that such taxation unduly hampers and discourages the formation of such small business corporations for the purpose of doing business and endangers existing elections of small business corporations whose shareholders may increase to more than ten (10) because of death or other uncontrollable events; and that in order properly to encourage businessmen to incorporate and assure them that they will be fairly and equitably taxed, it is necessary that this Act be enacted immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall become effective from and after its passage and approval."

Acts 1979, No. 740, § 4: Apr. 6, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an uncertainty as to the tax treatment of contributions made to a self-employed person's retirement plan or annuity and that only by the passage of this Act can this uncertainty be resolved and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1979, No. 912, § 4: Apr. 16, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present corporate income tax law discriminates against foreign corporations and the constitutionality of the law is questionable. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 914, § 9: Dec. 31, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the State's income tax laws that have counterparts in the Federal income tax laws do not coincide with recent amendments to the Federal income tax laws; that clarification needs to be made to provisions of the Arkansas Tax Procedure Act (Act 401 of 1979) with regard to the statute of limitations on assessments, the judicial review of contested assessments and the automatic assertion of the 10% negligence penalty (as apparently approved by the Supreme Court in its decision in *Great Lakes Chemical Co. v. Wooten*, 266 Ark. 511, 514 (1979) which decision was rendered after the adoption by the General Assembly of Act 401 of 1979, but before the effective date of that Act); and that this Act is immediately necessary to make the Arkansas income tax law conform with the Federal income tax law, to clarify any possible question as to the applicability of the Statute of Limitations on assessment and judicial review of contested assessments, and to stop the automatic assessment of the 10% negligence penalty on any deficiency in tax determined by the Commissioner.

Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all periods beginning after December 31, 1980."

Acts 1983, No. 51, § 5: Feb. 3, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that under Act 414 of 1979, unlike under the Federal Internal Revenue Code of 1954, as amended, small business corporations meeting the requirements of said Code, but having more than fifteen (15) shareholders, are required to file a corporate income tax return under Arkansas Income Tax Law and pay a corporate income tax on income earned by the corporation during the taxable year; that the shareholders of such corporations also are required to pay a personal income tax on the dividends received by such shareholders from such corporations; that such taxation unduly hampers and discourages the formation of such small business corporations for the purpose of doing business and endangers existing elections of small business corporations whose shareholders may increase to more than fifteen (15) because of death or other uncontrollable events; and that in order properly to encourage individuals to incorporate their businesses and assure them that they will be fairly and equitably taxed, it is necessary that this Act be enacted immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public

peace, health, and safety shall become effective from and after its passage and approval.” Acts 1983, No. 379, § 27: Dec. 31, 1982. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain provisions of the State's income and estate tax laws that have counterparts in the Federal tax laws do not coincide with recent amendments and changes to the Federal tax laws; and that this Act is immediately necessary to make the Arkansas tax laws conform with the Federal tax laws to clarify any possible question of confusion caused by such differences. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.”

Acts 1983, No. 854, § 6: Mar. 28, 1983. Emergency clause provided: “It is found and determined by the General Assembly that certain provisions of the State's income tax laws, regarding depreciation and the recovery of a taxpayer's capital expenditures for an investment in depreciable property, are in conflict with a single simplified method of capital cost recovery for depreciable property, as provided by Federal income tax laws; and such conflict has caused unnecessary conflict between the taxpayers and citizens of this State and the State employees administering the State taxing statutes, therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect upon its passage and approval.”

Acts 1985 (1st Ex. Sess.), No. 20, § 4: June 26, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 848 of 1985 as it was finally enacted phases in over a three year period the federal capital gains treatment for Arkansas income tax purposes beginning in 1987; that it was intended that the federal capital loss provisions likewise not be implemented until 1987 but that intent was not articulated in Act 848; that Act 848 adopts the federal capital loss provisions immediately instead of 1987; that Act 848 becomes effective on June 28, 1985; and therefore this Act should be given immediate effect in order to make the technical correction in a timely manner and thereby avoid unintended consequences. Therefore an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1985 (1st Ex. Sess.), No. 32, § 4: June 26, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 848 of 1985 as it was finally enacted phases in over a three year period the federal capital gains treatment for Arkansas income tax purposes beginning in 1987; that it was intended that the federal capital loss provisions likewise not be implemented until 1987 but that intent was not articulated in Act 848; that Act 848 adopts the federal capital loss provisions immediately instead of 1987; that Act 848 becomes effective on June 28, 1985; and therefore this Act should be given immediate effect in order to make the technical correction in a timely manner and thereby avoid unintended consequences. Therefore an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 382, § 34: Mar. 24, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the federal government has recently made major changes in the federal income tax law; that for simplicity of administration and equity various provisions of the federal law should be adopted for Arkansas Income Tax purposes; and that for the effective administration of this Act, the Act should become effective immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987 (1st Ex. Sess.), No. 48, § 4: June 26, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the federal government has recently made major changes in the federal income tax law; that for simplicity of administration and equity various provisions of the federal law should be adopted for the Arkansas Income Tax purposes; and that for the effective administration of this Act, the Act should become effective immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety

shall be in full force and effect from and after its passage and approval.”

Acts 1989, No. 583, § 8: Mar. 15, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that present law has no provisions for registered investment companies; that such laws are needed to properly govern investment companies and to clarify the status of investment companies; and that adoption of Subchapter M of the Internal Revenue Code of 1986 is necessary to provide uniform tax laws on both the State and Federal levels for investment companies. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1989, No. 615, § 4: Mar. 16, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that net operating losses which occurred during any income year beginning before January 1, 1987 may be carried forward for only three years; that net operating losses which occur in income years beginning on and after January 1, 1987 may be carried forward for five (5) years; that due to the weather, commodity prices and other circumstances the farm economy in this State has suffered devastating losses since 1980, and the farmers should be allowed to carry over for five (5) years the losses they have incurred since 1980; that this Act is intended to change from three (3) years to five (5) years the period of time in which losses which occurred since December 31, 1980 may be carried forward even to the extend of retroactive application; that this Act will grant some relief to the farm sector of this State and should therefore be given immediate effect. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 95, § 9: Feb. 11, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain low income working taxpayers and senior citizens bear a disproportionate share of the state tax burden; that unless this act becomes effective immediately upon passage irreparable harm will occur to low income taxpayers of this state; and that this act should become effective immediately upon passage. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 685, § 11: Jan. 1, 1991.

Acts 1991, No. 686, § 2: applicable for income years beginning on or after January 1, 1991.

Acts 1991, No. 687, § 2: effective for all income years beginning on and after January 1, 1991.

Acts 1993, No. 453, § 5: Mar. 11, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that it is unclear whether Education Service Cooperatives are instrumentalities of this state and therefore whether donations to them are tax deductible; that private donations to these entities should be encouraged; that some donations have been made during the calendar year 1992 on the assumption that the donations are in fact deductible; that this act specifically so provides and should be given immediate effect so that donations made during the 1992 calendar year will be deductible for state income tax purposes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 785, § 20: amendments to subchapters 1, 4, 5, 9, and 10 effective for taxable years beginning on and after January 1, 1993.

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: “It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 495, § 4: applicable for taxable years beginning on or after January 1, 1996.

Acts 1995, No. 535, § 4: applicable for taxable years beginning on or after January 1, 1996.

Acts 1995, No. 560, § 3: effective for taxable years beginning on or after January 1, 1995.

Acts 1995, No. 560, § 7: Mar. 8, 1995. Emergency clause provided: “It is hereby found and determined that in order to preserve and protect Arkansas' water and wetland resources,

including conserving, enhancing, and restoring the acreage, quality, biological diversity and ecosystem sustainability of the Arkansas Wetlands, certain changes to the Arkansas income tax laws regarding agricultural cost share programs and the method of expensing soil and water conservation practices are necessary; that these changes are necessary immediately in order to protect and preserve Arkansas' water resources and the restoration and creation of wetlands; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 586, § 8: Mar. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that establishment of qualified medical companies in this State will result in numerous benefits including industrial diversification, broadening of the economic base, the creation of jobs and benefits to the residents of this State through new products and processes; that this Act would provide assistance to qualified medical companies and at the same time create benefits to the State and its residents; that this Act would make state law concerning qualified medical companies' net operating loss carry forward provisions compatible with the Internal Revenue Code of the United States; and that the need for the assistance set forth in this Act is necessary in order to provide for assistance to qualified medical companies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1160, § 42: §§ 1, 2(a), and 3 through 13: applicable for taxable years beginning on or after January 1, 1995.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 328, § 11: effective on and after November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10.

Acts 1997, No. 951, § 34, provided: "Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time."

Acts 1997, No. 951, § 38: March 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1000, § 30: July 2, 1997. Emergency clause provided: "It is hereby found and

determined by the General Assembly that the laws of this State concerning the insurance matters covered in this Omnibus Act are inadequate for the protection of the public. Further, the laws of this State as to Small Employer Health Insurance are not consistent with federal laws, particularly the Health Insurance Portability and Accountability Act of 1996 of the U.S. Congress; and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in effect from and after July 2, 1997. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1075, § 2: effective for tax years beginning on or after January 1, 1998.

Acts 1997, No. 1189, § 2: effective for all tax years beginning on or after January 1, 1997.

Acts 1999, No. 1217, § 20: Apr. 7, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the first individuals to be affected by the two (2) year lifetime limit on Transitional Employment Assistance will soon reach that limit. This act will help those individuals to make the transition from welfare to long-term economic self-sufficiency. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 773, § 12: effective for tax years beginning on and after January 1, 2001.

Acts 2001, No. 1227, § 3: effective for tax years beginning on and after January 1, 2001.

Acts 2001, No. 1558, § 2: effective for tax years beginning on and after January 1, 2001.

Acts 2003, No. 218, § 3: effective for tax years beginning on and after January 1, 2003.

Acts 2003, No. 218, § 4: Feb. 26, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that recent changes to the federal Internal Revenue Code have resulted in a significant disparity between state and federal retirement plan laws; this disparity has increased the state's administrative burden and has led to confusion and anxiety among Arkansas taxpayers. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2003, No. 662, § 2: effective for tax years beginning on and after January 1, 2003.

Acts 2003, No. 663, § 14: effective for tax years beginning on and after January 1, 2003.

Acts 2003, No. 997, § 2: effective for tax years beginning on or after January 1, 2003.

Acts 2003, No. 1286, § 2: effective for tax years beginning on or after January 1, 2004.

Acts 2005, No. 53, § 2: Feb. 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Indian Ocean tsunami of December 26, 2004, has created an urgent need for financial relief efforts; that citizens of the State of Arkansas have made contributions toward the relief efforts in response to this great need; that such contributions made in January 2005 to the relief efforts should be treated for income tax purposes as made on December 31, 2004, if a taxpayer chooses; and that this act is immediately necessary so that taxpayers may claim the deduction on their 2004 income tax returns.

Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 94, § 6: effective for tax years beginning on or after January 1, 2004.

Acts 2005, No. 94, § 7: Feb. 10, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that that health savings accounts allow

taxpayers to better control their healthcare expenses; that Congress has provided for income tax benefits to taxpayers utilizing health savings accounts; and that Arkansas taxpayers cannot receive similar state income tax benefits until this act becomes effective. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2005, No. 261, § 2: effective for tax years beginning on or after January 1, 2005.

Acts 2005, No. 675, § 17: effective for tax years beginning on or after January 1, 2005.

Acts 2007, No. 196, § 2: March 5, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the federal Pension Protection Act of 2006 provides that for taxable years 2006 and 2007, taxpayers seventy and one-half (70 1/2) years of age and older may make a charitable distribution in an amount up to one hundred thousand dollars (\$100,000) from an Individual Retirement Account, which charitable distribution shall not be included in the gross income for the taxpayer for the taxable year. The federal Pension Protection Act of 2006, only applicable for taxable years 2006 and 2007, encourages benefactors to increase charitable giving by providing tax-free rollovers. Since the federal Pension Protection Act of 2006 is temporary it is necessary to immediately adopt the language of Internal Revenue Code Section 408(d)(8) to allow for parity in preparing federal and state income tax returns.

Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 613, § 2, provided: “The provisions of this act shall not be effective until the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2008 and fiscal year 2009 in an amount sufficient to replace the general revenue reduction for each of the fiscal years 2008 and 2009 that would result from the adoption of the provisions of section 179 of the Internal Revenue Code, as in effect on January 1, 2007, as provided by this act.”

Research References

Am. Jur. 71 Am. Jur. 2d, State Tax., § 518 et seq.

Ark. L. Rev.

Taxation — Limits of State Income Taxation upon Nonresidents, 3 Ark. L. Rev. 480.

Tax Problems of the Personal Representative, 16 Ark. L. Rev. 364.

U. Ark. Little Rock L.J.

Survey of Arkansas Law, Taxation, 1 U. Ark. Little Rock L.J. 258.

Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

26-51-401. Tax year — Accounting method.

(a) A taxpayer must calculate his Arkansas income tax liability using the same accounting method for Arkansas income tax purposes as used for federal income tax purposes.

(b) Taxpayers must provide to the Director of the Department of Finance and Administration a copy of any certification or approval from the federal Internal Revenue Service authorizing the taxpayer to change his accounting method.

History. Acts 1929, No. 118, Art. 3, § 9; Pope's Dig., § 14032; A.S.A. 1947, § 84-2012; Acts 1987, No. 382, § 12.

Publisher's Notes. Acts 1987, No. 382, § 1, provided that this act shall be known and may be cited as the “Income Tax Act of 1987.”

Acts 1987, No. 382, § 2, provided that the purpose of this act is to make technical amendments to

the Income Tax Act of 1929, Acts 1929, No. 118, as amended, and to the Arkansas Tax Procedure Act, Acts 1979, No. 401, as amended, to make the Arkansas income tax and tax procedure statutes conform to several recent amendments to their counterparts in the federal income statutes, to eliminate procedural problems that have arisen since the enactment of these acts, and for other purposes.

Acts 1987, No. 382, § 32(e), provided that all other laws and parts of laws in conflict with this act are repealed for income years beginning on and after January 1, 1987.

Acts 1987, No. 382, § 33, provided that, except as provided in § 26-18-303(a)(2)(B) and (c), regarding confidentiality of tax returns and other tax information, which shall apply retroactively to any pending suit, action, or prosecution, administrative or judicial, for which no final judgment has been rendered by a court of competent jurisdiction and all future suits, actions, and prosecutions, the provisions of this act shall apply to income years beginning on and after January 1, 1987.

Case Notes

Change of Method.

Change of Method.

Taxpayer using accrual basis, except as to one item, who changed accounting method so as to report entirely on accrual basis could do so without first obtaining permission when such change did not evade tax liability. *Cook v. Coca Cola Bottling Co.*, 210 Ark. 928, 198 S.W.2d 193 (1946).

26-51-402. Tax year — Basis for determining liability.

(a) A taxpayer must calculate his Arkansas income tax liability using the same income year for Arkansas income tax purposes as used for federal income tax purposes.

(b) Taxpayers must provide to the Director of the Department of Finance and Administration a copy of any certification or approval from the federal Internal Revenue Service authorizing the taxpayer to change his income year.

History. Acts 1929, No. 118, Art. 3, § 9; Pope's Dig., § 14032; A.S.A. 1947, § 84-2012; Acts 1987, No. 382, § 12.

Publisher's Notes. As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

26-51-403. Income generally.

(a) The term “net income” means the adjusted gross income of a taxpayer less the deductions allowed by the Income Tax Act of 1929, § 26-51-101 et seq.

(b) “Adjusted gross income” means, in the case of an individual, gross income minus the following deductions:

(1) Trade and business deductions otherwise allowable as deductions under this chapter that are attributable to a trade or business carried on by the taxpayer if the trade or business does not consist of the performance of services by the taxpayer as an employee;

(2) Trade and business deductions of employees otherwise allowable as deductions under this chapter;

(3) Deductions that consist of expenses paid or incurred by the taxpayer in connection with the performance by him or her of services as an employee under a reimbursement or other expense allowance arrangement with his or her employer;

(4) Losses from the sale or exchange of property;

(5) Deductions attributable to property held for the production of rents and royalties;

(6) (A) Certain deductions of life tenants and income beneficiaries of property.

(B) In the case of a life tenant of property, an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by § 167 of the Internal Revenue Code of 1986, as provided in § 26-51-428, and the deduction allowed by § 611 of the Internal Revenue Code, as provided in § 26-51-429;

(7) Deductions for certain portions of lump-sum distributions from pension plans taxed under § 402(e) of the Internal Revenue Code of 1986, as set forth in § 26-51-414;

(8) Deductions for moving expenses, as set forth in § 26-51-423(a)(4);

(9) Deductions for alimony payments;

(10) Deductions for separate maintenance payments;

(11) Deductions for interest forfeited to a bank, savings association, etc., on premature withdrawals from time savings accounts or deposits;

(12) Deductions allowed for cash payments to individual retirement accounts and deductions allowed for cash payments to retirement savings plans of certain married individuals to cover a nonworking spouse;

(13) Deductions for contributions by self-employed persons to pension, profit-sharing, and annuity plans;

(14) The border city exemption as provided by § 26-52-601 et seq.;

(15) Deductions for the health insurance costs of self-employed persons as computed in accordance with § 26-51-423(c);

(16) Deductions for contributions to a long-term intergenerational trust created pursuant to the Long-Term Intergenerational Security Act of 1995, § 28-72-501 et seq.; and

(17) Deductions for contributions to the Arkansas Tax-Deferred Tuition Savings Program not to exceed five thousand dollars (\$5,000) per taxpayer under § 6-84-111(b).

(c) (1) The net income shall be computed upon the basis of the taxpayer's annual accounting period, either fiscal or calendar year, in accordance with the method of accounting regularly employed in keeping the books of the taxpayer.

(2) If no such method of accounting has been employed or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the Director of the Department of Finance and Administration does clearly reflect the income.

(3) If the taxpayer's annual accounting period is other than a fiscal year as defined by this act or he has no annual accounting period, or does not keep books, the net income shall be computed upon the basis of the calendar year.

History. Acts 1929, No. 118, Art. 3, § 7; Pope's Dig., § 14030; Acts 1969, No. 236, § 2; 1973, No. 182, § 4; A.S.A. 1947, § 84-2007; Acts 1987, No. 382, §§ 5, 6; 1989, No. 826, § 17; 1991, No. 685, § 1; 1993, No. 785, § 19; 1995, No. 1160, § 7; 1997, No. 1345, § 1; 2005, No. 1973, § 2.

Publisher's Notes. Acts 1969, No. 236, § 6, provided that the Act applied to the annual corporate income tax liability of domestic life insurance companies for taxable years following December 31, 1968. The act became law without governor's signature on March 12, 1969. Acts 1973, No. 182, § 9 provided that this act shall be in effect on and after January 1, 1973, and shall apply to tax years after said date.

As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

Acts 1989, No. 826, § 1, provided that this act shall be known and may be cited as the "Arkansas

Income Tax Technical Revenue Act of 1989.”

Acts 1989, No. 826, § 36, provided that the provisions of that act shall be in full force and effect for all income years beginning on or after January 1, 1989.

Acts 1991, No. 685, § 11, provided:

“The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991.”

Acts 1993, No. 785, § 20, provides that the 1993 amendment is effective for taxable years beginning on and after January 1, 1993.

Acts 1995, No. 1160, § 42, provided that the 1995 amendments are applicable for taxable years beginning on or after January 1, 1995.

Acts 1997, No. 1345 became law without the Governor's signature.

The 1997 amendment of this section contains grammatical or stylistic errors. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the language.

The punctuation in the 1997 amendment of this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

Amendments. The 1993 amendment substituted “§ 26-51-423(c)” for “§ 162(l) of the Internal Revenue Code of 1986, as in effect on January 1, 1991, the same being 26 U.S.C. § 162(l) regarding the deduction of twenty-five percent (25%) of the health insurance costs of self-employed persons” in (b)(7).

The 1995 amendment inserted present (b)(1) through (7) and redesignated the remaining subdivisions accordingly; and inserted “in the case of an individual” in the introductory language of (b).

The 1997 amendment added (b)(15).

The 2005 amendment added (b)(17); and made related changes.

Meaning of “this act”. Acts 1929, No. 118, codified as §§ 26-51-101 — 26-51-107, 26-51-201 — 26-51-204, 26-51-303, 26-51-401 — 26-51-406, 26-51-410 — 26-51-412, 26-51-415 — 26-51-417, 26-51-423 — 26-51-431, 26-51-436, 26-51-501, 26-51-801 — 26-51-804, 26-51-806 — 26-51-809, and 26-51-811 — 26-51-815.

U.S. Code. Sections 167, 611 and 402(e) of the Internal Revenue Code of 1986, referred to in this section, are codified as 26 U.S.C. §§ 167, 611 and 402(e), respectively.

Research References

Ark. L. Notes.

Beard, Transfers of Property between Spouses and Former Spouses — An Overview of Income Tax Issues and a Suggested Analytical Approach to Such Issues, 1990 Ark. L. Notes 1.

Case Notes

Accounting Methods.

Received.

Accounting Methods.

Where agreement between state and taxpayer as to formula for determining what portion of gross income should be attributable to sources within the state in the case of income derived partly from sources within and partly from sources outside the state is held unenforceable, and the taxpayer's method of accounting does not clearly reflect the income, the computation may be made upon such basis and in such manner as in the opinion of the state does clearly reflect the income.

General Box Co. v. Scurlock, 224 Ark. 266, 272 S.W.2d 678 (1954).

Received.

For the purpose of computing net income, “received” means either received or accrued, depending on whether the taxpayer is on a cash basis or an accrual basis. F & M Bank v. Skelton, 266 Ark. 680, 587 S.W.2d 561 (1979).

Since in 1973 when Arkansas began to tax the income of banks, bank's books need to show the interest now being taxed as having been “received” in those years. F & M Bank v. Skelton, 266 Ark. 680, 587 S.W.2d 561 (1979).

Cited: Cook v. Walters Dry Goods Co., 212 Ark. 485, 206 S.W.2d 742 (1947).

26-51-404. Gross income generally.

(a) (1) “Gross income” includes:

(A) Gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid;

(B) Gains, profits, and income derived from professions, vocations, trades, business, commerce, or sales;

(C) Gains, profits, and income derived from dealings in property, whether real or personal, growing out of the ownership of, use of, or interest in the property;

(D) Gains, profits, and income derived from interest, rent, royalties, dividends, annuities, securities, or the transaction of any business carried on for gain or profit;

(E) Gains or profits and income derived from any source whatever; and

(F) Any payments of alimony and separate maintenance received pursuant to a court order.

(2) The amount of all such items shall be included in the gross income of the taxable year in which received by the taxpayer.

(3) Any recovery of an amount which was deducted from gross income in a prior year must be treated as taxable income in the year recovered to the extent that the deduction resulted in a reduction in income tax liability.

(4) Section 117 of the Internal Revenue Code of 1986, as in effect on January 1, 2003, regarding the taxability of scholarships, fellowships, grants, and stipends, is adopted for the purpose of clarifying and calculating Arkansas income tax liability.

(b) “Gross income” does not include the following items, which shall be exempt from taxation under the Income Tax Act of 1929, § 26-51-101 et seq.:

(1) Section 1033 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, relating to the exclusion from gross income of gain resulting from the involuntary conversion of a taxpayer's property, is adopted for the purpose of computing Arkansas income tax liability;

(2) Section 121 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, relating to the exclusion from gross income of gain from the sale or exchange of property owned and used as the taxpayer's principal residence, is adopted for the purpose of computing Arkansas income tax liability;

(3) Section 101 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, relating to the exclusion from gross income of proceeds or benefits paid upon the illness or death of the insured, is hereby adopted for the purpose of computing Arkansas income tax liability;

(4) The value of property acquired by gift, bequest, devise, or descent, but the income from such property shall be included in gross income;

(5) Interest upon obligations of the United States or its possessions or upon obligations of the State of Arkansas or any political subdivision of the State of Arkansas;

(6) Any:

(A) Amounts received through accident or health insurance or under workers' compensation acts as compensation for personal injuries or sickness, plus the amount of any damages received, whether by suit or agreement, on account of such injuries or sickness; or

(B) Social security payments, railroad retirement benefits, unemployment

compensation benefits paid from federal unemployment trust funds, unemployment insurance benefits received from the railroad retirement boards, and unemployment compensation paid under Title IV of the Social Security Act;

(7) (A) Income from domestic corporations when earned from sources without the state, and these sources shall be defined to mean places of manufacture or production and places of merchandising.

(B) When books of account do not clearly and accurately reflect the income earned from sources without the state, the Arkansas income shall be determined by processes or formulas of general apportionment prescribed by the Director of the Department of Finance and Administration and approved by the Governor;

(8) Dividends received by a corporation doing business within this state from a subsidiary if at least eighty percent (80%) of the subsidiary's capital stock is owned by a corporation doing business within this state;

(9) In the case of an ordained, commissioned, or licensed minister of a recognized church:

(A) The rental value of a home furnished to him or her; or

(B) The rental allowance paid to him or her, to the extent that the allowance is used by the minister to rent or to provide a home;

(10) Sections 108 and 1017 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, regarding income from the discharge of indebtedness, are adopted for the purpose of computing Arkansas income tax liability;

(11) Section 125 of the Internal Revenue Code of 1986, in effect on January 1, 2009, is adopted in computing amounts excludible from gross income under the Income Tax Act of 1929, § 26-51-101 et seq., for payments received under a cafeteria plan;

(12) (A) Section 129 of the Internal Revenue Code of 1986, as in effect on January 1, 2005, regarding the exclusion from income for dependent care assistance, is adopted for the purpose of computing Arkansas income tax liability.

(B) However, no amounts excluded from gross income pursuant to subdivision (b)(12)(A) of this section shall be taken into account in computing the dependent care credit contained in § 26-51-502;

(13) Section 79 of the Internal Revenue Code of 1986, as in effect on January 1, 1989, regarding the exclusion from income for group term life insurance is hereby adopted for the purpose of computing Arkansas income tax liability;

(14) Sections 104-106 of the Internal Revenue Code of 1986, as in effect on January 1, 1999, regarding the exclusion from income of disability and health plan payments, are adopted for the purpose of computing Arkansas income tax liability;

(15) Section 82 of the Internal Revenue Code of 1986, as in effect on January 1, 1995, regarding the inclusion in gross income of moving expense reimbursements, is adopted for the purpose of computing Arkansas income tax liability;

(16) Section 119 of the Internal Revenue Code of 1986, as in effect on January 1, 1999, regarding the exclusion from gross income of meals or lodging furnished for the convenience of the employer, is adopted for the purpose of computing Arkansas income tax liability;

(17) Section 126 of the Internal Revenue Code of 1986, as in effect on January 1, 1995, regarding the exclusion from gross income of certain cost-sharing payments, is adopted for the purpose of computing Arkansas income tax liability;

(18) Section 131 of the Internal Revenue Code of 1986, as in effect on January 1, 2003, regarding the exclusion from gross income of amounts received by a foster care provider as qualified foster care payments, is adopted for the purpose of computing Arkansas income tax liability;

(19) Section 132 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, regarding the exclusion from income of certain fringe benefits, is adopted for the purpose of computing Arkansas income tax liability;

(20) Section 127 of the Internal Revenue Code of 1986, as in effect on January 1, 2003, regarding the exclusion from gross income for employees whose education expenses were paid by an employer, is adopted for the purpose of computing Arkansas income tax liability;

(21) Interest or dividends earned or capital gains recognized on a long-term intergenerational security trust created pursuant to this subchapter, except as provided in this subchapter;

(22) Interest or dividends earned on an individual development account and matching funds deposited in an individual development account pursuant to the Family Savings Initiative Act, § 20-86-101 et seq.;

(23) Section 138 of the Internal Revenue Code of 1986, as in effect on January 1, 1999, regarding a pilot program permitting eligible senior citizens to establish Medicare Plus Choice medical savings accounts, is adopted for the purpose of computing Arkansas income tax liability;

(24) (A) Section 72 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, relating to the exclusion from gross income of certain proceeds received under life insurance, endowment, and annuity contracts, is adopted for the purpose of computing Arkansas income tax liability.

(B) (i) Annuity income received through an employment-related retirement plan shall not be subject to the provisions of this subsection.

(ii) The income shall instead be subject to the retirement income provisions of § 26-51-307;

(25) Section 137 of the Internal Revenue Code of 1986, as in effect on January 1, 2003, regarding the exclusion from gross income of benefits received under an employer's adoption assistance program, is adopted for the purpose of computing Arkansas income tax liability;

(26) Contributions by an employer to an employee's health savings account within the limitations established in § 26-51-453 shall not be included in the employee's gross income;

(27) Section 134 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, regarding the exclusion from income of qualified military benefits provided to members of the United States military, is adopted for the purpose of computing Arkansas income tax liability; and

(28) Section 408(d)(8) of the Internal Revenue Code of 1986, as in effect on January 1, 2007, relating to tax-free distributions from individual retirement plans for charitable purposes for taxable years 2006 and 2007, is adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1929, No. 118, Art. 3, § 8; Pope's Dig., § 14031; Acts 1939, No. 324, § 1; 1941, No. 129, § 6; 1953, No. 230, § 1; 1957, No. 144, §§ 1, 2; 1965, No. 570, § 1; 1967,

No. 222, § 1; 1969, No. 462, § 1; 1971, No. 226, § 2; 1975, No. 683, § 1; 1977, No. 898, § 2; 1981, No. 817, § 1; 1981, No. 914, § 3; 1983, No. 379, §§ 3, 6; 1985, No. 486, § 5; A.S.A. 1947, § 84-2008; Acts 1987, No. 382, §§ 4, 7-11, 32; 1987 (1st Ex. Sess.), No. 48, § 1; 1989, No. 826, §§ 9, 10, 18-21; 1995, No. 560, § 1; 1995, No. 732, § 1; 1995, No. 1160, §§ 8, 10, 11; 1995, No. 1303, § 4; 1997, No. 328, § 7; 1997, No. 951, §§ 3-5, 6, 22, 23; 1997, No. 1189, § 1; 1999, No. 1126, §§ 16-23; 1999, No. 1217, § 10; 2001, No. 773, § 3; 2003, No. 663, §§ 2-6; 2005, No. 94, §§ 2, 3; 2005, No. 189, § 2; 2005, No. 675, §§ 2-5; 2007, No. 196, § 1; 2007, No. 218, §§ 16, 17; 2009, No. 372, §§ 4-9.

A.C.R.C. Notes. Acts 1981, No. 914, § 2, provided:

"The purpose of this act is to make technical amendments to the Arkansas Tax Procedure Act, Acts 1979, No. 401, and to certain Arkansas income tax statutes to eliminate the procedural problems that have arisen since the enactment of Acts 1979, No. 401, and to make the Arkansas income tax statutes conform to several recent amendments to their counterparts in the federal income tax statutes." The act became effective for all periods after December 31, 1980.

Acts 1983, No. 379, § 2, provided:

"The purpose of this act is to make technical amendments to the Income Tax Act of 1929, Acts 1929, No. 118, as amended, to the Estate Tax Law of Arkansas, Acts 1941, No. 136, as amended, and to the Arkansas Tax Procedure Act, Acts 1979, No. 401, as amended, to eliminate the procedural problems that have arisen since the enactment of these acts and to make the Arkansas income and estate tax statutes conform to several recent amendments to their counterparts in the federal income and estate tax statutes, and for other purposes." The act was effective for all income years after, or estate tax return filing dates coming after, December 31, 1982.

As amended by Acts 1995, No. 560, § 1, subdivision (b)(21) began:

"Effective for taxable years beginning on or after January 1, 1995."

As amended by Acts 1995, No. 1303, § 4, subdivision (b)(22) began:

"'Gross income,' as defined in § 26-51-401, shall not include."

Acts 1997, No. 1189, § 2, provided:

"The provisions of this act shall be effective for all tax years beginning on or after January 1, 1997.

Acts 1997, No. 1189, § 3, provided:

"It is determined by the General Assembly that Arkansas income tax laws concerning the taxability of dividends received from a subsidiary are at variance with corresponding federal income tax laws, although the existence or non-existence of any such variance with respect to corporations filing an Arkansas consolidated tax return is subject to existing disputes. It is further determined that state income tax laws should have been the same as federal income tax laws and this Act is adopted to clarify that these dividends are to be treated for state income tax purposes in the same manner they would be treated for federal income tax purposes for all corporations to which the Act is applicable. It is further found that there are pending cases and controversies involving the taxability of dividends from subsidiaries for state income tax purposes and that this Act is not intended to affect any existing cases or controversies this issue or to have any effect upon the interpretation of prior law."

Acts 1997, No. 328, § 11, provided:

"This Act shall be effective on and after November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10."

Acts 1997, No. 328, § 12, provided:

"The withholding tables prescribed by the Director of the Department of Finance and

Administration pursuant to Ark. Code Ann. § 26-51-907 shall not be amended for tax year 1998 to reflect the changes adopted by this Act. If this Act becomes effective on November 15, 1998, the effect of the various provisions of this Act for tax year 1998 shall be reflected on the income tax return filed for that year. For all subsequent years, the Director shall adjust the withholding tables as otherwise required by law."

Acts 2005, No. 189, § 1, provided:

"The purpose of this act is to clarify current law regarding cost recovery for annuitants under the Income Tax Act of 1929, Arkansas Code § 26-51-101 et seq."

Pursuant to its own terms, subdivision (b)(28) of this section is only effective for tax years 2006 and 2007.

Publisher's Notes. Acts 1953, No. 230, § 2, provided that the provisions of the act shall be applicable to tax years on and after January 1, 1953, as the term "tax year" is defined in § 26-51-102.

Acts 1957, No. 144, § 4, provided that the provisions of this act shall be applicable to tax years on and after January 1, 1957, as the term "tax year" is defined in § 26-51-102.

Acts 1975, No. 683, § 2, provided that the amendment therein to subdivision (b)(6) of this section shall be applicable with respect to income received during the income year beginning January 1, 1975, and each income year thereafter.

As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

Acts 1995, No. 560, § 3 provided that the amendments by Acts 1995, No. 560, are effective for taxable years beginning on or after January 1, 1995.

Acts 1995, No. 1160, § 42 provided that the amendments by Acts 1995, No. 1160, are applicable for taxable years beginning on or after January 1, 1995.

Acts 1997, No. 951, § 34, provided: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 2003 amendment inserted (a)(4); substituted "2003" for "1995" in (b)(18); substituted "2003" for "1999" in (b)(19) and (b)(20); and added (b)(25).

The 2005 amendment by No. 94 substituted "January 1, 2005" for "January 1, 1997" in (b)(12)(A); and added (b)(26).

The 2005 amendment by No. 189, in (b)(24)(A), substituted "Section 72" for "Sections 72(a), (b), and (c)" and "2005" for "2001," and deleted "nonemployment-related" preceding "life insurance."

The 2005 amendment by No. 675 substituted "2005" for "1999" in (b)(1) and (b)(2); substituted "2005" for "1997" in (b)(12); added (b)(27); and made related changes.

The 2007 amendment by No. 196 added (b)(28).

The 2007 amendment by No. 218 substituted "January 1, 2007" for "January 1, 2005" in (b)(1), (b)(2), (b)(3), and (b)(24)(A).

The 2009 amendment, in (b), substituted "2009" for "2007" in (b)(1) and (b)(2), for "1999" in (b)(10), for "1997" in (b)(11), for "2003" in (b)(19), and for "2005" in (b)(27), and substituted "qualified military benefits" for "child care benefits" in (b)(27).

Meaning of "this act". See note to § 26-51-403.

U.S. Code. Title IV of the Social Security Act referred to in this section is codified as 42 U.S.C. § 601 et seq. Sections 72, 79, 82, 104-106, 108, 119, 125, 126, 129, 131, 132, and 1017 of the Internal Revenue Code referred to in this section are codified as 26 U.S.C. §§ 72, 79, 82, 104-106, 108, 119, 125, 126, 129, 131, 132, and 1017 respectively.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2001, No. 773, § 12: effective for tax years beginning on and after January 1, 2001.

Acts 2003, No. 663, § 14: applicable to tax years beginning on and after January 1, 2003.

Acts 2005, No. 94, § 6: applicable to tax years beginning on or after January 1, 2004.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after

January 1, 2009.”

Research References

Ark. L. Notes.

Beard, Transfers of Property between Spouses and Former Spouses — An Overview of Income Tax Issues and a Suggested Analytical Approach to Such Issues, 1990 Ark. L. Notes 1.

Ark. L. Rev.

Income Tax Amendments, 7 Ark. L. Rev. 346.

Constitutional Law — Corporate Income Taxation Classification for Income Tax Purposes, 14 Ark. L. Rev. 168.

U. Ark. Little Rock L. Rev.

Legislative Survey, Taxation, 4 U. Ark. Little Rock L.J. 609.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax Computation, 26 U. Ark. Little Rock L. Rev. 381.

Case Notes

Constitutionality.

Construction.

Dividends.

Gifts.

Constitutionality.

Acts 1931, No. 220, relieving domestic corporations doing business entirely outside the state of Arkansas from the payment of any income tax to the state, when read in connection with the General Income Tax Act of 1929, which imposes an income tax upon a domestic corporation doing business both within and without the state on income derived from sources outside Arkansas, denied to such domestic corporation the equal protection of the laws and amounted to the taking of its property without due process. *Cheney v. Stephens, Inc.*, 231 Ark. 541, 330 S.W.2d 949 (1960).

Since court could reasonably conceive of lawful purposes for state's classification scheme in providing tax exemptions for retirement income of government employees, such scheme could not be held to have been arbitrarily enacted; therefore, since state's classification confers a benefit upon public employees that is available to all workers of this calling and class throughout Arkansas, Ark. Const., Art. 2, § 18, and U.S. Const. Amend. 14 are not violated. *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983).

Tax legislation exempting retirement income of government employees is not special legislation, for it is not arbitrary; tax exemption acts are not special acts as that term has been defined, since it is not enough that the state has separated some class from the operation of a law, rather, the separation must be arbitrary. *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983).

Emergency Income Tax Rule, which was enacted by the Arkansas Department of Finance and Administration in response to the declaration that § 26-51-307(c) was unconstitutional, was also unconstitutional because it was clear that the General Assembly never intended I.R.C. § 72 be applied to recover of after-tax contribution in employment-related retirement plans. *Weiss v. Maples*, 369 Ark. 282, 253 S.W.3d 907 (2007).

Construction.

Section § 26-51-307(c) clearly provides that cost of contributions to a retirement plan may not be deducted in computing income for State tax purposes, and subdivision (b)(24)(B) of this section provides that annuity income from retirement plans is subject to § 26-51-307 rather than subsection (b) of this section; a retirement plan could contain pre-tax contributions upon which no income tax has ever been paid, employer contributions upon which no income tax has ever been paid, after-tax contributions upon which income tax has been paid, and the gain from pre-tax contributions and after-tax contributions upon which no income tax has ever been paid, and the above quoted statutes speak to income. *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003).

Dividends.

Stock dividends received by domestic corporation from foreign corporation not doing business in state held properly charged in the domestic corporation's income tax. *Temple v. Gates*, 186 Ark. 820, 56 S.W.2d 417 (1933).

Parent company was required to add back to its gross income nontaxable dividend income from its subsidiary for the restricted purpose of computing the net operating loss to be carried forward. *Kansas City S. Ry. v. Pledger*, 301 Ark. 564, 785 S.W.2d 462 (1990).

Gifts.

Where husband sold land and wife relinquished her dower, with the wife receiving one-third the purchase price, the one-third amount was taxable income on the part of the husband, since the wife's interest in the land was inchoate and not one that she could convey, and the payment to the wife amounted to no more than a gift of part of the purchase price by the husband. *Le Croy v. Cook*, 211 Ark. 966, 204 S.W.2d 173, 1 A.L.R.2d 1032 (1947).

Cited: *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935); *Cheney v. Stephens, Inc.*, 231 Ark. 541, 330 S.W.2d 949 (1960); *St. Louis S.W. Ry. v. Ragland*, 304 Ark. 1, 800 S.W.2d 410 (1990); *Weiss v. McFadden*, 356 Ark. 123, 148 S.W.3d 248 (2004).

26-51-405. Partnership income.

(a) An individual carrying on business as a partner in a partnership shall be liable for income tax only in his individual capacity and shall include in his gross income the distributive share of the net income or net loss of the partnership received by him or distributable to him during the income year.

(b) The partner shall report all deductions or credits distributable to him personally as a partner in the partnership.

(c) A partner's distributive share of partnership loss shall be allowed only to the extent of the adjusted basis of the partner's interest in the partnership at the end of the partnership year in which the loss occurred.

(d) Any excess of the loss over the basis shall be allowed as a deduction at the end of the partnership year in which the excess is repaid to the partnership.

History. Acts 1929, No. 118, Art. 3, § 9; Pope's Dig., § 14032; A.S.A. 1947, § 84-2012; Acts 1987, No. 382, § 12.

Publisher's Notes. As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

Research References

ALR.

State income tax treatment of partnerships and partners. 2 A.L.R.6th 1.

26-51-406. Income to beneficiaries of trusts and estates.

(a) Every individual, taxable under this act, who is a beneficiary of an estate or trust shall include in his gross income the distributive share of the income or loss of the estate or trust received by him or distributable to him during the income year.

(b) Unless otherwise provided in the law or the will, the deed, or other instrument creating the estate, trust, or fiduciary relationship, the net income shall be deemed to be distributed or distributable to the beneficiaries, including the fiduciary as a beneficiary, in the case of income accumulated for future distribution, ratably in proportion to their respective interests.

(c) Any excess losses accumulated by the estate or trust at the time of the termination of the estate or trust shall be distributable to the beneficiaries ratably and claimed by the

beneficiaries on the individual Arkansas income tax returns as otherwise provided by this act.

History. Acts 1929, No. 118, Art. 3, § 9; Pope's Dig., § 14032; A.S.A. 1947, § 84-2012; Acts 1987, No. 382, § 12.

Publisher's Notes. As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

Meaning of "this act". See note to § 26-51-403.

26-51-407. Financial institutions.

(a) A financial institution having its principal office in this state shall be taxed as a business corporation organized and existing under the laws of this state.

(b) (1) A financial institution having its principal office outside this state but doing business in this state shall be taxed as a foreign business corporation doing business in this state.

(2) However, this subsection is not intended to recognize the right of a foreign financial institution to conduct any business activities in this state except to the extent and under the conditions permitted by Acts 1959, No. 559, §§ 1-8 [unconstitutional] and any other applicable laws of this state.

History. Acts 1973, No. 182, § 3; A.S.A. 1947, § 84-2086; Acts 1995, No. 495, § 3

Publisher's Notes. For definitions applicable to, and legislative intent concerning, this section, see §§ 26-26-1502 and 26-50-101.

As to effective date of 1973 amendment, see Publisher's Notes to § 26-51-403.

For present law regarding the net taxable income of savings and loan associations and building and loan associations, see § 26-51-1401 et seq.

Amendments. The 1995 amendment repealed former (c).

26-51-408. Dividends of financial institutions taxable.

Dividends paid on shares of stock of financial institutions shall be subject to income tax under the Arkansas Income Tax Act, as amended, § 26-51-101 et seq., on the same basis as dividends on shares of stock of business corporations.

History. Acts 1973, No. 182, § 4; A.S.A. 1947, § 84-2008.2.

Publisher's Notes. For definitions applicable to, and legislative intent concerning, this section, see §§ 26-26-1502 and 26-50-101.

As to effective date of 1973 amendment, see Publisher's Notes to § 26-51-403.

Cross References. "Business corporations" defined, § 26-26-1502.

"Financial institutions" defined, § 26-26-1502.

RESEARCH REFERENCES

ALR.

State corporate income taxation of foreign dividends. 17 A.L.R.6th 623.

26-51-409. Federal Subchapter S adopted.

(a) Subchapter S of the Internal Revenue Code of 1986, as in effect on January 1, 2009, regarding small business corporations, is adopted for the purpose of computing Arkansas income tax liability.

(b) (1) The corporate election and shareholder consents required to be filed under

Subchapter S of the Internal Revenue Code of 1986 for Arkansas income tax purposes shall be filed with the Director of the Department of Finance and Administration in the same manner and at the same time as required under Subchapter S of the Internal Revenue Code of 1986, on forms to be prescribed by the director.

(2) A corporation may elect Subchapter S treatment for Arkansas income tax purposes only if it has elected Subchapter S treatment for federal income tax purposes for the same tax year.

(3) When filing an Arkansas Subchapter S income tax return, a corporation shall attach to its Arkansas Subchapter S income tax return a complete copy of the corporation's federal Subchapter S income tax return filed with the federal Internal Revenue Service for that taxable year.

(c) (1) However, all nonresident shareholders of S corporations receiving a prorated share of income, loss, deduction, or credit pursuant to the provisions of this section must file a properly executed state income tax return with the director and remit the applicable state income tax due.

(2) Failure to so report and remit on the part of any nonresident shareholder shall be grounds upon which the director may revoke the corporation's Subchapter S election and collect the tax from the corporation by any manner authorized by the Income Tax Act of 1929, § 26-51-101 et seq.

History. Acts 1979, No. 414, § 1; 1983, No. 51, §§ 1, 3; A.S.A. 1947, § 84-2004.1; Acts 1987, No. 382, § 3; 1989, No. 826, § 22; 1991, No. 685, § 2; 1993, No. 785, § 7; 1997, No. 951, § 17; 1999, No. 1126, § 24; 2003, No. 663, § 7; 2005, No. 261, § 1; 2005, No. 675, § 6; 2007, No. 218, § 18; 2007, No. 380, § 1; 2009, No. 372, § 10.

Publisher's Notes. As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

Acts 1991, No. 685, § 11, provided:

"The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991."

Acts 1993, No. 785, § 20, provides that the 1993 amendment is effective for taxable years beginning on and after January 1, 1993.

Acts 1997, No. 951, § 34, provided: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 2003 amendment by No. 663 substituted "2003" for "1999" in (a).

The 2005 amendment by No. 261 redesignated former (b) as present (b)(1); and added (b)(2).

The 2005 amendment by No. 675 substituted "January 1, 2005" for "January 1, 2003" in (a).

The 2007 amendment by No. 218 substituted "January 1, 2007" for "January 1, 2005" in (a).

The 2007 amendment by No. 380 substituted "2007" for "2005" in (a); added "on forms to be prescribed by the director" and made a minor punctuation change in (b)(1); and added (b)(3).

The 2009 amendment substituted "2009" for "2007" in (a).

U.S. Code. Subchapter S, referred to in this section, is codified as 26 U.S.C. § 1361 et seq.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2003, No. 663, § 14: applicable to taxyears beginning on and after January 1, 2003.

Acts 2005, No. 261, § 2: effective for tax years beginning on and after January 1, 2005.

Acts 2005, No. 675, § 17: effective for tax years beginning on or after January 1, 2005.

Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

Research References

U. Ark. Little Rock L. Rev.

Tyler, Survey of Business Law, 3 U. Ark. Little Rock L.J. 149.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax Computation, 26 U. Ark. Little Rock L. Rev. 381.

26-51-410. Inventory.

Whenever, in the opinion of the Director of the Department of Finance and Administration, the use of inventories is necessary in order to clearly determine the income of any taxpayer, inventories shall be taken by the taxpayer, upon such basis as the director may prescribe, conforming as nearly as may be possible to the best accounting practice in the trade or business and most clearly reflecting the income.

History. Acts 1929, No. 118, Art. 3, § 12; Pope's Dig., § 14035; A.S.A. 1947, § 84-2015.

26-51-411. Gain or loss — Sales of property.

(a) For the purpose of ascertaining the gain or loss from the sale or other disposition of real, personal, or mixed property, the basis shall be, in the case of property acquired before January 1, 1928, the assessed valuation of such property on the county tax books as of that date if such assessed valuation exceeds the original cost and, in all other cases, the cost of such property, except that:

(1) In the case of such property which should be included in the inventory, the basis shall be the last inventory value;

(2) (A) In the case of property acquired by gift after March 9, 1929, the basis shall be the same as that which it would have been in the hands of the donor or the last preceding owner by whom it was not acquired by gift.

(B) If the facts necessary to determine such basis are unknown to the donee, the Director of the Department of Finance and Administration shall use the assessed valuation of the property;

(3) In the case of such property acquired by gift on or before March 9, 1929, the basis for ascertaining gain or loss from sale or other disposition of such property shall be the assessed valuation; and

(4) In the case of such property acquired by bequest, devise, or inheritance, the basis shall be the appraised value of such property upon which state inheritance tax or estate tax was paid.

(b) The basis for ascertaining the gain derived or loss sustained from the sale or other disposition of real, personal, or mixed property acquired before January 1, 1928, shall be the assessed value of such property including improvements as of January 1, 1928, or the actual cost of such property, but:

(1) If its assessed valuation as of January 1, 1928, is in excess of its sale price at the time of disposition, then the deductible loss shall be the difference between the assessed valuation on January 1, 1928, and the amount realized from the sale less depreciation or depletion subsequently sustained;

(2) If the assessed valuation as of January 1, 1928, is less than the sale price, then the taxable gain shall be the excess realized over the assessed valuation plus depreciation

or depletion subsequently sustained; and

(3) If the amount realized is more than the cost price but not more than its assessed valuation as of January 1, 1928, or less than the cost but not less than its assessed valuation on January 1, 1928, then no gain shall be included in and no loss deducted from the gross income.

(c) For the purpose of this act, on any exchange of real, personal, or mixed property for any other like property of similar value no gain or loss shall be recognized.

(d) (1) In computing gain or loss from the sale of property, the difference between the amount realized and the adjusted basis is the amount of the gain or loss.

(2) The adjusted basis of the property is its cost, increased for capital charges and decreased for depreciation and for depletion.

(3) The amount realized from a sale or other disposition of property is the sum of any money received plus the fair market value of property or services received, less expenses.

(e) Sections 453, 453A, and 453B of the Internal Revenue Code of 1986, as in effect on January 1, 2005, are adopted concerning the installment method of accounting.

(f) Section 1045 of the Internal Revenue Code of 1986, as in effect on January 1, 1999, regarding gain on the sale or exchange of qualified small business stock, is adopted for the purpose of computing Arkansas income tax liability.

(g) Sections 1258 and 1259 of the Internal Revenue Code of 1986, as in effect on January 1, 1999, regarding appreciated financial positions, are adopted for the purpose of computing Arkansas income tax liability.

(h) Section 267 of the Internal Revenue Code of 1986, as in effect on January 1, 2001, regarding losses, expenses, and interest arising from transactions between related taxpayers, is adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1929, No. 118, Art. 3, § 10; Pope's Dig., § 14033; Acts 1969, No. 236, § 4; A.S.A. 1947, § 84-2013; Acts 1995, No. 1160, § 12; 1999, No. 1126, § 25; 2001, No. 773, § 4; 2005, No. 675, § 7; 2007, No. 827, § 216.

Publisher's Notes. In reference to the term "passage of this act," Acts 1929, No. 118, Art. 9, § 44, contained an emergency clause which provided that the act would take effect and be in force from and after its passage. The act was approved and signed by the Governor on March 9, 1929. As to applicability of 1969 amendment, see Publisher's Notes to § 26-51-403.

Acts 1995, No. 1160, § 42, provided that the 1995 amendments are applicable for taxable years beginning on or after January 1, 1995.

Amendments. The 2005 amendment substituted "January 1, 2005" for "January 1, 1995" in (e). The 2007 amendment substituted "March 9, 1929" for "the passage of this act" in (a)(2)(A) and (a)(3).

Meaning of "this act". See note to § 26-51-403.

U.S. Code. Sections 267, 453, 453A and 453B of the Internal Revenue Code of 1986, referred to in this section, are codified as 26 U.S.C. § 267, 453, 453A and 453B, respectively.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2001, No. 773, § 12: effective for taxyears beginning on and after January 1, 2001.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-51-412. Gain or loss — Exchange of property.

(a) (1) For the purpose of determining gain or loss, when property is exchanged for other property the property received in exchange shall be treated as the equivalent of cash to the amount of its fair market value if a market exists in which all the property so received can be disposed of at the time of exchange for a reasonable, certain, and definite price in cash.

(2) Otherwise, such exchange shall be considered as a conversion of assets from one (1) form to another, from which no gain or loss shall be deemed to arise.

(b) In the case of the organization of a corporation, the stock received shall be considered to take the place of property transferred for the stock, and no gain or loss shall be deemed to arise from the stock received.

(c) When, in connection with the reorganization, merger, or consolidation of a corporation, a taxpayer receives, in place of stock or securities owned by him or her, new stock or securities, then the basis of computing the gain or loss, if there is any, in a case where the stock or securities owned were acquired before January 1, 1928, shall be the fair market price or value thereof as of that date if such price or value exceeds the original cost, and in all other cases the cost thereof, under regulations to be promulgated by the Director of the Department of Finance and Administration.

(d) Sections 351, 354 — 358, 361, 362, 367, and 368 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, regarding corporate organization, reorganization, and recognition of gain, are adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1929, No. 118, Art. 3, § 11; Pope's Dig., § 14034; A.S.A. 1947, § 84-2014; Acts 1991, No. 687, § 1; 1999, No. 1126, § 26; 2001, No. 773, § 5; 2007, No. 218, § 19; 2009, No. 372, § 11.

Publisher's Notes. Acts 1991, No. 687, § 2, provided:

“The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991”.

Amendments. The 2007 amendment substituted “January 1, 2007” for “January 1, 2001” in (d). The 2009 amendment substituted “2009” for “2007” in (d).

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2001, No. 773, § 12: effective for tax years beginning on and after January 1, 2001.

Acts 2009, No. 372, § 25, provided: “This act is effective for tax years beginning on and after January 1, 2009.”

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-51-413. Corporate liquidations.

(a) Sections 332, 334, 336, 337, and 338 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, regarding the liquidations of corporations, are adopted for the purpose of computing Arkansas income tax liability.

(b) However, a corporation that has made an election under Subchapter S of the Internal Revenue Code of 1986 and that has not made a corresponding election to be treated as an S Corporation for Arkansas income tax purposes pursuant to § 26-51-409(b), will not be

deemed to have made elections under § 338 of the Internal Revenue Code of 1986 for Arkansas income tax purposes, unless it has filed a separate election with the Director of the Department of Finance and Administration stating that it is making an election under § 338 for Arkansas income tax purposes.

(c) For the purposes of the application of this section, the transition rule of §§ 633(c) and (d) of the Tax Reform Act of 1986, Pub. L. 99-514, as amended by subsections (g)(2), (g)(3)(A)-(C), (g)(4), (g)(5)(A) and (B), and (g)(7) of § 1006 of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, shall also apply under the state income tax law.

History. Acts 1973, No. 174, § 1; A.S.A. 1947, § 84-2013.1; Acts 1987, No. 382, § 13; 1989, No. 826, § 23; 1997, No. 951, § 33; 1999, No. 1126, § 27; 2007, No. 218, § 20.

Publisher's Notes. As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

Acts 1997, No. 951, § 34: Sections 1 through 24, 32 and 23 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 2007 amendment substituted "January 1, 2007" for "January 1, 1999, the same being 26 U.S.C. §§ 332, 334, 337, and 338" in (a).

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

U.S. Code. Sections 332, 334, 336, 337, and 338 of the federal Internal Revenue Code of 1986 referred to in this section are codified as 26 U.S.C. §§ 332, 334, 336, 337, and 338, respectively. Sections 633(c) and (d) of the Tax Reform Act of 1986 referred to in this section appear as 26 U.S.C. § 336, note.

26-51-414. Deferred compensation plans.

(a) (1) Sections 72, 219, 401-404, 406-416, and 457 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, relating to annuities, retirement savings, and employee benefit plans, respectively, are adopted for the purpose of computing Arkansas income tax liability, except Arkansas capital gains treatment and the Arkansas tax rates shall apply.

(2) The requirements for filing a joint return under § 219(c)(1)(A) of the Internal Revenue Code of 1986 shall not apply.

(b) Section 408A of the Internal Revenue Code of 1986, as in effect on January 1, 1999, relating to Roth individual retirement accounts, is adopted for the purpose of computing Arkansas income tax liability with the following exceptions:

(1) (A) Sections 408A(d)(3)(A)(iii) and 408A(d)(3)(E) are not adopted.

(B) All income from and tax attributable to distributions from a non-Roth individual retirement account to a Roth individual retirement account prior to January 1, 1999, shall be reported for tax year 1998, and the tax may be paid over a four-year period as permitted by the Director of the Department of Finance and Administration; and

(2) Adjusted gross income under § 408A(c)(3) shall be determined in the same manner as under § 26-51-403(b).

(c) Any additional tax or penalty imposed by this section shall be ten percent (10%) of

the amount of any additional tax or penalty provided in the federal income tax law adopted by this section.

(d) Section 1042 of the Internal Revenue Code of 1986, as in effect on January 1, 2003, regarding the deferral of gain realized on the sale of a corporation's shares of stock to the corporation's employee stock ownership plan (ESOP), is adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1959, No. 202, § 2; 1983, No. 379, § 13; 1986 (2nd Ex. Sess.), No. 20, § 1; A.S.A. 1947, § 84-2049; Acts 1987, No. 382, § 27; 1987 (1st Ex. Sess.), No. 48, § 2; 1989, No. 826, § 24; 1991, No. 685, § 4; 1995, No. 1160, § 6; 1997, No. 951, § 2; 1999, No. 144, § 1; 1999, No. 513, § 1; 2003, No. 218, § 1; 2003, No. 663, § 8; 2005, No. 94, § 4; 2007, No. 218, § 21; Acts 2009, No. 372, § 12.

Publisher's Notes. The 1983 amendment to this section took effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.

As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

Acts 1991, No. 685, § 11, provided:

"The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991."

Acts 1995, No. 1160, § 42, provided that the 1995 amendments are applicable for taxable years beginning on or after January 1, 1995.

Acts 1997, No. 951, § 34: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 2003 amendment by No. 218, in (a)(1), deleted "inclusive" following "416" and substituted "January 1, 2002" for "January 1, 1999."

The 2003 amendment by No. 663 added (d).

The 2005 amendment substituted "January 1, 2005" for "January 1, 2002" in (a)(1).

The 2007 amendment substituted "January 1, 2007" for "January 1, 2005" in (a)(1).

The 2009 amendment substituted "2009" for "2007" in (a)(1).

U.S. Code. Sections 72, 219, 401-404, 406-416 and 457 of the Internal Revenue Code of 1986, referred to in (a)(1), is codified as 26 U.S.C. §§ 72, 219, 401-404, 406-416 and 457, respectively.

Effective Dates. Acts 1999, No. 144, § 2: effective for tax years beginning on and after January 1, 1999.

Acts 1999, No. 513, § 3: effective for tax years beginning on and after January 1, 1999.

Acts 2003, No. 218, § 3: applicable to tax returns filed for tax years beginning on or after January 1, 2002.

Acts 2003, No. 663, § 14: applicable to tax years beginning on and after January 1, 2003.

Acts 2005, No. 94, § 6: effective for tax years beginning on and after January 1, 2004.

Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

Research References

Ark. L. Notes.

Beard, Transfers of Property between Spouses and Former Spouses — An Overview of Income Tax Issues and a Suggested Analytical Approach to Such Issues, 1990 Ark. L. Notes 1.

U. Ark. Little Rock L. Rev.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Internal Revenue Code Provisions, 26 U. Ark. Little Rock L. Rev. 495.

Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax

Computation, 26 U. Ark. Little Rock L. Rev. 381.

26-51-415. Deductions — Interest.

Section 163 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, regarding deductions for interest expenses, is adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; 1975, No. 972, § 1; 1977, No. 898, § 1; A.S.A. 1947, § 84-2016; Acts 1987, No. 382, § 15; 1989, No. 826, § 25; 1991, No. 686, § 1; 1995, No. 1160, § 3; 1997, No. 951, § 11; 1999, No. 1126, § 28; 2007, No. 218, § 22; 2009, No. 372, § 13.

Publisher's Notes. Acts 1975, No. 972, § 2, provided that the provisions of this act shall be applicable to income earned in calendar year 1975, upon which tax is due and payable in 1976, and each year thereafter.

Acts 1977, No. 898, § 4, provided that the provisions of this act shall be applicable to income earned in calendar year 1977, upon which tax is due and payable in 1978, and each year thereafter.

As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

Acts 1991, No. 686, § 2, provided:

"This act is applicable for income years beginning on or after January 1, 1991."

Acts 1995, No. 1160, § 42, provided that the 1995 amendments are applicable for taxable years beginning on or after January 1, 1995.

Acts 1997, No. 951, § 34, provided that Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 2007 amendment substituted "January 1, 2007" for "January 1, 1999."

The 2009 amendment substituted "2009" for "2007."

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

U.S. Code. Section 163 of the Internal Revenue Code of 1986 referred to in this section is codified as 26 U.S.C. § 163.

Research References

Ark. L. Notes.

Beard, Transfers of Property between Spouses and Former Spouses — An Overview of Income Tax Issues and a Suggested Analytical Approach to Such Issues, 1990 Ark. L. Notes 1.

Case Notes

Cited: Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

26-51-416. Deductions — Taxes.

In computing net income, there shall be allowed as deductions taxes paid or accrued within the income year, imposed by the authority of the United States or any of its possessions or of any state, territory, or any political subdivision of any state or territory, or the District of Columbia, or of any foreign country, except estate, succession, or inheritance taxes or except income taxes imposed by this act, and taxes assessed for local benefits of a kind tending to increase the value of the property assessed for those benefits.

However, the deductions allowed in this section for taxes shall not include any allowances or deductions for federal income taxes paid or accrued by the taxpayer within the income year which are imposed by the authority of the United States or any of its possessions; nor shall individuals be allowed an itemized deduction for general sales or use taxes imposed by the authority of any state or subdivision thereof, or for the cost of license plates or drivers' licenses, or for motor fuel or special motor fuel taxes.

History. Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1947, No. 135, § 2; 1949, No. 234, § 1; 1957, No. 147, § 1; A.S.A. 1947, § 84-2016; Acts 1987, No. 382, § 16.

Publisher's Notes. Acts 1949, No. 234, § 2, provided that the provisions of this act shall be applicable to tax years on and after January 1, 1949, as the term "tax year" is defined in § 26-51-102.

As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

Meaning of "this act". See note to § 26-51-403.

Case Notes

Constitutionality.

In General.

Applicability.

Federal Taxes.

Constitutionality.

Amendment of 1949 providing for elimination of amount paid in federal taxes as a deduction under state gross income tax was not a violation of constitutional amendment prohibiting increase of tax rate, as elimination of deduction did not increase the rate, though amount of tax was increased for those paying federal income taxes. *Morley v. Rimmel*, 215 Ark. 434, 221 S.W.2d 51 (1949).

In General.

Provision limiting deduction for federal taxes to 50% was not invalid, since the class of deductions are a matter for legislative determination. *Cook v. Walters Dry Goods Co.*, 212 Ark. 485, 206 S.W.2d 742 (1947) (decision prior to 1949 amendment).

Applicability.

The 1947 amendment to this section did not apply to a fiscal year ending June 30, 1946. *Cook v. Arkansas State Rice Milling Co.*, 213 Ark. 396, 210 S.W.2d 511 (1948).

Federal Taxes.

Post-war refund paid by taxpayer to federal government under § 780 of the Internal Revenue Code of 1939 (repealed) was not allowable as a deductible item of taxes in computing gross income for state income tax purposes. *Henry H. Cross Co. v. Cook*, 208 Ark. 958, 188 S.W.2d 497 (1945).

Cited: *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

26-51-417. Deductions — Alimony or separate maintenance.

(a) Section 71 of the federal Internal Revenue Code of 1986, in effect on January 1, 1987, is adopted for purposes of determining the amount of alimony or separate maintenance to include in the gross income of the recipient.

(b) Section 215 of the federal Internal Revenue Code of 1986, in effect on January 1, 1987, is adopted for purposes of determining the amount of alimony or separate maintenance that can be deducted from a taxpayer's income for any income year.

History. Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; 1983, No. 379, § 4; A.S.A. 1947, § 84-2016; Acts 1987, No. 382, § 20.

Publisher's Notes. The 1983 amendment to this section took effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.

As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

U.S. Code. Sections 71 and 215 of the federal Internal Revenue Code of 1986 referred to in this section are codified as 26 U.S.C. §§ 71 and 215, respectively.

Research References

Ark. L. Notes.

Beard, Transfers of Property between Spouses and Former Spouses — An Overview of Income Tax Issues and a Suggested Analytical Approach to Such Issues, 1990 Ark. L. Notes 1.

U. Ark. Little Rock L.J.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Case Notes

Cited: Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

26-51-418. Deductions — Disabled children.

(a) In addition to any other state income tax deduction permitted by law, a taxpayer in this state who is maintaining, supporting, and caring for a totally and permanently disabled child in his or her home shall be permitted a deduction on his or her Arkansas income taxes of five hundred dollars (\$500) for each income year that the taxpayer maintains, supports, and cares for such totally and permanently disabled child.

(b) As used in this section:

(1) “Child” means a natural or adopted child of the taxpayer; and

(2) (A) “Totally and permanently disabled” means any child who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

(B) A physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical or laboratory diagnostic techniques.

(c) The Director of the Department of Finance and Administration may adopt appropriate rules and regulations to carry out the purpose and intent of this section and to prevent abuse of the deduction provided for in this section.

History. Acts 1991, No. 708, §§ 1, 2, 4; 1999, No. 417, § 2.

Publisher's Notes. Former § 26-51-418, concerning deductions for political contributions, was repealed by Acts 1987, No. 382, § 32. The former section was derived from Acts 1967, No. 62, § 1; A.S.A. 1947, § 84-2016.5.

26-51-419. Deductions — Charitable contributions.

(a) (1) (A) Section 170 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, regarding deductions for charitable contributions, is adopted for the purpose of computing Arkansas income tax liability.

(B) This adoption is for taxable years beginning on or after January 1, 2009, and will have no effect on years before its adoption.

(2) However, with respect to contributions of qualified appreciated stock within the meaning of Internal Revenue Code § 170(e)(5) made after May 31, 1997, the provisions of this section shall apply after taking into account the extension of the

provisions of Internal Revenue Code § 170(e)(5) by § 602 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, and § 1004(a) of the Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105-277.

(b) The provisions of subsection (a) of this section shall apply to a corporation that files an Arkansas consolidated corporation income tax return pursuant to § 26-51-805, provided that each member of the affiliated group shall follow the provisions of § 26-51-805(f) and calculate its contribution limits separately.

(c) For purposes of subsection (a) of this section, a cash contribution made in January 2005 for the relief of victims in areas affected by the December 26, 2004, Indian Ocean tsunami, for which a charitable contribution deduction is allowed under § 170 of the Internal Revenue Code of 1986, may be treated as if the contribution were made on December 31, 2004, and not in January 2005.

History. Acts 1967, No. 25, § 2; 1983, No. 379, § 12; A.S.A. 1947, § 84-2016.3; Acts 1987, No. 382, § 22; 1989, No. 826, § 3; 1995, No. 1160, § 5; 1997, No. 951, § 13; 1999, No. 1126, § 29; 2001, No. 773, § 6; 2001, No. 1227, § 1; 2005, No. 53, § 1; 2005, No. 675, § 8; 2007, No. 218, § 23; 2009, No. 372, § 14.

A.C.R.C. Notes. Acts 2001, No. 1227, § 2, provides:

“This act is intended to reverse the Supreme Court of Arkansas decision in *Central & Southern Companies v. Weiss*, 339 Ark. 76 (1999), which provided that the excess charitable contributions of one member of a consolidated group could be used to offset the taxable income of other members of the consolidated group.”

Publisher's Notes. The 1983 amendment to this section took effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.

As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

Acts 1995, No. 1160, § 42, provided that the 1995 amendments are applicable for taxable years beginning on or after January 1, 1995.

Acts 1997, No. 951, § 34, provided that Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 2005 amendment by No. 53 amendment added (c).

The 2005 amendment by No. 675 substituted “January 1, 2005” for “January 1, 2001” twice in (a).

The 2007 amendment substituted “January 1, 2007” for “January 1, 2005” in two places in (a)(1).

The 2009 amendment substituted “2009” for “2007” in (a)(1)(A) and (a)(1)(B), and made a minor stylistic change.

U.S. Code. Section 170 of the Internal Revenue Code referred to in this section is codified as 26 U.S.C. § 170.

The Tax and Trade Relief Extension Act of 1998, referred to in (c), is codified as 26 U.S.C. § 1 nt.

The Taxpayer Relief Act of 1997, referred to in (a), is codified as 26 U.S.C. § 1 nt.

Cross References. Deduction for expenses of volunteer work, § 21-13-111.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2001, No. 773, § 12: effective for tax years beginning on and after January 1, 2001.

Acts 2001, No. 1227, § 3: effective for tax years beginning on and after January 1, 2001.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Acts 2009, No. 372, § 25, provided: “This act is effective for tax years beginning on and after January 1, 2009.”

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-51-420. Deductions — Education service cooperative contributions.

Education service cooperatives created under The Education Service Cooperative Act of 1985, § 6-13-1001 et seq., are declared instrumentalities and political subdivisions of the State of Arkansas, and all contributions and donations made to them in any calendar year are deductible from the Arkansas income tax levied by § 26-51-201 et seq.

History. Acts 1993, No. 453, § 1; 2007, No. 617, § 46; 2009, No. 655, § 6.

Publisher's Notes. Former § 26-51-420, concerning deductions for blood donations, was repealed by Acts 1987, No. 382, § 32. The former section was derived from Acts 1977, No. 613, §§ 1, 2; A.S.A. 1947, §§ 84-2016.6, 84-2016.7.

Amendments. The 2007 amendment deleted "or Act 103 of the First Extraordinary Session of 1983" following "§ 6-13-1001 et seq." and substituted "calendar year 1992 and in any calendar year shall" for "during calendar year 1992 and any calendar year thereafter shall."

The 2009 amendment deleted "calendar year 1992 and" following "made to them," and made minor stylistic and punctuation changes.

26-51-421. [Repealed.]

Publisher's Notes. This section, concerning deductions for energy-saving equipment, was repealed by Acts 2001, No. 773, § 7. The section was derived from Acts 1977, No. 535, §§ 1, 2; A.S.A. 1947, §§ 84-2016.8, 84-2016.9.

26-51-422. Deductions — Fair market value of donated artistic, literary, and musical creations.

(a) In computing net income for the purposes of the Arkansas Income Tax Act, as amended, § 26-51-101 et seq., there shall be allowed as deductions in addition to all other deductions allowed by law the fair market value of donated artistic, literary, and musical creations if:

(1) The taxpayer derives at least fifty percent (50%) of his income for the current or the prior tax year from the pursuit of his art-related profession;

(2) The fair market value of the art works has been verified by an independent appraiser approved by the Department of Finance and Administration, a copy of which appraisal shall be attached to the taxpayer's state income tax return;

(3) The art works were donated to and accepted by a museum, art gallery, or nonprofit charitable organization qualified under section 501(c)(3) of the Internal Revenue Code and located in the State of Arkansas; and

(4) The deduction for donated art works does not exceed fifteen percent (15%) of the individual's gross income in the calendar year of the donation.

(b) This section shall be effective for income years beginning with income year 1983.

History. Acts 1983, No. 818, §§ 1, 2; A.S.A. 1947, § 84-2016.15.

U.S. Code. Section 501(c)(3) of the Internal Revenue Code referred to in this section is codified as 26 U.S.C. § 501(c)(3).

26-51-423. Deductions — Expenses.

(a) In computing net income, there shall be allowed as deductions the following expenses:

(1) **Business expenses.** All of § 162, except subsection (n), of the Internal Revenue Code of 1986, as in effect on January 1, 2009, regarding trade or business expenses, is adopted for the purpose of computing Arkansas income tax liability;

(2) **Medical and dental expenses.** Section 213 of the Internal Revenue Code of 1986, as in effect on January 1, 1997, is adopted in computing the medical and dental expense deduction under the state income tax law;

(3) **Travel expenses.** In determining travel expenses deductible as a business expense in computing net income as provided under subdivision (a)(1) of this section, the deduction for vehicle miles shall be determined by the Director of the Department of Finance and Administration under his or her regulatory authority in § 26-18-301; and

(4) **Moving expenses.** Section 217 of the Internal Revenue Code of 1986, as in effect on January 1, 1995, regarding the deduction of moving expenses, is adopted for the purpose of computing Arkansas income tax liability.

(b) Section 274 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, regarding the deductions of expenses for entertainment, amusement, recreation, business meals, travel, et cetera, is adopted for the purpose of computing Arkansas income tax liability.

(c) (1) An individual who is self-employed shall be allowed a deduction equal to the applicable percentage as set forth in § 162(l)(1)(B) of the Internal Revenue Code of 1986, as in effect on January 1, 1999, of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his or her spouse, and his or her dependents.

(2) (A) No deduction shall be allowed under this subsection to the extent that the amount of the deduction exceeds the taxpayer's earned income derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established.

(B) This subsection shall not apply to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or the spouse of the taxpayer.

(3) Any amount paid by the taxpayer for insurance to which this subsection applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under subdivision (a)(2) of this section.

(d) Section 221 of the Internal Revenue Code of 1986, as in effect on January 1, 2003, regarding the deduction of interest paid on qualified education loans, is adopted for the purpose of computing Arkansas income tax liability.

(e) Section 198 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, regarding the deduction of costs paid or incurred for the cleanup of certain hazardous substances, is adopted for the purpose of computing Arkansas income tax liability.

(f) Section 190 of the Internal Revenue Code of 1986, as in effect on January 1, 2001, regarding the deduction of costs paid or incurred to improve access to vehicles and facilities for handicapped and elderly persons, is adopted for the purpose of computing Arkansas income tax liability.

(g) (1) A deduction pursuant to subdivision (a)(1) of this section for interest or intangible-related expenses paid by the taxpayer to a related party shall be allowed only

if:

(A) The interest or intangible-related income received by the related party is subject to income tax imposed by the State of Arkansas, another state, or a foreign government that has entered into a comprehensive income tax treaty with the United States;

(B) The interest or intangible-related income received by the related party was received pursuant to:

(i) An “arm's length” contract or at an “arm's length” rate of interest; and

(ii) A transaction not intended to avoid the payment of Arkansas income tax otherwise due;

(C) The taxpayer and the director enter into a written agreement prior to the due date of the taxpayer's Arkansas income tax return:

(i) Authorizing the taxpayer to take the deduction for the tax year at issue; or

(ii) Requiring the use of an alternative method of income apportionment by the taxpayer for the tax year at issue; or

(D) During the taxable year, the related party recipient of interest or intangible related income, in a location not described in subdivision (g)(1)(A) of this section, a “non-tax location”:

(i) Operates an active trade or business in the non-tax location;

(ii) Has a minimum of fifty (50) full-time-equivalent employees in the non-tax location;

(iii) Owns real or tangible personal property with a fair market value in excess of one million dollars (\$1,000,000) located in the non-tax location; and

(iv) Has revenues generated from sources within the non-tax location in excess of one million dollars (\$1,000,000).

(2) “Related party” means a related party as defined by § 267 of the Internal Revenue Code of 1986, as in effect on January 1, 2003.

(h) Section 194 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, regarding the amortization of qualified reforestation expenses, is adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; 1957, No. 550, § 1; 1967, No. 95, §§ 1, 2; 1968 (1st Ex. Sess.), No. 22, § 1; 1971, No. 457, § 1; 1975, No. 271, § 1; 1979, No. 912, § 1; 1981, No. 469, § 1; 1983, No. 379, §§ 8, 9; A.S.A. 1947, §§ 84-2016, 84-2016.11; Acts 1987, No. 382, §§ 14, 23, 25; 1989, No. 826, §§ 4, 26-28; 1991, No. 685, § 5; 1993, No. 785, § 8; 1995, No. 1160, § 2; 1997, No. 951, §§ 7-10; 1997, No. 1000, § 15; 1999, No. 1126, § 30; 2001, No. 773, § 8; 2003, No. 663, § 9; 2003, No. 1286, § 1; 2005, No. 675, § 9; 2007, No. 218, §§ 24, 25; 2009, No. 372, §§ 15, 16.

A.C.R.C. Notes. Pursuant to § 1-2-207, subdivision (a)(2) of this section is set out above as amended by Acts 1997, No. 1000. Subdivision (a)(2) was amended by Acts 1997, No. 951 to read “as in effect” instead of “in effect.”

Publisher's Notes. Acts 1957, No. 550, § 2, provided that the provisions of this act shall apply to income earned on and after January 1, 1957.

Acts 1968 (1st Ex. Sess.), No. 22, § 2, provided that the provisions of section 1 would become effective on January 1 for the income year beginning on January 1, 1967.

The 1983 amendment to this section took effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.

As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

Acts 1991, No. 685, § 11, provided:

"The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991."

Acts 1993, No. 785, § 20, provides that the 1993 amendment is effective for taxable years beginning on and after January 1, 1993.

Acts 1995, No. 1160, § 42, provided that the 1995 amendments are applicable for taxable years beginning on or after January 1, 1995.

Acts 1997, No. 951, § 34: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 2003 amendment by No. 663 substituted "2003" for "1999" in (d).

The 2003 amendment by No. 1286 added (g).

The 2005 amendment substituted "January 1, 2005" for "January 1, 1999" in (a)(1), (b) and (e); and added (h).

The 2007 amendment substituted "January 1, 2007" for "January 1, 2005" in (b) and (h).

The 2009 amendment substituted "2009" for "2005" in (a)(1) and (e).

U.S. Code. Sections 162, 190, 198, 213, 217, 221, 267 and 274 of the Internal Revenue Code of 1986 referred to in this section are codified as 26 U.S.C. §§ 162, 190, 198, 213, 217, 221, 267 and 274, respectively.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2001, No. 773, § 12: effective for tax years beginning on and after January 1, 2001.

Acts 2003, No. 663, § 14: applicable to tax years beginning on and after January 1, 2003.

Acts 2003, No. 1286, § 2: applicable to tax years beginning on or after January 1, 2004.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

Research References

ALR.

State income tax treatment of intangible holding companies. 11 A.L.R.6th 543.

U. Ark. Little Rock L. Rev.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Interest and Intangible Expense Deductions, 26 U. Ark. Little Rock L. Rev. 500.

Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax Computation, 26 U. Ark. Little Rock L. Rev. 381.

Case Notes

Oil Wells.

Oil Wells.

Where expenses were incurred in drilling "dry hole" oil well outside of Arkansas, they were deductible from taxable income under this section. *Morley v. Pitts*, 217 Ark. 755, 233 S.W.2d 539 (1950).

Cited: *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

26-51-424. Deductions — Losses.

(a) (1) In computing net income there shall be allowed as a deduction any loss sustained during the income year and not compensated for by insurance or otherwise.

(2) In the case of an individual, the deduction under subdivision (a)(1) of this section shall be limited to:

(A) Losses incurred in a trade or business; or

(B) Losses incurred in any transaction entered into for profit, though not connected with the trade or business.

(b) Sections 165(h) and 165(i) of the Internal Revenue Code of 1986, as in effect on January 1, 2009, regarding losses arising from a casualty or a disaster, are adopted for the purpose of computing Arkansas income tax liability.

(c) Section 183 of the Internal Revenue Code of 1986, as in effect on January 1, 1999, regarding hobby losses, is adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; 1983, No. 379, § 10; A.S.A. 1947, § 84-2016; Acts 1999, No. 1126, § 31; 2009, No. 372, § 17.

Publisher's Notes. The 1983 amendment to this section took effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.

Amendments. The 2009 amendment deleted (a)(2)(C) and made related changes; and rewrote (b).

U.S. Code. The Disaster Relief Act of 1974 referred to in this section is codified primarily as 42 U.S.C. § 5121 et seq.

Section 183 of the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 183.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

Research References

U. Ark. Little Rock L.J.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Case Notes

Cited: Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

26-51-425. Deductions — Worthless debts.

In computing net income there shall be allowed as deductions debts ascertained to be worthless and actually charged off the books of the taxpayer within the income year.

History. Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; A.S.A. 1947, § 84-2016.

Case Notes

Cited: Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

26-51-426. Deductions — Reserve for bad debts or liabilities.

Any bank, building and loan, savings and loan, or any other savings institution chartered and supervised as a savings and loan or similar associations under federal or state law shall be allowed a bad debt expense deduction computed in accordance with Internal Revenue Code of 1986 §§ 582, 585, and 593, as in effect on January 1, 1999.

History. Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; A.S.A. 1947, § 84-2016; Acts 1993, No. 785, § 9; 1997, No. 951, § 15; 1999, No. 1126, § 32.

Publisher's Notes. Acts 1993, No. 785, § 20, provides that the 1993 amendment is effective for taxable years beginning on and after January 1, 1993.

Acts 1997, No. 951, § 34, provided that: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

U.S. Code. Internal Revenue Code §§ 582, 585, and 593, referred to in this section, are codified as 26 U.S.C. §§ 582, 585, and 593.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Case Notes

Cited: Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

26-51-427. Deductions — Net operating loss carryover.

In addition to other deductions allowed by this chapter, there shall be allowed as a deduction from gross income a net operating loss carryover under the following rules:

(1) (A) The net operating loss as hereinbelow defined for any year ending on or after the passage of this act and for any succeeding taxable year may be carried over to the next-succeeding taxable year and annually thereafter for a total period of three (3) years next succeeding the year of the net operating loss or until the net operating loss has been exhausted or absorbed by the taxable income of any succeeding year, whichever is earlier, if the loss occurred in an income year beginning before January 1, 1987. The net operating loss deduction must be carried forward in the order named above;

(B) The net operating loss as hereinbelow defined for any year ending on or after the passage of this act and for any succeeding taxable year may be carried over to the next-succeeding taxable year and annually thereafter for a total period of five (5) years next succeeding the year of the net operating loss or until the net operating loss has been exhausted or absorbed by the taxable income of any succeeding year, whichever is earlier, if the loss occurred in an income year beginning on or after January 1, 1987. The net operating loss deduction must be carried forward in the order named above;

(C) The net operating loss as hereinbelow defined which resulted from farming operations, for income years beginning on or after January 1, 1981, and expired in accordance with subdivision (1)(A) before being fully used, may be carried forward for an additional two (2) years and any unused portions can be combined and either applied to tax years 1987 and 1988, respectively, or to tax years 1989 and 1990. In order to claim the additional two-year carry forward, taxpayers must attach copies of both their federal tax returns and their state tax returns, showing the net operating losses for income years beginning on or after January 1, 1981, to their state tax returns. As used in this subdivision, "farming operations" means that at least sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the total gross income, from all sources for the taxable year, must come from farming as defined by Internal Revenue Code Section 464(e)(1) in effect on January 1, 1989;

(D) As used in this section, the term "taxable income or net income" shall

be deemed to be the net income computed without benefit of the deduction for income taxes, personal exemptions, and credit for dependents. The net income of the taxable period to which the net operating loss deduction, as adjusted, is carried, shall be the net income before the deduction of federal income taxes, personal exemption, and credit for dependents. Such income taxes, exemptions, and credits shall not be used to increase the net operating loss which may be carried to any other taxable period;

(E) (i) As used in this section, the term “qualified medical company” means a corporation engaged in:

(a) Research and development in the medical field; and

(b) Manufacture and distribution of medical products, including therapeutic and diagnostic products.

(ii) In the case of qualified medical companies, as defined herein, a net operating loss for any taxable year shall be a net operating loss carryover to each of the fifteen (15) taxable years following the taxable year of the loss.

(iii) If the qualified medical company is an “S” corporation, the pass-through provisions of § 26-51-409, as in effect for the taxable year of the loss, shall be applicable.

(iv) The net operating loss provisions set forth above, which resulted from the operation of a qualified medical company, shall be effective for taxable years beginning on and after January 1, 1987.

(2) As used in this section, the term “net operating loss” is defined as the excess of allowable deductions over gross income for the taxable year, subject to the following adjustments:

(A) There shall be added to gross income all nontaxable income, not required to be reported as gross income, as provided by law, less any expenses properly and reasonably incurred in earning nontaxable income, which expenses would otherwise be nondeductible;

(B) In the case of a taxpayer other than a corporation, deductions, not including federal income taxes, not attributable to the operation of the trade or business shall be eliminated from the deductions otherwise allowable for the taxable year to the extent that they exceed gross income not derived from trade or business. Personal exemptions and credit for dependents shall not be a deduction for the purpose of computing a net operating loss;

(C) No net operating loss deduction shall be allowed;

(D) In the case of a taxpayer other than a “C corporation,” as defined in 26 U.S.C. § 1361, as in effect on January 1, 1985:

(i) For income years beginning after December 31, 1986, the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

(ii) For income years beginning after December 31, 1986, the deduction for long-term capital gains provided by 26 U.S.C. § 1202 [repealed], as in effect on January 1, 1985, shall not be allowed;

(3) In the case of the acquisition of assets of one (1) corporation by another corporation, the acquiring corporation shall succeed to and take into account any net operating loss carryover apportionable to Arkansas, under subchapter 7 of this chapter,

that the acquired corporation could have claimed had it not been acquired, subject to the following conditions:

(A) The net operating loss may not be carried forward to a taxable year which ends more than three (3) years after the taxable year in which the loss occurred if the loss occurred in an income year beginning before January 1, 1987;

(B) The net operating loss may not be carried forward to a taxable year which ends more than five (5) years after the taxable year in which the loss occurred if the loss occurred in an income year beginning on or after January 1, 1987;

(C) The net operating loss may be claimed only when the ownership of both the acquired and acquiring corporations is substantially the same, that is, where not less than eighty percent (80%) of the voting stock of each corporation is owned by the same person or where prior to the acquisition the acquiring corporation owned at least eighty percent (80%) of the voting stock of the acquired corporation. The carryover losses will be allowed only in those cases where the assets of the corporation going out of existence earn sufficient profits apportionable to Arkansas under § 26-51-701 et seq. in the post-merger period to absorb the carryover losses claimed by the surviving corporation.

History. Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; 1975, No. 676, § 1; 1979, No. 740, § 1; 1985, No. 848, § 2; 1985 (1st Ex. Sess.), No. 20, § 2; 1985 (1st Ex. Sess.), No. 32, § 2; A.S.A. 1947, § 84-2016; Acts 1987, No. 382, §§ 18, 19; 1989, No. 615, § 1; 1995, No. 586, § 4.

Publisher's Notes. In reference to the term "passage of this act," in (1)(A), Acts 1929, No. 118, § 44, contained an emergency clause which provided that the act would take effect and be in force from and after its passage. The act was approved and signed by the Governor on March 9, 1929. Acts 1975, No. 676, § 2, provided that the provisions of this act shall apply to all corporate income returns for income years beginning on and after January 1, 1975, and to all corporate income tax returns filed for years prior to January 1, 1975, that are pending on the effective date of this act and on which taxes have not been paid.

Acts 1979, No. 740, § 2, provided that the provisions of this act shall apply to all corporate income tax returns for income years beginning on or after January 1, 1979, and to all corporate income tax returns filed for years prior to January 1, 1979, that are pending on the effective date of this act and on which the taxes have been paid, under protest, or on which the taxes have not been paid.

In reference to the term "passage of this act", in (1)(B), Acts 1987, No. 382 was signed by the Governor on March 24, 1987, and became effective on March 24, 1987.

As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

Amendments. The 1995 amendment added (1)(E).

Meaning of "this act". See note to § 26-51-403.

U.S. Code. Section 464 of the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 464. 26 U.S.C. § 1202, as in effect on January 1, 1985, referred to in this section was repealed by P.L. 99-514. A new 26 U.S.C. § 1202 was enacted by P.L. 103-66.

Research References

ALR.

Sales and use tax exemption for medical supplies. 30 A.L.R.5th 494.

Construction and application of state corporate income tax statutes allowing net operation loss deductions. 33 A.L.R.5th 509.

Case Notes

Corporate Acquisitions.

Dividends.

Nonbusiness Income.

Corporate Acquisitions.

Following a statutory merger of two corporations that had common stock ownership, where the business of the surviving corporation was not altered, enlarged, or materially affected by the merger, but constituted a continuation of the business enterprise on a sounder financial basis, a net operating loss carryover of the merged corporation was available to the surviving corporation as a deduction for state income tax purposes. *Bracy Dev. Co. v. Milam*, 252 Ark. 268, 478 S.W.2d 765 (1972).

Where a certificate of indebtedness had been filed and an execution issued upon acquiring corporation's income tax return, the return was pending on the effective date of Acts 1975, No. 676, which provided that an acquiring corporation would succeed to any net operating loss carryover that the acquired corporation could have claimed, and therefore the certificate of indebtedness was void. *Skelton v. B.C. Land Co.*, 260 Ark. 122, 539 S.W.2d 411 (1976). Evidence was sufficient to support the chancellor's decision that the surviving corporation had presented a prima facie case to prove that the equipment acquired by the surviving corporation in the merger had generated income in an amount sufficient to absorb the carryover net operating loss claimed by the surviving corporation. *Jones v. Carter Constr. Co.*, 266 Ark. 358, 583 S.W.2d 63 (1979).

Dividends.

For the restricted purpose of computing the net operating loss to be carried forward, parent company was required to add back to its gross income nontaxable dividend income from its subsidiary. *Kansas City S. Ry. v. Pledger*, 301 Ark. 564, 785 S.W.2d 462 (1990).

Nonbusiness Income.

Nonbusiness income items such as rents, interest, and dividends (which although clearly defined as "gross income" under statute, were not required to be "reported as gross income" for purposes of taxation by state, but merely for purposes of allocation under the Uniform Division of Income for Tax Purposes Act, 26-51-701 et seq.) were properly added to gross income in calculating net operating loss under this section. *St. Louis S.W. Ry. v. Ragland*, 304 Ark. 1, 800 S.W.2d 410 (1990).

Cited: *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

26-51-428. Depreciation — Deductions — Expensing of property. [Effective until contingency in Acts 2007, No. 613, § 2 is met.]

(a) Sections 167, 168 (a)–(j), and 179A of the Internal Revenue Code of 1986, as in effect on January 1, 2009, and section 179 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, regarding depreciation and expensing of property, are adopted for the purpose of computing Arkansas income tax liability for property purchased in tax years beginning on or after January 1, 2009.

(b) The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect to any property shall be the adjusted basis provided in § 26-51-411 for the purpose of determining the gain on the sale or other disposition of the property.

(c) Section 197 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, regarding the amortization of goodwill and certain other intangibles, is adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; 1957, No. 156, § 1; 1983, No. 379, §§ 8-11; 1983, No. 854; §§ 1, 5; A.S.A. 1947, §§ 84-2016, 84-2016.16; Acts 1987, No. 382, §§ 17, 32; 1989, No. 826, §§ 29, 30; 1991, No. 685, § 7; 1995, No. 1160, § 4; 1997, No. 951, § 12; 1999, No. 1126, § 33; 2007, No. 218, § 26; 2009, No. 372, § 18.

A.C.R.C. Notes. Acts 2007, No. 613, § 2, provided:

"The provisions of this act shall not be effective until the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2008 and fiscal year 2009 in an amount sufficient to replace the general revenue reduction for each of the fiscal years 2008 and 2009 that would result from the adoption of the provisions of section 179 of the Internal Revenue Code, as in effect on January 1, 2007, as provided by this act."

Publisher's Notes. Acts 1983, No. 854, § 3, read:

"The provisions of Section 1 [§ 84-2016.16] of this Act shall be effective as follows: (1) for all property qualifying as '3-year property' and '5-year property,' as defined in Title 26 USC Subsection 168(c)(2)(A) and (B), respectively, for all income years ending after December 31, 1982; (2) for all property qualifying as '10-year property,' as defined in Title 26 USC Subsection 168(c)(2)(C) for all income years ending after December 31, 1984; and (3) for all property qualifying as '15-year real property' and '15-year public utility property,' as defined in Title 26 USC Subsection 168(c)(2)(D) and (E) respectively, for all income years ending after December 31, 1986. However, subsections (2) and (3) of this Section shall expire and be abolished as of March 31, 1985, unless they are reenacted by the 1985 Regular Session of the General Assembly. It is the intent of the General Assembly that the three classes of property comprising '10-year property', '15-year real property' and '15-year public utility property' shall not be eligible for the benefits of the Accelerated Cost Recovery System after March 31, 1985, unless they are specifically reenacted or extended during the 1985 Regular Session of the General Assembly."

The 1983 amendment to this section (No. 379) took effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.

As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

Acts 1991, No. 685, § 11, provided:

"The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991."

Acts 1995, No. 1160, § 42, provided that the 1995 amendments are applicable for taxable years beginning on or after January 1, 1995.

Acts 1997, No. 951, § 34, provided that: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

For text effective if contingency in Acts 2007, No. 613, § 2 is met, see the following version.

Amendments. The 2007 amendment substituted "January 1, 2007" for "January 1, 1995" in (c). The 2009 amendment, in (a), substituted the first instance of "January 1, 2009" for "January 1, 1999" and the second instance for "January 1, 2007," and inserted "for property purchased in tax years beginning on or after January 1, 2009."

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

U.S. Code. Sections 167, 168, 179, and 197 of the Internal Revenue Code of 1986 referred to in this section are codified as 26 U.S.C. §§ 167, 168, 179, and 197, respectively.

Research References

U. Ark. Little Rock L.J.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Case Notes

Common Carriers.

Common Carriers.

A corporation engaged in interstate and intrastate transportation of property as a common carrier held not free to calculate and claim depreciation as it desires under this section. *Cheney v. East*

Tex. Motor Freight, Inc., 233 Ark. 675, 346 S.W.2d 513 (1961).

Cited: Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

26-51-428. Depreciation — Deductions — Expensing of property. [Effective if contingency in Acts 2007, No. 613, § 2 is met.]

(a) Sections 167, 168, and 179A of the Internal Revenue Code of 1986, as in effect on January 1, 1999, and section 179 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, regarding depreciation and expensing of property, are adopted for the purpose of computing Arkansas income tax liability.

(b) The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect to any property shall be the adjusted basis provided in § 26-51-411 for the purpose of determining the gain on the sale or other disposition of the property.

(c) Section 197 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, regarding the amortization of goodwill and certain other intangibles, is adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; 1957, No. 156, § 1; 1983, No. 379, §§ 8-11; 1983, No. 854; §§ 1, 5; A.S.A. 1947, §§ 84-2016, 84-2016.16; Acts 1987, No. 382, §§ 17, 32; 1989, No. 826, §§ 29, 30; 1991, No. 685, § 7; 1995, No. 1160, § 4; 1997, No. 951, § 12; 1999, No. 1126, § 33; 2007, No. 218, § 26; 2007, No. 613, § 1.

Publisher's Notes. For text effective until contingency in Acts 2007, No. 613, § 2 is met, see the preceding version.

Amendments. The 2007 amendment by No. 218 substituted "January 1, 2007" for "January 1, 1995" in (c).

The 2007 amendment by No. 613, in (a), deleted "179" following "168" and inserted "and section 179 of the Internal Revenue Code of 1986, as in effect on January 1, 2007"; and made related changes.

U.S. Code. Sections 167, 168, 179, and 197 of the Internal Revenue Code of 1986 referred to in this section are codified as 26 U.S.C. §§ 167, 168, 179, and 197, respectively.

Effective Dates. Acts 2007, No. 613, § 2, provided: "The provisions of this act shall not be effective until the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2008 and fiscal year 2009 in an amount sufficient to replace the general revenue reduction for each of the fiscal years 2008 and 2009 that would result from the adoption of the provisions of section 179 of the Internal Revenue Code, as in effect on January 1, 2007, as provided by this act."

Research References

U. Ark. Little Rock L.J.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Case Notes

Common Carriers.

Common Carriers.

A corporation engaged in interstate and intrastate transportation of property as a common carrier held not free to calculate and claim depreciation as it desires under this section. *Cheney v. East Tex. Motor Freight, Inc.*, 233 Ark. 675, 346 S.W.2d 513 (1961).

Cited: *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

26-51-429. Deductions — Depletion allowances.

(a) In the case of all natural resources for which a deduction for depletion is allowed under § 611 of the Internal Revenue Code of 1986, the provisions of §§ 611-613, 614, 616, and 617 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, are adopted in computing the depletion allowance deduction under Arkansas income tax law.

(b) In computing the depletion allowance deduction allowed by this section for oil and gas wells, the provisions of § 613 of the Internal Revenue Code of 1986 shall not be in effect, but instead the computation of the amount of the depletion deduction shall be controlled by the provisions of § 613A of the Internal Revenue Code of 1986, as in effect on January 1, 2009, which are adopted as part of the state income tax law.

History. Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1939, No. 140, § 1; 1947, No. 335, § 3; 1965, No. 499, § 1; 1983, No. 854, § 4; A.S.A. 1947, § 84-2016; Acts 1989, No. 826, § 31; 1991, No. 685, § 10; 1999, No. 1126, § 34; 2005, No. 675, § 10; 2007, No. 218, § 27; 2009, No. 372, § 19.

Publisher's Notes. Acts 1947, No. 335, § 7, provided that it is declared to be the intention of the General Assembly that this act shall be applicable to the income year 1946, calendar or fiscal, and for each year thereafter.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

Acts 1991, No. 685, § 11, provided:

"The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991."

Amendments. The 2005 amendment substituted "January 1, 2005" for "January 1, 1999" in (a) and (b).

The 2007 amendment substituted "January 1, 2007" for "January 1, 2005" in (a) and (b).

The 2009 amendment substituted "2009" for "2007" in (b).

U.S. Code. Sections 611-613, 613A, 614, 616, and 617 of the Internal Revenue Code referred to in this section are codified as 26 U.S.C. §§ 611-613, 613A, 614, 616 and 617, respectively.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

Research References

U. Ark. Little Rock L.J.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Case Notes

Cited: Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

26-51-430. Deductions — Standard deduction.

(a) (1) In lieu of itemizing deductions, each taxpayer may elect to use the standard deduction.

(2) In the case of a married couple, both spouses must elect to use the standard deduction or both spouses must claim itemized deductions, without regard to whether the spouses file separate returns or file separately on the same return.

(b) (1) The standard deduction shall be two thousand dollars (\$2,000) per taxpayer.

(2) In the case of a married couple, each spouse shall be entitled to claim a standard deduction of two thousand dollars (\$2,000).

History. Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1951, No. 124, § 1; 1957, No. 147, § 1; A.S.A. 1947, § 84-2016; Acts 1997, No. 328, § 1; 2003, No. 997, § 1.

A.C.R.C. Notes. Acts 1997, No. 328, § 11, provided:

“This Act shall be effective on and after November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10.”

Acts 1997, No. 328, § 12, provided:

“The withholding tables prescribed by the Director of the Department of Finance and Administration pursuant to Ark. Code Ann. § 26-51-907 shall not be amended for tax year 1998 to reflect the changes adopted by this Act. If this Act becomes effective on November 15, 1998, the effect of the various provisions of this Act for tax year 1998 shall be reflected on the income tax return filed for that year. For all subsequent years, the Director shall adjust the withholding tables as otherwise required by law.”

Publisher's Notes. Acts 1951, No. 124, § 2, provided that the provisions of this act shall be applicable to tax years on and after January 1, 1951, as the term “tax year” is defined in § 26-51-102.

Amendments. The 1997 amendment substituted “each taxpayer” for “the taxpayer” in (a); and rewrote (b).

The 2003 amendment redesignated former (a) as present (a)(1); and inserted (a)(2).

Effective Dates. Acts 2003, No. 997, § 2: applicable to tax years beginning on or after January 1, 2003.

Case Notes

Cited: Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

26-51-431. Items not deductible in net income computation.

(a) In computing net income, no deduction shall in any case be allowed in respect of:

- (1) Personal, living, or family expenses, except that any payments of alimony made by an individual pursuant to a court order shall be deductible;
- (2) Any amount paid for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;
- (3) Any amount expended in restoring property for which an allowance is to be made;
- (4) Premiums paid on life insurance policies;
- (5) Shrinkage in value of property.

(b) Section 265(a) of the Internal Revenue Code of 1986, as in effect on January 1, 1993, regarding expenses and interest relating to tax-exempt income, is hereby adopted for the purpose of computing Arkansas individual income tax liability.

(c) For the purpose of computing Arkansas corporation income tax liability, no deduction shall be allowed for:

- (1) Expenses otherwise allowable as deductions which are allocable to income other than interest (whether or not any amount of income is received or accrued) wholly exempt from the taxes authorized by Arkansas law;
- (2) Interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by Arkansas law;
- (3) Expenses otherwise allowable as deductions which are allocable to

nonbusiness income.

History. Acts 1929, No. 118, Art. 3, § 14; Pope's Dig., § 14037; Acts 1983, No. 379, § 5; A.S.A. 1947, § 84-2019; Acts 1993, No. 785, § 17.

Publisher's Notes. The 1983 amendment to this section took effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.

Acts 1993, No. 785, § 20, provides that the 1993 amendment is effective for taxable years beginning on and after January 1, 1993.

Amendments. The 1993 amendment added (b) and (c).

U.S. Code. Section 265(a) of the Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 265(a).

Research References

U. Ark. Little Rock L.J.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

26-51-432 — 26-51-434. [Repealed.]

Publisher's Notes. These sections, concerning a delivered meal program, a War Memorial Stadium improvement and expansion program, and a nongame preservation program, were repealed by Acts 1993, No. 943, § 1. They were derived from the following sources:

26-51-432. Acts 1991, No. 172, §§ 1-4.

26-51-433. Acts 1981, No. 545, § 1(b)-(d); 1981 (1st Ex. Sess.), No. 21, § 4; A.S.A. 1947, §§ 84-2016.12, 84-2016.13; Acts 1987, No. 879, §§ 10, 11, 13.

26-51-434. Acts 1983, No. 475, § 2; A.S.A. 1947, § 84-2016.14; Acts 1987, No. 879, §§ 12, 13.

26-51-435. Nonresidents or part-year residents.

(a) Nonresidents or part-year residents of Arkansas shall compute their taxable income as if all income were earned in Arkansas.

(b) Using Arkansas income tax rates, nonresident or part-year residents of Arkansas shall compute their tax liability on the amount computed in subsection (a) of this section.

(c) From the tax liability computed in subsection (b) of this section there shall be deducted all allowable credits to determine the amount of tax due.

(d) (1) Nonresidents shall divide adjusted gross income from Arkansas sources by the adjusted gross income from all sources to arrive at the applicable percentage that Arkansas adjusted gross income represents of all adjusted gross income received by the taxpayer in the income year.

(2) Part-year residents shall divide adjusted gross income received while an Arkansas resident by the adjusted gross income from all sources to arrive at the applicable percentage that the adjusted gross income received while an Arkansas resident represents of all adjusted gross income received by the taxpayer in the income year.

(e) Nonresidents and part-year residents shall multiply the amount computed in subsection (c) of this section by the applicable percentage from subsection (d) of this section in order to determine the amount of income tax which must be paid to the State of Arkansas.

(f) For the purpose of ascertaining the income tax due by a nonresident or part-year resident of Arkansas with income derived from two (2) or more states, the credit available under § 26-51-504 for income tax paid to other states shall be calculated in the following manner:

(1) The credit shall not exceed what the tax would be on the outside income, if

added to the Arkansas income, and calculated at Arkansas income tax rates; and

(2) The credit is limited to the total income tax owed to other states on income that has been:

- (A) Reported as taxable income to both Arkansas and the other states;
- (B) Reported as income from all sources; and
- (C) Included as Arkansas income.

History. Acts 1987, No. 382, § 12; 1997, No. 951, § 20; 2003, No. 662, § 1.

Publisher's Notes. As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

Acts 1997, No. 951, § 34, provided that Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 1997 amendment rewrote (d).
The 2003 amendment added (f).

Effective Dates. Acts 2003, No. 662, § 2: applicable to tax years beginning on and after January 1, 2003.

26-51-436. Deductions — Limitations.

Notwithstanding any other provision of this act with regard to deductions allowed in computing net income:

(1) Section 465 of the Internal Revenue Code of 1986, as in effect on January 1, 1987, is adopted to limit deductions claimed under this act to the amount the taxpayer has at risk, as that term is used in the federal income tax law;

(2) Section 469 of the Internal Revenue Code of 1986, as in effect on January 1, 1997, regarding the limitations on deductibility of passive activity losses and credits, is adopted for the purpose of computing Arkansas income tax liability;

(3) Subsections (a), (b), (c), and (d) of § 280F of the Internal Revenue Code of 1986, as in effect on January 1, 1999, regarding investment tax credit and depreciation for luxury automobiles, is adopted for purposes of computing Arkansas income tax liability;

(4) Section 68 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, is adopted to limit itemized deductions;

(5) Section 220 of the Internal Revenue Code of 1986, as in effect on January 1, 2005, regarding the deductibility from income of contributions made to a medical savings account by the taxpayer or the taxpayer's employer, is adopted for the purpose of computing Arkansas income tax liability;

(6) Section 264 of the Internal Revenue Code of 1986, as in effect on January 1, 1999, regarding premium and interest deductions on life insurance of officers and employees, is adopted for the purpose of computing Arkansas income tax liability; and

(7) Section 470 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, regarding leasing transactions between taxpayers, is adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1929, No. 118, Art. 3, § 13; 1987, No. 382, § 21; 1989, No. 826, §§ 5, 32; 1991, No. 95, § 4; 1991, No. 685, § 3; 1995, No. 1160, § 1; 1997, No. 951, §§ 14, 21; 1997, No. 1000, § 16; 1999, No. 1126, § 35; 2001, No. 634, § 1; 2003, No. 336, § 1;

2003, No. 663, § 10; 2005, No. 94, § 5; 2005, No. 675, § 11; 2007, No. 218, § 28; 2009, No. 372, §§ 20, 21.

Publisher's Notes. As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

Acts 1991, No. 95, § 5, provided that "the provisions contained in this act shall be effective for tax years beginning on and after January 1, 1991."

Acts 1991, No. 685, § 11, provided:

"The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991."

Acts 1995, No. 1160, § 42, provided that the 1995 amendments are applicable for taxable years beginning on or after January 1, 1995.

Acts 1997, No. 951, § 34, provided that Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 2003 amendment by Nos. 336 and 663 were identical and substituted "2003" for "2001" in (5).

The 2005 amendment by No. 94 substituted "January 1, 2005" for "January 1, 2003" in (5).

The 2005 amendment by No. 675 added (7).

The 2007 amendment substituted "January 1, 2007" for "January 1, 2005" in (7).

The 2009 amendment substituted "2009" for "1995" in (4); and substituted "2009" for "2007" in (7).

Meaning of "this act". See note to § 26-51-403.

U.S. Code. Sections 68, 220, 264, 280F, 465 and 469 of the Internal Revenue Code of 1986 referred to in this section are codified as 26 U.S.C. §§ 68, 220, 264, 280F, 465 and 469, respectively.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2003, No. 336, § 2: applicable to tax years beginning on or after January 1, 2003.

Acts 2003, No. 663, § 14: applicable to tax years beginning on and after January 1, 2003.

Acts 2005, No. 94, § 6: applicable to tax years beginning on or after January 1, 2004.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax Computation, 26 U. Ark. Little Rock L. Rev. 381.

26-51-437. Miscellaneous itemized deductions.

(a) In the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of those deductions exceeds two percent (2%) of adjusted gross income.

(b) For the purposes of this section, the term "miscellaneous itemized deductions" means the itemized deductions other than:

(1) The deduction allowed under § 26-51-423(a)(1) relating to expenses in carrying on a trade or business. However, employee business expenses which are not reimbursed by the employer are miscellaneous itemized deductions;

(2) The deduction allowed under § 26-51-423(a)(2) relating to medical, dental,

drug, and related health care expenses;

(3) The deduction allowed under § 26-51-415 relating to interest;

(4) The deduction allowed under § 26-51-416 relating to taxes;

(5) The deduction allowed under § 26-51-424 relating to losses;

(6) The deduction allowed under § 26-51-419 relating to charitable contributions;

(7) The deduction allowed under § 26-51-422 relating to the donation of artistic, literary, and musical creations.

(8) The deduction allowed under § 26-51-418.

History. Acts 1987, No. 382, § 28; 1991, No. 708, § 3; 1995, No. 1296, § 84.

Publisher's Notes. As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

Amendments. The 1995 amendment redesignated former (c) as (b)(8) and deleted "shall not be a miscellaneous itemized deduction as provided in § 26-51-437" from the end.

26-51-438. [Repealed.]

Publisher's Notes. This section, concerning contributions to a cancer research fund, was repealed by Acts 1993, No. 943, § 1. The section was derived from Acts 1987, No. 879, §§ 2-9, 13.

26-51-439. Capitalization of certain expenses.

(a) Subsections (a)-(h) of § 263A of the Internal Revenue Code of 1986, as in effect on January 1, 2007, regarding capitalization and inclusion in inventory costs of certain expenses, are adopted for the purpose of computing Arkansas income tax liability.

(b) Section 195 of the Internal Revenue Code of 1986, as in effect on January 1, 2001, regarding capitalization and amortization of a corporation's start-up expenses, is adopted for the purpose of computing Arkansas income tax liability.

(c) Section 248 of the Internal Revenue Code of 1986, as in effect on January 1, 2005, regarding capitalization and amortization of a corporation's organizational expenses, is adopted for the purpose of computing Arkansas income tax liability.

(d) Section 709 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, regarding the amortization of partnership organizational expenses, is adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1989, No. 826, § 8; 2001, No. 773, § 9; 2005, No. 675, § 12; 2007, No. 218, §§ 29, 30.

Publisher's Notes. As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

Amendments. The 2005 amendment substituted "January 1, 2005" for "January 1, 2001" in (c); and added (d).

The 2007 amendment substituted "January 1, 2007" for "January 1, 1989" in (a), and for "January 1, 2005" in (d).

U.S. Code. Sections 195, 248, and 263A of the Internal Revenue Code of 1986, referred to in this section, are codified as U.S.C. §§ 195, 248, and 263A respectively.

Effective Dates. Acts 2001, No. 773, § 12: effective for tax years beginning on and after January 1, 2001.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-51-440. Federal Subchapter M adopted.

(a) (1) Subchapter M of the Internal Revenue Code of 1986, as in effect on January 1, 2009, relating to regulated investment companies, real estate investment trusts, and financial asset securitization investment trusts, is adopted for the purpose of computing Arkansas income tax liability and shall govern all corporations that are registered as investment companies under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., as in effect on January 1, 2009.

(2) (A) However, those provisions of Subchapter M addressing the tax rates applied to financial asset securitization investment trust income are not adopted.

(B) Any financial asset securitization investment trust income subject to Arkansas income tax shall be taxed at the rates set forth in § 26-51-205.

(b) As used in this section:

(1) (A) “Captive real estate investment trust” means a real estate investment trust the shares or beneficial interests of which are not regularly traded on an established securities market and more than fifty percent (50%) of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly, indirectly, or constructively by a single entity that is:

(i) Treated as an association taxable as a corporation under the Internal Revenue Code of 1986, as in effect on January 1, 2009; and

(ii) Not exempt from federal income tax under 26 U.S.C. § 501(a), as in effect on January 1, 2009.

(B) “Captive real estate investment trust” does not include a real estate investment trust that is intended to be regularly traded on an established securities market and that satisfies the requirements of 26 U.S.C. § 856(a)(5) and (6), as in effect on January 1, 2009, by reason of 26 U.S.C. § 856(h)(2), as in effect on January 1, 2009; and

(2) “Real estate investment trust” means the same as defined in 26 U.S.C. § 856, as in effect on January 1, 2009.

(c) For purposes of applying subdivision (b)(1)(A)(i) of this section, the following entities are not considered an association taxable as a corporation under the Internal Revenue Code of 1986:

(1) A real estate investment trust other than a captive real estate investment trust;

(2) A qualified real estate investment trust subsidiary under 26 U.S.C. § 856(i), as in effect on January 1, 2009, other than a qualified real estate investment trust subsidiary of a captive real estate investment trust;

(3) A listed Australian Property Trust, meaning an Australian unit trust registered as a Managed Investment Scheme under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market, or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, seventy-five percent (75%) or more of the voting power or value of the beneficial interests or shares of such trust; or

(4) A qualified Foreign Entity, meaning a corporation, trust, association, or

partnership organized outside the laws of the United States and which satisfies the following criteria:

(A) At least seventy-five percent (75%) of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in 26 U.S.C. § 856(c)(5)(B), as in effect on January 1, 2009, including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and United States Government securities;

(B) The entity is not subject to tax on amounts distributed to its beneficial owners or is exempt from entity-level taxation;

(C) The entity distributes at least eighty-five percent (85%) of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis;

(D) More than ten percent (10%) of the voting power or value in the entity is not held directly, indirectly, or constructively by a single entity or individual, or the shares or beneficial interests of the entity are regularly traded on an established securities market; and

(E) The entity is organized in a country that has a tax treaty with the United States.

(d) The dividends-paid deduction otherwise allowed by federal law in computing net income of a real estate investment trust that is subject to federal income tax shall be added back in computing the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., if the real estate investment trust is a captive real estate investment trust.

(e) (1) A real estate investment trust that does not become regularly traded on an established securities market within one (1) year of the date on which it first became a real estate investment trust shall not be considered to have been regularly traded on an established securities market, retroactive to the date it first became a real estate investment trust, and the owner of the real estate investment trust shall file an amended return reflecting the retroactive designation for any tax year or part year occurring during its initial year of status as a real estate investment trust.

(2) Under this section, a real estate investment trust becomes a real estate investment trust on the first day that it has:

(A) Met the requirements of 26 U.S.C § 856 as in effect on January 1, 2009; and

(B) Elected to be treated as a real estate investment trust under 26 U.S.C. § 856(c)(1), as in effect on January 1, 2009, by the owner of the real estate investment trust.

(f) Under this section, the constructive ownership rules of 26 U.S.C. § 318(a), as in effect on January 1, 2009, as modified by 26 U.S.C. § 856(d)(5), as in effect on January 1, 2009, shall apply in determining the ownership of stock, assets, or net profits of a person.

(g) An election made for federal income tax purposes under Subchapter M of the Internal Revenue Code of 1986, as in effect on January 1, 2009, shall be deemed made for state income tax purposes.

(h) This section shall take effect and be enforced for tax years beginning on or after January 1, 2009.

History. Acts 1989, No. 583, § 5; 1995, No. 1160, § 13; 1997, No. 951, § 24; 1999, No.

1126, § 36; 2001, No. 773, § 10; 2007, No. 218, § 31; 2007, No. 827, § 217; 2009, No. 372, § 22.

A.C.R.C. Notes. A comma following the word “trusts” in subsection (a) could not be inserted pursuant to § 1-2-303.

This section was amended by Acts 2007, No. 827, § 217. However, pursuant to Acts 2007, No. 827, § 240, this section is set out as amended by Acts 2007, No. 218, § 31.

Publisher's Notes. Acts 1995, No. 1160, § 42, provided that the 1995 amendments are applicable for taxable years beginning on or after January 1, 1995.

Acts 1997, No. 951, § 34, provided that: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 2007 amendment by No. 218 substituted “January 1, 2007” for “January 1, 2001” throughout the section; and substituted “is adopted” for “is adopted as state income tax law” in (a)(1).

The 2007 amendment by No. 827 deleted (c).

The 2009 amendment substituted “2009” for “2007” twice in (a)(1) and in (g) and (h); inserted (b) through (f) and redesignated the remaining subsections accordingly; and made a minor stylistic change.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2001, No. 773, § 12: effective for tax years beginning on and after January 1, 2001.

Acts 2009, No. 372, § 25, provided: “This act is effective for tax years beginning on and after January 1, 2009.”

U.S. Code. Subchapter M of the Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 851 et seq. The Investment Company Act of 1940 is codified as 15 U.S.C. § 80a-1 et seq.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-51-441. Contribution to Olympic Committee Program.

(a) (1) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form, and on all corporate income tax forms, a designation as follows:

(A) If you are entitled to a refund, check if you wish to designate \$1, \$5, \$10, \$ (write in amount), or all refund due, of your tax refund for the United States Olympic Committee Program. Your refund will be reduced by this amount.

(B) If you owe an additional amount, check if you wish to contribute an additional \$1, \$5, \$10, \$ (write in amount) for the United States Olympic Committee Program. If you wish to make a contribution to the program, you must enclose a separate check for the amount of your contribution, payable to the United States Olympic Committee Program.

(2) The United States Olympic Committee checkoff program on state income tax returns shall be effective beginning with the returns for the 1993 income year and each income year thereafter.

(3) The Director of the Department of Finance and Administration shall have the authority to promulgate all rules and regulations and all income tax forms, returns, and schedules necessary to carry out this program.

(b) The Department of Finance and Administration shall quarterly certify to the Treasurer of State the amount contributed to the program through this state income tax checkoff during the quarter as authorized by this section, and the Treasurer of State shall deduct from the Individual Income Tax Withholding Fund the amount so certified.

(c) (1) There is hereby created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a United States Olympic Committee Program Trust Fund. The Treasurer of State shall credit to the fund the amount certified each quarter in accordance with subsection (b) of this section.

(2) The moneys credited to this fund shall be held as trust funds in interest-bearing accounts only. All interest earned shall be credited to the program fund and shall be used only for the purposes of that fund. At the end of each fiscal year, the Treasurer of State shall transfer all designated moneys in the fund to the United States Olympic Committee.

(3) All funds deposited into the fund and all interest earned on deposits and fund balances in the fund may be disbursed as appropriated in each fiscal year of the biennium for the program created by this section.

(d) (1) The Director of the Department of Finance and Administration is authorized to accept any gifts, grants, bequests, devises, and donations made to the State of Arkansas for the purpose of funding the United States Olympic Committee Program.

(2) The director shall deposit any of these gifts, grants, bequests, devises, and donations so received into the United States Olympic Committee Program Trust Fund. These gifts, grants, bequests, devises, and donations shall be used together with any other funds appropriated for funding the program provided for in this section.

(3) All gifts, grants, bequests, devises, and donations shall be deposited, disbursed, budgeted, and regulated under the procedures prescribed by the Chief Fiscal Officer of the State under § 19-4-806.

(4) (A) The provisions of this section allowing the Director of the Department of Finance and Administration to accept gifts, grants, bequests, devises, and donations shall be effective on August 13, 1993.

(B) The director is authorized to promulgate rules and regulations to carry out those provisions of this section.

(e) The Revenue Division of the Department of Finance and Administration shall be authorized to establish any regulation to effectively carry out the revenue-producing provisions of this section.

History. Acts 1993, No. 471, §§ 1-4.

A.C.R.C. Notes. References to “this chapter” in subchapters 1—13 may not apply to this section which was enacted subsequently.

26-51-442. Sale of property to comply with conflict-of-interest requirements.

Section 1043 of the Internal Revenue Code of 1986, as in effect on January 1, 1993, is hereby adopted.

History. Acts 1993, No. 785, § 18.

A.C.R.C. Notes. References to “this chapter” in subchapters 1—13 may not apply to this section which was enacted subsequently.

Publisher's Notes. Acts 1993, No. 785, § 20, provides that the 1993 enactment is effective for taxable years beginning on and after January 1, 1993.

U.S. Code. Section 1043 of the Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 1043.

26-51-443. Allocation of unstated interest — Foregone interest.

(a) Section 483 of the Internal Revenue Code of 1986, as in effect on January 1, 1999, regarding the allocation of unstated interest, is adopted for the purpose of computing Arkansas income tax liability.

(b) Section 7872 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, regarding the taxation of foregone interest on a below-market loan, is adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1993, No. 785, § 10; 1997, No. 951, § 18; 1999, No. 1126, § 37; 2007, No. 218, § 32.

Publisher's Notes. Acts 1993, No. 785, § 20, provides that the 1993 enactment is effective for taxable years beginning on and after January 1, 1993. Acts 1997, No. 951, § 34, provided that Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 2007 amendment substituted “January 1, 2007” for “January 1, 1999” in (b).

U.S. Code. Sections 483 and 7872 of the Internal Revenue Code, referred to in this section, are codified as 26 U.S.C. § 483 and 7872.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

26-51-444. Deductions — Soil and water conservation.

Section 175 of the Internal Revenue Code of 1986, as in effect on January 1, 1995, regarding the deduction of certain expenditures related to soil and water conservation is hereby adopted.

History. Acts 1995, No. 560, § 2.

A.C.R.C. Notes. As enacted by Acts 1995, No. 560, § 2, this section began: “Effective for taxable years beginning on or after January 1, 1995.”

References to “this chapter” in subchapters 1—13 may not apply to this section which was enacted subsequently.

Publisher's Notes. Acts 1995, No. 560, § 3, provided the act is effective for taxable years beginning on or after January 1, 1995.

U.S. Code. Section 175 of the Internal Revenue Code of 1986 is codified as 26 U.S.C. § 175.

26-51-445. Adoption expenses.

(a) Section 23 of the Internal Revenue Code of 1986, 26 U.S.C. § 23, as in effect on January 1, 2003, is adopted for purposes of determining the allowable credit for adoption-related fees, costs, and expenses paid or incurred by a taxpayer.

(b) The amount of credit allowed against Arkansas income tax due shall be twenty

percent (20%) of the federal credit as calculated pursuant to 26 U.S.C. § 23.

History. Acts 1995, No. 535, §§ 1-4; 1997, No. 951, § 32; 1999, No. 1126, § 38; 2003, No. 663, § 11.

A.C.R.C. Notes. References to “this chapter” in subchapters 1—13 may not apply to this section which was enacted subsequently.

Publisher's Notes. Acts 1997, No. 951, § 34, provided that Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 2003 amendment substituted “2003” for “1999.”

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2003, No. 663, § 14: applicable to tax years beginning on and after January 1, 2003.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax Computation, 26 U. Ark. Little Rock L. Rev. 381.

26-51-446. Long-term intergenerational security.

(a) (1) All distributions of funds other than principal from the trust shall be taxable as provided in the Arkansas Income Tax Act, § 26-51-101 et seq.

(2) All distributions from the trust shall be deemed principal until all contributions of principal have been withdrawn.

(b) (1) In addition to any income tax imposed for distributions from the long term intergenerational trust as provided in subsection (a) of this section, there is hereby imposed a twenty percent (20%) penalty on all distributions from the trust in violation of this subchapter.

(2) The penalty shall be collected by the Department of Finance and Administration and shall be deposited in the State Treasury as general revenue.

(c) A beneficiary must file a copy of the long-term intergenerational security trust agreement with his or her income tax return for each taxable year the beneficiary claims the tax benefits provided in this subchapter.

(d) Upon the death of the beneficiary, all funds remaining in the long-term intergenerational security trust shall be distributed to the beneficiary's estate, and all undistributed income shall be included in the beneficiary's final tax return.

History. Acts 1995, No. 1303, §§ 4, 5, 7, 8.

A.C.R.C. Notes. Acts 1995, No. 1303, is also codified as § 28-72-501 et seq.

References to “this chapter” in subchapters 1—13 may not apply to this section which was enacted subsequently.

26-51-447. Deductions — Tuition to post-secondary educational institutions.

(a) In computing net income for the purposes of the Arkansas Income Tax Act, as amended, § 26-51-101 et seq., there shall be allowed as a deduction in addition to all other deductions allowed by law for a portion of the amount paid by the taxpayer as tuition for the taxpayer, the taxpayer's spouse or dependent to attend a post-secondary educational institution. The deduction shall be equal to fifty percent (50%) of the lesser

of either the amount of tuition paid or the weighted average tuition for post-secondary educational institutions of the same classification.

(b) On or before November 30, 1998 of each year thereafter, the director shall determine the weighted average tuition of post-secondary institutions of each of the following classifications:

- (1) Four-year institutions of higher education;
- (2) Two-year institutions of higher education; and
- (3) Technical institutes.

(c) (1) For the purpose of this section, “weighted average tuition” means the tuition cost resulting from the following calculation:

(A) Add the products of the annual tuition at each state-supported post-secondary institution of the same classification multiplied by that institution's total number of fiscal-year-equated students; and

(B) Divide the gross total of the product from subdivision (1)(A) of this subsection by the total number of fiscal-year-equated students attending each state-supported post-secondary institution of the same classification.

(2) For four-year institutions of higher education only undergraduate tuition and undergraduate students shall be used in calculating weighted average tuition.

History. Acts 1997, No. 1075, § 1.

Effective Dates. Acts 1997, No. 1075, § 2: effective for tax years beginning on or after January 1, 1998.

26-51-448. Educational individual retirement accounts.

(a) Section 530 of the Internal Revenue Code of 1986, as in effect on January 1, 2009, relating to educational individual retirement accounts, is adopted for the purposes of computing Arkansas income tax liability.

(b) Any additional tax or penalty imposed by this section shall be ten percent (10%) of the amount of any additional tax or penalty provided in the federal income tax law adopted by this section.

History. Acts 1999, No. 513, § 2; 2003, No. 218, § 2; 2005, No. 675, § 13; 2009, No. 372, § 23.

Amendments. The 2003 amendment deleted “federal” preceding “Internal” and substituted “January 1, 2002” for “January 1, 1999.”

The 2005 amendment substituted “January 1, 2005” for “January 1, 2002.”

The 2009 amendment substituted “2009” for “2005” in (a).

U.S. Code. Section 530 the Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 530.

Effective Dates. Acts 1999, No. 513, § 3: effective for tax years beginning on or after January 1, 1999.

Acts 2003, No. 218, § 3: applicable to tax returns filed for tax years beginning on or after January 1, 2002.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Acts 2009, No. 372, § 25, provided: “This act is effective for tax years beginning on and after January 1, 2009.”

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Internal Revenue Code

26-51-449. Contribution to the Arkansas School for the Blind and the Arkansas School for the Deaf.

(a) (1) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form, and on all corporate income tax forms, a designation as follows:

“(A) If you are entitled to a refund, check if you wish to designate [] \$1, [] \$5, [] \$10, [] _____ (write in amount) or [] all refund due of your tax refund for the Arkansas School for the Blind and the Arkansas School for the Deaf. Your refund will be reduced by this amount.

(B) If you owe an additional amount, check if you wish to contribute an additional [] \$1, [] \$5, [] \$10, [] _____ (write in amount) for the Arkansas School for the Blind and the Arkansas School for the Deaf. If you wish to make a contribution to the schools, you must enclose a separate check for the amount of your contribution payable to the Department of Finance and Administration.”

(2) The Arkansas School for the Blind and the Arkansas School for the Deaf checkoff program on state income tax returns shall be effective beginning with the returns for the 2001 income year and each income year thereafter.

(3) The Director of the Department of Finance and Administration may promulgate all rules and regulations and all income tax forms, returns, and schedules necessary to implement this section.

(b) The Department of Finance and Administration shall quarterly certify to the Treasurer of State the amount contributed to the Arkansas School for the Blind and the Arkansas School for the Deaf through this state income tax checkoff during the quarter, and the Treasurer of State shall deduct from the Individual Income Tax Withholding Fund the amount so certified.

(c) The Treasurer of State shall credit fifty percent (50%) of the amount certified each quarter to the School for the Blind Fund Account and fifty percent (50%) to the School for the Deaf Fund Account.

History. Acts 2001, No. 1556, § 1.

Cross References. School for the Blind Fund Account, § 19-5-304.

School for the Deaf Fund Account, § 19-5-304.

26-51-450. Deductions — Small business guaranty fees.

(a) In computing net income, there shall be allowed as a deduction the amount paid during a taxable year to the United States Small Business Administration as a guaranty fee associated with the acquisition of Small Business Administration financing.

(b) The deduction shall be taken only by the small business which is the primary obligor in the financing transaction and which paid the fee.

(c) “Small business” means any corporation, partnership, sole proprietorship, limited liability corporation, or other business entity qualifying as “small” under the standards contained in 13 C.F.R. § 121, as in effect on January 1, 2001.

(d) The Revenue Division of the Department of Finance and Administration may

promulgate regulations as necessary to administer this section.

History. Acts 2001, No. 1558, § 1.

Publisher's Notes. Acts 2001, No. 1558, § 2, provided:

"The income tax provisions of this act shall be in full force and effect for all taxable years beginning on and after January 1, 2001."

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-51-451. Voluntary contributions to Organ Donor Awareness Education Trust Fund.

(a) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form and on all corporate income tax forms, the opportunity to allow taxpayers to voluntarily apply any amount of their tax refund for organ donor awareness education.

(b) Funds collected pursuant to this section shall be credited to the Organ Donor Awareness Education Trust Fund.

History. Acts 2003, No. 1362, § 3[6].

A.C.R.C. Notes. References to "this chapter" in subchapters 1 through 14 may not apply to this section, which was enacted subsequently.

References to "this subchapter" in §§ 26-51-401 through 26-51-450 may not apply to this section, which was enacted subsequently.

Acts 2003, No. 1362 contained two sections designated as Section 2, Section 3, and Section 4 each.

26-51-452. Organ Donor Awareness Education Trust Fund — Rules and regulations.

The Director of the Department of Finance and Administration shall promulgate all rules and regulations and all income tax forms, returns, schedules, or other materials necessary to carry out the provisions of § 26-51-451.

History. Acts 2003, No. 1362, § 3[6].

A.C.R.C. Notes. References to "this chapter" in subchapters 1 through 14 may not apply to this section, which was enacted subsequently.

References to "this subchapter" in §§ 26-51-401 through 26-51-450 may not apply to this section, which was enacted subsequently.

Acts 2003, No. 1362, contained two sections designated as Section 2, Section 3 and Section 4 each.

26-51-453. Health savings accounts.

(a) Subsections (a)-(d), (e)(2), (f), and (g) of § 223 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, regarding a deduction from income for amounts deposited to health savings accounts, is adopted for purposes of computing Arkansas income tax liability.

(b) A health savings account is exempt from tax under this chapter unless it no longer

meets the requirements of subsection (a) of this section.

History. Acts 2005, No. 94, § 1; 2007, No. 218, § 33.

Amendments. The 2007 amendment substituted "January 1, 2007" for "January 1, 2005" in (a).
Effective Dates. Acts 2005, No. 94, § 6: effective for tax years beginning on or after January 1, 2004.

26-51-454. Contribution to Arkansas Area Agencies on Aging.

(a) (1) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form, and on all corporate income tax forms, a designation as follows:

"If you are entitled to a refund, check if you wish to designate \$1, \$5, \$10, _____ (write in amount) or all refund due of your tax refund for the Arkansas Area Agencies on Aging to fund programs and activities for senior citizens. Your refund will be reduced by this amount.

If you owe an additional amount, check if you wish to contribute an additional \$1, \$5, \$10, _____ (write in amount) for the Arkansas Area Agencies on Aging to fund programs and activities for senior citizens. If you wish to make a contribution to the Arkansas Area Agencies on Aging, you must enclose a separate check for the amount of your contribution payable to the Department of Finance and Administration."

(2) The Arkansas Area Agencies on Aging check-off program on state income tax returns shall be effective beginning with the returns for the 2005 tax year and each subsequent tax year.

(3) The Director of the Department of Finance and Administration may promulgate rules and develop all income tax forms, returns, and schedules necessary to implement this section.

(b) The department shall quarterly certify to the Treasurer of State the amount contributed to the Arkansas Area Agencies on Aging through this state income tax check-off during the quarter, and the Treasurer of State shall deduct from the Individual Income Tax Withholding Fund the amount certified.

(c) The Treasurer of State shall credit the amount certified each quarter to the Area Agencies on Aging Fund.

History. Acts 2005, No. 1821, § 1.

Cross References. Area Agencies on Aging Fund, § 19-5-1228.

26-51-455. Income tax check-off program for contributions to the Newborn Umbilical Cord Blood Initiative.

(a) (1) It is the purpose of this section to provide a means by which an individual taxpayer may designate a portion or all of his or her income tax refund to be withheld and contributed for the purposes set forth in this section.

(2) It is the intent of the General Assembly that the income tax check-off program established in this section is supplemental to any funding and in no way is intended to take the place of funding that would otherwise be appropriated for this purpose.

(b) The Revenue Division of the Department of Finance and Administration shall

include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form and on all corporate income tax forms, a designation as follows:

“(1) If you are entitled to a refund, check if you wish to designate \$1, \$5, \$10, \$20, \$_____ (write in amount), or all refund due of your tax refund for the Newborn Umbilical Cord Blood Initiative. Your refund will be reduced by this amount. (2) If you owe an additional amount, check if you wish to contribute an additional \$1, \$5, \$10, \$20, \$_____ (write in amount) for the Newborn Umbilical Cord Blood Initiative. If you wish to make a contribution to the program, you must enclose a separate check for the amount of your contribution, payable to the Newborn Umbilical Cord Blood Initiative.”

(c) The Department of Finance and Administration shall certify quarterly to the Treasurer of State the amount contributed to the program through this state income tax checkoff during the quarter as authorized by this section, and the Treasurer of State shall deduct from the:

(1) Individual Income Tax Withholding Fund the amount certified by the department as contributed to the program on individual income tax forms; and

(2) Corporate Income Tax Withholding Fund the amount certified by the department as contributed to the program on corporate income tax forms.

(d) The Director of the Department of Finance and Administration shall promulgate all rules and all income tax forms, returns, and schedules necessary to carry out the program.

History. Acts 2007, No. 695, § 1; 2009, No. 655, § 7.

Amendments. The 2009 amendment rewrote (c), which read: “The Department of Finance and Administration shall certify quarterly to the Treasurer of State the amount contributed to the program through this state income tax checkoff during the quarter as authorized by this section, and the Treasurer of State shall deduct from the Income Tax Withholding Fund the amount so certified.”

Research References

Ark. L. Rev.

Comment, Tiny Wonders, Huge Possibility: Arkansas Act 695 and the Stem Cell Phenomenon, 61 Ark. L. Rev. 673.

26-51-456. Contribution to Arkansas Tax-Deferred Tuition Savings Program account.

(a) (1) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form, a designation as follows:

“If you are entitled to a refund, check if you wish to designate \$25, \$50, \$100, _____ (write in amount) or all of your tax refund to an Arkansas Tax-Deferred Tuition Savings Program account. Your refund will be reduced by this amount.”

(2) The Arkansas Tax-Deferred Tuition Savings Program account must already be in existence at the time the election in subdivision (a)(1) of this section is made, and the pertinent information regarding the Arkansas Tax-Deferred Tuition Savings Program account must be provided to the Department of Finance and Administration so that the deposit can be correctly made.

(b) The Arkansas Tax-Deferred Tuition Savings Program check-off program on state

income tax returns shall be effective beginning with the returns for the 2009 tax year and each subsequent tax year.

(c) The Director of the Department of Finance and Administration shall promulgate rules and develop all income tax forms, returns, and schedules necessary to implement this section.

History. Acts 2009, No. 211, § 1.

Subchapter 5 **— Tax Credits Generally**

26-51-501. Personal tax credits.

26-51-502. Household and dependent care services.

26-51-503. Support of a child with a developmental disability.

26-51-504. Income from sources outside Arkansas.

26-51-505. Establishment or expansion of manufacturing enterprise.

26-51-506. Tax credit for waste reduction, reuse, or recycling equipment —
Eligibility.

26-51-507. Employer-provided child care — As qualified under § 26-52-401.

26-51-508. Employer-provided child care — As qualified under § 26-52-516 or § 26-53-132.

26-51-509. Youth apprenticeship program.

26-51-510. [Repealed.]

26-51-511. Coal mining, producing, and extracting.

26-51-512. Rice straw tax credit.

26-51-513. Arkansas historic rehabilitation income tax credit.

26-51-514. Cigarette receptacle tax credit. [Effective if contingency in Acts 2009, No. 1500, § 2 is met.].

A.C.R.C. Notes. Acts 2007, No. 518, § 3, as amended by Acts 2009, No. 349, § 1, provided:

“Definitions.

“As used in this act:

“(1) 'Economically distressed area' means a county-wide area in Arkansas in which the percentage of families that earn income below poverty level exceeds twenty-three percent (23%), based on year 2000 income levels as compiled by the Bureau of the Census, United States Department of Commerce demographic profiles;

“(2) 'Geotourism' means tourism that sustains or enhances the geographical character of an area including without limitation, its environment, heritage, aesthetics, culture, natural resources, and well-being of its residents.

“(3) 'Geotourism attraction' means an environmental, aesthetic, cultural, or natural point of interest in an area of natural phenomena or scenic beauty that attracts tourists to experience and appreciate the environmental, aesthetic, cultural, or natural point of interest including without limitation:

“(A) A geological monument;

“(B) A lake;

“(C) A mountain;

“(D) A park;

“(E) A river;

“(F) A species of animal abundant or unique to a particular area;

“(G) A species of bird abundant or unique to a particular area;

“(H) A species of insect abundant or unique to a particular area;

“(I) A wetland or aquatic resources area; and

“(J) An historic site;

“(4) (A) 'Geotourism-supporting business' means a business necessary to support a geotourism attraction by constructing, expanding or re-modeling a retail facility including without limitation, cultural or educational centers, indoor or outdoor plays or music shows, recreational or entertainment facilities, sporting goods retail and rental establishments, guide services, transient lodging facilities including RV parks, arts and antique shops, campgrounds, bed and breakfasts, and dining establishments.

“(B) 'Geotourism-supporting business' does not include:

“(i) Facilities that are not open to the general public; or

“(ii) Facilities owned by the State of Arkansas or a political subdivision of the state.

“(5) 'Geotourism tax credit' means an tax credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., or a credit against the premium taxes under §§ 26-57-603 — 26-57-605.

“(6) 'Geotourist' means a person who travels to an area to enjoy the area's natural habitats, heritage sites, scenic appeals, and local culture;

“(7) 'Holder' means the holder of a geotourism tax credit that is:

“(A) A person or entity subject to the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq.; or

“(B) An insurance company paying an annual premium tax on its gross premium receipts under §§ 26-57-603 — 26-57-605.

“(8) 'Lower Mississippi River Delta' means a county in Arkansas or portion of a county in Arkansas whose land area includes an alluvial plain created by the Mississippi River; and

“(9) 'Person or entity' means a sole proprietorship, partnership, LLC, or corporation.”

“(10) 'Tourism attraction' means the same as defined under A.C.A. § 15-11-503;

“(11) 'Tourism attraction project' means the same as defined under A.C.A. § 15-11-503;

and

“(12) 'Tourism-supporting business' means a business that is open to the general public and provides goods or services necessary to support a tourism attraction and includes without limitation, restaurants, retail establishments, and lodging.”

Acts 2007, No. 518, § 4, as amended by Acts 2009, No. 349, § 1, provided:

“Income tax credit for geotourism development.

“(a) To qualify for a geotourism tax credit, a person or entity shall invest a minimum of twenty-five thousand dollars (\$25,000) in a geotourism-supporting business located in the Lower Mississippi River Delta that is:

“(1) In an economically distressed area or a county that borders two (2) counties defined as economically distressed.

“(2) In an unincorporated area or a city with a population of less than sixteen-thousand (16,000) as determined by the U.S. Census Report of 2000;

“(3) Within thirty (30) miles of a national scenic byway; and

“(4) Within fifteen (15) miles of:

“(A) Public access to a navigable river; or

“(B) An Arkansas State Park; or

“(C) An Arkansas State Game and Fish Commission Wildlife

Management Area; or

“(D) A National Wildlife Refuge.

“(b) (1) A geotourism tax credit is equal to twenty-five percent (25%) of the amount of an investment described in subsection (a) of this Section 4.

“(2) For any tax year, the maximum amount of investment for a geotourism tax credit under this act is one hundred thousand dollars (\$100,000).”

Acts 2007, No. 518, § 5, as amended by Acts 2009, No. 349, § 1, provided:

“Rules and regulations.

“(a) To claim a geotourism tax credit under Section 4 of this act, a person or entity shall submit evidence to the Department of Finance and Administration that:

“(1) The person or entity has made a minimum investment of twenty five thousand dollars (\$25,000); and

“(2) The investment is used to construct, expand, or remodel a geotourism-supporting business.

“(b) To claim a geotourism tax credit that has been transferred, sold, or assigned to another person or entity, the transferee, buyer, or assignee of the geotourism tax credit shall submit evidence to the Department of Finance and Administration that:

“(1) The person or entity has made a minimum investment of one hundred thousand dollars (\$100,000); and

“(2) The investment is used to construct, expand, or remodel a geotourism-supporting business, a tourism attraction, or tourism-supporting business project within the state but not within the Lower Mississippi River Delta.

“(c) If a geotourism tax credit is transferred, sold, or assigned to a person or entity that qualifies for a geotourism tax credit under Section 4 of this act, the minimum investment is twenty-five thousand dollars (\$25,000).

“(d) The Department of Finance and Administration shall promulgate rules necessary to implement this act.

“(e) The Department of Finance and Administration shall consult with the Arkansas Department of Parks and Tourism in promulgating rules under this act.

“(f) The Department of Finance and Administration and the Arkansas Department of Parks and Tourism may inspect facilities and records of a person or an entity requesting or receiving an income tax credit under this act as necessary to verify a claim.”

Acts 2007, No. 518, § 6, as amended by Acts 2009, No. 349, § 1, provided:

“Use and transfer of credit.

“(a) (1) A holder may claim all or part of a geotourism tax credit for a taxable year up to an amount that is equal to, but that does not exceed, the amount of income tax or premium tax due by the holder.

“(2) If a holder does not use the total amount of the geotourism tax credit for a taxable year, a holder may carry forward any remainder of the geotourism tax credit.

“(3) A holder may carry forward any remainder of a geotourism tax credit for five (5) taxable years after the date of the original issuance of the geotourism tax credit or until the amount of the geotourism tax credit is exhausted, whichever occurs first.

“(b) (1) A holder may transfer, sell, or assign all or part of the geotourism tax credit to:

“(A) A person or entity that meets the criteria in Section 4 of this act; or

“(B) A person or entity that invests a minimum of one hundred thousand dollars (\$100,000) in any county for the purpose of constructing, expanding, or remodeling a geotourism-supporting business, a tourism attraction, or tourism-supporting business project within the state.

“(2) A holder is not required to have any ownership or other interest in the investment for which a geotourism tax credit is claimed.

“(c) (1) If there is no executed agreement for an alternative distribution of a geotourism tax credit, a geotourism tax credit granted to a partnership, a limited liability company taxed as a partnership, an S-corporation, or multiple owners of property is passed through to the partners, members, or owners on a pro rata basis.

“(d) A holder that transfers, sells, or assigns all or part of a geotourism tax credit shall perfect the transfer, sale, or assignment by notifying the Department of Finance and Administration in writing within thirty (30) calendar days following the effective date of the transfer, sale, or assignment.

“(e) (1) Any consideration received for the transfer, sale, or assignment of the geotourism tax credit shall not be included as income taxable by the State of Arkansas.

“(2) Any consideration paid for the transfer, sale, or assignment of the geotourism tax credit shall not be deducted from income taxable by the State of Arkansas.”

Acts 2007, No. 518, § 7, as amended by Acts 2009, No. 349, § 1, provided:

“Expiration and effective date.

“(a) This act expires at the end of the 2016 tax year and is effective for income tax years beginning January 1, 2009.”

Acts 2009, No. 349, § 1, omitted the phrase “under this act” from the introductory language of Acts 2007, No. 518, § 3(a). The Section 3 that the phrase was omitted from is now Section 4.

Publisher's Notes. Acts 1997, No. 951, § 34: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Preambles. Acts 1929, No. 118, contained a preamble which read:

"Whereas, this State has been neglectful of its Wards in the Charitable Institutions, which is a disgrace to the people of a Great Commonwealth, and it is imperative that additional Revenue should be provided to correct the fearful conditions which now exist; and

"Whereas, an equalization Fund should be provided to give equal Educational opportunities to the Boys and Girls of our Rural Communities; and

"Whereas, Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Ad Valorem Tax, thus penalizing and discouraging ownership of property, while many who enjoy the benefits of Government and have large incomes, pay almost nothing to support the Government; Therefore...."

Acts 1961, No. 411 contained a preamble which read:

"Whereas, corporations organized and existing under the laws of the State of Arkansas are required to pay income taxes to other states because of activities or presence of property therein; and

"Whereas, Arkansas corporations which have qualified to transact business in other states are, under present law, relieved from paying Arkansas income tax on income attributable to such other states, but corporations which have not qualified to transact business in other states, although subject to tax by such other states as to income attributable thereto, are required to pay Arkansas income tax on all their income, including income on which income tax is paid to such other states; and

"Whereas, it is the intention of the General Assembly to allow a credit to all persons, whether individuals, fiduciaries, partnerships or corporations, as to income derived from property located outside the State of Arkansas or from business transacted outside the State of Arkansas, where such person incurs liability for income tax to another state or territory...."

Acts 1967, No. 495, contained a preamble, which read:

"Whereas, there are some mentally retarded children in this State who are cared for by a state institution without cost to such child's parents, and

"Whereas, some parents of mentally retarded children care for such children at home, thus relieving the State of the financial burden of caring for such children, and

"Whereas, the care of such mentally retarded children by the parents is costly and represents a substantial saving to the State of Arkansas in tax dollars...."

Effective Dates. Acts 1929, No. 118, § 44: approved Mar. 9, 1929. Emergency clause provided:

"It is hereby ascertained and declared that the Hospital for Nervous Diseases is inadequate to properly care for all who should be confined therein, to the end there are many persons of unsound mind at large, who are a menace to the public safety, and that said Hospital as now equipped is inadequate to restrain those insane persons who are confined therein, so that there is danger of their escaping at any time and imperil the safety of the public; that there are hundreds and hundreds of persons desiring to enter the Tuberculosis Sanitarium who cannot now be accommodated there, because that institution has neither room, beds nor facilities for additional people, as a result said consumptives at large are spreading the disease amongst their families and friends; that the funds to be raised by this Act will be used for the better care of the charitable wards of this State and to provide better for the rural schools of this State; and it is therefore ascertained and declared that it is necessary for the public peace, health and safety that this Act go into immediate operation, and accordingly it is provided that this act shall take effect and be in force from and after its passage."

Acts 1941, No. 129, § 8: approved Mar. 11, 1941. Emergency clause provided: "Because of the various social problems caused by the failure of the State to provide adequate relief for its aged citizens, and it appearing that there is a dire need for additional funds to meet the requirements of the Social Security Act and give additional revenue to this State and because the old folks in this State are suffering by reason of the failure of the State to secure funds with which to pay Old Age Pensions, and [an] emergency is hereby found to exist and is so declared by the Legislature of

Arkansas; that this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage.”

Acts 1943, No. 162, § 3: approved Mar. 4, 1943. Emergency clause provided: “It is ascertained and hereby declared that Arkansas residents are being prevented from engaging in business and owning property in other states because of double income taxation on the same income, and that for the same reason persons now residents of other states are prevented from becoming citizens and residents of Arkansas, and that constitutes an emergency, and this Act, being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared, and this Act shall take effect and be in full force from and after its passage.”

Acts 1947, No. 135, § 9: approved Mar. 3, 1947. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the distribution of state revenues are such that a moderate diminution of certain of the revenues would have the effect of curtailing the activities of certain necessary agencies of the State Government, and that only the provisions of this Act will correct a situation which otherwise may deprive the citizens of this State from receiving the benefits which the operation of the State Government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from after its passage.”

Acts 1953, No. 320, § 4: approved Mar. 26, 1953. Emergency clause provided: “It is found by the General Assembly of this State that under the existing income tax law that persons owning and operating real estate located outside the State of Arkansas are not required to account for the income on said real estate in their Arkansas Income Tax Returns, but that they are permitted under the present law to take deductions by reason of expenditures and losses on said real estate and that by such method the State of Arkansas is being defeated of its just portion of taxes due this State. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage.”

Acts 1961, No. 411, § 2: effective for all taxable years ending Sept. 30, 1961 and thereafter.

Acts 1968 (2nd Ex. Sess.), No. 7, § 4: Jan. 1, 1968. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present definition in the Arkansas Income Tax Law as to what constitutes a “dependent” for the purposes of allowing a tax credit is unclear and unduly hampers the efficient administration of the Income Tax Laws of this State; that by such ambiguity creates an inequity in the administration of such laws; and that in order to clarify the definition of who constitutes a “dependent” for income tax credit purposes and to remedy this situation, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective and be in full force and effect from and after January 1, 1968.”

Acts 1969, No. 75, § 3: Feb. 20, 1969. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 413 of 1961, as amended, The Uniform Division of Income for Tax Purposes Act, provides for the apportionment of net income of multi-state transactions for income tax purposes; that in order to more efficiently administer the income tax laws of this State and to insure that Arkansas receives its fair share of income taxes from such transactions, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from and after its passage and approval.”

Acts 1969, No. 219, § 4: provisions of act applicable to 1969 income upon which the tax is paid in 1970.

Acts 1977, No. 629, § 3: Dec. 31, 1976.

Acts 1977, No. 734, § 4: Mar. 24, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that many taxpayers are unable to take a legitimate dependent care deduction if they file separately, and that this is an arbitrary and unreasonable distinction which will be repealed by this Act. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1979, No. 420, § 3: Mar. 20, 1979. Emergency clause provided: “It is hereby found and

determined by the General Assembly that the present definition of deaf persons is erroneous and this Act is immediately necessary to correct such error. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.” Acts 1983, No. 379, § 27: Dec. 31, 1982. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain provisions of the State's income and estate tax laws that have counterparts in the Federal tax laws do not coincide with recent amendments and changes to the Federal tax laws; and that this Act is immediately necessary to make the Arkansas tax laws conform with the Federal tax laws to clarify any possible question of confusion caused by such differences. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public, peace, health and safety shall be in full force and effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.”

Acts 1983, No. 785, § 8: Mar. 24, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that the current level of employment is unacceptable; and that it is incumbent upon the General Assembly to provide an economic climate conducive to the creation of jobs for the citizens of this State; and that the tax credit provided by this Act could serve as a stimulus for businesses to create needed job opportunities. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 382, § 34: Mar. 24, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the federal government has recently made major changes in the federal income tax law; that for simplicity of administration and equity various provisions of the federal law should be adopted for Arkansas Income Tax purposes; and that for the effective administration of this Act, the Act should become effective immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 172, § 5; effective beginning with returns for the 1991 income year.

Acts 1993, No. 654, § 5: Mar. 24, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that clarification of the law for the tax credit for waste reduction, reuse, or recycling equipment is necessary; that the use of Arkansas post-consumer waste should be encouraged by means of this credit; that the credit should be refunded or disallowed under certain circumstances; and that for the effective administration of this act, the act should become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: “It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 785, § 20: amendments to subchapters 1, 4, 5, 9, and 10 effective for taxable years beginning on and after January 1, 1993.

Acts 1993, Nos. 820 and 987, § 9: Apr. 1, 1993, and April 9, 1993, respectively. Emergency clause provided: “It is hereby found and determined by the General Assembly of this state that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this state and the state as a whole has been unable to compete with other state's incentive programs for economic development, and, that the incentives afforded by this Act are critical to the development and expansion of job opportunities in the state. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 850, § 8: effective for taxable years beginning January 1, 1995.

Acts 1995, No. 850, § 12: Mar. 31, 1995. Emergency clause provided: “It is hereby found and

determined by the General Assembly that the State of Arkansas is in serious need to provide for the health, welfare and education of the State's children by encouraging child care facilities to offer an "appropriate early childhood program" and this Act is designed to meet that need by providing tax incentives to encourage construction of these facilities. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 951, § 34, provided "Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time."

Acts 1997, No. 951, § 38: March 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto."

Acts 2001, No. 773, § 12: effective for tax years beginning on and after January 1, 2001.

Acts 2003, No. 663, § 14: effective for tax years beginning on and after January 1, 2003.

Acts 2003, No. 993, § 2: effective for tax years beginning on or after January 1, 2003.

Acts 2003, No. 1724, § 2: effective for tax years beginning on or after January 1, 2003.

Acts 2005, No. 675, § 17: effective for tax years beginning on or after January 1, 2005.

Acts 2005, No. 2247, § 2: effective for tax years beginning on or after January 1, 2006.

Acts 2009, No. 237, § 2: effective for tax years beginning on or after January 1, 2009.

Research References

Am. Jur. 71 Am. Jur. 2d, State Tax., § 549 et seq.

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Income Tax Amendments, 5 Ark. L. Rev. 371.

U. Ark. Little Rock L.J.

Survey of Arkansas Law, Taxation, 1 U. Ark. Little Rock L.J. 258.

26-51-501. Personal tax credits.

(a) There shall be deducted from the tax after the tax shall have been computed as set forth in this act a personal tax credit as follows:

(1) (A) For a single individual, the adjusted individual credit.

(B) However, a taxpayer who was blind or deaf at any time during the income year shall be entitled to an additional tax credit of twenty dollars (\$20.00).

(C) A single individual who is deaf-blind shall be entitled to an additional tax credit of forty dollars (\$40.00).

(D) A single individual of sixty-five (65) years of age or older shall be entitled to an additional tax credit of twenty dollars (\$20.00);

(2) (A) (i) (a) For the head of household, surviving spouse, or a married individual living with husband or wife, the adjusted joint credit.

(b) A husband and wife living together and filing either jointly or separately on the same income tax form shall receive only one (1) adjusted joint

credit against their aggregate tax.

(ii) Subdivision (a)(2)(A)(i) of this section shall apply if the Director of the Department of Finance and Administration continues to provide a tax return on which a husband and wife can elect to file jointly or separately on the same return.

(B) However, in the event that the husband or wife shall be sixty-five (65) years of age or older, each of them who is sixty-five (65) years of age or older shall be entitled to an additional tax credit of twenty dollars (\$20.00).

(C) However, any husband or wife filing a separate return on a separate tax form shall receive the adjusted individual credit on each return so filed, but if the husband or wife is sixty-five (65) years of age or older, each of them who is sixty-five (65) years of age or older shall be entitled to an additional tax credit of twenty dollars (\$20.00).

(D) "Head of household" shall have the same meaning as defined in § 2(b) of the Internal Revenue Code of 1986, as in effect on January 1, 2001.

(E) "Surviving spouse" shall have the same meaning as defined in § 2(a) of the Internal Revenue Code of 1986, as in effect on January 1, 2001;

(3) (A) For each individual, other than husband or wife, who has a gross income for the tax year of less than three thousand dollars (\$3,000), who has not filed a joint return with his or her spouse for the taxable year, and who is dependent upon and receives his or her chief support from the taxpayer, the adjusted individual credit.

(B) (i) As used in subdivision (a)(3)(A) of this section, "dependent" means the same as defined in § 152 of the Internal Revenue Code of 1986, as in effect on January 1, 2005.

(ii) "Dependent" does not include any individual who is a citizen or subject of a foreign country unless that individual is a resident of the United States or a country contiguous to the United States.

(C) (i) As used in subdivision (a)(3)(B) of this section, "brother" and "sister" include a brother or sister by half blood.

(ii) For the purpose of determining whether any of the foregoing relationships exist, a legally adopted child of a person shall be considered a child of that person by blood;

(4) In the case of a fiduciary:

(A) If taxable under § 26-51-203(a)(1), the adjusted individual credit;

(B) If taxable under § 26-51-203(a)(2), the same tax credit as would be allowed the deceased if living;

(C) If taxable under § 26-51-203(a)(3), the tax credit to which the beneficiary would be entitled; and

(5) In the case of a nonresident taxpayer, the taxpayer shall be entitled to that proportion of the tax credit granted by this act that the gross income within the state bears to the entire gross income wherever earned.

(b) (1) The status of the last day of the income year shall determine the right to the tax credits provided in this section.

(2) However, a taxpayer shall be entitled to tax credits for a husband or wife or a dependent who has died during the income year.

(c) (1) As used in this section, "blind person" means any person:

- (A) Who is totally blind, cannot tell light from darkness;
 - (B) A person whose central visual acuity does not exceed $20/200$ in the better eye with correcting lenses; or
 - (C) Whose fields of vision are so limited that the widest diameter of the visual field subtends an angle no greater than twenty degrees (20°).
- (2) For the purposes of subdivision (a)(1) of this section:
 - (A) An individual is deaf only if his or her average loss in the speech frequencies which are 500 to 2,000 Hertz in the better ear is 86 decibels, I.S.O. or worse; and
 - (B) An individual is deaf-blind only if he or she is both deaf and blind.
- (d) For the purposes of this section:
 - (1) "Adjusted individual credit" shall be twenty dollars (\$20.00); and
 - (2) "Adjusted joint credit" shall be forty dollars (\$40.00).
- (e) (1) (A) Not later than July 15 of each calendar year, the Director of the Department of Finance and Administration shall increase the adjusted individual credit and adjusted joint credit by the cost-of-living adjustment for that current calendar year, rounding each amount to the nearest dollar.
 - (B) The annual cost-of-living adjustment shall apply to the adjusted credits as contained in subdivisions (d)(1) and (2) of this section.
- (2) (A) For purposes of subdivision (e)(1) of this section, the cost-of-living adjustment for any calendar year is the percentage, if any, by which the Consumer Price Index for the calendar year preceding the taxable year exceeds the Consumer Price Index for the calendar year 2001.
 - (B) The Consumer Price Index for any calendar year is the average of the Consumer Price Index as of the close of the twelve-month period ending on August 31 of that calendar year.
 - (C) As used in this subsection, "Consumer Price Index" means the last Consumer Price Index for all urban consumers published by the United States Department of Labor.
- (3) The adjusted credit amounts shall apply for tax years beginning on and after January 1, 2003.
- (4) The director shall not increase the adjusted credit for any calendar year unless the conditions of subsection (f) of this section are met.
- (f) The adjusted credit applicable for any calendar year shall not be increased unless:
 - (1) The net available general revenue forecast provided to the Joint Committee on Economic and Tax Policy pursuant to § 10-3-1404 in May of the calendar year for which a credit increase is contemplated indicates that net available general revenue growth for the fiscal year beginning in the calendar year for which a credit increase is contemplated will be four and two-tenths percent (4.2%) or greater; and
 - (2) Either:
 - (A) The net available general revenues for the fiscal year ending in the calendar year for which a credit increase is contemplated exceed the official forecast by at least one-half of one percent (0.5%); or
 - (B) The net available general revenues for the fiscal year ending in the calendar year for which a credit increase is contemplated exceed the total distributions for that fiscal year under the provisions of the Revenue Stabilization Law, § 19-5-101 et seq.

(g) Section 151(c)(6) of the Internal Revenue Code of 1986, as in effect on January 1, 2003, regarding the tax treatment of kidnapped children, is adopted for the purpose of computing Arkansas income tax liability.

History. Acts 1929, No. 118, Art. 3, § 16; Pope's Dig., § 14039; Acts 1941, No. 129, § 1; 1947, No. 135, § 4; 1951, No. 19, § 1; 1957, No. 20, § 2; 1968 (2nd Ex. Sess.), No. 7, § 1; 1969, No. 219, §§ 1, 3; 1969, No. 243, § 1; 1975, No. 994, § 1; 1977, No. 629, §§ 1, 2; 1979, No. 420, § 1; 1983, No. 506, § 1; A.S.A. 1947, §§ 84-2021, 84-2021a, 84-2021.3; Acts 1987, No. 382, § 24; 1993, No. 785, §§ 11, 12; 2001, No. 1819, § 1; 2003, No. 663, § 12; 2005, No. 675, § 14.

A.C.R.C. Notes. As enacted by Acts 2001, No. 1819, § 1, subdivision (e)(1)(A) of this section began:

“Not later than July 15 of calendar year 2003, and of each subsequent calendar year,”.

As enacted by Acts 2001, No. 1819, § 1, subsection (f) of this section began:

“The adjusted credit applicable for any calendar year beginning on and after January 1, 2003, shall not be increased unless:”.

Publisher's Notes. Acts 1951, No. 19, § 2, provided:

“The provisions of this act shall apply to income earned on and after January 1, 1951.”

Acts 1975, No. 994, § 2, provided:

“The provisions of this act shall be effective in regard to income tax returns filed in 1976, with respect to income earned in 1975, and thereafter.”

Acts 1983, No. 506, § 2, provided that this act shall apply to tax years beginning after January 1, 1983.

Acts 1987, No. 382, § 1, provided:

“This act shall be known and may be cited as the ‘Income Tax Act of 1987.’”

Acts 1987, No. 382, § 2, provided that the purpose of this act is to make technical amendments to the Income Tax Act of 1929, Acts 1929, No. 118, as amended, and to the Arkansas Tax Procedure Act, Acts 1979, No. 401, as amended, to make the Arkansas income tax and tax procedure statutes conform to several recent amendments to their counterparts in the federal income statutes, to eliminate procedural problems that have arisen since the enactment of these acts, and for other purposes.

Acts 1987, No. 382, § 32(e), provided that all other laws and parts of laws in conflict with this act are repealed for income years beginning on and after January 1, 1987.

Acts 1987, No. 382, § 33, provided that, except as provided in § 26-18-303(a)(2)(B) and (c), regarding confidentiality of tax returns and other tax information, which shall apply retroactively to any pending suit, action, or prosecution, administrative or judicial, for which no final judgment has been rendered by a court of competent jurisdiction and all future suits, actions, and prosecutions, the provisions of this act shall apply to income years beginning on and after January 1, 1987.

Acts 1993, No. 785, § 20, provides that the 1993 amendment is effective for taxable years beginning on and after January 1, 1993.

Amendments. The 2003 amendment added (g).

The 2005 amendment rewrote (a)(3)(B).

Meaning of “this act”. Acts 1929, No. 118, codified as §§ 26-51-101 — 26-51-107, 26-51-201 — 26-51-204, 26-51-303, 26-51-401 — 26-51-406, 26-51-410 — 26-51-412, 26-51-415 — 26-51-417, 26-51-423 — 26-51-431, 26-51-436, 26-51-501, 26-51-801 — 26-51-804, 26-51-806 — 26-51-809, and 26-51-811 — 26-51-815.

U.S. Code. Section 2 of the Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 2.

Effective Dates. Acts 2003, No. 663, § 14: applicable to tax years beginning on and after January 1, 2003.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax

Case Notes

In General.
Applicability.
Aggregate Net Income.
Nonresidents.

In General.

Administrative rule held void as an attempt to amend this section. State ex rel. Att'y Gen. v. Burnett, 200 Ark. 655, 140 S.W.2d 673 (1940).

Applicability.

This section applies to both residents and nonresidents without discrimination between them, but deals only with incomes derived from property or business conducted in Arkansas and has no relation whatever to incomes derived by nonresidents from sources outside the state. State ex rel. Att'y Gen. v. Burnett, 200 Ark. 655, 140 S.W.2d 673 (1940).

Aggregate Net Income.

Aggregate net income as used in this section has relation to the aggregate net income of husband and wife living together derived from property in the state or from business carried on in the state. State ex rel. Att'y Gen. v. Burnett, 200 Ark. 655, 140 S.W.2d 673 (1940).

Nonresidents.

Net income of nonresident taxpayer's spouse derived from sources outside the state should not be taken into account in allowing exemptions. State ex rel. Att'y Gen. v. Burnett, 200 Ark. 655, 140 S.W.2d 673 (1940).

26-51-502. Household and dependent care services.

(a) A credit shall be allowed to individuals against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for expenses for household and dependent care services necessary for gainful employment in the manner prescribed by subsection (b) of this section.

(b) (1) Section 21 of the Internal Revenue Code of 1986, as in effect on January 1, 2007, is adopted for purposes of determining the allowable credit under the Income Tax Act of 1929, § 26-51-101 et seq., for household and dependent care services necessary for gainful employment.

(2) The amount of credit shall be twenty percent (20%) of the federal credit allowable.

(c) (1) (A) (i) A credit, which is equal to twenty percent (20%) of the federal child care credit as allowed under § 21 of the Internal Revenue Code, as in effect on January 1, 1993, shall be allowed to qualified individuals against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq.

(ii) The twenty percent (20%) child care credit is refundable.

(iii) The excess of the credit over tax liability will be returned to the taxpayer as an overpayment of tax.

(B) "Qualified individual" means a taxpayer who has a dependent child with respect to whom the taxpayer is entitled to a credit under § 26-51-501(a)(3), and who incurs child care expenses necessary for gainful employment at an approved child care facility, as defined in subdivision (c)(1)(C) of this section.

(C) "Approved child care facility" means a child care facility which provided an appropriate early childhood program, as defined in § 6-45-103, and which is approved in accordance with § 6-45-109.

(2) A taxpayer cannot claim both the credit allowed in subsections (a) and (b) of this section and the credit allowed in subsection (c) of this section.

(3) The credit allowed in this subsection shall be effective for taxable years beginning January 1, 1993.

History. Acts 1973, No. 490, §§ 1, 2; 1977, No. 734, §§ 1, 2; 1983, No. 379, § 15; A.S.A. 1947, §§ 84-2088, 84-2089; Acts 1993, No. 1268, § 1; 1997, No. 328, § 6; 1997, No. 951, § 1; 2003, No. 663, § 13; 2005, No. 675, § 15; 2007, No. 218, § 34.

A.C.R.C. Notes. Acts 1997, No. 328, § 11, provided:

“This Act shall be effective on and after November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10.”

Acts 1997, No. 328, § 12, provided:

“The withholding tables prescribed by the Director of the Department of Finance and Administration pursuant to Ark. Code Ann. § 26-51-907 shall not be amended for tax year 1998 to reflect the changes adopted by this Act. If this Act becomes effective on November 15, 1998, the effect of the various provisions of this Act for tax year 1998 shall be reflected on the income tax return filed for that year. For all subsequent years, the Director shall adjust the withholding tables as otherwise required by law.”

Publisher's Notes. Acts 1997, No. 951, § 34, provided that Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 1993 amendment added (c).

The 1997 amendment by No. 951, in (b)(1) substituted “Section 21 of the Internal Revenue Code of 1986” for “Section 44A of the Internal Revenue Code of 1954” and substituted “January 1, 1997” for “January 1, 1983.”

The 1997 amendment by No. 328, in (b)(1) substituted “Section 21 of the Internal Revenue Code of 1986” for “Section 44A of the Internal Revenue Code of 1954” and substituted “January 1, 1997” for “January 1, 1983”; and substituted “twenty percent (20%)” for “ten percent (10%)” in (b)(2).

The 2003 amendment substituted “2003” for “1997” in (b).

The 2005 amendment substituted “January 1, 2005” for “January 1, 2003” in (b)(1).

The 2007 amendment substituted “January 1, 2007” for “January 1, 2005” in (b)(1).

U.S. Code. Section 44A of the Internal Revenue Code of 1954, as amended, and § 21 of the Internal Revenue Code, referred to in this section, are codified as 26 U.S.C. § 21.

Effective Dates. Acts 2003, No. 663, § 14: applicable to tax years beginning on and after January 1, 2003.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax Computation, 26 U. Ark. Little Rock L. Rev. 381.

26-51-503. Support of a child with a developmental disability.

(a) In addition to the state income tax credit permitted by § 26-51-501(a) and (b), any taxpayer in this state who is maintaining, supporting, and caring for an individual with a

diagnosis of developmental disability in the taxpayer's home shall be permitted, in addition to all other income tax credits, a credit of five hundred dollars (\$500) for each income year for that individual.

(b) (1) Any person wishing to take advantage of this tax credit must have certification by a licensed physician, licensed psychologist, or licensed psychological examiner that the individual has a diagnosis of developmental disability.

(2) The certification shall be valid for five (5) years for income tax purposes.

(3) If any person wishes to take advantage of this tax credit after using the certification for five (5) income years, the person must have the individual reevaluated by a licensed physician, licensed psychologist, or licensed psychological examiner for recertification.

(4) The recertification process shall be valid for another five (5) years for income tax purposes.

(c) As used in this section:

(1) "Diagnosis of developmental disability" means a disability of a person that:

(A) Is attributable to:

(i) An intellectual disability, cerebral palsy, epilepsy, or autism;

(ii) Another condition of the person found to be closely related to an intellectual disability because the condition results in an impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual disability or requires treatment and services similar to that required for a person with an intellectual disability; or

(iii) Dyslexia resulting from a disability or condition described in subdivision (c)(1)(A)(i) or (c)(1)(A)(ii) of this section;

(B) Originates before the person reaches twenty-two (22) years of age;

(C) Has continued or can be expected to continue indefinitely; and

(D) Constitutes a substantial handicap to the person's ability to function without appropriate support services, including without limitation:

(i) Planned recreational activities;

(ii) Medical services such as physical therapy and speech therapy;

and

(iii) Possibilities for sheltered employment or job training; and

(2) "Individual" means a child of the taxpayer's blood, an adopted child, or a dependent within the meaning of § 26-51-501(a)(3)(B).

History. Acts 1967, No. 495, §§ 1, 2; 1977, No. 833, § 1; 1983, No. 523, § 1; A.S.A. 1947, §§ 84-2021.1, 84-2021.2; Acts 1999, No. 417, § 1; 2009, No. 237, § 1.

Amendments. The 1999 amendment rewrote this section.

The 2009 amendment rewrote subdivision (c)(1).

Effective Dates. Acts 2009, No. 237, § 2 provided: "This act is effective for tax years beginning on or after January 1, 2009."

26-51-504. Income from sources outside Arkansas.

(a) (1) For the purpose of ascertaining the income tax due by an individual resident of Arkansas whose gross income includes income derived from property located outside the State of Arkansas, or from business transacted outside the State of Arkansas, the tax shall first be computed as if all of the income of the resident were derived from sources within

the State of Arkansas, but a credit shall then be given on the tax as so computed, for the amount of income tax actually owed by the resident for the year to any other state or territory on account of income from property owned or business transacted in the other state or territory. However, credit shall not exceed what the tax would be on the outside income, if added to the Arkansas income, and calculated at Arkansas income tax rates.

(2) (A) For purposes of subdivision (a)(1) of this section, the amount of income tax owed to any other state or territory by a resident shareholder of an S corporation shall be considered to include an amount equal to the shareholder's pro rata share of any net income tax owed by the S corporation to a state which does not recognize S corporations.

(B) For purposes of subdivision (a)(2)(A) of this section, the term "net income tax" means any tax imposed on or measured by a corporation's net income.

(b) Before a resident of Arkansas may claim the credit allowed under this section, he shall file with his income tax return any such additional information as the Director of the State Income Tax Division or the Director of the Department of Finance and Administration may by regulation require showing in detail the amount of gross and net income derived from property owned or business transacted without this state, together with the amount of tax actually owed on the income to another state or territory.

(c) The credit against Arkansas income tax afforded individual residents of Arkansas under this section shall also be available to fiduciaries and partnerships residing or domiciled in Arkansas which are subject to Arkansas income tax or which have to report income for purposes of Arkansas income tax.

History. Acts 1943, No. 162, §§ 1, 2; 1953, No. 320, § 1; 1961, No. 411, § 1; 1969, No. 75, § 1; A.S.A. 1947, §§ 84-2017, 84-2018, 84-2018.1; Acts 1989, No. 826, § 6; 1993, No. 721, § 1; 1993, No. 785, § 13.

Publisher's Notes. Acts 1953, No. 320, § 3, provided that the provisions of this act shall be applicable to the tax years on and after January 1, 1953, as the term "tax year" is defined in § 26-51-102.

Acts 1961, No. 411, § 2 provided that this act shall be effective for all taxable years ending September 30, 1961 and thereafter.

Acts 1989, No. 826, § 1, provided that this act shall be known and may be cited as the "Arkansas Income Tax Technical Revenue Act of 1989".

Acts 1989, No. 826, § 36, provided that the provisions of that act shall be in full force and effect for all income years beginning on or after January 1, 1989.

Acts 1993, No. 721, § 2 and No. 785, § 20, provide that the 1993 amendments are effective for taxable years beginning on and after January 1, 1993.

Amendments. The 1993 amendment by No. 721 added (a)(2).

The 1993 amendment by No. 785 deleted "and corporations" following "partnerships" in (c).

Research References

Ark. L. Rev.

Conflict of Laws: Arkansas, 32 Ark. L. Rev. 1.

Case Notes

Constitutionality.

Deductions.

Constitutionality.

Even if this section would be unconstitutional because of subsection (b), the power to tax the income of an Arkansas resident derived from without the state under Acts 1929, No. 118 would not be destroyed. *Morgan v. Cook*, 211 Ark. 755, 202 S.W.2d 355 (1947).

Deductions.

This section was concerned with income and not deductions, and therefore, person drilling for oil in another state was entitled to claim as deductions the amount expended in drilling a "dry hole." *Morley v. Pitts*, 217 Ark. 755, 233 S.W.2d 539 (1950) (decision prior to 1953 amendment). Losses paid under contract to nonresidents for oil operations in another state were deductible from taxable income in conformance with holdings prior to statutory amendment where the taxpayer was not the owner of the real estate involved. *Scurlock v. Sherman*, 224 Ark. 750, 276 S.W.2d 52 (1955).

Cited: *Collins v. Skelton*, 256 Ark. 955, 512 S.W.2d 542 (1974).

26-51-505. Establishment or expansion of manufacturing enterprise.

(a) There shall be allowed a credit against the tax imposed by the Arkansas Income Tax Act, as amended, § 26-51-101 et seq., § 26-51-205, and § 26-51-303, an amount as determined in subsection (c) of this section, for any taxpayer who establishes or expands a manufacturing enterprise in the State of Arkansas which results in the creation of new additional full-time or part-time jobs within this state.

(b) (1) For the purposes of this section, the term "manufacturing" refers to and includes those operations commonly understood within their ordinary meaning and shall also include mining, quarrying, refining, extracting oil and gas, cotton ginning, the drying of rice, soybeans, and other grains, the manufacturing of feed, processing of poultry or eggs and livestock, and the hatching of poultry.

(2) (A) A "new employee" shall be a person residing and domiciled in this state, hired by the taxpayer to fill a new additional job in this state which previously did not exist in the manufacturing enterprise during the taxable year for which the credit allowed by this section is claimed.

(B) To qualify for the credit provided in this section, the employment of a new employee by the manufacturer must increase the total number of employees who are employed by the manufacturer. In no case shall the new employees allowed for the purpose of the credit exceed the total increase in employment.

(C) A person shall be deemed to be so engaged if that person performs duties in connection with the operation of the business enterprise on:

(i) A regular full-time basis;

(ii) A part-time basis if the person is customarily performing such duties at least twenty (20) hours per week for at least six (6) months during the taxable year.

(c) (1) The credit shall be a portion of the state individual or corporate income tax paid by the taxpayer but not in excess of fifty percent (50%) of the tax. The portion shall be an amount determined by multiplying the number of new employees, as defined in subdivision (b)(2) of this section, by one hundred dollars (\$100) per eligible new employee per taxable year.

(2) The amount of the credit allowed under subdivision (c)(1) of this section for the taxable year shall be an amount equal to the sum of:

(A) A carryover of prior unused credits arising from the taxable years beginning on or after January 1, 1983, carried to the taxable year; plus

(B) The amount of the credit allowed by subdivision (c)(1) of this section for the taxable year.

(3) If the sum of the amount of the credits under subdivisions (c)(2)(A) and (B) of this section for the taxable year exceeds the limitation imposed by subdivision (c)(1) of

this section, the excess shall be treated as a carryover credit and may be carried over for a maximum of three (3) consecutive years following the taxable year in which the credit originated.

(d) (1) In the case of a proprietorship or partnership, the amount of the credit determined under this section for any taxable year shall be apportioned to each proprietor or partner in proportion to the amount of income from the manufacturing entity which the proprietor or partner is required to include in his gross income.

(2) In the case of a Subchapter S corporation, as allowed by § 26-51-409, the amount of the credit determined under this section for any taxable year shall be apportioned pro rata among the persons who are shareholders of the corporation on the last day of the taxable year.

(3) No credit shall be allowed under this section to any organization which is exempt from state income tax.

(4) In the case of an estate or trust:

(A) The amount of the credit determined under this section for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each; and

(B) Any beneficiary to whom any amount has been apportioned under subdivision (d)(4)(A) of this section shall be allowed, subject to the limitations contained in this section, a credit under this section for the amount.

(e) (1) The Revenue Division of the Department of Finance and Administration shall promulgate such rules and regulations as may be deemed necessary to carry out the purposes of this section.

(2) The Revenue Division shall consult with the Arkansas Employment Security Department and the Arkansas Economic Development Commission during the promulgation of the rules and regulations.

(f) The tax credit provided by this section shall expire on June 30, 1988. Any unused credits may be carried over beyond this date in accordance with subdivision (b)(3) of this section.

History. Acts 1983, No. 785, §§ 1-6; A.S.A. 1947, §§ 84-2021.18 — 84-2021.23; Acts 1997, No. 540, § 54.

Publisher's Notes. Pursuant to Acts 1991, No. 100, the name of the Employment Security Division was changed to the Arkansas Employment Security Department.

Amendments. The 1997 amendment substituted "Arkansas Economic Development Commission" for "Arkansas Industrial Development Commission" in (e)(2).

Research References

U. Ark. Little Rock L.J.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

26-51-506. Tax credit for waste reduction, reuse, or recycling equipment — Eligibility.

(a) The intent and purpose of this section is to increase capacity in the State of Arkansas for the use of recovered materials.

(b) As used in this section:

(1) "Cost", in the case of a transfer of title or a finance lease, means the amount of the purchase price, and, in the case of a lease which is not a finance lease but which

otherwise qualifies as a purchase under this section, means the amount of the lease payments due to be paid during the term of the lease after deducting any portion of the lease payments attributable to interest, insurance, and taxes;

(2) "Equipment to service waste reduction, reuse, or recycling equipment" means expenditures, machinery, or equipment that keeps existing machinery or equipment in running order by providing repair, maintenance, adjustment, inspection, or supplies;

(3) "Finance lease" means a lease agreement which is treated as a purchase by a lessee for Arkansas income tax purposes;

(4) "Home scrap" means materials or by-products generated from and commonly reused within an original manufacturing process;

(5) "Maintenance" means expenditures, machinery, or equipment used to keep existing machinery or equipment in a condition that approaches or equates to its original condition;

(6) "Motor vehicle" means a vehicle or trailer that is licensed, or that normally would be licensed, for use on highways in Arkansas;

(7) "Postconsumer waste" means products or other materials generated by a business, governmental entity, or consumer which have served their intended end use and have been recovered from or otherwise diverted from the solid waste stream for the purpose of recycling;

(8) "Preconsumer material" means material generated during any step in the production of a product and recovered or otherwise diverted from the solid waste stream for the purpose of recycling but does not include home scrap;

(9) "Purchase" means a transaction under which title to an item is transferred for consideration or a lease contract for a period of at least three (3) years regardless of whether title to the item is transferred at the end of such period;

(10) "Recovered materials" means those materials which have been separated, diverted, or removed from the waste stream for the purpose of recycling and includes preconsumer material and postconsumer waste but not home scrap;

(11) "Recycling" means the systematic collecting, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange;

(12) "Repair" means expenditures, machinery, or equipment used to restore existing machinery or equipment to its original or similar condition and capacity after damage or after deterioration from use;

(13) "Solid waste" means all putrescible and nonputrescible wastes in solid or semisolid form, including, but not limited to, yard or food waste, waste glass, waste metals, waste plastics, wastepapers, waste paperboard, and all other solid or semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities; and

(14) (A) (i) "Waste reduction, reuse, or recycling equipment" means new or used machinery or equipment located in Arkansas on the last day of the taxable year which is operated or used exclusively in Arkansas to collect, separate, process, modify, convert, or treat solid waste so that the resulting product may be used as a raw material or for productive use or to manufacture products containing recovered materials.

(ii) "Waste reduction, reuse, or recycling equipment" also includes devices which are directly connected with or are an integral and necessary part of such machinery or equipment and are necessary for such collection, separation, processing,

modification, conversion, treatment, or manufacturing.

(B) “Waste reduction, reuse, or recycling equipment” does not include motor vehicles.

(c) There shall be allowed a credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount as determined in subsection (e) of this section for any taxpayer engaged in the business of reducing, reusing, or recycling solid waste for commercial purposes who purchases waste reduction, reuse, or recycling equipment used exclusively for the purpose of reducing, reusing, or recycling solid waste.

(d) To claim the benefits of this section, a taxpayer must obtain a certification from the Director of the Arkansas Department of Environmental Quality certifying to the Revenue Division of the Department of Finance and Administration that:

(1) The taxpayer is engaged in the business of reducing, reusing, or recycling solid waste material for commercial purposes, whether or not for profit;

(2) The machinery or equipment purchased is waste reduction, reuse, or recycling equipment;

(3) The machinery or equipment is being used in the collection, separation, processing, modification, conversion, treatment, or manufacturing of products containing at least fifty percent (50%) recovered materials, provided that at least ten percent (10%) of the recovered materials shall be post-consumer waste; and

(4) The taxpayer has filed a statement with the director acknowledging that the taxpayer will make a good faith effort to utilize post-consumer waste generated in Arkansas as at least ten percent (10%) of the post-consumer waste being used in the equipment, to the extent available at a competitive price.

(e) (1) The amount of the credit allowed under subsection (c) of this section shall be equal to thirty percent (30%) of the cost of waste reduction, reuse, or recycling equipment, including the cost of installation.

(2) The cost of installation shall not include the cost of:

(A) Feasibility studies;

(B) Engineering costs of a building to house the equipment and related machinery; or

(C) Equipment used to service the waste reduction, reuse, or recycling equipment.

(3) (A) The cost of replacement parts which serve only to keep existing waste reduction, reuse, or recycling equipment in its ordinary efficient operating condition shall not be included in determining the amount of the credit.

(B) The cost of replacement of existing waste reduction, reuse, or recycling equipment shall not be included in determining the amount of the credit unless the replacement provides greater capacity for recycling or provides the capability to collect, separate, process, modify, convert, treat, or manufacture additional or a different type of solid waste.

(4) The cost of service contracts, sales tax, maintenance, and repairs shall not be included in determining the amount of the credit.

(f) (1) The taxpayer shall refund the amount of the tax credit determined by subdivision (f)(2) of this section if, within three (3) years of the taxable year for which a credit is allowed:

(A) The waste reduction, reuse, or recycling equipment is removed from

Arkansas, is disposed of, is transferred to another person, or the taxpayer otherwise ceases to use the required materials or operate in the manner required by this section; or

(B) The director finds that the taxpayer has demonstrated a pattern of intentional failure to comply with final administrative or judicial orders which clearly indicates a disregard for environmental regulation or a pattern of prohibited conduct which could reasonably be expected to result in adverse environmental impact.

(2) If the provisions of subdivision (f)(1) of this section apply, the taxpayer shall refund the amount of the tax credit which was deducted from income tax liability which exceeds the following amounts:

(A) Within the first year, zero dollars (\$0);

(B) Within the second year, an amount equal to thirty-three percent (33%) of the amount of credit allowed; and

(C) Within the third year, an amount equal to sixty-seven percent (67%) of the credit allowed.

(3) Any refund required by subdivision (f)(1)(A) of this section shall apply only to the credit given for the particular waste reduction, reuse, or recycling equipment to which that subdivision applies.

(4) Any taxpayer who is required to refund part of a credit pursuant to this subsection shall no longer be eligible to carry forward any amount of that credit which had not been used as of the date such refund is required.

(5) (A) This subsection shall apply to all credits which are certified as a result of applications for certification filed with the Arkansas Department of Environmental Quality on or after July 1, 1993.

(B) This subsection shall not apply to credits which are certified as a result of applications for certification filed with the Arkansas Department of Environmental Quality prior to July 1, 1993.

(C) Taxpayers who file written notice and a project plan with the Arkansas Department of Environmental Quality prior to July 1, 1993, shall be deemed to have filed an application for certification for purposes of subdivision (f)(5) of this section, provided that all the information necessary to complete the application for certification is provided to the Arkansas Department of Environmental Quality on or before December 31, 1993.

(g) (1) Waste reduction, reuse, or recycling equipment shall only be eligible for one (1) tax credit.

(2) The sale or transfer of waste reduction, reuse, or recycling equipment shall not recreate the eligibility for a tax credit.

(h) (1) In the case of a proprietorship or partnership engaged in the business of waste reduction, reuse, or recycling of solid waste, the amount of the credit determined under this section for any taxable year shall be apportioned to each proprietor or partner in proportion to the amount of income from the entity which the proprietor or partner is required to include as gross income.

(2) In the case of a Subchapter S corporation, as allowed by § 26-51-409, the amount of the credit determined under this section for any taxable year shall be apportioned among the persons who are shareholders of the corporation on the last day of the taxable year based on each person's percentage of ownership.

(3) In the case of an estate or trust:

(A) The amount of the credit determined under this section for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each; and

(B) Any beneficiary to whom any amount has been apportioned under this subsection shall be allowed, subject to limitations contained in this section, a credit under this section for the amount.

(i) (1) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of state, individual, or corporate income tax otherwise due.

(2) Any unused credit may be carried over for a maximum of three (3) consecutive years following the taxable year in which the credit originated.

(j) A taxpayer who receives a credit under this section shall not be entitled to claim any other state or local tax credit or deduction based on the purchase of the machinery or equipment, except for the deduction for normal depreciation.

(k) (1) (A) The Arkansas Department of Environmental Quality and the division shall promulgate rules or regulations as are necessary to administer this section.

(B) These rules or regulations may include, but are not limited to, the establishment of technical specifications and of requirements for information and documentation for taxpayers seeking a credit under this section and shall encourage, but not require, the use of Arkansas contractors and post-consumer waste generated in Arkansas in recycling projects which qualify for credits provided by this section.

(2) In order to determine eligibility for the credit or to ensure that the machinery or equipment is being utilized in the required manner, each agency shall have the right to inspect facilities and records of a taxpayer requesting or receiving a credit under this section.

(l) Any person or legal entity aggrieved by a decision of the director under subsection (d) of this section or subdivision (f)(1)(B) of this section may appeal to the Arkansas Pollution Control and Ecology Commission through administrative procedures adopted by the commission and to the courts in the manner provided in §§ 8-4-222 — 8-4-229.

History. Acts 1991, No. 748, § 1; 1993, No. 654, § 1; 1999, No. 1164, §§ 185-188; 2007, No. 827, § 218.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided:

“‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

Publisher's Notes. Acts 1991, No. 748, § 1, provided:

“This section shall apply to purchases of waste reduction, reuse, or recycling equipment made after January 1, 1991”.

Amendments. The 2007 amendment added “or” at the end of (f)(1)(A).

Research References

Am. Jur. 71 Am. Jur. 2d State Tax. § 335.5.
U. Ark. Little Rock L.J.
Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

26-51-507. Employer-provided child care — As qualified under § 26-52-401.

(a) A business which qualifies for the exemption from the gross receipts tax under § 26-52-401(29) shall be allowed an income tax credit of three and nine-tenths percent (3.9%) of the annual salary of employees employed exclusively in providing child care services.

(b) If two (2) or more businesses participate in a child care program for their employees as provided by § 26-52-401(29), then each business will be allowed an income tax credit of three and nine-tenths percent (3.9%) of the annual salary of only those employees who are on the respective business' payroll and are employed exclusively for providing child care services.

(c) (1) To qualify for the income tax credit, the revenue to the business or businesses from the child care facility cannot exceed the direct operating costs of the facility. If, on an annual basis, the child care facility receives revenue which exceeds the direct operating costs of the facility, the business or businesses will not be entitled to the income tax credit.

(2) For the purposes of this subsection, direct operating costs means:

(A) The cost of food and beverages provided to the children;

(B) The cost of labor for personnel whose services are performed

exclusively on the premises of the child care facility for the care of the children and all related employment taxes paid by the employer; and

(C) All materials and supplies necessary to operate the child care facility.

(d) The income tax credit created by subsection (a) of this section shall first be available in the taxable year following the year the business makes payment of wages to child care workers. To the extent that the credit is not fully utilized in this first year, it may be carried forward for an additional two (2) years. Any credit remaining thereafter shall expire.

(e) The income tax provisions of this section shall be in full force and effect for all income tax years beginning on and after January 1, 1993.

(f) [Repealed.]

History. Acts 1993, No. 820, §§ 3, 4; 1993, No. 987, §§ 3, 4; 1995, No. 850, §§ 6, 7.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-14 may not apply to this section which was enacted subsequently.

Amendments. The 1995 amendment rewrote (e); and repealed former (f).

26-51-508. Employer-provided child care — As qualified under § 26-52-516 or § 26-53-132.

(a) A business which qualifies for the refund of the gross receipts tax or compensating use tax under § 26-52-516 or § 26-53-132 shall be allowed an income tax credit of three and nine-tenths percent (3.9%) of the annual salary of its employees employed exclusively in providing child care service, or a five thousand dollar (\$5,000) income tax credit for the first tax year the business provides its employees with a child care facility.

(b) If two (2) or more businesses participate in a child care program for their employees as provided by § 26-52-516 or § 26-53-132, then each business will be allowed an

income tax credit of three and nine-tenths percent (3.9%) of the annual salary of only those employees who are on the respective business' payroll and are employed exclusively for providing child care services. The first year's five thousand dollar (\$5,000) credit will be prorated among the businesses based upon the percentage of the cost paid by each business for the initial construction and equipping of the child care facility.

(c) (1) (A) To qualify for the income tax credit, the revenue to the business or businesses from the child care facility cannot exceed the direct operating costs of the facility.

(B) If, on an annual basis, the business receives revenues from the operation of the child care facility which exceed the direct operating costs of the facility, the businesses will not be entitled to the income tax credit.

(2) For the purposes of this subsection, "direct operating costs" means:

(A) The cost of food and beverages provided to the children;

(B) The cost of labor for personnel whose services are performed exclusively on the premises of the child care facility for the care of the children and all related employment taxes paid by the employer; and

(C) All materials and supplies necessary to operate the child care facility.

(d) The income tax credit created by subsection (a) of this section shall first be available in the taxable year following the year the business makes payment of wages to child care workers. To the extent that the credit is not fully utilized in this first year, it may be carried forward for an additional two (2) years. Any credit remaining thereafter shall expire.

History. Acts 1995, No. 850, § 5.

26-51-509. Youth apprenticeship program.

(a) For the purposes of this section:

(1) "Bureau" means the Bureau of Apprenticeship and Training of the United States Department of Labor;

(2) "Department" means the Department of Finance and Administration; and

(3) "Youth apprentice" means an individual between the ages of sixteen (16) and twenty-one (21) years who is enrolled in a public or private secondary or postsecondary school.

(b) (1) A taxpayer who employs a youth apprentice in a registered apprenticeship program as provided in Title 29, Subtitle (a), Part 29 of the Code of Federal Regulations, as in effect on January 1, 1995, shall be allowed a credit in the amount of two thousand dollars (\$2,000) or ten percent (10%) of the wages earned by the youth apprentice, whichever is less, against the tax imposed by the Arkansas Income Tax Act of 1929, as amended, § 26-51-101 et seq., for each such apprentice.

(2) (A) A partner's or member's distributive share of the credit shall be determined by the partnership or limited liability company agreement, unless the agreement does not have substantial economic effect or does not provide for the allocation of credits.

(B) If the agreement does not have substantial economic effect or does not provide for the allocation of the credit, the credit shall be allocated according to the partner's or member's interest in the partnership, pursuant to federal Internal Revenue

Code section 704(b), as in effect on January 1, 1995.

(c) (1) To claim the benefits of this section, a taxpayer must obtain a certification from the bureau certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer has met all the requirements and qualifications set forth in this section.

(2) The certification to the department shall include the total amount of wages paid to each youth apprentice employed by the taxpayer or 501(c)(3) corporation in the taxable year for which the taxpayer claims the credit provided in this section.

(d) (1) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of individual or corporate income tax otherwise due.

(2) Any unused credit may be carried over for a maximum of two (2) consecutive taxable years.

(e) If the business is an "S" corporation, the pass-through provisions of § 26-51-409, as in effect for the taxable year the credit is earned, shall be applicable.

(f) A taxpayer who trains a youth apprentice in a registered youth apprenticeship program as provided in subsection (b) of this section shall be entitled to the tax credit provided in this section for such youth apprentice, even though the apprentice receives his or her wages for such training from a 501(c)(3) corporation.

(g) (1) The Revenue Division of the Department of Finance and Administration shall promulgate such rules and regulations as may be deemed necessary to carry out the purposes of this section.

(2) The Revenue Division shall consult with the Bureau of Apprenticeship and Training of the United States Department of Labor during the promulgation of the rules and regulations.

History. Acts 1995, No. 1103, §§ 1-5.

A.C.R.C. Notes. Acts 1995, No. 1103, § 4 also provided, in part:

"The tax credit provided by this act shall apply to taxable years beginning January 1, 1996 and all taxable years thereafter."

References to "this chapter" in subchapters 1-14 may not apply to this section which was enacted subsequently.

U.S. Code. Section 704(b) of the Internal Revenue Code, referred to in (e)(2)(B) is codified at 26 U.S.C. § 704(b).

Cross References. Youth apprenticeship tax credit, § 26-51-1601 et seq.

26-51-510. [Repealed.]

Publisher's Notes. This section, concerning federal Social Security (OASDI) tax credit, was repealed by Acts 2003, No. 1724, § 1. The section was derived from Acts 1997, No. 328, § 4; 2001, No. 773, § 11.

26-51-511. Coal mining, producing, and extracting.

(a) As used in this section:

(1) "Coal mining enterprise" means:

(A) An Arkansas taxpayer primarily engaged in surface or highwall mining, producing, or extracting coal in Arkansas; and

(B) A holder of a valid mining permit issued by the Arkansas Department of Environmental Quality to allow surface or highwall mining;

(2) "Eligible transferee" means any Arkansas taxpayer subject to the Income Tax Act of 1929, § 26-51-101 et seq., the premium tax imposed by § 23-75-119, or the premium tax imposed by § 23-63-1614; and

(3) "Taxpayer" means a coal mining enterprise or an eligible transferee.

(b) (1) There shall be allowed a credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., the premium tax imposed by § 23-75-119, or the premium tax imposed by § 23-63-1614 in an amount as determined in subsection (c) of this section for a taxpayer.

(2) A credit allowed under this section shall expire after five (5) tax years following the tax year in which the tax credit was earned.

(c) (1) (A) A credit of two dollars (\$2.00) per ton of coal mined, produced, or extracted shall be allowed on each ton of coal mined in Arkansas by a coal mining enterprise in a tax year.

(B) An additional credit of three dollars (\$3.00) per ton of coal mined, produced, or extracted shall be allowed on each ton of coal mined in Arkansas in excess of fifty thousand (50,000) tons by a coal mining enterprise in a tax year.

(2) A credit under this section is earned only if the coal is sold to an electric generation plant for less than forty dollars (\$40.00) per ton excluding freight charges.

(3) At the election of the taxpayer, the credit may be treated as:

(A) Payment of a tax;

(B) Prepayment of a tax; or

(C) Prepayment of an estimated tax.

(d) (1) The credits allowed under this section shall be freely transferable by written agreement to subsequent transferees at any time during the five (5) years following the year the credit was earned.

(2) A coal mining enterprise that has earned a credit under this section may transfer the credit in writing to an eligible transferee.

(3) (A) The coal mining enterprise and the eligible transferee shall jointly file a copy of the written credit transfer agreement with the Director of the Department of Finance and Administration within thirty (30) days of the credit transfer.

(B) The written credit transfer agreement shall contain:

(i) The name of the parties to the transfer;

(ii) The amount of the credit transferred;

(iii) The tax year that the credit was originally earned by the coal mining enterprise; and

(iv) The tax year or years in which the credit may be claimed.

(C) (i) The Department of Finance and Administration shall promulgate rules and regulations to permit the verification of the validity and timeliness of a claimed tax credit that has been transferred under this subsection.

(ii) The rules and regulations shall not unduly restrict or hinder the transfers of credits under this section.

History. Acts 2003, No. 993, § 1.

Effective Dates. Acts 2003, No. 993, § 2: applicable to tax years beginning on or after January 1, 2003.

26-51-512. Rice straw tax credit.

(a) As used in this section:

(1) “End user” means a person who purchases and uses rice straw for processing, manufacturing, generating energy, or producing ethanol; and

(2) “Rice straw” means the dry stems of rice left after the seed heads have been removed.

(b) (1) There is allowed a credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in the amount of fifteen dollars (\$15.00) for each ton of rice straw over five hundred (500) tons that is purchased by an Arkansas taxpayer who is the end user.

(2) The amount of credit that may be used by the taxpayer for a taxable year may not exceed fifty percent (50%) of the amount of income tax due for that tax year.

(3) Any unused credit may be carried forward for ten (10) consecutive tax years following the tax year the credit was earned.

(c) A taxpayer who claims a credit under this section shall not claim any other state tax credit or deduction for the purchase of rice straw.

History. Acts 2005, No. 2247, § 1.

26-51-513. Arkansas historic rehabilitation income tax credit.

(a) In addition to any income tax credit not related to the same eligible property for which a taxpayer qualifies, the taxpayer is allowed an income tax credit for the amount of the Arkansas historic rehabilitation income tax credit allowed by the certification of completion issued by the Department of Arkansas Heritage under the Arkansas Historic Rehabilitation Income Tax Credit Act, § 26-51-2201 et seq.

(b) The amount of the income tax credit under this section that may be claimed by the taxpayer in a tax year shall not exceed the amount of state income tax due by the taxpayer.

(c) Any unused income tax credit under this section may be carried forward for a maximum of five (5) consecutive tax years for credit against the state income tax.

(d) The Director of the Department of Finance and Administration shall promulgate rules to implement this section.

History. Acts 2009, No. 498, § 2.

Effective Dates. Acts 2009, No. 498, § 4, provided: “This act is effective for tax years beginning on and after January 1, 2009, and ending on or before December 31, 2015.”

26-51-514. Cigarette receptacle tax credit. [Effective if contingency in Acts 2009, No. 1500, § 2 is met.]

(a) As used in this section, “cigarette receptacle” means a receptacle or urn specifically designed for the disposal of cigarette litter such as cigarette butts and ash.

(b) (1) A business or commercial enterprise with fifty (50) or fewer employees is allowed an income tax credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for the purchase of a cigarette receptacle that is placed in service during the taxable year.

(2) The amount of the income tax credit under this section is twenty percent (20%) of the purchase price of the cigarette receptacle.

(3) A taxpayer may claim the income tax credit under this section only one (1)

time and only for one (1) cigarette receptacle.

(c) Any unused income tax credit under this section may be carried forward for three (3) consecutive tax years following the tax year the income tax credit was earned.

(d) The amount of the income tax credit under this section that may be claimed by the taxpayer in a tax year shall not exceed the amount of income tax due by the taxpayer.

(e) The Department of Finance and Administration shall promulgate rules to implement this section.

History. Acts 2009, No. 1500, § 1.

A.C.R.C. Notes. Acts 2009, No. 1500, § 2, provided: "Contingent Effectiveness. This act is effective if the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2010 in an amount sufficient to replace the general revenue reduction for the fiscal year 2010 that would result from the allowance of the income tax credit provided in this act. The Chief Fiscal Office of the State will make the same determination for fiscal year 2011 and each fiscal year thereafter. At any time that the Chief Fiscal officer of the State determines that additional funding from sources other than state general revenues does not exist in an amount sufficient to replace the general revenue reduction for that fiscal year from the allowance of the income tax credit provided in this act, the income tax credit provided by this act will expire. The Chief Fiscal Officer of the State shall provide notice to the Director of the Bureau of Legislative Research when the contingencies in this section have been met."

Subchapter 6 **— Property Tax Credit for Senior Citizens**

26-51-601 — 26-51-609. [Repealed.]

Publisher's Notes. Acts 1973, No. 63, § 16, provided:

"The provisions of this Act shall be applicable with respect to real property ad valorem taxes paid in the year 1973 and thereafter."

Identical Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 10 provided:

"The provisions of Section 7 shall become effective January 1, 2002. Claims for refund may be filed in 2001 pursuant to Arkansas Code 26-51-601 through 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999."

Effective Dates. Acts 1974 (Ex. Sess.), No. 30, § 7: July 3, 1974. Emergency clause provided: "It is hereby found and determined by the Sixty-Ninth General Assembly, meeting in Extraordinary Session, that the Individual Income Tax Withholding Fund does not have sufficient appropriation to meet the anticipated refunds of income taxes to be disbursed as authorized by law or make rebates of the Ad Valorem Property Tax paid by certain home owners 65 years of age and older who may claim rebate from the State as authorized by law. It would be in the best interest of the citizens of this State that payment of any overpayment, interest or penalty or rebate, be promptly paid. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 401, § 50: Jan. 1, 1980.

Acts 1979, No. 412, § 3: Mar. 19, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of the Homeowner's Tax Relief Act are unduly restrictive with respect to the eligibility of persons to claim benefits thereunder; that this Act is designed to revise the provisions of said Act to make same more realistic and to improve benefits thereunder and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 367, § 3: Mar. 9, 1981. Emergency clause provided: "It is hereby found and

determined by the General Assembly that the present law provides that of the females between 62 and 65 years of age, only widows are eligible for benefits under the Homeowners Property Tax Relief Act; that this inequitable restriction places a serious burden on other females between 62 and 65 years of age who have not been married or who are divorced or who do not otherwise come within the meaning of the word "widow"; that this Act is designed to correct this inequity and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 454, § 9: effective for income years beginning from and after January 1, 1987, thereby being applicable to claims for ad valorem property tax rebates filed from and after January 1, 1988.

Acts 1991, No. 655, § 9: Jan. 1, 1992.

Acts 1991, No. 776, § 5: Jan. 1, 1991.

Acts 1997, No. 328, § 11, provided: "This Act shall be effective on and after November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10."

Acts 1999, No. 1492, § 8: if contingency met, sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Effective date clause provided: "Effective Date. The provisions of Section 5 shall be effective 90 days after adjournment. The provisions of Sections 1, 2, 3, 4, 6 and 7 shall not be effective unless; a) the General Assembly refers a constitutional amendment to be approved during the 2000 general election; b) the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and c) the amendment is approved. If those conditions are met, Sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Claims for refund may be filed in 2001 pursuant to §§ 26-51-601 - 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999."

Identical Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 10. January 1, 2002.

A.C.R.C. Notes. Acts 1997, No. 328, § 12, provided:

"The withholding tables prescribed by the Director of the Department of Finance and Administration pursuant to Ark. Code Ann. § 26-51-907 shall not be amended for tax year 1998 to reflect the changes adopted by this Act. If this Act becomes effective on November 15, 1998, the effect of the various provisions of this Act for tax year 1998 shall be reflected on the income tax return filed for that year. For all subsequent years, the Director shall adjust the withholding tables as otherwise required by law."

Cross References. City and county government redevelopment, Ark. Const. Amend. 78.

Property tax relief, Ark. Const. Amend. 79.

Research References

U. Ark. Little Rock L.J.

Survey of Arkansas Law, Taxation, 1 U. Ark. Little Rock L.J. 258.

26-51-601 — 26-51-609. [Repealed.]

Publisher's Notes. Sections 26-51-601 — 26-51-608, concerning property tax credit for senior citizens, were repealed by Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 7. Section 26-51-609, concerning written notice, was repealed by Acts 2001, No. 979, § 1 and was previously repealed pursuant to the terms of Acts 1999, No. 900, § 5. These sections were derived from the following sources:

26-51-601. Acts 1973, No. 63, § 1; 1977, No. 522, § 1; A.S.A. 1947, § 84-2021.4; Acts 1987, No. 454, § 1; 1991, No. 655, § 1.

26-51-602. Acts 1973, No. 63, § 2; 1975, No. 30, § 1; 1977, No. 525, § 1; 1979, No. 607, § 1; 1983, No. 134, § 1; A.S.A. 1947, § 84-2021.5; Acts 1987, No. 454, § 2, 1991, No. 655, § 2; 1991, No. 776, § 1.

26-51-603. Acts 1973, No. 63, §§ 3, 11; 1977, No. 522, § 2; 1981, No. 367, § 1; A. S.A. 1947, § § 84-2021.6, 84-2021.14; Acts 1987, No. 454, § 3; 1991, No. 655, § 3; 1999, No. 940, § 1.

26-51-604. Acts 1973, No. 63, §§ 4, 6, 8, 9; A.S.A. 1947, §§ 84-2021.7, 84-2021.9, 84-2021.11, 84-2021.12; Acts 1987, No. 454, §§ 4, 7; 1991, No. 655, § 4.

26-51-605. Acts 1973, No. 63, § 5; A.S.A. 1947, § 84-2021.8; Acts 1987, No. 454, § 5.

26-51-606. Acts 1973, No. 63, § 10; 1979, No. 401, § 45; A.S.A. 1947, § 84-2021.13.

26-51-607. Acts 1973, No. 63, §§ 3, 6, 7; 1975, No. 30, § 2; 1977, No. 522, § 2; 1979, No. 412, § 1; 1981, No. 367, § 1; 1983, No. 130, § 1; A.S.A. 1947, §§ 84-2021.6, 84-2021.9, 84-2021.10; Acts 1987, No. 454, §§ 3, 6; 1991, No. 230, § 1; 1991, No. 655, § 5; 1997, No. 328, § 9; 1999, No. 900, §§ 1,2.

26-51-608. Acts 1973, No. 63, § 14; 1974 (Ex. Sess.), No. 30, § 2; A.S.A. 1947, § 84-2021.17.

26-51-609. Acts 1999 No. 900, § 3.

Subchapter 7

— Uniform Division of Income for Tax Purposes Act

26-51-701. Definitions.

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26-51-705. Rents and royalties — Extent of utilization of tangible personal property.

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26-51-709. Business income.

26-51-710. Real and tangible personal property — Factor.

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26-51-713. Payroll factor.

26-51-714. Compensation for service — Determination of payment in state.

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26-51-716. Sales of tangible personal property.

26-51-717. Sales — Income-producing activity.

26-51-718. Procedure when allocation does not fairly represent taxpayer's business activity.

26-51-719. Construction.

26-51-720. Severability.

26-51-721. Repealer.

26-51-722. Effective date.

26-51-723. Legislative findings — Emergency.

Publisher's Notes. For Comments regarding the Uniform Division of Income for Tax Purposes, see Commentaries Volume B.

Effective Dates. Acts 1995, No. 682, § 3: effective for tax years beginning on or after January 1, 1995.

Acts 2001, No. 1228, § 2: effective for tax years beginning on or after January 1, 2001.

Acts 2003, No. 1183, § 2: effective for tax years beginning on or after January 1, 2003.

Research References

ALR.

Construction and application of Uniform Division of Income for Tax Purposes Act. 8 A.L.R.4th 934.

Oil and gas royalty as real or personal property. 56 A.L.R.4th 539.

Case Notes

Purpose.

Purpose.

The Uniform Division of Income for Tax Purposes Act is merely a procedural vehicle by which the states can resolve conflicts among themselves and aggrieved taxpayers. *Land O'Frost, Inc. v. Pledger*, 308 Ark. 208, 823 S.W.2d 887 (1992).

The Uniform Division of Income for Tax Purposes Act governs the manner in which Arkansas may impose income and franchise taxes on the earnings of multistate and multinational corporations doing business in the state, and is designed to fairly apportion among the states in which a corporation does business the fair amount of regular business income earned by the corporation's activities in each state. *Pledger v. Getty Oil Exploration Co.*, 309 Ark. 257, 831 S.W.2d 121 (1992).

Cited: *St. Louis S.W. Ry. v. Ragland*, 304 Ark. 1, 800 S.W.2d 410 (1990); *Pledger v. Illinois Tool Works, Inc.*, 306 Ark. 134, 812 S.W.2d 101 (1991).

26-51-701. Definitions.

As used in this subchapter, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

(c) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(d) [Repealed.]

(e) "Nonbusiness income" means all income other than business income;

(f) "Public utility" means any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products, or gas;

(g) "Sales" means all gross receipts of the taxpayer not allocated under §§ 26-51-704 — 26-51-708;

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

History. Acts 1961, No. 413, § 1; 1963, No. 529, § 1; 1979, No. 1024, § 1; A.S.A. 1947, § 84-2055; Acts 1989, No. 494, § 3.

Research References

Ark. L. Rev.

Case Note, *Pledger v. Illinois Tool Works, Inc.*: Arkansas Belatedly Recognizes the Unitary Business Principle as a Limitation of Its Power to Tax Capital Gains of Nondomiciliary

Corporations, 45 Ark. L. Rev. 597.

U. Ark. Little Rock L.J.

Survey, Taxation, 14 U. Ark. Little Rock L.J. 401.

Case Notes

Business Income.

—In General.

—Unitary Business Principle.

Commercial Domicile.

Business Income.

—In General.

The focus of subsection (a) is the nature of the taxpayer's business, and business income arising from either of two sources: (1) transactions and activity in the regular course of the taxpayer's business, or (2) income from the acquisition, management, and disposition of property that constitutes integral parts of the taxpayer's regular business. *Pledger v. Getty Oil Exploration Co.*, 309 Ark. 257, 831 S.W.2d 121 (1992).

—Unitary Business Principle.

Under the "unitary business" rationale, the general test for determining whether a diversified group of businesses had a unitary business relationship was to determine whether the income that the state was attempting to tax resulted from functional integration, centralization of management, and economies of scale utilized by the corporate group. *Pledger v. Illinois Tool Works, Inc.*, 306 Ark. 134, 812 S.W.2d 101 (1991), cert. denied, *Pledger v. Illinois Tool Works*, 502 U.S. 958, 112 S. Ct. 418 (1991).

Applying the unitary business principle, the plaintiff's capital gains income from the sale of stock interest in three other companies was nonbusiness income for Arkansas's Uniform Division of Income for Tax Purposes Act (UDITPA) purposes; for at no time did the plaintiff hold the majority of the stock in these companies, and did not have a controlling interest or part. *Pledger v. Illinois Tool Works, Inc.*, 306 Ark. 134, 812 S.W.2d 101 (1991), cert. denied, *Pledger v. Illinois Tool Works*, 502 U.S. 958, 112 S. Ct. 418 (1991).

Plaintiff's capital gains which were not an integral part of its regular manufacturing and leasing businesses did not fit the unitary business principle test. *Pledger v. Illinois Tool Works, Inc.*, 306 Ark. 134, 812 S.W.2d 101 (1991), cert. denied, *Pledger v. Illinois Tool Works*, 502 U.S. 958, 112 S. Ct. 418 (1991).

Commercial Domicile.

Taxpayers were not entitled to a "commercial domicile" for income tax purposes, since there was no evidence that they paid any income tax in the state of Texas, their place of business, or that Texas even had an income tax law. *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976).

Cited: *Cheney v. St. Louis S. R. Co.*, 239 Ark. 870, 394 S.W.2d 731 (1965); *Collins v. Skelton*, 256 Ark. 955, 512 S.W.2d 542 (1974); *Land O'Frost, Inc. v. Pledger*, 308 Ark. 208, 823 S.W.2d 887 (1992).

26-51-702. Apportionment of net income authorized.

Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this subchapter.

History. Acts 1961, No. 413, § 2; A.S.A. 1947, § 84-2056; Acts 1989, No. 494, § 1.

Case Notes

Provisions Not Applicable.

Provisions Not Applicable.

Income received by an Arkansas resident partner from a Texas partnership that did not conduct business in Arkansas was not exempted by this section from Arkansas income tax. *Collins v. Skelton*, 256 Ark. 955, 512 S.W.2d 542 (1974).

Taxpayers were not entitled to a “commercial domicile” for income tax purposes under this subchapter applying to income from business activity that is taxable both within and without the state, since there was no evidence that they paid any income tax in the state of Texas, their place of business, or that Texas even had an income tax law. *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976).

Under the unitary business principle, the taxpayer must show that income was earned in a course of activities, unrelated to the sale of its products in that state, for it not to be subject to apportioned tax. *Pledger v. Illinois Tool Works, Inc.*, 306 Ark. 134, 812 S.W.2d 101 (1991), cert. denied, *Pledger v. Illinois Tool Works*, 502 U.S. 958, 112 S. Ct. 418 (1991).

Cited: *United States Tobacco Co. v. Martin*, 304 Ark. 119, 801 S.W.2d 256 (1990).

26-51-703. Taxpayer taxable in another state.

For purposes of allocation and apportionment of income under this subchapter, a taxpayer is taxable in another state if:

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, or any other tax measured by income or other measure of business activity in the state and the taxpayer files the requisite tax return in the other state; or

(2) The state has no net income tax, franchise tax measured by net income, or any other tax measured by income or other measure of business activity in the state as provided in subdivision (1) of this section and the taxpayer has activities in the other state that exceed those protected by 15 U.S.C. §§ 381 — 385.

History. Acts 1961, No. 413, § 3; A.S.A. 1947, § 84-2057; Acts 2001, No. 1228, § 1; 2003, No. 1183, § 1.

Amendments. The 2003 amendment, in (1), substituted “or any other ... in the state” for “a franchise tax for the privilege of doing business, or a corporate stock tax”; and rewrote (2).

Effective Dates. Acts 2001, No. 1228, § 2: effective for tax years beginning on or after January 1, 2001.

Acts 2003, No. 1183, § 2: applicable to tax years beginning on or after January 1, 2003.

Case Notes

Cited: *Cheney v. St. Louis S. R. Co.*, 239 Ark. 870, 394 S.W.2d 731 (1965).

26-51-704. Nonbusiness income.

Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in §§ 26-51-705 — 26-51-708.

History. Acts 1961, No. 413, § 4; A.S.A. 1947, § 84-2058.

Research References

Ark. L. Rev.

Case Note, *Pledger v. Illinois Tool Works, Inc.*: Arkansas Belatedly Recognizes the Unitary Business Principle as a Limitation of Its Power to Tax Capital Gains of Nondomiciliary Corporations, 45 Ark. L. Rev. 597.

U. Ark. Little Rock L.J.

Survey, Taxation, 14 U. Ark. Little Rock L.J. 401.

Case Notes

Cited: *Pledger v. Getty Oil Exploration Co.*, 309 Ark. 257, 831 S.W.2d 121 (1992).

26-51-705. Rents and royalties — Extent of utilization of tangible personal property.

- (a) Net rents and royalties from real property located in this state are allocable to this state.
- (b) Net rents and royalties from tangible personal property are allocable to this state:
 - (1) If and to the extent that the property is utilized in this state; or
 - (2) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.
- (c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

History. Acts 1961, No. 413, § 5; A.S.A. 1947, § 84-2059.

Research References

U. Ark. Little Rock L.J.

Survey, Taxation, 14 U. Ark. Little Rock L.J. 401.

26-51-706. Capital gains and losses from sales of property.

- (a) Capital gains and losses from sales of real property located in this state are allocable to this state.
- (b) Capital gains and losses from sales of tangible personal property are allocable to this state if:
 - (1) The property had a situs in the state at the time of the sale; or
 - (2) The taxpayer's commercial domicile is in this state; or
 - (3) The property has been included in depreciation which has been allocated to this state; in which event gains or losses on those sales shall be allocated on the percentage that is used in the formula for allocating income to Arkansas during the year of those sales.
- (c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

History. Acts 1961, No. 413, § 6; A.S.A. 1947, § 84-2060.

26-51-707. Interest and dividends.

Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

History. Acts 1961, No. 413, § 7; A.S.A. 1947, § 84-2061.

Case Notes

Dividends.

Dividends.

The unitary business principle does not apply to dividend income only. *Pledger v. Illinois Tool Works, Inc.*, 306 Ark. 134, 812 S.W.2d 101 (1991), cert. denied, *Pledger v. Illinois Tool Works*, 502 U.S. 958, 112 S. Ct. 418 (1991).

Cited: *Collins v. Skelton*, 256 Ark. 955, 512 S.W.2d 542 (1974); *Pledger v. Getty Oil Exploration Co.*, 309 Ark. 257, 831 S.W.2d 121 (1992).

26-51-708. Patent and copyright royalties.

(a) Patent and copyright royalties are allocable to this state:

(1) If and to the extent that the patent or copyright is utilized by the payer in this state; or

(2) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

History. Acts 1961, No. 413, § 8; A.S.A. 1947, § 84-2062.

26-51-709. Business income.

All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus double the sales factor, and the denominator of which is four (4).

History. Acts 1961, No. 413, § 9; A.S.A. 1947, § 84-2063; Acts 1995, No. 682, § 2.

Publisher's Notes. Acts 1995, No. 682, § 3, provided that the 1995 amendments are effective for tax years beginning on or after January 1, 1995.

Amendments. The 1995 amendment substituted "plus double the sales factor, and the denominator of which is four (4)" for "plus the sales factor, and the denominator of which is three (3)."

Research References

U. Ark. Little Rock L.J.

Survey, Taxation, 14 U. Ark. Little Rock L.J. 401.

Case Notes

Nonbusiness Income.

Nonbusiness Income.

Applying the unitary business principle, the plaintiff's capital gains income from the sale of stock interest in three other companies was nonbusiness income. *Pledger v. Illinois Tool Works, Inc.*, 306 Ark. 134, 812 S.W.2d 101 (1991), cert. denied, *Pledger v. Illinois Tool Works*, 502 U.S. 958, 112 S. Ct. 418 (1991).

Cited: Pledger v. Getty Oil Exploration Co., 309 Ark. 257, 831 S.W.2d 121 (1992).

26-51-710. Real and tangible personal property — Factor.

The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

History. Acts 1961, No. 413, § 10; A.S.A. 1947, § 84-2064.

Case Notes

Cited: Pledger v. Getty Oil Exploration Co., 309 Ark. 257, 831 S.W.2d 121 (1992).

26-51-711. Original cost of property — Annual rental rate.

Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

History. Acts 1961, No. 413, § 11; A.S.A. 1947, § 84-2065.

Case Notes

Substantial Evidence.

Substantial Evidence.

Where the president of the surviving corporation had testified that the acquired equipment was used in the daily operations of the surviving corporation; that it would be impractical, if not impossible, to maintain records of which piece of equipment worked on which jobs; and that it would be impossible to determine the amount of income each individual piece of equipment had earned, and where the corporation's accountant testified that he had used the only acceptable method available to him to determine the pro rata share of income earned by the acquired equipment; that the use of the original cost of property rather than the book value was required by the Arkansas Statutes in the division and apportionment of income earned by multistate corporations; and that the information necessary to use one of the other methods to arrive at a pro rata share was not available to the accountant, substantial evidence supported the chancellor's decision that the surviving corporation had presented a prima facie case to prove that the equipment acquired by the surviving corporation in the merger had generated income of \$151,500.54, an amount sufficient to absorb the carryover net operating loss of \$95,182.80 claimed by the surviving corporation. Jones v. Carter Constr. Co., 266 Ark. 358, 583 S.W.2d 63 (1979).

Cited: Pledger v. Getty Oil Exploration Co., 309 Ark. 257, 831 S.W.2d 121 (1992).

26-51-712. Average value of property.

The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the Director of the Department of Finance and Administration may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

History. Acts 1961, No. 413, § 12; A.S.A. 1947, § 84-2066.

Case Notes

Cited: Pledger v. Getty Oil Exploration Co., 309 Ark. 257, 831 S.W.2d 121 (1992).

26-51-713. Payroll factor.

The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

History. Acts 1961, No. 413, § 13; A.S.A. 1947, § 84-2067.

Case Notes

Cited: Pledger v. Getty Oil Exploration Co., 309 Ark. 257, 831 S.W.2d 121 (1992).

26-51-714. Compensation for service — Determination of payment in state.

Compensation is paid in this state if:

- (a) The individual's service is performed entirely within the state; or
- (b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
- (c) Some of the service is performed in the state and:
 - (1) The base of operations or, if there is no base of operations, the place from which the service is directed or controlled, is in the state; or
 - (2) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

History. Acts 1961, No. 413, § 14; A.S.A. 1947, § 84-2068.

Case Notes

Cited: Pledger v. Getty Oil Exploration Co., 309 Ark. 257, 831 S.W.2d 121 (1992).

26-51-715. Sales factor.

The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

History. Acts 1961, No. 413, § 15; A.S.A. 1947, § 84-2069.

Case Notes

Cited: Pledger v. Getty Oil Exploration Co., 309 Ark. 257, 831 S.W.2d 121 (1992).

26-51-716. Sales of tangible personal property.

Sales of tangible personal property are in this state if:

- (a) The property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or
- (b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:
 - (1) The purchaser is the United States Government; or
 - (2) The taxpayer is not taxable in the state of the purchaser.

History. Acts 1961, No. 413, § 16; A.S.A. 1947, § 84-2070.

Case Notes

Cited: Pledger v. Getty Oil Exploration Co., 309 Ark. 257, 831 S.W.2d 121 (1992).

26-51-717. Sales — Income-producing activity.

Sales, other than sales of tangible personal property, are in this state if:

- (a) The income-producing activity is performed in this state; or
- (b) The income-producing activity is performed both within and without the state, in which event the portion of income allocable to this state shall be the percentage that is used in the formula for allocating income to Arkansas during the year of the sale.

History. Acts 1961, No. 413, § 17; A.S.A. 1947, § 84-2071.

Case Notes

Cited: Pledger v. Getty Oil Exploration Co., 309 Ark. 257, 831 S.W.2d 121 (1992).

26-51-718. Procedure when allocation does not fairly represent taxpayer's business activity.

If the allocation and apportionment provisions of this subchapter do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the Director of the Department of Finance and Administration may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (a) Separate accounting;
- (b) The exclusion of any one (1) or more of the factors;
- (c) The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

History. Acts 1961, No. 413, § 18; A.S.A. 1947, § 84-2072.

Case Notes

Reporting Method.

Reporting Method.

This section is permissive in terms of allowing a state to accept combined reporting; the Commissioner has the discretionary power to require or permit the apportionment on a combined basis of the income of a taxpayer that is part of a unitary business. *Leathers v. Jacuzzi, Inc.*, 326 Ark. 857, 935 S.W.2d 252 (1996).

Two corporate taxpayers held not entitled to file for a refund using the combined method, nor to file returns using the combined method, because they did not apply to the Commissioner to be permitted to use this method of accounting in accordance with this section. *Leathers v. Jacuzzi, Inc.*, 326 Ark. 857, 935 S.W.2d 252 (1996).

26-51-719. Construction.

This subchapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History. Acts 1961, No. 413, § 19; A.S.A. 1947, § 84-2073.

26-51-720. Severability.

If any provision of this subchapter or the application of this subchapter to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are declared to be severable.

History. Acts 1961, No. 413, § 20; A.S.A. 1947, § 84-2073n.

26-51-721. Repealer.

Any law or parts of laws in conflict with this subchapter are hereby repealed.

History. Acts 1961, No. 413, § 20; A.S.A. 1947, § 84-2073n.

26-51-722. Effective date.

The provisions of this subchapter shall be applicable to all income earned or accrued in the income years, both calendar and fiscal, beginning on or after January 1, 1961.

History. Acts 1961, No. 413, § 22; A.S.A. 1947, § 84-2073n.

26-51-723. Legislative findings — Emergency.

It is found and determined by the General Assembly that the laws of this state pertaining to the apportionment of income for income tax purposes derived from multi-state operations are in need of clarification in order that this state might derive its just taxes due from such income and that only by the immediate passage of this subchapter may such clarification be provided. Therefore, an emergency is declared to exist and this subchapter, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

History. Acts 1961, No. 413, § 23; A.S.A. 1947, § 84-2073n.

Subchapter 8 — Tax Returns

26-51-801. Returns by individuals.

26-51-802. Partnership returns.

26-51-803. Fiduciary returns.

26-51-804. Corporation returns.

26-51-805. Consolidated corporate returns.

26-51-806. Filing returns — Time and place — Forms.

26-51-807. Filing returns — Extensions of time.

26-51-808. Failure to file return or include income — Return or supplemental return.

26-51-809. Receipts for taxes.

26-51-810. Forms provided to tax practitioners.

26-51-811. Information at source as to recipients of income.

26-51-812. Withholding tax at source.

26-51-813. Reports and returns — Confidentiality — Exceptions.

26-51-814. Reports and returns — Preservation and destruction.

26-51-815. Computing capital gains and losses.

26-51-816. Signature document.

Preambles. Acts 1929, No. 118, contained a preamble which read:

“Whereas, this State has been neglectful of its Wards in the Charitable Institutions, which is a disgrace to the people of a Great Commonwealth, and it is imperative that additional Revenue should be provided to correct the fearful conditions which now exist; and

“Whereas, an equalization Fund should be provided to give equal Educational opportunities to the Boys and Girls of our Rural Communities; and

“Whereas, Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Ad Valorem Tax, thus penalizing and discouraging ownership of property, while many who enjoy the benefits of Government and have large incomes, pay almost nothing to support the Government; Therefore....”

Effective Dates. Acts 1929, No. 118, § 44: approved Mar. 9, 1929. Emergency clause provided:

“It is hereby ascertained and declared that the Hospital for Nervous Diseases is inadequate to properly care for all who should be confined therein, to the end there are many persons of unsound mind at large, who are a menace to the public safety, and that said Hospital as now equipped is inadequate to restrain those insane persons who are confined therein, so that there is danger of their escaping at any time and imperil the safety of the public; that there are hundreds and hundreds of persons desiring to enter the Tuberculosis Sanitarium who cannot now be accommodated there, because that institution has neither room, beds nor facilities for additional people, as a result said consumptives at large are spreading the disease amongst their families and friends; that the funds to be raised by this Act will be used for the better care of the charitable wards of this State and to provide better for the rural schools of this State; and it is therefore ascertained and declared that it is necessary for the public peace, health and safety that this Act go into immediate operation, and accordingly it is provided that this act shall take effect and be in force from and after its passage.”

Acts 1935, No. 23, § 3: approved Feb. 7, 1935. Emergency clause provided: “It being determined that this Act is necessary to better enforce the collection of Income Tax, and said act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in full force from and after its passage.”

Acts 1937, No. 183, § 3: Mar. 3, 1937. Emergency clause provided: “It having been ascertained that much additional revenue will be collected by the State of Arkansas upon the passage of this Act, and it having been determined that this Act is necessary to better enforce the collection of Income Tax, which will result in increased financial benefits to the people of this State, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval.”

Acts 1939, No. 140, § 8: Feb. 25, 1939. Emergency clause provided: “It having been ascertained that this Act is necessary to better enforce the collection of the Income Tax Law, which will result in increased financial benefits to the people of this State, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation for the public peace, health and safety, shall take effect and be in full force from and after its passage and approval.”

Acts 1947, No. 335, § 8: Mar. 28, 1947. Emergency clause provided: “It has been ascertained by the Legislature that adjustments and revisions of the present income tax laws are necessary to correct the method of computing and reporting income to the State for purposes of taxation thereof and to facilitate the enforcement of present laws relating thereto, and this law being necessary to remedy this situation and to provide for the public peace, health and safety and well being, an emergency is hereby declared to exist and this Act shall be in full force and effect after its passage and approval.”

Acts 1957, No. 20, § 6: Feb. 7, 1957. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, the University of Arkansas and the other state supported institutions of higher learning, the Public School System, the Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts

estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment to all of the people of this State; and (4) that only the provisions of this act will provide funds in amounts sufficient to alleviate the aforementioned conditions. It has also been found and is hereby declared by the General Assembly that in order that the state agencies, beneficiaries of the increased revenues hereunder, may properly plan their respective programs of operation, and that the Revenue Department may prepare and print the necessary income tax forms, and prepare, print and distribute the necessary instructions relative to the use of such forms, this act take effect without delay. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after the date of its passage and approval."

Acts 1968 (1st Ex. Sess.), No. 61, § 9: Feb. 27, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that many employers in this State are required under the provisions of Act 132 of 1965 to withhold small amounts on a weekly, bi-weekly, semi-monthly, or monthly basis from the wages paid employees and to remit the same to the Commissioner of Revenues; that this places an undue burden upon the employer of withholding and reporting such income tax; and that to remove inequities and at the same time to insure the effective enforcement of the income tax and income tax withholding laws of this State, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 114, § 4: Feb. 13, 1979. Emergency clause provided: "It is hereby found that there is an inconsistency in the current State Income Tax Code such that persons who by law are not liable for tax due to the size of their incomes are nonetheless required to file tax returns; that this inconsistency results in a hardship upon those persons and a waste of public money and the time of public employees; that this situation should be corrected without delay in order that it not continue through another calendar year tax return filing period; therefore, an emergency is hereby declared to exist, and this Act being necessary to the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1979, No. 708, § 10: Apr. 2, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the clarification of the consolidated return statutes is needed to provide both an equitable manner for the taxation of corporations in an affiliated group and also to protect revenues, and that only by the immediate passage of this Act will these problems be corrected. Therefore, an emergency is declared to exist and this Act, being immediately necessary for the preservation of the public peace, welfare and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 403, § 3: Jan. 1, 1982.

Acts 1983, No. 673, § 4: Mar. 22, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Student Loan Authority and the Student Loan Guarantee Foundation of Arkansas are charged with collecting student loan indebtedness and that in some cases those agencies are unable to locate persons who fail to make payment of their student loans; that all reasonable assistance should be given those agencies in locating persons who fail to repay student loans as agreed; that this Act is designed to aid those agencies in locating such persons by authorizing the Commissioner of Revenues to disclose to those agencies information concerning the last known address and/or last known employer of such persons. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 832, § 3: Jan. 1, 1983.

Acts 1985 (1st Ex. Sess.), No. 20, § 4: June 26, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 848 of 1985 as it was finally enacted phases in over a three year period the federal capital gains treatment for Arkansas income tax purposes beginning in 1987; that it was intended that the federal capital loss provisions likewise not be implemented until 1987 but that intent was not articulated in Act 848; that Act 848 adopts the federal capital loss provisions immediately instead of 1987; that Act 848 becomes effective on June 28, 1985; and therefore this Act should be given immediate effect in order to make the

technical correction in a timely manner and thereby avoid unintended consequences. Therefore an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1985 (1st Ex. Sess.), No. 32, § 4: June 26, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 848 of 1985 as it was finally enacted phases in over a three year period the federal capital gains treatment for Arkansas income tax purposes beginning in 1987; that it was intended that the federal capital loss provisions likewise not be implemented until 1987 but that intent was not articulated in Act 848; that Act 848 adopts the federal capital loss provisions immediately instead of 1987; that Act 848 becomes effective on June 28, 1985; and therefore this Act should be given immediate effect in order to make the technical correction in a timely manner and thereby avoid unintended consequences. Therefore an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 35, § 4: Feb. 13, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas Capital Gains Law becomes effective during calendar year 1987; that due to the present economic conditions the implementation should be postponed for two years; that this Act delays that implementation; and that this Act should go into effect immediately in order to prevent taxpayers from relying upon its becoming effective during calendar year 1987. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 382, § 34: Mar. 24, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the federal government has recently made major changes in the federal income tax law; that for simplicity of administration and equity various provisions of the federal law should be adopted for Arkansas Income Tax purposes; and that for the effective administration of this Act, the Act should become effective immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1989, No. 933, § 5: Mar. 24, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas Capital Gains Law becomes effective during calendar year 1989; that due to the present economic conditions that implementation should be postponed for two years; that this Act delays the implementation; and that this Act should go into effect immediately in order to prevent taxpayers from relying upon its becoming effective during calendar year 1989. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 95, § 9: Feb. 11, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain low income working taxpayers and senior citizens bear a disproportionate share of the state tax burden; that unless this act becomes effective immediately upon passage irreparable harm will occur to low income taxpayers of this state; and that this act should become effective immediately upon passage. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 685, § 11: Jan. 1, 1991.

Acts 1991, No. 882, § 2: Jan. 1, 1991.

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: “It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 1018, § 6: Apr. 12, 1993. Emergency clause provided: “It is hereby found and

determined by the General Assembly that the Arkansas Public Institutions of Higher Education are charged with collecting student indebtedness and that in some cases those institutions are unable to locate persons who fail to make payment of their student indebtedness; that all reasonable assistance should be given those agencies in locating persons who fail to pay or repay student tuition, fees, loans, and other student indebtedness; that this act is designed to aid those institutions in locating such persons by authorizing the Commissioner of Revenues to disclose to those agencies information concerning the last known address and/or last known employer of such persons. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 1160, § 42: §§ 1, 2(a), and 3 through 13: applicable for taxable years beginning on or after January 1, 1995.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 951, § 34: “Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.”

Acts 1997, No. 951, § 38: March 31, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2003, No. 965, § 3: effective for tax years beginning on and after January 1, 2003.

Acts 2003, No. 774, § 6: effective for tax years beginning on or after January 1, 2003.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Acts 2007, No. 369, § 4: effective for tax years beginning on or after January 1, 2007.

Research References

ALR.

State laws requiring public officials to protect confidentiality of income tax returns or information. 1 A.L.R.4th 959.

Am. Jur. 71 Am. Jur. 2d, State Tax., § 589 et seq.

C.J.S. 85 C.J.S., Tax., § 1102.

26-51-801. Returns by individuals.

(a) Every person owning property or doing business in the State of Arkansas shall file a return with the Director of the Department of Finance and Administration showing his or her gross income and the deductions or credits allowed by §§ 26-51-301, 26-51-302 [repealed], and 26-51-436 if he or she has a gross income of:

(1) Three thousand nine hundred ninety-nine dollars (\$3,999) if married and not filing jointly or married but living apart from the spouse at the end of the income year or on the date the spouse died;

(2) Seven thousand eight hundred dollars (\$7,800) if single and under sixty-five (65) years of age;

(3) Nine thousand three hundred dollars (\$9,300) if single and sixty-five (65) years of age or over;

(4) Twelve thousand one hundred dollars (\$12,100) if head of household and under sixty-five (65) years of age;

(5) Thirteen thousand dollars (\$13,000) if head of household and sixty-five (65) years of age or over;

(6) Fifteen thousand five hundred dollars (\$15,500) if married, filing jointly, and both spouses are under sixty-five (65) years of age;

(7) Fifteen thousand six hundred dollars (\$15,600) if married, filing jointly, and one (1) spouse is sixty-five (65) years of age or older;

(8) Sixteen thousand two hundred dollars (\$16,200) if married, filing jointly, and both spouses are sixty-five (65) years of age or over;

(9) Fifteen thousand five hundred dollars (\$15,500) if a qualifying widow or widower with a dependent child and under sixty-five (65) years of age; or

(10) Sixteen thousand dollars (\$16,000) if a qualifying widow or widower with a dependent child and sixty-five (65) years of age or over.

(b) If a husband and wife are living together and have an aggregate gross income of fifteen thousand five hundred dollars (\$15,500) or over, each shall make a return unless the income of each is included in a single joint return.

(c) If a taxpayer is unable to make his or her own return, the return shall be made by an authorized agent or by the guardian or other person charged with the care of the taxpayer or estate of the taxpayer.

(d) As used in this section:

(1) "Dependent" means the same as defined in § 152 of the Internal Revenue Code of 1986, as in effect on January 1, 2007;

(2) "Head of household" means the same as defined in § 2(b) of the Internal Revenue Code of 1986, as in effect on January 1, 2005;

(3) "Jointly" means filing a joint return; and

(4) "Qualifying widow or widower with a dependent child" means the "surviving spouse" as defined in § 2(a) of the Internal Revenue Code of 1986, as in effect on January 1, 2005.

(e) If a person is not required to file a return, the person must complete and submit to his or her employer a statement to that effect on forms approved by the director in order to be exempt from the state withholding tax.

History. Acts 1929, No. 118, Art. 4, § 17; Pope's Dig., § 14040; Acts 1939, No. 140, § 2; 1947, No. 335, § 4; 1957, No. 20, § 3; 1979, No. 114, § 1; A.S.A. 1947, § 84-2022; Acts 1991, No. 95, § 1; 1999, No. 1131, § 1; 2005, No. 675, § 16; 2007, No. 218, § 35.

A.C.R.C. Notes. Section 26-501-302 referred to in subsection (a) of this section was repealed by Acts 2007, No. 195, § 2.

Publisher's Notes. Acts 1947, No. 335, § 7, provided that it is declared to be the intention of the General Assembly that this act shall be applicable to the income year 1946, calendar or fiscal,

and for each year thereafter.

Acts 1957, No. 20, § 4, provided that the provisions of this act shall be applicable to all income earned or accrued in the income years, both calendar and fiscal, beginning on and after January 1, 1957.

Acts 1979, No. 114, § 2, provided that this act shall be applicable to the income year 1979, whether calendar or fiscal, and each year thereafter.

Acts 1991, No. 95, § 5, provided that the provisions contained in this act shall be effective for tax years beginning on and after January 1, 1991.

Amendments. The 2005 amendment substituted "January 1, 2005" for "January 1, 1991" in (d)(1), (d)(2) and (d)(4).

The 2007 amendment substituted "January 1, 2007" for "January 1, 2005" in (d)(1).

Meaning of "this act". Acts 1929, No. 118, codified as §§ 26-51-101 — 26-51-107, 26-51-201 — 26-51-204, 26-51-303, 26-51-401 — 26-51-406, 26-51-410 — 26-51-412, 26-51-415 — 26-51-417, 26-51-423 — 26-51-431, 26-51-436, 26-51-501, 26-51-801 — 26-51-804, 26-51-806 — 26-51-809, and 26-51-811 — 26-51-815.

U.S. Code. Sections 2(b) and 152 of the Internal Revenue Code of 1986, referred to in this section, are codified as 26 U.S.C. §§ 2(b) and 152.

Effective Dates. Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

26-51-802. Partnership returns.

(a) A partnership shall be classified and taxed for Arkansas income tax purposes in the same manner as it is classified and taxed for federal income tax purposes.

(b) (1) Every partnership filing an Arkansas partnership return shall state specifically the items of its gross income and the deductions allowed by this act and shall include in the return the names and addresses of individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual.

(2) The returns shall be sworn to by one (1) of the partners.

(c) (1) The provisions of § 26-51-702 are not applicable to partnerships filing Arkansas partnership returns.

(2) Subject to the provisions of § 26-51-202(e), all partnership income from activities within this state that is reflected on a partnership return shall be allocated to this state.

History. Acts 1929, No. 118, Art. 4, § 18; Pope's Dig., § 14041; A.S.A. 1947, § 84-2023; Acts 1993, No. 785, § 14; 1999, No. 1283, § 2; 2003, No. 965, § 2.

Amendments. The 2003 amendment redesignated former (a) and (b) as present (b) and (c); added present (a); substituted "filing an Arkansas partnership return shall state" for "shall make a return for each taxable year, stating" in (b)(1); added "filing Arkansas partnership returns" to the end of (c)(1); and, in (c)(2), substituted "this" for "the," twice and inserted "that is reflected on a partnership return."

Meaning of "this act". See note to § 26-51-801.

Effective Dates. Acts 2003, No. 965, § 3 provided:

"This act shall apply to tax years beginning on and after January 1, 2003."

Research References

ALR.

State income tax treatment of partnerships and partners. 2 A.L.R.6th 1.

26-51-803. Fiduciary returns.

(a) Every fiduciary, except a receiver appointed by authority of law in possession of part only of the property of an individual, shall make return under oath for any individual trust

or estate for whom he acts, when the returns are required by the provision of this act, and for every trust or estate when the beneficiary is a nonresident and shall state therein that he has sufficient knowledge of the affairs of the individual, trust, or estate for which return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, correct.

(b) Any fiduciary required to make returns under this act shall be subject to all the provisions of this act which apply to individuals.

History. Acts 1929, No. 118, Art. 4, § 19; Pope's Dig., § 14042; A.S.A. 1947, § 84-2024.

Meaning of "this act". See note to § 26-51-801.

26-51-804. Corporation returns.

(a) Every corporation subject to taxation under this act shall make a return stating specifically the items of its gross income and the deductions and credits allowed by this act.

(b) The return shall be sworn to by the president, vice-president, treasurer, or other principal officer.

(c) If any foreign corporation has no office or place of business in this state but has an agent in this state, the returns shall be made by the agent.

(d) In case of a receiver, trustee in bankruptcy, or assignees operating the property or business of a corporation, the receiver, trustee, or assignees shall make returns for the corporation in the same manner and form as corporations are required to make returns, and any tax due on the basis of those returns shall be collected in the same manner as if collected from the corporations of whose business or property they have custody or control.

(e) Returns made under this section shall be subject to the provisions of this act.

History. Acts 1929, No. 118, Art. 4, § 20; Pope's Dig., § 14043; A.S.A. 1947, § 84-2025; Acts 1987, No. 114, § 1; 1987, No. 382, § 26.

Publisher's Notes. Acts 1987, No. 382, § 1, provided that this act shall be known and may be cited as the "Income Tax Act of 1987."

Acts 1987, No. 382, § 2, provided that the purpose of this act is to make technical amendments to the Income Tax Act of 1929, Acts 1929, No. 118, as amended, and to the Arkansas Tax Procedure Act, Acts 1979, No. 401, as amended, to make the Arkansas income tax and tax procedure statutes conform to several recent amendments to their counterparts in the federal income statutes, to eliminate procedural problems that have arisen since the enactment of these acts, and for other purposes.

Acts 1987, No. 382, § 32(e), provided that all other laws and parts of laws in conflict with this act are repealed for income years beginning on and after January 1, 1987.

Acts 1987, No. 382, § 33, provided that, except as provided in § 26-18-303(a)(2)(B) and (c), regarding confidentiality of tax returns and other tax information, which shall apply retroactively to any pending suit, action, or prosecution, administrative or judicial, for which no final judgment has been rendered by a court of competent jurisdiction and all future suits, actions, and prosecutions, the provisions of this act shall apply to income years beginning on and after January 1, 1987.

Meaning of "this act". See note to § 26-51-801.

Case Notes

Income.

Income.

Corporation operating water and light plant in state and receiving income from stock owned by it in corporations operated in another state is liable for the tax on both sources of income. *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

26-51-805. Consolidated corporate returns.

(a) (1) All corporations which are eligible members of an affiliated group as that term is defined in 26 U.S.C. § 1504(a) and (b) as of January 1, 1989, which affiliated group files a federal consolidated corporate income tax return pursuant to 26 U.S.C. §§ 1501-1505 as of January 1, 1989, may elect to file a consolidated Arkansas corporate income tax return.

(2) However, only corporations in the affiliated group that have gross income from sources within the State of Arkansas that is subject to taxation under the provisions of the Arkansas Income Tax Act, as amended, § 26-51-101 et seq., shall be eligible to file consolidated corporate income tax returns in Arkansas.

(b) (1) All corporations in the affiliated group which are eligible to file an Arkansas consolidated income tax return must consent to, and join in, the filing of the consolidated return prior to the last day for filing the return, as may be extended.

(2) The making of the consolidated income tax return shall be deemed as consent of each eligible corporation in the affiliated group.

(c) When filing an Arkansas consolidated corporate income tax return, a complete copy of the federal consolidated corporate income tax return filed with the federal Internal Revenue Service for that taxable year must be attached to the Arkansas return.

(d) (1) The election to file an Arkansas consolidated corporate income tax return for any income year shall require the filing of consolidated corporate income tax returns for all subsequent income years so long as the individual corporations remain members of the affiliated group unless the Director of the Department of Finance and Administration consents to the filing of separate returns by any members of the affiliated group.

(2) However, in the event that the General Assembly amends or supplements the Arkansas Income Tax Act, § 26-51-101 et seq., in a manner which would substantially alter the method of allocating or apportioning net income or loss subject to the Arkansas Income Tax Act, § 26-51-101 et seq., or in computing the tax due from the affiliated group, then the affiliated group may revoke the election to file an Arkansas consolidated corporate income tax return effective for the income year to which any such change to the Arkansas Income Tax Act, § 26-51-101 et seq., is effective.

(e) In any case of two (2) or more corporations, whether or not affiliated, owned, or controlled directly or indirectly by the same interests, the director may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such corporations if he determines that the distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income to any such corporation. This subsection is based upon the concept of 26 U.S.C. § 482 as of January 1, 1989, as that section applies to corporations.

(f) In computing Arkansas consolidated taxable income or loss to which the tax rate is applied, the separate net income or loss of each corporation which is entitled to be included in the affiliated group shall be included in the consolidated net income or loss to the extent that its net income or loss is separately apportioned or allocated to the State of Arkansas in accordance with the provisions of § 26-51-701 et seq.

(g) This section is specifically designed to clarify the filing of consolidated corporate income tax returns with the Revenue Division of the Department of Finance and

Administration and is to amend the Arkansas Income Tax Act, § 26-51-101 et seq. This section is based upon the concept of filing federal consolidated income tax returns.

History. Acts 1979, No. 708, §§ 1-6; A.S.A. 1947, §§ 84-2025.1 — 84-2025.6; Acts 1989, No. 826, §§ 33, 34.

Publisher's Notes. Acts 1979, No. 708, § 8, provided that the provisions of the act should apply to all income tax years after December 31, 1976.

Acts 1989, No. 826, § 1, provided that this act shall be known and may be cited as the "Arkansas Income Tax Technical Revenue Act of 1989".

Acts 1989, No. 826, § 36, provided that the provisions of that act shall be in full force and effect for all income years beginning on or after January 1, 1989.

Case Notes

Construction.

Charitable Contributions.

Construction.

This section does not mandate the filing of a combined return or the filing of any specific type of return. *Leathers v. Jacuzzi, Inc.*, 326 Ark. 857, 935 S.W.2d 252 (1996).

Charitable Contributions.

The legislative intent is to follow the federal concept of allowing deductions for charitable contributions to be taken at the consolidated-entity level; this section does not require that charitable contributions be deducted at the individual level by the separate corporations before a consolidated tax return is filed. *Central & S. Cos. v. Weiss*, 339 Ark. 76, 3 S.W.3d 294 (1999).

26-51-806. Filing returns — Time and place — Forms.

(a) (1) Returns shall be in such form as the Director of the Department of Finance and Administration may prescribe from time to time and shall be filed with the director's office at Little Rock.

(2) Returns for all income taxes other than corporation income tax, cooperative associations, and exempt organizations shall be filed as follows:

(A) If covering the preceding calendar year, on or before April 15; or

(B) If covering a fiscal year, on or before the expiration of three and one-half (3½) months after the closing date of the period covered.

(3) Returns for corporation income tax shall be filed as follows:

(A) If covering the preceding calendar year, on or before March 15; or

(B) If covering a fiscal year, on or before the expiration of two and one-half (2½) months after the closing date of the period covered.

(4) (A) Returns for cooperative association income tax shall be filed as follows:

(i) If covering the preceding calendar year, on or before September 15; or

(ii) If covering a fiscal year, on or before the expiration of eight and one-half (8½) months after the closing date of the period covered.

(B) As used in this section, "cooperative association" means a cooperative association as described in § 26 U.S.C. § 1381(a) as in effect on January 1, 2003.

(5) (A) Returns for an exempt organization that is required to file an income tax return shall be filed as follows:

(i) If covering the preceding calendar year, on or before May 15;
or

(ii) If covering a fiscal year, on or before the expiration of four

and one-half (4½) months after the closing date of the period covered.

(B) As used in this section, “exempt organization” means an organization as described in § 26-51-303.

(b) (1) The director shall cause to be prepared blank forms for the returns and shall cause them to be furnished upon application, but failure to receive or secure the forms shall not relieve any taxpayer from the obligation of making any return required by this act.

(2) As far as possible and practicable for filing returns for income tax, the director shall use the same form of blanks as is used by the United States down to the net income part of the form.

(c) (1) In filing an income tax return in the State of Arkansas, a taxpayer shall not be required to execute any affidavit or other statement under oath, but shall make the following statement, which shall be annexed to the return:

“I declare, under the penalties of perjury, that the foregoing statements are true to the best of my knowledge and belief and that all my income is reported hereon.”

(Year)

(2) The statement shall be signed by the taxpayer filing the return.

(d) (1) Every corporation filing a return under this act shall attach to the return a completed copy of its federal tax return for the same income year, including all schedules and attachments.

(2) As used in this subsection, “corporation” means a Subchapter C corporation as defined in § 1361(a) of the Internal Revenue Code of 1986, in effect January 1, 1989. **History.** Acts 1929, No. 118, Art. 4, § 22; 1929, No. 118, Art. 9, § 43; 1935, No. 23, § 1; 1937, No. 183, § 1; Pope's Dig., §§ 14045, 14066; Acts 1947, No. 158, § 1; 1979, No. 600, § 1; 1981, No. 403, § 1; A.S.A. 1947, §§ 84-2027, 84-2028, 84-2048; Acts 1989, No. 826, § 7; 2003, No. 774, § 2; 2007, No. 369, §§ 3, 4.

Publisher's Notes. As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-805.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-805.

Amendments. The 2003 amendment redesignated former (a) as present (a)(1) and deleted “Arkansas on or before May 15, if covering the preceding calendar year and, if covering a fiscal year, on or before the expiration of four and one half (4½) months from the closing date of the period covered” from the end; and added (a)(2) through (a)(4).

The 2007 amendment, in (a)(2), substituted “tax” for “tax and” following “income”, made a minor punctuation change and inserted “and exempt organizations”; substituted “As used in this section, cooperative” for “Cooperative” in (a)(4)(B); and added (a)(5).

Effective Dates. Acts 2003, No. 774, § 6: applicable to tax years beginning on or after January 1, 2003.

Acts 2007, No. 369, § 4, provided: “This act shall be effective for tax years beginning on or after January 1, 2007.”

Meaning of “this act”. See note to § 26-51-801.

U.S. Code. Section 1361 of the Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 1361.

Case Notes

Construction.

Construction.

The adoption, for convenience, of the same blank forms certainly does not mean that the state also adopts the federal income tax law in its entirety. *F & M Bank v. Skelton*, 266 Ark. 680, 587 S.W.2d 561 (1979).

Cited: *Collins v. Humphrey*, 181 Ark. 609, 27 S.W.2d 102 (1930); *Taylor v. Partain*, 267 Ark. 476, 591 S.W.2d 653 (1980).

26-51-807. Filing returns — Extensions of time.

(a) (1) Any person who requests an automatic extension of time for filing a federal income tax return and who attaches a copy of the request to the corresponding state income tax return shall be granted an extension of time until the due date of the federal income tax return to file the corresponding state income tax return.

(2) Any person who receives an extension of time for filing a federal income tax return in addition to an automatic extension, and who attaches a copy of the document granting the federal extension to the corresponding state income tax return, shall be granted an extension of time until the due date of the federal income tax return to file the corresponding state income tax return.

(b) (1) The Director of the Department of Finance and Administration shall assess the taxpayer interest at the rate of ten percent (10%) per annum on the amount of tax finally determined to be due.

(2) (A) (i) The interest on income tax other than corporation income tax may be computed from April 16 if the return covers the preceding calendar year.

(ii) If the return covers a fiscal year, interest shall be computed from the day following the expiration of three and one-half (3½) months after the closing date of the period covered.

(B) The interest on corporation income tax shall be computed as follows:

(i) If the return covers a calendar year, from March 16; or

(ii) If the return covers a fiscal year, from the day following the expiration of two and one-half (2½) months after the closing date of the period covered.

(c) The director may grant a taxpayer's written request to extend the time for filing a corporation income tax return for a period of time not to exceed sixty (60) days in addition to the extensions provided in subsection (a) of this section that correspond to the extensions for filing a federal return.

(d) The director may promulgate regulations granting automatic extensions of time to file income tax returns and information returns without the taxpayer being required to submit a written application, a copy of the federal request for extension, or a copy of the document granting the federal extension if the director determines that such requirements are unnecessary for the administration of the income tax laws.

History. Acts 1929, No. 118, Art. 4, § 22; 1935, No. 23, § 1; 1937, No. 183, § 1; Pope's Dig., § 14045; Acts 1979, No. 600, § 1; 1981, No. 403, § 1; 1983, No. 832, § 1; A.S.A. 1947, § 84-2027; Acts 1991, No. 685, § 9; 2003, No. 774, § 3; 2007, No. 369, § 2.

Publisher's Notes. Acts 1991, No. 685, § 11, provided:

"The provisions of this act shall be in full force and effect for all income years beginning on and after January 1, 1991."

Amendments. The 2003 amendment redesignated former (b)(2) as present (b)(2)(A); in (b)(2)(A), inserted “on income ... tax” following “interest,” substituted “April” for “May,” substituted “three and one-half (3 ½)” for “four and one-half (4 ½)” and added (b)(2)(B).

The 2007 amendment rewrote (c).

Effective Dates. Acts 2003, No. 774, § 6: applicable to tax years beginning on or after January 1, 2003.

Acts 2007, No. 369, § 4, provided: “This act shall be effective for tax years beginning on or after January 1, 2007.”

Case Notes

Cited: Collins v. Humphrey, 181 Ark. 609, 27 S.W.2d 102 (1930); Taylor v. Partain, 267 Ark. 476, 591 S.W.2d 653 (1980).

26-51-808. Failure to file return or include income — Return or supplemental return.

(a) If the Director of the Department of Finance and Administration shall be of the opinion that any taxpayer has failed to file a return or failed to include in a return filed, either intentionally or through error, items of taxable income, the director may require from the taxpayer a return or a supplementary return, under oath, in such form as he shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this act.

(b) If from a supplementary return or otherwise, the Director of the Department of Finance and Administration finds that any items of income taxable under this act have been omitted from the original return, he may require the items so omitted to be disclosed to him, under oath of the taxpayer, and to be added to the original return.

(c) Such supplementary return and the correction of original shall not relieve the taxpayer from any of the penalties to which he may be liable under any provision of this act.

History. Acts 1929, No. 118, Art. 4, § 23; Pope's Dig., § 14046; A.S.A. 1947, § 84-2029.

Meaning of “this act”. See note to § 26-51-801.

Case Notes

Errors.

Errors.

The Arkansas tax laws provide ample opportunity for a taxpayer to establish the error of any tax assessment. Stuart v. Department of Fin. & Admin., 598 F.2d 1115 (8th Cir. 1979).

26-51-809. Receipts for taxes.

The Director of the Department of Finance and Administration shall give to any person making any payment a full written or printed receipt stating the amount paid and the particular account for which the payment was made and show for which installment it is paid.

History. Acts 1929, No. 118, Art. 8, § 36; Pope's Dig., § 14059; A.S.A. 1947, § 84-2042.

26-51-810. Forms provided to tax practitioners.

(a) The Director of the Department of Finance and Administration may impose a postage fee sufficient to defray the cost of postage for mailing out tax forms to tax practitioners.

(b) A tax practitioner is any person, partnership, limited liability company, or

corporation who compiles a tax return for hire.

History. Acts 1968 (1st Ex. Sess.), No. 61, § 5; A.S.A. 1947, § 84-2027.1; Acts 1995, No. 1160, § 25.

Publisher's Notes. Acts 1968 (1st Ex. Sess.), No. 61, § 5, formerly was compiled as A.S.A. 1947, § 84-2079.7, before being transferred to become A.S.A. 1947, § 84-2027.1.

Amendments. The 1995 amendment inserted "limited liability company" in (b).

26-51-811. Information at source as to recipients of income.

(a) (1) Every individual, partnership, limited liability company, corporation, joint-stock company or association, or insurance company, being a resident or having a place of business in this state; members of a partnership or employees in whatever capacity acting, including lessees or mortgagees, of real or personal property; members or managers of limited liability companies or employees in whatever capacity acting; fiduciaries; employers and all officers and employees of this state, or of any political subdivision of this state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income amounting to two thousand five hundred dollars (\$2,500) or over, paid or payable during any year to any taxpayer shall make complete returns under oath to the Director of the Department of Finance and Administration, under such regulations and in such form and manner and to such extent as may be prescribed by the director with the approval of the Governor.

(2) Unless the income is so reported, the director may disallow such payments as deductions or credits in computing the tax of the payer.

(b) The returns may be required, regardless of amounts:

(1) In the case of payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations; and

(2) In the case of dividends paid by corporations.

(c) When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

(d) The provisions of this section shall not apply to the payment of interest obligations not taxable under this act.

History. Acts 1929, No. 118, Art. 4, § 21; Pope's Dig., § 14044; Acts 1939, No. 140, § 3; 1947, No. 335, § 2; A.S.A. 1947, § 84-2026; Acts 1995, No. 1160, § 18.

Publisher's Notes. Acts 1947, No. 335, § 7, provided that it is declared to be the intention of the General Assembly that this act shall be applicable to the income year 1946, calendar or fiscal, and for each year thereafter.

Amendments. The 1995 amendment, in (a)(1), inserted "limited liability company" and inserted "members or managers of limited liability companies or employees in whatever capacity acting."

Meaning of "this act". See note to § 26-51-801.

26-51-812. Withholding tax at source.

(a) The Director of the Department of Finance and Administration, whenever he deems it necessary to ensure compliance with the provisions of this act, may, under rules and regulations prescribed by him, require any individual, partnership, limited liability

company, corporation, joint-stock company, or association, including lessees or mortgagors and employees of the state or of any political subdivision of the state having control, receipt, custody, disposal, or payment of interest, other than interest coupons payable to bearer, rent, salaries, wages, premiums, compensation, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income paid or payable to any taxpayer, to deduct and withhold the tax due from the taxpayer and make return thereof and pay the tax to the director.

(b) (1) Upon the giving of notice by the director to the fiduciary of an estate or trust that the taxes due under this act from the grantor or beneficiary of an estate or trust on income of the estate or trust, which is taxable to the grantor or beneficiary under the provisions of § 26-51-201, have not been paid, the fiduciary shall withhold the amount of the taxes from any payments or distribution due or to become due from the estate or trust to the grantor or beneficiary and transmit the amount so withheld to the director.

(2) The notice required in this section is to be served on the fiduciary or other person named above by registered mail, the letter to be directed to the last known address of the fiduciary or other person so named above, as the address appears in the records of the director.

(3) Any person failing or refusing to deduct and withhold the tax due from any taxpayer as required by the director pursuant to this section shall be personally liable for such tax, and the director may proceed against him as provided for in § 27 [repealed] of this act.

(c) The provisions of this section shall not apply to the payment of interest obligations not taxable under this act.

History. Acts 1929, No. 118, Art. 4, § 21; Pope's Dig., § 14044; Acts 1939, No. 140, § 3; 1947, No. 335, § 2; A.S.A. 1947, § 84-2026; Acts 1995, No. 1160, § 19.

Publisher's Notes. Acts 1947, No. 335, § 7, provided that it is declared to be the intention of the General Assembly that this act shall be applicable to the income year 1946, calendar or fiscal, and for each year thereafter.

Amendments. The 1995 amendment, in (a), inserted "limited liability company" and made minor stylistic changes.

Meaning of "this act". See note to § 26-51-801.

26-51-813. Reports and returns — Confidentiality — Exceptions.

(a) It shall be unlawful for the Department of Finance and Administration or any other public official or employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by this act or any information concerning the taxpayer's affairs acquired from the taxpayer's records, officers, or employees while examining or auditing any taxpayer's liability for taxes imposed under this act, except:

(1) In connection with a proceeding involving taxes due under this act from the taxpayer making the return; and

(2) In the manner and for the purposes prescribed in this section, the Arkansas Tax Procedure Act, § 26-18-101 et seq., and §§ 26-5-107, 26-5-108, 26-51-910, 26-52-105, 26-52-302, 26-52-303, 26-52-509, and 26-59-111.

(b) The Director of the Department of Finance and Administration may furnish a copy of any taxpayer's return to any official of the United States or of any state having duties to

perform in respect to the assessment or collection of any tax imposed upon or measured by income if the taxpayer is required by the laws of the United States or of the state to make a return in the United States or that state and if the laws of the United States or of the state provide substantially for the same secrecy in respect to the information revealed by the taxpayer's return as is provided by Arkansas laws.

(c) The director and all other public officials and employees shall keep and maintain the same secrecy in respect to any information furnished by any department, commission, or official of the United States or of any other state in respect to the income of any person as is required by this act in respect to information concerning the affairs of the taxpayer under this act.

(d) Nothing in this section shall be construed to prohibit the department from publishing statistics so classified as not to disclose the identity of a particular return or report and the items of the return or report, or the inspection by the Attorney General or other legal representatives of this state of the return or report of any taxpayer who shall bring action to set aside or review the tax paid on the return or report or against whom an action or proceeding is necessary to recover any tax or any penalty imposed by this act.

(e) (1) Nothing in this section shall be construed to prohibit the Department of Finance and Administration from disclosing from any return or other record maintained by the director to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration the last known address or whereabouts or the last known employer of any deserting parent from whom the office is charged with collecting child support.

(2) In providing this information, the Department of Finance and Administration shall not allow the office to examine the tax return, except that the Department of Finance and Administration shall disclose the taxpayer's tax return, personal and business, when compelled by an order of any Arkansas circuit court or the Supreme Court in any case or controversy before that court.

(f) (1) Nothing in this section shall be construed to prohibit the Department of Finance and Administration from disclosing from any return or other record maintained by the director to the Arkansas Student Loan Authority or the Student Loan Guarantee Foundation of Arkansas, the last known address or whereabouts or the last known employer of any person from whom the Arkansas Student Loan Authority and the Student Loan Guarantee Foundation of Arkansas are charged with collecting a student loan indebtedness.

(2) In providing this information the Department of Finance and Administration shall not allow the Arkansas Student Loan Authority or the Student Loan Guarantee Foundation of Arkansas to examine the tax return.

(g) (1) Nothing in this section shall be construed to prohibit the Department of Finance and Administration from disclosing from any return or other record maintained by the director to the Department of Higher Education or any Arkansas public institution of higher education the last known address or whereabouts or the last known employer of any person from whom these institutions are charged with collecting student indebtedness.

(2) In providing this information, the Department of Finance and Administration shall not allow the Department of Higher Education or the Arkansas public institutions of higher education to examine the tax return.

History. Acts 1929, No. 118, Art. 8, § 40; Pope's Dig., § 14063; Acts 1939, No. 38, § 1; 1947, No. 335, § 1; 1981, No. 903, § 1; 1983, No. 673, § 1; A.S.A. 1947, § 84-2046; Acts 1993, No. 1018, § 1; 1995, No. 1184, § 37; 2007, No. 827, § 219.

Publisher's Notes. Acts 1947, No. 335, § 7, provided that it is declared to be the intention of the General Assembly that this act shall be applicable to the income year 1946, calendar or fiscal, and for each year thereafter.

Amendments. The 1993 amendment added (g).

The 1995 amendment added the subdivision designations in (e); substituted "Office of Child Support Enforcement" for "Child Support Enforcement Unit" throughout (e); deleted "of the Arkansas Department of Human Services" preceding "the last known address" in (e)(1); and added the exception in (e)(2).

The 2007 amendment deleted "26-51-606 [repealed]" following "26-5-108" in (a)(2), and made a related change.

Meaning of "this act". See note to § 26-51-801.

Research References

Ark. L. Rev.

Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 741.

26-51-814. Reports and returns — Preservation and destruction.

All reports and returns required by this act shall be preserved for three (3) years and thereafter until the Director of the Department of Finance and Administration orders them destroyed.

History. Acts 1929, No. 118, Art. 8, § 40; Pope's Dig., § 14063; Acts 1983, No. 673, § 1; A.S.A. 1947, § 84-2046.

Meaning of "this act". See note to § 26-51-801.

26-51-815. Computing capital gains and losses.

(a) (1) (A) To the extent they apply to capital gains and losses realized or incurred during income years beginning after December 31, 1996, 26 U.S.C. §§ 1211-1237 and 1239-1257 as in effect on January 1, 2007, and the regulations of the Secretary of the Treasury promulgated under 26 U.S.C. §§ 1211-1237 and 1239-1257 as in effect on January 1, 2007, are adopted for the purpose of computing tax liability under the Income Tax Act of 1929, § 26-51-101 et seq.

(B) However, the provisions of this section shall not apply to a C corporation as defined in 26 U.S.C. § 1361, as in effect on January 1, 1997.

(2) Furthermore, any other provisions of the federal income tax law and regulations necessary for interpreting and implementing 26 U.S.C. §§ 1211-1237 and 1239-1257 are adopted to that extent and as in effect on January 1, 2007.

(b) If a taxpayer has a net capital gain for tax years beginning on and after January 1, 1999, thirty percent (30%) of the gain shall be exempt from state income tax.

(c) Section 1202 of the Internal Revenue Code of 1986, as in effect on January 1, 1995, regarding the exclusion from gain of certain small business stock, is adopted for the purpose of computing Arkansas income tax liability.

(d) (1) If a taxpayer has a net capital gain from a venture capital investment, one hundred percent (100%) of the gain shall be exempt from the Income Tax Act of 1929, § 26-51-101 et seq., if:

(A) The venture capital investment was initially made on or after January 1, 2001; and

(B) The venture capital investment was held for at least five (5) years prior to disposition.

(2) (A) “Venture capital” means equity financing, broadly defined, including early stage research, development, commercialization, seed capital for startup enterprises, and other risk capital for expansion of entrepreneurial enterprises doing business in Arkansas that are:

(i) Qualified technology-based enterprises doing business in Arkansas;

(ii) Qualified biotechnology enterprises doing business in Arkansas; or

(iii) Qualified technology incubator clients doing business in Arkansas.

(B) “Venture capital” does not include the purchase of a share of stock in a company if, on the date on which the share of stock is purchased, the company has securities outstanding that are:

(i) Registered on a national securities exchange under § 12(b) of Title I of the Securities Exchange Act of 1934 as it exists on January 1, 2001;

(ii) Registered or required to be registered under § 12(g) of Title I of the Securities Exchange Act of 1934 as it exists on January 1, 2001; or

(iii) Required to be registered except for the exemptions in § 12(g)(2) of Title I of the Securities Exchange Act of 1934 as it exists on January 1, 2001.

(C) “Qualified biotechnology enterprise” means a corporation, partnership, limited liability company, sole proprietorship, or other entity that is certified by the Arkansas Economic Development Commission pursuant to § 2-8-108.

(D) “Qualified technology incubator” means a business incubator certified by the Board of Directors of the Arkansas Science and Technology Authority as being a facility operated in cooperation with an Arkansas college or university to foster the growth of technology-based enterprises.

(E) “Qualified technology incubator client” means a corporation, partnership, limited liability company, sole proprietorship, or other entity that, as of the date of the venture capital investment, is certified by an Arkansas college or university as currently receiving, or having received within the previous three (3) years, the services of a qualified technology incubator.

(F) “Qualified technology-based enterprise” means a corporation, partnership, limited liability company, sole proprietorship, or other legal entity whose primary business directly involves commercializing the results of research in fields having long-term economic or commercial value to the state and having been identified in the research and development plan approved by the board.

History. Acts 1929, No. 118, §§ 45, 46, as added by 1985, No. 848, § 1; 1985 (1st Ex. Sess.), No. 20, § 1; 1985 (1st Ex. Sess.), No. 32, § 1; A.S.A. 1947, §§ 84-2048.1, 84-2048.2; Acts 1987, No. 35, § 2; 1989, No. 933, § 2; 1991, No. 882, § 1; 1995, No. 1160, § 9; 1997, No. 951, § 16; 1999, No. 1005, § 1; 1999, No. 1126, § 39; 2001, No. 1584, § 1; 2003, No. 857, § 1; 2007, No. 218, § 36.

A.C.R.C. Notes. Acts 1989, No. 933, § 1, provided “It is hereby found and determined by the

General Assembly that the United States Congress is anticipated to adopt special treatment for capital gains income for federal income tax purposes, and that it is in the best interest of this State for the General Assembly to enact a capital gains law to parallel the federal capital gains law as soon as the United States Congress takes such action. Therefore, in order to timely implement a capital gains law to synchronize with the federal capital gains law, the Governor is hereby requested to include a capital gains proposal in his call for the first Special Session of the Arkansas General Assembly which occurs after the United States Congress enacts a law addressing capital gains treatment under the federal Internal Revenue Code.”

Acts 1991, No. 882, § 2, provided:

“This act shall be effective for income years beginning on or after January 1, 1991.”

Acts 1995, No. 1160, § 42, provided that the 1995 amendments are applicable for taxable years beginning on or after January 1, 1995.

Publisher's Notes. Acts 1997, No. 951, § 34, provided that Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Amendments. The 2003 amendment added present (d)(2)(D); redesignated former (d)(2)(D) and (d)(2)(E) as present (d)(2)(E) and (d)(2)(F); in (d)(2)(E), substituted “an Arkansas college or university” for “the University of Arkansas” and “a qualified technology incubator” for “the GENESIS Technology Incubator at the University of Arkansas”; and in (d)(2)(F), substituted “commercializing the ... board” for “information technology, nano-technology, or emerging technology for energy such as micro-turbines that is doing business in Arkansas.”

The 2007 amendment substituted “January 1, 2007” for “January 1, 1999” throughout (a).

U.S. Code. Section 1202 of the Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 1202.

Sections 12(b), 12(g), and 12(g)(2) of Title I of the Securities Exchange Act of 1934, referred to in this section, are codified as 15 U.S.C. § 78l.

Effective Dates. Acts 1999, No. 1005, § 2: effective for tax years beginning on and after January 1, 1999.

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Research References

Ark. L. Rev.

Comment: The Venture Capital Investment Act of 2001: Arkansas's Vision for Economic Growth, 56 Ark. L. Rev. 397.

U. Ark. Little Rock L.J.

Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-51-816. Signature document.

(a) The Director of the Department of Finance and Administration may require the originator, transmitter, or paid preparer of an electronically filed Arkansas income tax return to retain the signature document, AR8453, as well as all other forms and schedules which support the return.

(b) Supporting forms and schedules which should be attached to the signature document include, but are not limited to, the following:

(1) Form W-2;

(2) Form 1099;

(3) Form AR1000EC;

(4) Form AR1000DC;

(5) Form AR1000RC5; and

(6) Any other documents or schedules that require the taxpayer's signature.

(c) The signature document and all supporting documents for an electronically filed Arkansas return must be made available for inspection by the director upon the director's request.

(d) The director may promulgate rules and regulations for the proper enforcement of this section.

History. Acts 1999, No. 1132, § 7.

Subchapter 9 **— Arkansas Income Tax Withholding Act**

26-51-901. Title.

26-51-902. Definitions.

26-51-903. Subchapter supplemental.

26-51-904. Rules and regulations — Forms.

26-51-905. Withholding of tax.

26-51-906. Withholding state income taxes of federal employees by federal agencies.

26-51-907. Withholding tables.

26-51-908. Employer's return and payment of taxes withheld.

26-51-909. Annual withholding statement.

26-51-910. Refunds to employer for overpayment.

26-51-911. Declaration of estimated tax.

26-51-912. Minimum estimated tax.

26-51-913. Payment of estimated tax.

26-51-914. Furnishing exemption certificate to employer.

26-51-915. Deposits of payments — Refunds.

26-51-916. Employer liable for amounts required to be withheld — Exceptions.

26-51-917. Employer's withholding account number.

26-51-918. Withholding — Deferred income.

26-51-919. Pass-through entities.

Effective Dates. Acts 1965, No. 132, §§ 24, 27: Jan. 1, 1966. Emergency clause provided: "It is hereby found and determined by the General Assembly that the establishment of the State income tax withholding system provided for in this Act necessitates a great deal of advance planning and preparation by the Commissioner and the Department of Revenues; that it is essential to the proper initiation and administration of the withholding system provided for herein that the Commissioner of Revenues promulgate rules and regulations, prescribe forms and procure the printing of the same, and take bids upon and purchase equipment and supplies necessary therefor; and that it is necessary that this Act take effect immediately in order that the Commissioner and the Department of Revenues may commence such planning and preparation and may take bids upon and negotiate the purchase of the equipment and supplies necessary to effectively initiate said withholding system on January 1, 1966. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in effect from the date of its passage and approval." Approved March 1, 1965.

Acts 1965 (1st Ex. Sess.), No. 5, § 12: June 3, 1965. Emergency clause provided: "It is hereby provided that the provisions of this Act shall take effect with the beginning of the fiscal year on July 1, 1965; provided, however, that because of the necessity of making certain provisions of this Act effective immediately, particularly with respect to the funds provided for construction, new improvements and educational purposes, and only the provisions of this Act will make these benefits possible; now, therefore, it has been found and is hereby declared by the General

Assembly of the State of Arkansas that it is imperative that this Act become effective immediately. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval.”

Acts 1967, No. 13, § 2: Jan. 26, 1967. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State Income Tax Withholding Law included a provision authorizing farmers to file a declaration and pay the estimated tax on or before the 15th day of the second month after close of income year, but did not include a provision comparable to the Federal law authorizing farmers to file a return and pay the tax one month later than the final date for filing the declaration, in lieu of filing a declaration and paying the estimated tax, and, that the failure to include such provision in the Arkansas Income Tax Withholding Law has resulted in an undue burden on the farmers of this State which should be relieved immediately, and that this Act is designed to relieve this burden. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval.”

Acts 1967, No. 15, § 3: Jan. 26, 1967. Emergency clause provided: “It is hereby found and determined by the General Assembly that under the Arkansas Income Tax Act of 1965, and the administrative rules and regulations promulgated pursuant thereto, some agricultural employers are required to withhold from wages and compensation paid to agricultural laborers; that withholding is not required on compensation paid for agricultural labor under the Federal Income Tax Law; and that the said requirement under the Arkansas law and regulations creates an undue burden upon agricultural employers in this State, which should be removed immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval.”

Acts 1967, No. 105, § 3: approved Feb. 17, 1967. Emergency clause provided: “There is a possibility that the 66th General Assembly will be extended, in which event considerable confusion could evolve concerning the effective date of legislation which does not contain an emergency clause. Therefore, an emergency is hereby declared and this act shall be in effect from and after the date of passage.”

Acts 1967, No. 636, § 7: Apr. 6, 1967. Emergency clause provided: “It is hereby found and determined by the General Assembly that a number of inequities exist in the Arkansas Income Tax Withholding Act of 1965 and that the immediate passage of this Act is necessary to correct such inequities and to expedite the enforcement of such law. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1968 (1st Ex. Sess.), No. 61, § 9: Feb. 27, 1968. Emergency clause provided: “It is hereby found and determined by the General Assembly that many employers in this State are required under the provisions of Act 132 of 1965 to withhold small amounts on a weekly, bi-weekly, semi-monthly, or monthly basis from the wages paid employees and to remit the same to the Commissioner of Revenues; that this places an undue burden upon the employer of withholding and reporting such income tax; and that to remove inequities and at the same time to insure the effective enforcement of the income tax and income tax withholding laws of this State, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1969, No. 122, § 5: Jan. 1, 1969. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present classification of employers as Quarterly and Annual is too low; that such classification works a hardship on small employers; that the present penalty is excessive to the point of being punitive; and that in order to remedy this situation, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after January 1, 1969.”

Acts 1979, No. 401, § 50: Jan. 1, 1980.

Acts 1981, No. 917, § 3: Mar. 30, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly that many active armed forces personnel are failing to

estimate their income tax liability and/or repay their income tax when due; that the Tax Reform Act of 1976 has authorized the armed forces' disbursing offices to withhold state income taxes of their personnel, that necessary agreements have been made with the Department of the Treasury to effect withholding; that under Arkansas law withholding has not been authorized and a significant loss in revenue has been experienced. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1987, No. 502, § 16: Apr. 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in great need of additional general revenues and that providing a tax penalty amnesty program will result in a substantial addition to the generation of such much needed general revenues. It is further found and determined that certain criminal and civil penalties provided for in the Arkansas Tax Procedure Act must be made more severe to effectuate the collection of taxes owed under the laws of this State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 785, § 20: amendments to subchapters 1, 4, 5, 9, and 10 effective for taxable years beginning on and after January 1, 1993.

Acts 1993, No. 1205, § 3; in full force and effect for all income years beginning on and after January 1, 1994.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 951, § 34, provided: "Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time."

Acts 1997, No. 951, § 38: March 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2003, No. 774, § 6: effective for tax years beginning on or after January 1, 2003.

Acts 2005, No. 1982, § 2: effective for tax years beginning on or after January 1, 2006.

Acts 2005, No. 1309, § 1: effective for tax years beginning on and after January 1, 2006.

Research References

Am. Jur. 71 Am. Jur. 2d, State Tax., § 602.

26-51-901. Title.

This subchapter may be cited as the “Arkansas Income Tax Withholding Act of 1965”.

History. Acts 1965, No. 132, § 1; A.S.A. 1947, § 84-2074.

26-51-902. Definitions.

As used in this subchapter:

- (1) “Agricultural labor” means agricultural labor as defined in 26 U.S.C. § 3121(g), as in effect January 1, 1993;
- (2) “Calendar quarter” means the period of three (3) consecutive months ending on March 31, June 30, September 30, or December 31;
- (3) “Director” means the Director of the Department of Finance and Administration of the State of Arkansas;
- (4) “Division” means the Revenue Division of the Department of Finance and Administration of the State of Arkansas;
- (5) “Employee” means any individual subject to the Income Tax Act of 1929, § 26-51-101 et seq., who performs or performed services for an employer and receives wages for the services;
- (6) “Employer” means a person doing business in or deriving income from sources within this state who has control of the payment of wages to an individual for services performed, or a person who is the officer or agent of the person having control of the payment of wages;
- (7) “Estimated tax” means the amount by which the tax liability of the taxpayer under the Income Tax Act of 1929, § 26-51-101 et seq., can reasonably be expected to exceed the amount withheld from wages of the taxpayer pursuant to this subchapter during the income year;
- (8) (A) “Income year” means the calendar or fiscal year upon the basis of which the net income of the taxpayer is computed under the Income Tax Act of 1929, § 26-51-101 et seq.
(B) If no fiscal year has been established, it means the calendar year;
- (9) “Payroll period” means a period for which a payment of wages is made to the employee by the employer;
- (10) “Person” means individuals, fiduciaries, corporations, partnerships, limited liability companies, associations, the state and its political subdivisions, and the federal government and its agencies and instrumentalities;
- (11) “Taxpayer” means any individual, fiduciary, corporation, partnership, limited liability company, or other legal entity subject to the reporting requirements of the Income Tax Act of 1929, § 26-51-101 et seq.;
- (12) (A) “Transient employer” means an employer who is not a resident of this state and who temporarily engages in any activity within this state for the production of income.
(B) Without intending to exclude others that may come within the definition of “transient employer” in subdivision (12)(A) of this section, any nonresident employer engaging in any such activity within this state which, as of any date, cannot be reasonably expected to continue for a period of eighteen (18) consecutive months shall be

deemed to be temporarily engaged in such activity; and

(13) “Wages” means remuneration in cash or other form for services performed by an employee for an employer, except that it shall not include remuneration paid:

(A) For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(B) (i) For agricultural labor, except that an agricultural employer who pays wages as defined in 26 U.S.C. § 3121(a), as in effect on January 1, 1993, to four (4) or more employees during any reporting period shall be required to collect, account for, and pay over Arkansas income taxes for that reporting period.

(ii) An employer who pay wages for agricultural labor to three (3) or fewer employees during any reporting period shall have the option to collect, account for, and pay over Arkansas income taxes for each reporting period if the employer so chooses;

(C) For services not in the course of the employee's trade or business performed by an employee in any calendar quarter unless the remuneration paid for such services is one hundred fifty dollars (\$150) or more;

(D) For services performed by an ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order performing duties required by the religious order;

(E) For active service performed in a month in which the employee is entitled to the benefits in 26 U.S.C. § 112, adopted by § 26-51-306, to the extent remuneration for the service is excludable from gross income under § 26-51-306;

(F) For services performed for an employer by a United States citizen if it is reasonable to believe when the remuneration is paid that the remuneration will be excludable from gross income under 26 U.S.C. § 911, adopted by § 26-51-310;

(G) For services performed by an individual under eighteen (18) years of age delivering or distributing newspapers or shopper's news, excluding the delivery or distribution of the newspapers or shopper's news to a destination for subsequent delivery or distribution;

(H) For services performed by an individual selling newspapers or magazines to consumers under an arrangement in which the newspapers or magazines are sold at a fixed price with the individual's compensation equal to the excess of the fixed price over the amount the individual pays for the newspaper or magazines, regardless of whether the individual is guaranteed a minimum amount of compensation or entitled to a credit for the unsold newspapers or magazines returned;

(I) For services performed by an individual that are not in the course of the employer's trade or business if the remuneration is paid in any medium other than cash;

(J) To an employee or his or her beneficiary:

(i) From a trust or to a trust exempt from tax under § 26-51-308 unless the payment is rendered to an employee of the trust as remuneration for services rendered by the employee and not as a beneficiary of the trust;

(ii) Under an annuity plan or to an annuity plan under 26 U.S.C. § 403(a), adopted by § 26-51-414;

(iii) Under 26 U.S.C. §§ 402(h)(1) and (2), adopted by § 26-51-414, if it is reasonable to believe at the time of payment that the payment will be

excluded under § 26-51-414;

(iv) Under 26 U.S.C. § 408(p), adopted by § 26-51-414; or

(v) Under an eligible deferred compensation plan or paid to an eligible deferred compensation plan under 26 U.S.C. § 457(b), maintained by an eligible employer under 26 U.S.C. § 457(e)(1)(A), as those sections are adopted by § 26-51-414;

(K) In the form of group-term life insurance on the life of an employee;

(L) To or on behalf of an employee if it is reasonable to believe at the time of payment that a corresponding deduction is allowed under § 26-51-423 with the exception of 26 U.S.C. § 274(n), adopted by § 26-51-423(b);

(M) As tips in any medium other than cash;

(N) As cash tips to an employee received in the course of employment in any calendar month unless the amount of the cash tips is twenty dollars (\$20.00) or more;

(O) For any benefit provided to an employee if it is reasonable to believe that the benefit is excluded from income under § 26-51-404(a)(4), § 26-51-404(b)(12), § 26-51-404(b)(19), or § 26-51-404(b)(20);

(P) For any medical reimbursement made to an employee or for the benefit of an employee under a self-insured medical reimbursement plan under 26 U.S.C. § 105(h)(6), adopted by § 26-51-404; and

(Q) For any payment made to an employee or for the benefit of an employee if it is reasonable to believe that the payment is excluded from income under 26 U.S.C. § 106(b), adopted by § 26-51-404.

History. Acts 1965, No. 132, § 2; 1967, No. 15, § 1; 1981, No. 917, § 1; A.S.A. 1947, § 84-2075; Acts 1989, No. 826, § 35; 1993, No. 1205, §§ 1, 2; 1995, No. 1160, § 20; 2005, No. 1309, § 3.

Publisher's Notes. Acts 1989, No. 826, § 1, provided that this act shall be known and may be cited as the "Arkansas Income Tax Technical Revenue Act of 1989".

Acts 1989, No. 826, § 36, provided that the provisions of that act shall be in full force and effect for all income years beginning on or after January 1, 1989.

Amendments. The 1993 amendment rewrote (1) and (13)(B).

The 1995 amendment inserted "limited liability companies" in (10); and, in (11), inserted "partnership, limited liability company" and substituted "reporting requirements of the Income Tax Act of 1929" for "the tax imposed by the Arkansas Income Tax Act."

The 2005 amendment deleted "or" at the end of (13)(C); and added (13)(E)-(P).

Case Notes

Agricultural Labor.

Wages.

Agricultural Labor.

If a nursery and a garden center did nothing more than raise the horticultural products, they would be exempt from withholding income taxes on wages because such wages would be for "agricultural labor," but exemption of wages paid for "agricultural labor" is not applicable to wages paid for landscaping. *Ragland v. Pittman Garden Ctr.*, 293 Ark. 533, 739 S.W.2d 671 (1987). But see *Ragland v. Pittman Garden Ctr., Inc.*, 299 Ark. 293, 772 S.W.2d 331 (1989).

Agricultural labor exemption applies only if the employee in question performs services that constitute valid agricultural labor for at least one-half (½) of any pay period (a period of not more than 31 consecutive days). *Ragland v. Pittman Garden Ctr., Inc.*, 299 Ark. 293, 772 S.W.2d 331 (1989).

In calculating time devoted to agricultural and nonagricultural labor, nonagricultural labor commenced not when the employees arrived at the landscaping site, but when they left the

nursery to engage in nonagricultural activity. *Ragland v. Pittman Garden Ctr., Inc.*, 299 Ark. 293, 772 S.W.2d 331 (1989).

Nursery company workers were not involved in agriculture but in landscaping where 75 percent of the time they actually installed the plants they delivered into the ground, therefore, the employees were not exempt from state income tax. *Ragland v. Pittman Garden Ctr., Inc.*, 307 Ark. 374, 820 S.W.2d 450 (1991).

Wages.

Awards of backpay and front pay (in lieu of reinstatement) to a wrongfully discharged employee did not constitute wages, and the withholding requirements in federal and state income tax law were not applicable because (1) the key factor in determining whether an award constituted wages was the nature of the employer-employee relationship at the time the compensation was being paid for; and (2) during the time period for which these awards were meant to compensate, the employee was not an employee of the employer. Thus, the employer was not required or authorized to withhold the taxes. *Ark. HHS v. Storey*, 372 Ark. 23, 269 S.W.3d 803 (2007).

26-51-903. Subchapter supplemental.

The provisions of this subchapter are declared to be supplemental to the provisions of the Arkansas Income Tax Act, as amended, § 26-51-101 et seq., and shall not be construed to repeal any part thereof not in direct conflict with this subchapter.

History. Acts 1965, No. 132, § 26; A.S.A. 1947, § 84-2085n.

26-51-904. Rules and regulations — Forms.

The director shall make and prescribe such rules, regulations, and forms as he shall deem necessary to carry out the purposes of this subchapter.

History. Acts 1965, No. 132, § 17; A.S.A. 1947, § 84-2080.

26-51-905. Withholding of tax.

(a) (1) Every employer making payments of wages to employees shall deduct and withhold from the employees' wages an amount determined from withholding tables promulgated by the Director of the Department of Finance and Administration and furnished to the employer.

(2) The full amount deducted and withheld from any employee's wages during the income year shall be credited against the tax liability of the employee under the Income Tax Act of 1929, § 26-51-101 et seq., for that year.

(b) (1) Notwithstanding the provisions of subsection (a) of this section, every employer who withholds less than one thousand dollars (\$1,000) for a full year's withholding shall report and remit annually on a date specified by the director any amounts so withheld by the employer.

(2) An employer shall be advised by the director of the employer's classification and shall report as classified until such time as the employer advises the director in writing that the employer no longer has employees or the employer is closing the business.

(3) However, it shall be the duty of the employer to report to the director at the end of each income year all wages paid to any such employees on the same forms provided in this subchapter for making employer annual withholding statements in order that the director may determine the tax liability, if any, of those employees during that income year.

History. Acts 1965, No. 132, § 3; 1968 (1st Ex. Sess.), No. 61, § 1; 1969, No. 122, § 1;

1981, No. 851, § 1; A.S.A. 1947, § 84-2076; 2003, No. 1017, § 2.

Amendments. The 2003 amendment, in (b)(1), substituted “one thousand dollars (\$1,000)” for “twenty dollars (\$20.00)” and “the employer” for “him.”

Case Notes

Failure to Withhold.

Failure to Withhold.

There was no error in failing to give employers additional credit against unpaid withholding taxes for taxes certain employees claimed they had paid where (1) the Arkansas Department of Finance and Administration's records did not show that the employees had paid their taxes and (2) the employers were not entitled to any credit under § 26-51-916 because they had not shown reasonable cause for failing to withhold and remit taxes. *Morris v. Ark. Dep't of Fin. & Admin.*, 82 Ark. App. 124, 112 S.W.3d 378 (2003).

Awards of backpay and front pay (in lieu of reinstatement) to a wrongfully discharged employee did not constitute wages, and the withholding requirements in federal and state income tax law were not applicable because (1) the key factor in determining whether an award constituted wages was the nature of the employer-employee relationship at the time the compensation was being paid for; and (2) during the time period for which these awards were meant to compensate, the employee was not an employee of the employer. Thus, the employer was not required or authorized to withhold the taxes. *Ark. HHS v. Storey*, 372 Ark. 23, 269 S.W.3d 803 (2007).

Cited: *Ragland v. Pittman Garden Ctr.*, 293 Ark. 533, 739 S.W.2d 671 (1987).

26-51-906. Withholding state income taxes of federal employees by federal agencies.

The director is authorized and directed to enter into an agreement with the Secretary of the Treasury of the United States with respect to withholding of income tax as provided by this subchapter and pursuant to an Act of Congress, Public Law 82-587, and to Executive Order 10407 of November 7, 1952.

History. Acts 1965, No. 132, § 23; A.S.A. 1947, § 84-2085.

U.S. Code. Public Law 82-587 referred to in this section is codified as 5 U.S.C. § 5517. Executive Order No. 10407 of November 7, 1952, referred to in this section may be found at 17 Fed. Reg. 10132.

26-51-907. Withholding tables.

The director shall prepare and furnish to employers state income tax withholding tables based on the current income tax laws of the state, taking into consideration the various deductions and personal tax credits allowed therein. The tables shall be designed to provide for a yearly aggregate withholding that will approximate the state income tax liability of the average taxpayer with the various personal tax credits.

History. Acts 1965, No. 132, § 17; A.S.A. 1947, § 84-2080.

A.C.R.C. Notes. Acts 1997, No. 328, § 12, provided:

“The withholding tables prescribed by the Director of the Department of Finance and Administration pursuant to Ark. Code Ann. § 26-51-907 shall not be amended for tax year 1998 to reflect the changes adopted by this Act. If this Act becomes effective on November 15, 1998, the effect of the various provisions of this Act for tax year 1998 shall be reflected on the income tax return filed for that year. For all subsequent years, the Director shall adjust the withholding tables as otherwise required by law.”

26-51-908. Employer's return and payment of taxes withheld.

(a) (1) Every employer required to deduct and withhold from wages under this subchapter shall file a withholding return on an annual basis as prescribed by the Director of the Department of Finance and Administration and annually pay over to the director the full amount required to be deducted and withheld from the wages of the employees if the amount is less than one thousand dollars (\$1,000) per year.

(2) Every employer required to deduct and withhold from wages under this subchapter shall file a withholding return on a monthly basis as prescribed by the director and pay over on a monthly basis to the director the full amount required to be deducted and withheld from the wages of the employees if the amount is one thousand dollars (\$1,000) or more per year.

(3) However, the director may provide by regulation that every such employer shall on or before the fifteenth day of each month pay over to the director or a depository designated by the director the amount required to be deducted and withheld by the employer for the preceding month if the amount is one hundred dollars (\$100) or more.

(b) (1) Notwithstanding any other provision of this section, all transient employers shall make return and pay over to the director, on a monthly basis, the full amounts required to be deducted and withheld from the wages by the transient employer for the calendar month.

(2) The returns and payments to the director by transient employers shall be made on or before the last day of the month following the month for which the amounts were deducted and withheld from the wages of the transient employer's employees.

(c) (1) Notwithstanding any other provision of this section, all employers engaged in any business which is seasonal shall make return and pay over to the director on a monthly basis the amounts required to be deducted and withheld from the wages by the employer for the calendar month.

(2) Returns and payments to the director by employers engaged in seasonal business shall be made on or before the last day of the month following the month for which those amounts were deducted and withheld from the wages of the employer's employees.

(d) When the director has justifiable reason to believe that the collection of funds required to be withheld by any employer as provided in this subchapter is in jeopardy, the director may require the employer to file a return and pay the amounts required to be withheld at any time.

(e) Every employer who fails to withhold or pay to the director any sums required by this subchapter to be withheld and paid shall be personally and individually liable for the sums except as provided in § 26-51-916.

(f) Any sum withheld in accordance with the provisions of this subchapter shall be deemed to be held in trust for the State of Arkansas and shall be recorded by the employer in a ledger account so as to clearly indicate the amount of tax withheld and that the amount is the property of the State of Arkansas.

(g) (1) When an employer has become liable to an annual return of withholding, the employer must continue to file an annual report, even though no tax has been withheld, until such time as the employer notifies the director, in writing, that the employer no longer has employees or that the employer is no longer liable for an annual return.

(2) When an employer has become liable to a monthly return of withholding, the

employer must continue to file a monthly report, even though no tax has been withheld until such time as the employer notifies the director, in writing, that the employer no longer has employees or that the employer is no longer liable for monthly returns.

(h) (1) For any withholding tax reporting period, a company or any other business enterprise which provides the service of reporting and remitting withholding tax on the wages paid to Arkansas employees by other employers shall remit all such withholding taxes to the director by electronic funds transfer, as more particularly described in § 26-19-105.

(2) However, a company or business which provides tax reporting and remitting services shall not be required to remit withholding taxes by electronic funds transfer if the company or business provides those services for fewer than one hundred (100) Arkansas employers.

(3) As used in this subsection, “Arkansas employer” means any employer required by Arkansas law to withhold, report, and remit Arkansas income tax on the wages, salary, or other compensation paid to its employees within this state.

History. Acts 1965, No. 132, § 5; A.S.A. 1947, § 84-2076.2; Acts 1989, No. 826, § 11; 1997, No. 951, §§ 25, 26; 1999, No. 1132, § 5; 2003, No. 1017, § 1; 2007, No. 827, § 220.

Publisher's Notes. As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-902.

Acts 1989, No. 826, § 36, provided that the amendment of this section by that act shall be effective for income years beginning on or after January 1, 1990.

Amendments. The 2003 amendment, in (a)(1) and (2), substituted “the” for “said” and “one thousand dollars (\$1,000)” for “two hundred dollars (\$200).”

The 2007 amendment substituted “For any withholding tax reporting period” for “Starting with withholding tax reporting periods beginning on January 1, 2001, and for all subsequent reporting periods” in (h)(1).

Case Notes

Failure to Withhold.
Subrogation.

Failure to Withhold.

There was no error in failing to give employers additional credit against unpaid withholding taxes for taxes certain employees claimed they had paid where (1) the Arkansas Department of Finance and Administration's records did not show that the employees had paid their taxes and (2) the employers were not entitled to any credit under § 26-51-916 because they had not shown reasonable cause for failing to withhold and remit taxes. *Morris v. Ark. Dep't of Fin. & Admin.*, 82 Ark. App. 124, 112 S.W.3d 378 (2003).

Subrogation.

Employers who failed to withhold and remit taxes were not entitled to subrogation against their employees, as only the employers, not the employees, were liable under the withholding tax statutes. *Morris v. Ark. Dep't of Fin. & Admin.*, 82 Ark. App. 124, 112 S.W.3d 378 (2003).

26-51-909. Annual withholding statement.

(a) Every employer shall file an annual statement of withholding for each employee.

(b) (1) The annual statement of withholding shall be in the form prescribed by the Director of the Department of Finance and Administration.

(2) (A) The statement from the employer shall be filed with the director on or before February 28 following the close of the income year.

(B) For tax years beginning on or after January 1, 2006, an employer who has two hundred fifty (250) or more employees during the employer's income year shall file the statement either:

- (i) Electronically;
- (ii) On magnetic media; or
- (iii) In any other machine-readable form approved by the director.

(3) (A) The employer shall provide two (2) copies of the statement to the employee on or before January 31 following the close of the income year.

(B) However, if the employment of the employee is terminated during the calendar year, the employer shall furnish the statement to the employee at the time of the termination of employment.

(c) The statement shall show:

- (1) The name and withholding account number of the employer;
- (2) The name of the employee and his or her social security account number;
- (3) The total compensation paid the employee;
- (4) The total amount withheld by the employer pursuant to this subchapter for the year or part of a calendar year when the employee worked for less than a full calendar year; and

(5) Such other information as the director shall require by rule or regulation.

(d) An annual withholding statement shall not be required for wages less than six hundred dollars (\$600) for services rendered as agricultural labor.

History. Acts 1965, No. 132, § 7; 1967, No. 636, § 2; A.S.A. 1947, § 84-2077; Acts 1993, No. 785, § 15; 2005, No. 1309, § 2.

Publisher's Notes. Acts 1993, No. 785, § 20, provides that the 1993 amendment is effective for taxable years beginning on and after January 1, 1993.

Amendments. The 1993 amendment added (b)(2) and (3); and inserted "of withholding" in (b)(1). The 2005 amendment redesignated former (b)(2) as present (b)(2)(A); and added (b)(2)(B).

26-51-910. Refunds to employer for overpayment.

Any employer who makes an overpayment of the tax required to be remitted to the director by § 26-51-908 may file application with the director, on a form prescribed by the director, to have the amount of such overpayment refunded to him or to have the amount credited against the payment which he is required to make for a subsequent quarterly period. However, the refund or credit shall be allowed only to the extent that the amount of the overpayment was not withheld under § 26-51-905 by the employer.

History. Acts 1965, No. 132, § 10; 1979, No. 401, § 48; A.S.A. 1947, § 84-2078.2.

26-51-911. Declaration of estimated tax.

(a) Every taxpayer subject to the tax levied by the Income Tax Act of 1929, § 26-51-101 et seq., shall make and file with the Director of the Department of Finance and Administration a declaration of the estimated tax for the income year if the taxpayer can reasonably expect the estimated tax to be more than one thousand dollars (\$1,000).

(b) The declaration of estimated tax shall be made on such forms and shall include such information as the director shall prescribe.

(c) (1) The declaration shall be filed with the director on or before the fifteenth day of the fourth month of the income year of the taxpayer.

(2) However, taxpayers whose income from farming for the income year can reasonably be expected to amount to at least two-thirds (2/3) of the total gross income from all sources for the income year may file the declaration and pay the estimated tax on or before the fifteenth day of the second month after the close of the income year, or in lieu of filing any declaration, may file an income tax return and pay the tax on or before the fifteenth day of the third month after the close of the income year.

(d) A taxpayer who, due to a change of circumstances, first meets the requirements for filing a declaration after the fifteenth day of the fourth month of the income year shall make and file the declaration on or before the next regular quarterly tax payment date.

(e) (1) A single declaration may be filed jointly by a husband and wife having the same income year.

(2) If a joint declaration is filed by a husband and wife and they do not file a joint return for the income year, the estimated tax paid under the joint declaration may be treated as the estimated tax of either the husband or wife or may be divided between them.

(f) A taxpayer may file amendments to a declaration at such times, under such rules and regulations, and in such form as the director shall prescribe.

History. Acts 1965, No. 132, §§ 11-14; 1967, No. 13, § 1; 1967, No. 105, § 1; 1967, No. 636, §§ 4, 5; 1968 (1st Ex. Sess.), No. 61, § 6; 1977, No. 200, § 1; 1983, No. 831, § 1; A.S.A. 1947, §§ 84-2079 — 84-2079.3; Acts 1989, No. 826, § 12; 1999, No. 1126, § 8; 2003, No. 774, § 4.

Publisher's Notes. Acts 1983, No. 831, § 3, provided that this act shall be in effect for income year 1984 and all income years thereafter.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-902.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-902.

Amendments. The 2003 amendment redesignated former (c) as present (c)(1) and (c)(2); and in (c)(1), substituted "fourth" for "fifth."

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2003, No. 774, § 6: applicable to tax years beginning on or after January 1, 2003.

Case Notes

Cited: Dixie Furn. Co. v. Ragland, 300 Ark. 69, 776 S.W.2d 357 (1989); Kansas City S. Ry. v. Pledger, 301 Ark. 564, 785 S.W.2d 462 (1990).

26-51-912. Minimum estimated tax.

A taxpayer who makes a declaration of estimated tax for the income year shall estimate an amount not less than ninety percent (90%) of the amount actually due.

History. Acts 1965, No. 132, § 15; 1967, No. 636, § 6; A.S.A. 1947, § 84-2079.4; Acts 1987, No. 502, § 14.

Publisher's Notes. As to title, definitions, etc., of Acts 1987, No. 502, see A.C.R.C. Notes to § 26-18-201 et seq.

Cross References. Additional penalties and tax, § 26-18-208.

Case Notes

Cited: Dixie Furn. Co. v. Ragland, 300 Ark. 69, 776 S.W.2d 357 (1989); Kansas City S. Ry. v. Pledger, 301 Ark. 564, 785 S.W.2d 462 (1990).

26-51-913. Payment of estimated tax.

(a) The estimated tax as shown on the declaration filed with the Director of the Department of Finance and Administration shall be paid as follows:

(1) If the estimated tax is not more than one thousand dollars (\$1,000), payment may be made at the time the declaration is filed or at the time the return for the income year is filed;

(2) If the estimated tax is in excess of one thousand dollars (\$1,000), it may be paid in full at the time of filing the declaration of estimated tax, or, at the election of the taxpayer, it may be paid in four equal installments to be due as follows:

(A) The first installment is due at the time prescribed for filing the declaration;

(B) The second installment is due on or before the fifteenth day of the sixth month of the income year;

(C) The third installment is due on or before the fifteenth day of the ninth month of the income year; and

(D) For:

(i) Individual income tax, the fourth installment is due on or before the fifteenth day of the first month after the close of the income year; or

(ii) Corporation income tax, the fourth installment is due on or before the fifteenth day of the last month of the income year;

(3) In the case of a taxpayer who files an amendment to the declaration, the quarterly tax payments coming due after the amendment shall be adjusted either up or down to conform to the amended declaration of estimated tax; and

(4) (A) In the case of a taxpayer who first meets the requirements and files a declaration subsequent to the fifteenth day of the fourth month of the income year and not later than the fifteenth day of the ninth month of the income year, if the estimated tax is in excess of one thousand dollars (\$1,000), the taxpayer may pay the estimated tax in equal installments with the first installment being due at the time of filing the declaration and an installment being due on each subsequent regular quarterly tax payment date for the income year as prescribed in subdivision (a)(2) of this section.

(B) If the declaration is filed subsequent to the fifteenth day of the ninth month of the income year and on or before the fifteenth day of the first month after the close of the income year, the estimated tax shall be paid in full at the time of filing the declaration.

(b) Any tax payment due under the provisions of this subchapter may be paid by the taxpayer in advance of the date prescribed in the section for the payment of the tax.

History. Acts 1965, No. 132, § 16; 1983, No. 831, § 2; A.S.A. 1947, § 84-2079.5; Acts 1989, No. 826, § 13; 1999, No. 1126, § 9; 2003, No. 774, § 5.

Publisher's Notes. As to applicability of 1983 amendment, see Publisher's Notes to § 26-51-911. As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-902.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-902.

Amendments. The 2003 amendment rewrote (a)(2) and added (a)(2)(A) through (a)(2)(D).

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2003, No. 774, § 6: applicable to tax years beginning on or after January 1, 2003.

Case Notes

Cited: Dixie Furn. Co. v. Ragland, 300 Ark. 69, 776 S.W.2d 357 (1989).

26-51-914. Furnishing exemption certificate to employer.

- (a) Every employee whose wages are subject to the withholding provisions of this subchapter shall furnish his or her employer with a certificate showing the number of dependents claimed by the employee for purposes of withholding.
- (b) If any employee fails or refuses to furnish his or her employer with the certificate, the employer shall withhold from the wages of the employee as if the employee claimed no credit or exemption either for himself or herself or for any dependents.
- (c) The furnishing of information in the form required for federal income tax purposes shall be sufficient for the purposes of this section.

History. Acts 1965, No. 132, § 19; A.S.A. 1947, § 84-2082.

26-51-915. Deposits of payments — Refunds.

- (a) All payments received by the director from employers for taxes withheld from employees and all payments received by the director from taxpayers as herein provided shall be deposited in the State Treasury as general revenues to the credit of the State Apportionment Fund.
- (b) Based upon information provided by the Director of the Department of Finance and Administration, the Chief Fiscal Officer shall determine the amount estimated to be necessary to meet any refunds of state income taxes under the provisions of this subchapter, and, upon certification of the Chief Fiscal Officer of the State, the State Treasurer shall transfer from any general revenues in the General Revenue Allotment Reserve Fund the amount so certified to the Individual Income Tax Withholding Fund, from which the director is authorized to make refunds as provided for by law and by this subchapter.
- (c) All refund warrants drawn against the Income Tax Withholding Fund which are not presented for payment within one (1) year of issuance shall be void.
- (d) Neither the director nor any member or employee of the division shall be held personally liable for making any refund by reason of a fraudulent withholding certificate being used as a basis for the refund.

History. Acts 1965, No. 132, § 22; 1965 (1st Ex. Sess.), No. 5, § 7; 1969, No. 620, § 17; A.S.A. 1947, § 84-2084.

26-51-916. Employer liable for amounts required to be withheld — Exceptions.

Every employer shall be liable for amounts required to be deducted and withheld by this subchapter regardless of whether or not the amounts were in fact deducted and withheld. However, if the employer fails to deduct and withhold the required amounts and if the tax against which the required amounts would have been credited is paid, the employer shall not be liable for those amounts not deducted and withheld if the failure was due to reasonable cause.

History. Acts 1965, No. 132, § 4; A.S.A. 1947, § 84-2076.1.

Case Notes

Failure to Withhold.

Failure to Withhold.

There was no error in failing to give employers additional credit against unpaid withholding taxes

for taxes certain employees claimed they had paid where (1) the Arkansas Department of Finance and Administration's records did not show that the employees had paid their taxes and (2) the employers were not entitled to any credit under this section because they had not shown reasonable cause for failing to withhold and remit taxes. *Morris v. Ark. Dep't of Fin. & Admin.*, 82 Ark. App. 124, 112 S.W.3d 378 (2003).

26-51-917. Employer's withholding account number.

Every employer, as defined in this subchapter, shall make application to the division for and be assigned an employer's withholding account number. The account number assigned to an employer shall be used by the employer on all returns, reports, and inquiries addressed to the director or the division.

History. Acts 1965, No. 132, § 18; A.S.A. 1947, § 84-2081.

26-51-918. Withholding — Deferred income.

(a) (1) Section 3405 of the Internal Revenue Code of 1986, as in effect on January 1, 2005, regarding withholding from deferred income, is adopted as modified by subdivision (a)(2) of this section.

(2) For the purposes of Arkansas withholding tax under this section:

(A) The amount of withholding required under 26 U.S.C. § 3405(b)(1) shall be three percent (3%); and

(B) The amount of withholding required under 26 U.S.C. § 3405(c)(1)(B) shall be five percent (5%).

(b) This section shall apply only when the payee is an Arkansas resident.

History. Acts 2005, No. 1309, § 1.

A.C.R.C. Notes. As enacted by Acts 2005, No. 1309, § 1, this section contained a subsection (d) that read:

"This section shall become effective for tax years beginning on and after January 1, 2006."

Effective Dates. Acts 2005, No. 1309, § 1: effective for tax years beginning on and after January 1, 2006.

26-51-919. Pass-through entities.

(a) As used in this section:

(1) "Lower-tier pass-through entity" means a member of a pass-through entity that is itself a pass-through entity;

(2) (A) "Member" means a shareholder of a Subchapter S corporation, a partner in a general partnership, a partner in a limited partnership, a partner in a limited liability partnership, a member of a limited liability company, or a beneficiary of a trust.

(B) "Member" does not mean a Subchapter C corporation as defined in § 1361(a) of the Internal Revenue Code of 1986, in effect January 1, 2005;

(3) "Nonresident" means:

(A) An individual who is not a resident of or domiciled in Arkansas during any part of the tax year;

(B) A business entity that does not have its commercial domicile in Arkansas during any part of the tax year; or

(C) A trust not organized in Arkansas; and

(4) "Pass-through entity" means a business entity that for the applicable tax year

is:

(A) A corporation treated as a Subchapter S corporation under § 26-51-409, a general partnership, limited partnership, limited liability partnership, limited liability company, or a trust; and

(B) Not taxed as a corporation for federal or Arkansas income tax purposes.

(b) (1) (A) (i) A pass-through entity shall withhold Arkansas income tax at the highest income tax rate levied under §§ 26-51-201 and 26-51-202 on the share of income of the pass-through entity that is derived from or attributable to sources within this state and distributed to each nonresident member.

(ii) The pass-through entity is liable to the Director of the Department of Finance and Administration for the payment of the tax required to be withheld and is not liable to the member for the amount withheld and paid to the director.

(B) (i) A lower-tier pass-through entity shall withhold and pay income tax on the share of income distributed by the lower-tier pass-through entity to each of its nonresident members.

(ii) The director shall apply the tax withheld and paid by a pass-through entity on distributions to a lower-tier pass-through entity to the withholding required of that lower-tier pass-through entity.

(2) (A) On or before the due date for the pass-through entity's composite income tax return described in subsection (d) of this section, a pass-through entity shall file an annual return with the director showing the total amount of income distributed or credited to its nonresident members and the amount of tax withheld and shall remit the amount of tax withheld.

(B) The annual return shall be in an electronic format prescribed by the director.

(3) A pass-through entity shall annually furnish a nonresident member of the pass-through entity with a record of the amount of tax withheld on behalf of the nonresident member no later than the fifteenth day of the fourth month following the end of the pass-through entity's tax year.

(c) A pass-through entity is not required to withhold tax for a nonresident member if:

(1) The nonresident member has a pro rata or distributive share of income of the pass-through entity from doing business in or deriving income from sources within this state of less than one thousand dollars (\$1,000) per year;

(2) The director has determined that the nonresident member's income is not subject to withholding;

(3) The nonresident member elects to have the tax due paid as part of a composite return filed by the pass-through entity under subsection (d) of this section;

(4) The pass-through entity:

(A) Is a publicly traded partnership as defined by § 7704(b) of the Internal Revenue Code, as in effect on January 1, 2005, that is treated as a partnership for the purposes of federal income taxation; and

(B) Has agreed to file an annual information return reporting the name, address, and taxpayer identification number of each member with an annual Arkansas income greater than five hundred dollars (\$500) along with any other information requested by the director;

(5) (A) The pass-through entity has filed with the director on forms prescribed by the director the nonresident member's signed agreement to timely file an Arkansas nonresident individual or trust income tax return, to pay any tax due on the return, and to be subject to the jurisdiction of the Department of Finance and Administration in the courts of this state for the purpose of determining and collecting any Arkansas income tax together with interest and penalties owed by the nonresident member.

(B) (i) The department may revoke the exception from the withholding requirement in subdivision (c)(5)(A) of this section if it is determined that the nonresident member is not abiding by the terms of the agreement.

(ii) At the time of revocation, the department shall notify the pass-through entity that withholding is required for future distributions to the nonresident member whose exception is revoked; or

(6) The income received by the nonresident member is exempt from Arkansas income tax pursuant to § 26-51-202(e).

(d) (1) A pass-through entity may file a composite income tax return on behalf of electing nonresident members reporting and paying Arkansas income tax at the highest income tax rate under §§ 26-51-201 and 26-51-202 on the nonresident member's pro rata or distributive shares of income of the pass-through entity from doing business in or deriving income from sources within this state.

(2) A nonresident member whose only source of income within this state is from one (1) or more pass-through entities may elect to be included in a composite return filed pursuant to this section.

(3) A nonresident member who has been included in a composite return may file an individual income tax return and shall receive credit for income tax paid on the nonresident member's behalf by the pass-through entity.

(4) On or before the fifteenth day of the fourth month following the close of the pass-through entity's tax year, a pass-through entity shall file an annual composite return with the director showing the total amount of income distributed or credited to its nonresident members and the amount of tax withheld and shall remit the tax due on the composite income tax return.

(e) The director may promulgate rules necessary to administer this section.

History. Acts 2005, No. 1982, § 1; 2007, No. 218, § 37; 2009, No. 372, § 24.

Amendments. The 2007 amendment substituted "the due date for the pass-through entity's composite income tax return described in subsection (d) of this section" for "February 28 following the close of the pass-through entity's tax year" in (b)(2)(A).

The 2009 amendment substituted "fourth" for "third" in (b)(3).

Effective Dates. Acts 2005, No. 1982, § 2: effective for tax years on and after January 1, 2005. Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

Subchapter 10

— Water Resource Conservation and Development Incentives

26-51-1001. Title.

26-51-1002. Legislative findings.

26-51-1003. Definitions.

26-51-1004. Applicability — Effective date.

- 26-51-1005. Credit granted — Water impoundments outside critical areas.
- 26-51-1006. Credit granted — Water impoundments within critical areas.
- 26-51-1007. Credit granted — Surface water conversion outside critical areas.
- 26-51-1008. Credit granted — Surface water conversion within critical areas.
- 26-51-1009. Credit granted — Land leveling for water conservation.
- 26-51-1010. Application and approval procedure — Administration.
- 26-51-1011. Development, operation, and tax credits.
- 26-51-1012. Deduction for project costs above tax credit.
- 26-51-1013. Annual compilation of credits — Expiration of the subchapter.
- 26-51-1014. Construction.

Publisher's Notes. Former Subchapter 10, the Water Resource Conservation and Development Act of 1985, was repealed by implication by Acts 1995, No. 341, § 19. The subchapter was derived from the following sources:

- 26-51-1001. Acts 1985, No. 417, § 1; A.S.A. 1947, § 84-2021.24.
- 26-51-1002. Acts 1985, No. 417, § 2; A.S.A. 1947, § 84-2021.25.
- 26-51-1003. Acts 1985, No. 417, § 7; 1985 (1st Ex. Sess.), No. 26, § 3; A.S.A. 1947, § 84-2021.30.
- 26-51-1004. Acts 1985, No. 417, § 5; A.S.A. 1947, § 84-2021.28.
- 26-51-1005. Acts 1985, No. 417, § 4; 1985 (1st Ex. Sess.), No. 26, § 2; A.S.A. 1947, § 84-2021.27.
- 26-51-1006. Acts 1985, No. 417, § 3; 1985 (1st Ex. Sess.), No. 26, § 1; A.S.A. 1947, § 84-2021.26; Acts 1993, No. 785, § 16.
- 26-51-1007. Acts 1985, No. 417, § 6; A.S.A. 1947, § 84-2021.29.
- 26-51-1008. Acts 1985, No. 417, § 10 as added by 1985 (1st Ex. Sess.), No. 26, § 4; A.S.A. 1947, § 84-2021.30a.
- 26-51-1009. Acts 1993, No. 657, § 2; 1993, No. 942, § 2.

Effective Dates. Acts 1995, No. 341, § 1: effective for taxable years beginning January 1, 1996. Acts 1999, No. 765, § 3: effective for tax years beginning on and after January 1, 1999. Acts 1999, No. 1050, § 23: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty Second Arkansas General Assembly that particular counties in this State face critical water shortages due to depletion of Sparta aquifer water and that these shortages are subject to remediation only by the immediate conjunctive use of surface water and groundwater. This act would allow the most critical counties to reduce the use of ground water and substitute available surface water. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 727, § 4: Mar. 12, 2001. Emergency clause provided: "It is found and determined by the General Assembly that ground water levels continue to decline throughout the state; that the ground water levels in some areas of the state are critical; that it is urgent that steps be taken immediately to encourage greater use of surface water; and that changes in the tax credit law would encourage the installation of impoundments and water control structures to reduce ground water use and make it available for future generations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

26-51-1001. Title.

This subchapter shall be known as the “Water Resource Conservation and Development Incentives Act”.

History. Acts 1995, No. 341, § 1.

26-51-1002. Legislative findings.

(a) The State of Arkansas is blessed with abundant rainfall and other surface and underground water resources which, when managed conjunctively, can provide a continuous high quality water supply to meet the foreseeable needs of the entire state.

(b) Existing water use patterns are depleting groundwater supplies at an unacceptable rate, and alternative surface water supplies are not available in sufficient quantities to alleviate this groundwater depletion problem.

(c) The tax incentives provided in this subchapter will encourage the water users to invest in:

(1) The construction of impoundments to utilize available surface water and reduce our dependence on groundwater;

(2) The conversion from groundwater use to surface water use when surface water is available; and

(3) The water conservation practice of land leveling to reduce agricultural irrigation water use.

(d) It is of utmost importance to Arkansas that, within critical groundwater areas, surface water be used when available.

History. Acts 1995, No. 341, § 2.

26-51-1003. Definitions.

As used in this subchapter:

(1) “Acre-foot” means the volumetric measure equal to forty-three thousand five hundred sixty cubic feet (43,560 cu. ft.) or approximately three hundred twenty-five thousand nine hundred gallons (325,900 gals.);

(2) “Application” means a written request for approval for tax credits, describing the project, including a water conservation plan outlining the operation of the project and any additional requirements as the Arkansas Natural Resources Commission may adopt by rule;

(3) “Commission” means the Arkansas Natural Resources Commission;

(4) “Critical groundwater areas” means those areas that are designated by the commission pursuant to the Arkansas Groundwater Protection and Management Act, § 15-22-901 et seq.;

(5) “Department” means the Revenue Division of the Department of Finance and Administration;

(6) “Land leveling” means modifying the surface relief of a field to a planned grade to provide a more suitable surface for efficiently applying irrigation water without excessive erosion, loss of water quality, or damage to land by waterlogging;

(7) “Project” means:

(A) The construction, installation, or restoration of water impoundment or water control structures of twenty (20) acre-feet or more designed for the purpose of storing water to be used for agricultural, commercial, or industrial purposes;

(B) The conversion from groundwater to surface water use by

agricultural, commercial, industrial, or recreational water users;

(C) Agricultural land leveling resulting in water savings due to the more efficient use of irrigation water for which tax credits are claimed; and

(D) (i) The purchase and installation of water measuring or metering devices used to determine the quantity of water used.

(ii) Installation of such devices shall be considered a conversion from groundwater to surface water for tax credit purposes; and

(8) "Project cost" means the actual expenditure for a project, less any reimbursement received by the taxpayer from cost-share programs.

History. Acts 1995, No. 341, § 3; 1999, No. 1050, § 18; 2001, No. 727, § 1.

26-51-1004. Applicability — Effective date.

(a) (1) The tax credits provided by this subchapter shall apply to taxable years beginning on or after January 1, 1996, and all taxable years thereafter.

(2) Any taxpayer claiming a tax credit under this subchapter may not claim a credit under the Water Resource Conservation and Development Incentives Act of 1985 [repealed] or any similar act for any costs related to the same project.

(3) Any tax credits issued to partnerships, limited liability companies, Subchapter S corporations, or fiduciaries may pass through to their members, managers, partners, shareholders, and/or beneficiaries.

(b) (1) No new tax credit approval certificates under the Water Resource Conservation and Development Incentives Act of 1985 [repealed] shall be issued after December 31, 1995.

(2) However, any taxpayer having been issued a certificate of tax credit approval on or prior to December 31, 1995, may complete the project and shall be entitled to the credits provided under that act.

History. Acts 1995, No. 341, §§ 4, 16.

26-51-1005. Credit granted — Water impoundments outside critical areas.

(a) For projects located outside critical groundwater areas, there shall be allowed as a credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount equal to fifty percent (50%) of the project cost incurred in the construction and installation or restoration of water impoundments or water control structures of twenty (20) acre-feet or more designed for the purpose of storing water to be used primarily for agricultural, commercial, or industrial purposes.

(b) (1) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000).

(2) Any unused credit may be carried over for a maximum of nine (9) consecutive taxable years following the taxable year in which the credit originated.

History. Acts 1995, No. 341, § 6; 2001, No. 727, § 2.

26-51-1006. Credit granted — Water impoundments within critical areas.

(a) For projects located within critical groundwater areas, there shall be allowed as a credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount equal to fifty percent (50%) of the project cost incurred in the construction and

installation or restoration of water impoundments or water control structures of twenty (20) acre-feet or more designed for the purpose of storing water to be used primarily for agricultural, commercial, or industrial purposes.

(b) (1) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000).

(2) Any unused credit may be carried over for a maximum of nine (9) consecutive taxable years following the taxable year in which the credit originated.

History. Acts 1995, No. 341, § 7; 2001, No. 727, § 3.

26-51-1007. Credit granted — Surface water conversion outside critical areas.

(a) For projects located outside critical groundwater areas, there shall be allowed as a credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount equal to ten percent (10%) of the project cost incurred for the reduction of groundwater use by substitution of surface water for water used for industrial, commercial, agricultural, or recreational purposes.

(b) (1) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000).

(2) Any unused tax credit may be carried over for a maximum of two (2) consecutive taxable years following the taxable year in which the credit originated.

History. Acts 1995, No. 341, § 8.

26-51-1008. Credit granted — Surface water conversion within critical areas.

(a) For projects located within critical groundwater areas, there shall be allowed as a credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount equal to fifty percent (50%) of the project cost incurred for the reduction of groundwater use by substitution of surface water for water used for industrial, commercial, agricultural, or recreational purposes.

(b) (1) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000) for projects using water for agricultural or recreational purposes and two hundred thousand dollars (\$200,000) for projects using water for industrial or commercial purposes.

(2) Any unused tax credit may be carried over for a maximum of two (2) consecutive taxable years for projects using water for agricultural or recreational purposes and a maximum of four (4) consecutive taxable years for projects using water for industrial or commercial purposes following the taxable year in which the credit originated.

History. Acts 1995, No. 341, § 9; 1997, No. 421, § 1; 1999, No. 765, § 1.

Effective Dates. Acts 1999, No. 765, § 3: effective for tax years beginning on and after January 1, 1999.

26-51-1009. Credit granted — Land leveling for water conservation.

(a) There shall be allowed as a credit against the tax imposed by the Income Tax Act of

1929, § 26-51-101 et seq., in an amount equal to ten percent (10%) of the project cost incurred for agricultural land leveling to conserve irrigation water.

(b) (1) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000).

(2) Any unused tax credit may be carried over for a maximum of two (2) consecutive taxable years following the taxable year in which the credit originated.

History. Acts 1995, No. 341, § 10.

26-51-1010. Application and approval procedure — Administration.

(a) (1) The commission shall promulgate such rules and regulations as may be deemed necessary in administering projects submitted with the intent of qualifying for the tax incentives provided for in this subchapter.

(2) The rules shall not be adopted without the approval of the department.

(b) (1) The commission may charge a reasonable application fee for the processing of tax credit applications.

(2) All fees collected shall be deposited in the Arkansas Water Development Fund.

(c) (1) The commission may issue a tax credit approval certificate for those applications proposing projects that meet the requirements of this subchapter and rules promulgated thereunder.

(2) Upon completion of the project, the commission shall issue a certificate of completion.

(3) To claim the benefits of this section, a taxpayer must obtain a certification from the commission certifying to the department that the taxpayer has met all the requirements and qualifications set forth in this subchapter.

(4) (A) A taxpayer must file the certificate of tax credit approval with his income tax return for the first year in which the taxpayer claims a tax credit under this subchapter.

(B) A taxpayer must file the certificate of completion with the first tax return filed after issuance of the certificate of completion.

(d) The department shall promulgate such rules and regulations as may be deemed necessary to carry out the tax credit provisions of this subchapter.

History. Acts 1995, No. 341, §§ 5, 11.

26-51-1011. Development, operation, and tax credits.

(a) Project activities shall meet or exceed those standards as established by the commission, and the project must be maintained for a minimum life of ten (10) years after issuance of a certificate of completion.

(b) Project costs incurred after issuance of a tax credit approval certificate may be claimed for tax credit, subject to other limitations contained in this subchapter.

(c) (1) All projects must be completed within three (3) years of the date of the certificate of tax credit approval.

(2) If the taxpayer does not complete the project within the period provided in subdivision (c)(1) of this section, all credits claimed must be repaid to the department, and the project will be disallowed as a project for tax credit purposes.

(d) (1) If the taxpayer terminates the project prior to expiration of the minimum project life, the taxpayer shall provide written notification to the commission and the department. In addition, the taxpayer shall file an amended tax return and repay the amount of tax credit claimed which was not allowable.

(2) If the commission determines that the taxpayer has terminated the project, it shall notify the department.

(e) (1) Upon the termination of a project, the taxpayer shall not be allowed any further tax credits provided in this subchapter, and the department shall recapture the pro rata share of any tax credits claimed under this subchapter for the period of termination.

(2) The pro rata share for recapture of the disallowed tax credits shall be determined by dividing the period of time from termination of the project until the expiration of the minimum life of the project by the required minimum life of the project times the tax credit claimed.

(f) Notwithstanding the provisions of § 26-18-306, the department may make necessary assessments to recapture disallowed tax credits for a period of three (3) years from the date of expiration of the minimum life of the project.

(g) For purposes of this subchapter, the recordkeeping provisions of § 26-18-506 requiring a taxpayer to maintain records for six (6) years after a return is filed shall be extended to require the taxpayer claiming a credit under this subchapter to maintain the required records for the required minimum life of the project plus three (3) years.

History. Acts 1995, No. 341, § 12.

26-51-1012. Deduction for project costs above tax credit.

(a) In determining net income for Arkansas income tax purposes, any taxpayer qualifying for the credits provided for in this subchapter shall also be entitled to a deduction in an amount equal to the project cost less the total amount of credits to which the taxpayer is entitled under this subchapter.

(b) The deduction provided for in this subchapter shall be taken only during the year in which the expenditures for the project were actually incurred.

History. Acts 1995, No. 341, § 13.

26-51-1013. Annual compilation of credits — Expiration of the subchapter.

(a) The Department of Finance and Administration shall compile the total amount of tax credits used pursuant to the provisions of this subchapter for each calendar year.

(b) (1) When the total amount of tax credits used pursuant to the provisions of this subchapter exceeds ten million dollars (\$10,000,000) in any calendar year, the tax credits established by this subchapter shall expire on December 31 of the calendar year following the calendar year in which the tax credits used pursuant to the provisions of this subchapter exceeded ten million dollars (\$10,000,000).

(2) However, any taxpayer having been issued a certificate of tax credit approval on or prior to December 31 may complete the project and shall be entitled to the tax credits provided under this subchapter without regard to the fact that the availability of the tax credits has otherwise expired.

History. Acts 1995, No. 341, § 14; 1999, No. 765, § 2.

Effective Dates. Acts 1999, No. 765, § 3: effective for tax years beginning on and after January

1, 1999.

26-51-1014. Construction.

No part or segment of this subchapter shall be interpreted to in any way alter or amend the permit requirements, reporting requirements, allocation procedures, or other requirements set forth in title 15, chapter 22.

History. Acts 1995, No. 341, § 15.

Subchapter 11

— Donations or Sales of Equipment to Educational Institutions

26-51-1101. Definitions.

26-51-1102. Credit granted.

26-51-1103. Limit on total credit.

26-51-1104. Documentation required.

26-51-1105. Rules and regulations.

Effective Dates. Acts 1985, No. 469, § 7: effective for tax years on or after Jan. 1, 1985.

Acts 1985, No. 759, § 7: effective for tax years beginning on or after Jan. 1, 1985.

Acts 2007, No. 1045, § 8: Apr. 4, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the development of products and services derived from research activities involving Arkansas institutions of higher education and businesses and entrepreneurs involved in these research activities form the basis for much needed economic development that capitalizes on knowledge acquired through research; that the resulting intellectual property that is the foundation for business development presents opportunities for the State of Arkansas to compete effectively in the changing global economy; that the opportunities available for the growth of knowledge-based businesses are dependent upon the State of Arkansas creating an environment that allows these new businesses to grow and succeed in Arkansas; and that this act is immediately necessary to develop and retain these knowledge-based businesses in the State of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Research References

U. Ark. Little Rock L.J.

Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

26-51-1101. Definitions.

As used in this subchapter:

(1) "Accredited institution of higher education" means a four-year public college or university that offers bachelor's degrees and is recognized by the Department of Higher Education for credit; (2) "Cost" means:

(A) In the case of a donation or sale below cost by a wholesale or retail business, the amount actually paid by the wholesaler or retailer to the supplier for the machinery or equipment; or

(B) In the case of a donation or sale below cost by a manufacturer of machinery or equipment, the enhanced value of the materials used to produce the machinery or equipment, which shall be deemed to be the lowest price at which the

manufacturer sells the machinery or equipment;

(3) “Machinery and equipment” means tangible personal property used in connection with a qualified education program or a qualified research program that has been approved for a tax credit under rules and regulations prescribed by the Department of Finance and Administration;

(4) “New” means the machinery and equipment are state-of-the-art machinery and equipment that have:

(A) Never been used except for normal testing by the manufacturer to ensure that the machinery or equipment is of a proper quality and in good working order; or

(B) Been used by the retailer or wholesaler solely for the purpose of demonstrating the product to customers for sale;

(5) “Qualified education program” means a program conducted by a qualified educational institution under rules prescribed by the Department of Higher Education for programs in colleges, universities, or junior colleges, by the Department of Workforce Education for programs in vocational technical training schools and by the Department of Education for programs in elementary or secondary schools, all of which programs are for the purpose of promoting the use of new machinery and equipment for classroom, laboratory, and other educational instruction;

(6) “Qualified educational institution” means:

(A) Any public university, college, junior college, or vocational technical training school supported by the State of Arkansas;

(B) Any private university, college, junior college, or vocational technical training school located in Arkansas and qualified for tax-exempt status under the Income Tax Act of 1929, § 26-51-101 et seq.; or

(C) Any public elementary or secondary school;

(7) “Qualified research expenditures” means the sum of any amounts that are paid or incurred by a taxpayer during the taxable year in funding a qualified research program that has been approved for tax credit treatment under rules promulgated by the Department of Finance and Administration;

(8) “Qualified research program” means a program of applied or basic research undertaken by a qualified educational institution pursuant to rules jointly prescribed by the Arkansas Science and Technology Authority and the Department of Higher Education under § 15-3-110;

(9) “Research park authority” means a public entity created under the Research Park Authority Act, § 14-144-101 et seq., to provide facilities and support for businesses engaged in research and development in pursuit of economic development opportunities; and

(10) “State-of-the-art-machinery and equipment” means machinery and equipment that is of the same type, design, and capability as like machinery and equipment that is currently sold or manufactured by the donee for sale to customers.

History. Acts 1985, No. 469, § 1; 1985, No. 759, § 1; A.S.A. 1947, § 84-2021.31; Acts 2007, No. 1045, § 2.

Amendments. The 2007 amendment deleted “unless the context otherwise requires” in the introductory language; inserted present (1) and redesignated the following subdivisions accordingly; substituted “Arkansas Income Tax Act” for “Arkansas Income Tax Act, as amended”

in present (6)(B); substituted "rules" for "rules and regulations" in present (7), (8), and (9); substituted "Department of Workforce Education" for "Vocational and Technical Division of the Department of Education" in present (9); added (10); and made related and stylistic changes.

26-51-1102. Credit granted.

(a) (1) There is granted a credit against a taxpayer's Arkansas corporate income tax or Arkansas individual income tax for donations by any taxpayer of new machinery or equipment and for sales below cost of machinery and equipment by taxpayers to qualified educational institutions in connection with a qualified education program or a qualified research program.

(2) The amount of the credit granted by this section shall be:

(A) In the case of a donation, thirty-three percent (33%) of the cost of the machinery and equipment donated; and

(B) In the case of a sale below cost, thirty-three (33%) of the amount by which the cost is reduced.

(b) There is granted a credit against a taxpayer's Arkansas corporate income tax or Arkansas individual income tax equal to thirty-three percent (33%) of the qualified research expenditures of a taxpayer in qualified research programs.

(c) (1) There is granted a credit against a taxpayer's Arkansas corporate income tax or Arkansas individual income tax equal to thirty-three percent (33%) of a donation made to an accredited institution of higher education to support a research park authority.

(2) In order to claim this credit authorized by subdivision (c)(1) of this section, a donation made in support of a research park authority shall:

(A) Be consistent with the research and development plan approved by the Board of Directors of the Arkansas Science and Technology Authority, as evidenced by a letter of support from the President of the Arkansas Science and Technology Authority; and

(B) Support either directly or indirectly research subject to being funded by one (1) or more federal agencies, as enumerated in § 15-3-205(1).

History. Acts 1985, No. 469, §§ 2, 3; 1985, No. 759, §§ 2, 3; A.S.A. 1947, §§ 84-2021.32, 84-2021.33; Acts 2007, No. 1045, § 3.

Amendments. The 2007 amendment added (c).

26-51-1103. Limit on total credit.

(a) Total credits for qualified research expenditures, donations, and sales under this subchapter shall be allowed up to one hundred percent (100%) of the net tax liability of the taxpayer after all other credits and reductions in tax have been calculated.

(b) The credit shall be claimed in the tax year of the qualified research expenditure, donation, or sale. However, all or part of any unused credit may be carried over to and claimed in succeeding tax years until the credits are exhausted or until the end of the nine (9) tax years succeeding the tax year of the qualified research expenditure, donation, or sale, whichever occurs earlier. In no event shall a taxpayer claim a credit under this subchapter for any tax year in excess of one hundred percent (100%) of the net tax due after all other credits and reductions in tax have been calculated.

(c) Any person claiming any credit granted by this subchapter for any expense or contribution shall not take any deduction under the Arkansas income tax law for the same

expense or contribution.

History. Acts 1985, No. 469, § 4; 1985, No. 759, § 4; A.S.A. 1947, § 84-2021.34; Acts 2007, No. 1607, § 1.

Amendments. The 2007 amendment substituted “allowed up to one hundred percent (100%)” for “limited to fifty percent (50%)” in (a); and in (b), substituted “nine (9)” for “three (3)” and “one hundred percent (100%)” for “fifty percent (50%).”

26-51-1104. Documentation required.

(a) To claim the credit granted by § 26-51-1102, the taxpayer must provide the following for each piece of machinery and equipment donated or sold below cost:

(1) A statement from the receiving qualified educational institution that it has received the machinery or equipment; that the machinery or equipment is new machinery or equipment within the meaning of this subchapter; that it received the machinery or equipment as a donation or, if it purchased the machinery or equipment below cost, a statement of the amount paid for the machinery or equipment; and that the machinery or equipment has been donated or sold to the qualified educational institution for use in a qualified education program or a qualified research program;

(2) In the case of a donation or sale by a retail or wholesale business, a copy of the invoice from the business' supplier showing the actual cost of the machinery or equipment. In the case of a donation or sale below cost by a manufacturer, a copy of the manufacturer's wholesale price list showing the lowest price of the machinery or equipment for which credit is claimed.

(b) To claim the credit granted by § 26-51-1102, the taxpayer must show that the Arkansas Science and Technology Authority and the Department of Higher Education have approved the qualified research expenditure as a part of a qualified research program.

(c) Copies of each of the above documents shall be filed by the taxpayer with his return as an attachment to the form prescribed by the Director of the Department of Finance and Administration.

History. Acts 1985, No. 469, § 5; 1985, No. 759, § 5; A.S.A. 1947, § 84-2021.35.

26-51-1105. Rules and regulations.

The Director of the Department of Finance and Administration, the Director of the Department of Higher Education, the Director of the Vocational and Technical Division of the Department of Education, the Director of the General Education Division of the Department of Education, and the President of the Arkansas Science and Technology Authority shall promulgate such reasonable rules and regulations as they shall deem necessary and appropriate to carry out the purposes of this subchapter.

History. Acts 1985, No. 469, § 6; 1985, No. 759, § 6; A.S.A. 1947, § 84-2021.36.

Subchapter 12 **— Steel Mill Tax Incentives**

26-51-1201. Definition.

26-51-1202. Certification required.

26-51-1203. Net operating loss deduction — Carry forward.

- 26-51-1204 — 26-51-1210. [Reserved.]
26-51-1211. Definitions.
26-51-1212. Certification required — Contents.
26-51-1213. Net operating loss deduction — Carry forward.
26-51-1214. Sales of natural gas and electricity — Exemption.

Effective Dates. Acts 1987, No. 48, § 7: Feb. 16, 1987. Emergency clause provided: “Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This Act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after its passage and approval.”

Acts 1991, No. 136, § 8: Feb. 13, 1991. Emergency clause provided: “Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This Act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after its passage and approval.”

Acts 1991, No. 137, § 8: Feb. 13, 1991. Emergency clause provided: “Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This Act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after its passage and approval.”

26-51-1201. Definition.

For the purposes of §§ 26-51-1201 — 26-51-1203, the term “invested” shall include expenditures made from the proceeds of bonds, including interim notes or other evidence of indebtedness, issued by a municipality, county, or an agency or instrumentality of a municipality, county, or the State of Arkansas, if the obligation to repay the bonds, including interest on the bonds, is a legal, binding obligation, directly or indirectly, of the taxpayer.

History. Acts 1987, No. 48, § 1.

Publisher's Notes. Acts 1987, No. 48, § 1, is also codified as §§ 15-4-1101, 26-52-901(1).

26-51-1202. Certification required.

(a) To claim the benefits of §§ 26-51-1201 — 26-51-1203, a taxpayer must obtain a certification from the Director of the Arkansas Department of Economic Development certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer:

(1) Operates a steel mill in Arkansas which began production after February 16, 1987; and

(2) Has invested, after February 16, 1987, in excess of one hundred twenty million dollars (\$120,000,000) in the steel mill, which investment expenditure is for one (1) of the following:

(A) Property purchased for use in the construction of a building or buildings or any addition or improvement thereon to house the steel mill;

(B) Machinery and equipment to be located in or in connection with the steel mill. Motor vehicles of a type subject to registration shall not be considered as machinery and equipment; or

(C) Project planning costs or construction labor costs, including on-site direct labor and supervision, whether employed by a contractor or the project owner; architectural fees, engineering fees, or both; right-of-way purchases; utility extensions; site preparation; parking lots; disposal or containment systems; water and sewer treatment systems; rail spurs; streets and roads; purchase of mineral rights; land; buildings; building renovation; production, processing, and testing equipment; freight charges; building demolition; material handling equipment; drainage systems; water tanks and reservoirs; storage facilities; equipment rental; contractor's cost plus fees; builders risk insurance; original spare parts; job administrative expenses; office furnishings and equipment; rolling stock; capitalized start-up costs as recognized by generally accepted accounting principles; and other costs related to the construction.

(b) "Production and processing equipment", as used in subdivision (a)(2)(C) of this section, includes machinery and equipment essential for the receiving, storing, processing, and testing of raw materials and the production, storage, testing, and shipping of finished products, including facilities for the production of steam, electricity, chemicals, and other materials that are essential to the manufacturing process, but which are consumed in the manufacturing process and do not become essential components of the finished product.

History. Acts 1987, No. 48, § 1; 1997, No. 540, § 89.

Publisher's Notes. Acts 1987, No. 48, § 1, is also codified as §§ 15-4-1102, 26-52-902(a), (b).

Amendments. The 1997 amendment substituted "Department of Economic Development" for "Department of Industrial Development" in (a).

26-51-1203. Net operating loss deduction — Carry forward.

(a) Taxpayers qualified under § 26-51-1202(a) and (b), entitled to a net operating loss deduction as provided in § 26-51-427, may carry forward that deduction to the next succeeding taxable year following the year of the net operating loss and annually thereafter for a total period of ten (10) years or until the net operating loss has been exhausted, whichever is earlier.

(b) The net operating loss deduction must be carried forward in the order named above.

History. Acts 1987, No. 48, § 2.

Research References

ALR.

Construction and application of state corporate income tax statutes allowing net operation loss deductions. 33 A.L.R.5th 509.

26-51-1204 — 26-51-1210. [Reserved.]

26-51-1211. Definitions.

For purposes of §§ 26-51-1211 — 26-51-1214, the following definitions apply:

(1) A taxpayer is a "qualified manufacturer of steel" if:

(A) The taxpayer is a natural person, company, or corporation engaged in

the manufacture, refinement, or processing of steel; and

(B) More than fifty percent (50%) of the electricity or natural gas consumed in the manufacture, refinement, or processing of steel by the taxpayer is used either:

(i) To power an electric arc furnace or furnaces, continuous casting equipment, or rolling mill equipment in connection with melting, continuous casting, or rolling of steel; or

(ii) In the preheating of steel for processing through a rolling mill;

(2) “Production and processing equipment” includes machinery and equipment essential for the receiving, storing, processing, and testing of raw materials and the production, storage, testing, and shipping of finished products, including facilities for the production of steam, electricity, chemicals, and such other materials that are essential to the manufacturing process, but which are consumed in the manufacturing process and do not become essential components of the finished product;

(3) “Invested” shall include expenditures made from the proceeds of bonds including interim notes or other evidence of indebtedness issued by a municipality, county, or an agency or instrumentality of a municipality, county, or the State of Arkansas, if the obligation to repay the bonds, including interest thereon, is a legal, binding obligation, directly or indirectly, of the taxpayer.

History. Acts 1991, No. 136, § 1; 1991, No. 137, § 1.

Publisher's Notes. Acts 1991, Nos. 136 and 137, § 1, are also codified as § 26-52-911.

26-51-1212. Certification required — Contents.

To claim the benefits of §§ 26-51-1211 — 26-51-1214, a taxpayer must obtain certification prior to June 30, 1994, from the Director of the Arkansas Department of Economic Development certifying to the Revenue Division of the Department of Finance and Administration that:

(1) The taxpayer is a “qualified manufacturer of steel” as defined in § 26-51-1211; or

(2) (A) The taxpayer operates a steel mill in Arkansas which began production after February 13, 1991; and

(B) The taxpayer has invested, after February 13, 1991, in excess of one hundred twenty million dollars (\$120,000,000) in the steel mill, which investment expenditure is for one (1) of the following:

(i) Property purchased for use in the construction of a building or buildings or any addition or improvement thereon to house the steel mill;

(ii) Machinery and equipment to be located in or in connection with the steel mill. Motor vehicles of a type subject to registration shall not be considered as machinery and equipment;

(iii) Project planning costs; construction labor costs, including on-site direct labor and supervision, whether employed by a contractor or the project owner; architectural or engineering fees; right-of-way purchases; utility extensions; site preparation; parking lots; disposal or containment systems; water and sewer treatment systems; rail spurs; streets and roads; purchase of mineral rights; land; buildings; building renovation; production, processing, and testing equipment; freight charges; building

demolition; material handling equipment; drainage systems; water tanks and reservoirs; storage facilities; equipment rental; contractor's cost plus fees; builders risk insurance; original spare parts; job administration expenses; office furnishings and equipment; rolling stock; capitalized start-up costs as recognized by generally accepted accounting principles; and other costs related to the construction.

History. Acts 1991, No. 136, § 2; 1991, No. 137, § 2; 1997, No. 540, § 90.

Publisher's Notes. Acts 1991, Nos. 136 and 137, § 2, are also codified as § 26-52-912.

Amendments. The 1997 amendment substituted "Department of Economic Development" for "Department of Industrial Development" in the introductory language.

26-51-1213. Net operating loss deduction — Carry forward.

(a) Taxpayers qualified under § 26-51-1212(2) and entitled to a net operating loss deduction as provided in § 26-51-427 may carry forward that deduction to the next-succeeding taxable year following the year of such net operating loss and annually thereafter for a total period of ten (10) years or until such net operating loss has been exhausted, whichever is earlier.

(b) The net operating loss deduction must be carried forward in the order named above.

History. Acts 1991, No. 136, § 3; 1991, No. 137, § 3.

Publisher's Notes. Acts 1991, Nos. 136 and 137, § 3 are also codified as § 26-52-913.

Research References

ALR.

Construction and application of state corporate income tax statutes allowing net operation loss deductions. 33 A.L.R.5th 509.

26-51-1214. Sales of natural gas and electricity — Exemption.

(a) Sales of natural gas and electricity to taxpayers qualified under subdivision (1) or (2) of § 26-51-1212 for use in connection with the steel mill shall be exempt from the Arkansas gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, as amended, § 26-52-101 et seq., and the Arkansas compensating use tax, levied by the Arkansas Compensating Tax Act of 1949, as amended, § 26-53-101 et seq., and any other state or local tax administered under those acts.

(b) The benefits of exemptions granted pursuant to this section shall become effective on July 1, 1991.

History. Acts 1991, No. 136, § 4; 1991, No. 137, § 4.

Publisher's Notes. Acts 1991, Nos. 136 and 137, § 4, are also codified as § 26-52-914.

Subchapter 13 — Winnings Withholding Act

26-51-1301. Title.

26-51-1302. Definitions.

26-51-1303. Amount deducted and withheld — Credit.

26-51-1304. Administration.

26-51-1305. Liability of franchise holders.

26-51-1306. Withholding return and payment.

- 26-51-1307. Annual statement of withholding.
- 26-51-1308. Duties of franchise holders and payees.
- 26-51-1309. Gaming winnings tax levied on winnings paid by electronic games of skill.
- 26-51-1310. Withholding return, reporting, and payment — Electronic games of skill.

Effective Dates. Acts 1987, No. 899, § 8: Apr. 13, 1987. Emergency clause provided: “An emergency is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for schools and other essential services required by the citizens of this State and the provisions of this Act are necessary to avoid substantial reduction in State revenues. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2007, No. 732, § 9: May 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that state revenues will be lost; that irreparable harm will result since those lost revenues cannot be recouped; and that this act is immediately necessary because the revenues collected under this act are necessary to fund vital state needs. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on May 1, 2007.”

26-51-1301. Title.

This subchapter may be cited as the “Winnings Withholding Act of 1987”.

History. Acts 1987, No. 899, § 1.

26-51-1302. Definitions.

As used in this subchapter:

(1) “Gaming winnings” means winnings from electronic games of skill based on the amount paid with respect to the wager without reduction for the amount of the wager; and

(2) “Racing winnings” means winnings from live dog racing or horse racing based on the amount paid with respect to the wager less the amount of the wager.

History. Acts 1987, No. 899, § 2; 2007, No. 732, § 1.

Amendments. The 2007 amendment rewrote the section.

26-51-1303. Amount deducted and withheld — Credit.

(a) Every holder of a franchise to conduct dog racing or horse racing in this state making any single payment of racing winnings on a single wagering transaction of more than one thousand dollars (\$1,000), if the amount of the racing winnings is at least three hundred (300) times as large as the amount wagered, shall deduct and withhold an amount equal to seven percent (7%) from the racing winnings.

(b) The amount deducted and withheld from any person receiving racing winnings during the income year shall be credited against the tax liability of that person under the Income Tax Act of 1929, § 26-51-101 et seq.

History. Acts 1987, No. 899, § 2; 2007, No. 732, § 2; 2009, No. 655, § 8.

Amendments. The 2007 amendment inserted “racing” twice in (a) and once in (b). The 2009 amendment inserted “racing” following “amount of the” in (a).

26-51-1304. Administration.

This subchapter shall be administered in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1987, No. 899, § 7.

26-51-1305. Liability of franchise holders.

Every holder of a franchise to conduct dog racing, horse racing, or electronic games of skill shall be liable for amounts required to be deducted and withheld by this subchapter regardless of whether the amounts were in fact deducted and withheld.

History. Acts 1987, No. 899, § 4; 2007, No. 732, § 3.

Amendments. The 2007 amendment substituted "Every holder of a franchise to conduct dog racing, horse racing, or electronic games of skill" for "Every franchise holder."

26-51-1306. Withholding return and payment.

Every franchise holder required to deduct and withhold income tax from racing winnings under this subchapter shall file, within sixty (60) days after the termination of its racing season, a withholding return as prescribed by the Director of the Department of Finance and Administration and pay over to the director the full amount required to be deducted and withheld from the racing winnings by the franchise holder for the income year.

History. Acts 1987, No. 899, § 5; 2007, No. 732, § 4.

Amendments. The 2007 amendment inserted "income tax" once and "racing" twice.

26-51-1307. Annual statement of withholding.

(a) Every franchise holder required to deduct and withhold income tax from racing winnings under this subchapter shall file an annual statement of withholding for each person receiving racing winnings subject to withholding under this subchapter.

(b) (1) The annual statement shall be in the form prescribed by the Director of the Department of Finance and Administration and shall be filed with the director.

(2) Two (2) copies of the statement shall be furnished to each person who had received racing winnings during the income year before January 31 following the close of the income year.

(c) The statement shall show:

(1) The name and withholding account number of the franchise holder;

(2) The name and address of the person who had received the racing winnings and his or her taxpayer identification number;

(3) The total amount of the racing winnings subject to withholding paid by the franchise holder to the recipient of the racing winnings;

(4) The total amount withheld from the recipient's racing winnings by the franchise holder pursuant to this subchapter for the income year; and

(5) Such other information as the director shall require by rule or regulation.

History. Acts 1987, No. 899, § 6; 2007, No. 732, § 5; 2009, No. 655, § 9.

Amendments. The 2007 amendment inserted "racing" throughout the section; inserted "required to deduct and withhold income tax from racing winnings under this subchapter" in (a); and

inserted the (1) and (2) designations in (b).
The 2009 amendment inserted "racing" following "recipient of the" in (c)(3).

26-51-1308. Duties of franchise holders and payees.

(a) Every holder of a franchise to conduct dog racing, horse racing, or electronic games of skill who fails to withhold or pay to the Director of the Department of Finance and Administration any sums required by this subchapter to be withheld and paid shall be personally and individually liable therefor. Any sum or sums withheld in accordance with the provisions of this subchapter shall be deemed to be held in trust for the State of Arkansas and shall be recorded by the franchise holder in a ledger account so as to clearly indicate the amount of tax withheld and that the amount is the property of the State of Arkansas.

(b) Every person who is to receive a payment of racing winnings or gaming winnings that are subject to this subchapter shall furnish the person making the payment a statement, made under penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of the payment.

History. Acts 1987, No. 899, §§ 3, 5; 2007, No. 732, § 6.

Amendments. The 2007 amendment substituted "Every holder of a franchise to conduct dog racing, horse racing, or electronic games of skill" for "Every franchise holder" in (a); and inserted "racing winnings or gaming" in (b).

26-51-1309. Gaming winnings tax levied on winnings paid by electronic games of skill.

(a) There is levied, assessed, and collected a gaming winnings tax of three percent (3%) on any single payment of winnings from electronic games of skill of one thousand two hundred dollars (\$1,200) or more paid on a single electronic game of skill wager.

(b) The holder of a franchise to conduct electronic games of skill shall:

(1) Deduct and withhold the tax from winnings from electronic games of skill upon which the tax is levied by subsection (a) of this section; and

(2) Remit the tax to the Director of the Department of Finance and Administration as provided in § 26-51-1310 and as prescribed by rules promulgated by the director.

History. Acts 2007, No. 732, § 7.

26-51-1310. Withholding return, reporting, and payment — Electronic games of skill.

(a) The holder of a franchise to conduct electronic games of skill in this state shall register to withhold the gaming winnings tax under § 26-51-1309 from winnings from electronic games of skill in the manner prescribed by the Director of the Department of Finance and Administration.

(b) The withholding account used to report and remit the withholding on wages shall not be used to report withholding on winnings from electronic games of skill.

(c) A separate account for withholding on winnings from electronic games of skill shall be obtained from the Revenue Division of the Department of Finance and

Administration.

(d) Each holder of a franchise to conduct electronic games of skill shall file a monthly return and remit the tax withheld from winnings from electronic games of skill on or before the fifteenth day of the month following the month in which the tax was withheld.

(e) The holder of a franchise to conduct electronic games of skill shall keep the following records and information for three (3) years after the date the tax becomes due or is paid, whichever is later:

- (1) The total gaming winnings paid;
- (2) The amount of gaming winnings tax withheld and remitted;
- (3) The name, address, and social security number or taxpayer identification number of the party in receipt of gaming winnings; and
- (4) The name, address, and Arkansas identification number of the holder of a franchise to conduct electronic games of skill.

(f) (1) Gaming winnings are not includable as income on the payee's regular Arkansas income tax return.

(2) The amount of tax paid or withheld on gaming winnings under § 26-51-1309 shall not be claimed under the Income Tax Act of 1929, § 26-51-101 et seq., on an Arkansas income tax return to:

- (A) Offset a tax liability;
- (B) Create a refund; or
- (C) Generate any other type of credit or offset for income tax purposes.

(3) Losses sustained from electronic games of skill wagers are not deductible under the Income Tax Act of 1929, § 26-51-101 et seq., on Arkansas income tax returns.

History. Acts 2007, No. 732, § 8.

Subchapter 14

— Apportionment and Allocation of Net Income of Financial Institutions.

26-51-1401. Apportionment and allocation.

26-51-1402. Definitions.

26-51-1403. Receipts factor.

26-51-1404. Property factor.

26-51-1405. Payroll factor.

Effective Dates. Acts 1995, No. 495, § 4: applicable for taxable years beginning on or after January 1, 1996.

Research References

Am. Jur. 71 Am. Jur. 2d State Tax. § 431.

26-51-1401. Apportionment and allocation.

(a) Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this subchapter. All items of nonbusiness income, income which is not includable in the apportionable income tax base, shall be allocated pursuant to the provisions of §§ 26-51-704 — 26-51-708. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession

of the United States whose effectively connected income, as defined under the federal Internal Revenue Code, as in effect January 1, 1995, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this subchapter.

(b) (1) All business income, income which is includable in the apportionable income tax base, shall be apportioned to this state by multiplying such income by the apportionment percentage.

(2) The apportionment percentage is determined by adding the taxpayer's receipts factor as described in § 26-51-1403, property factor as described in § 26-51-1404, and payroll factor as described in § 26-51-1405 together and dividing the sum by three (3). If one (1) of the factors is missing, the two (2) remaining factors are added and the sum is divided by two (2). If two (2) of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.

(c) Each factor shall be computed according to the method of accounting, cash or accrual basis, used by the taxpayer for the taxable year.

(d) If the allocation and apportionment provisions of this subchapter do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the Director of the Department of Finance and Administration may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) Separate accounting;

(2) The exclusion of any one (1) or more of the factors;

(3) The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

History. Acts 1995, No. 495, § 1.

U.S. Code. The Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 1 et seq.

26-51-1402. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on such later date in the taxable year when the customer relationship began, as the address where any notice, statement, and/or bill relating to a customer's account is mailed;

(2) "Borrower or credit card holder located in this state" means:

(A) A borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state; or

(B) A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state;

(3) "Commercial domicile" means:

(A) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(B) If a taxpayer is organized under the laws of a foreign country, or of

the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile shall be deemed for the purposes of this subchapter to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year;

(4) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the federal Internal Revenue Code, as in effect January 1, 1995. In the case of employees not subject to the federal Internal Revenue Code, as in effect January 1, 1995, e.g., those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the federal Internal Revenue Code, as in effect January 1, 1995, shall be made as though such employees were subject to the federal Internal Revenue Code, as in effect January 1, 1995;

(5) "Credit card" means a credit, travel, or entertainment card;

(6) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one (1) of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card;

(7) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer;

(8) "Financial institution" means:

(A) Any corporation or other business entity registered under state law as a bank holding company or registered under the federal Bank Holding Company Act of 1956, as amended and in effect January 1, 1995, or registered as a savings and loan holding company under the federal National Housing Act, as amended and in effect January 1, 1995;

(B) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. § 21 et seq., as in effect January 1, 1995;

(C) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. § 1813(b)(1), as in effect January 1, 1995;

(D) Any bank or thrift institution incorporated or organized under the laws of any state;

(E) Any corporation organized under the provisions of 12 U.S.C. §§ 611—631, as in effect January 1, 1995;

(F) Any agency or branch of a foreign depository as defined in 12 U.S.C. § 3101, as in effect January 1, 1995;

(G) A production credit association organized under the federal Farm Credit Act of 1933, as in effect January 1, 1995, all of whose stock held by the Federal Production Credit Corporation has been retired;

(H) Any corporation whose voting stock is more than fifty percent (50%)

owned, directly or indirectly, by any person or business entity described in subdivisions (8)(A)-(G) of this section other than an insurance company taxable under § 26-57-601 et seq.;

(I) A corporation or other business entity that derives more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases.

(i) For purposes of this subdivision (8)(I), a “finance lease” shall mean any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any “direct financing lease” or “leverage lease” that meets the criteria of Financial Accounting Standards Board Statement No. 13, “Accounting for Leases”, as in effect January 1, 1995, or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles.

(ii) For this classification to apply:

(a) The average of the gross income in the current tax year and immediately preceding two (2) tax years must satisfy the more than fifty percent (50%) requirement; and

(b) Gross income from incidental or occasional transactions shall be disregarded; and

(J) (i) Any other person or business entity, other than insurance companies, real estate brokers, or securities dealers taxable under § 26-51-205, which derives more than fifty percent (50%) of its gross income from activities that a person described in subdivisions (8)(B)-(G) and (I) of this section is authorized to transact.

(ii) For the purpose of this subdivision (8)(J), the computation of gross income shall not include income from nonrecurring, extraordinary items.

(iii) The Director of the Department of Finance and Administration is authorized to exclude any person from the application of this subdivision (8)(J) upon such person's proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in subdivisions (8)(B)-(G) and (I) of this section.

(9) (A) “Gross rents” means the actual sum of money or other consideration payable for the use or possession of property.

(B) “Gross rents” shall include, but not be limited to:

(i) Any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise;

(ii) Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement; and

(iii) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight (8) and the value of the building is determined in the same manner as if owned by the

taxpayer.

(C) The following are not included in the term “gross rents”:

(i) Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(ii) Reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(iii) Reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and

(D) That portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it;

(10) (A) “Loan” means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another.

(B) Loans include participations, syndications, and leases treated as loans for federal income tax purposes under the federal Internal Revenue Code, as in effect January 1, 1995.

(C) Loans shall not include:

(i) Properties treated as loans under Section 595 [repealed] of the federal Internal Revenue Code, as in effect January 1, 1995;

(ii) Futures or forward contracts;

(iii) Options;

(iv) Notional principal contracts such as swaps;

(v) Credit card receivables, including purchased credit card relationships;

(vi) Noninterest bearing balances due from depository institutions;

(vii) Cash items in the process of collection;

(viii) Federal funds sold;

(ix) Securities purchased under agreements to resell;

(x) Assets held in a trading account;

(xi) Securities;

(xii) Interests in a real estate mortgage investment conduit, as defined by the federal Internal Revenue Code, as in effect January 1, 1995, or other mortgage-backed or asset-backed security; and

(xiii) Other similar items;

(11) “Loan secured by real property” means that fifty percent (50%) or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property;

(12) “Merchant discount” means the fee or negotiated discount charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder;

(13) “Participation” means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may

not be known to the borrower;

(14) “Person” means an individual, estate, trust, partnership, limited liability company, corporation, and any other business entity;

(15) (A) “Principal base of operations”, with respect to transportation property, means the place of more or less permanent nature from which said property is regularly directed or controlled.

(B) With respect to an employee, the “principal base of operations” means the place of more or less permanent nature from which the employee regularly:

(i) Starts his or her work and to which he or she customarily returns in order to receive instructions from his or her employer;

(ii) Communicates with his or her customers or other persons; or

(iii) Performs any other functions necessary to the exercise of his or her trade or profession at some other point or points;

(16) (A) “Real property owned” and “tangible personal property owned” mean real and tangible personal property, respectively:

(i) On which the taxpayer may claim depreciation for federal income tax purposes, pursuant to the Internal Revenue Code, as in effect January 1, 1995; or

(ii) Property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, pursuant to the Internal Revenue Code, as in effect January 1, 1995, or could claim depreciation if subject to federal income tax, pursuant to the Internal Revenue Code, as in effect January 1, 1995.

(B) “Real property owned” and “tangible personal property owned” do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure;

(17) “Regular place of business” means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the taxpayer;

(18) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country;

(19) “Syndication” means an extension of credit in which two (2) or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount;

(20) “Taxable” means either:

(A) That a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, or an earned surplus tax, or any tax which is imposed upon or measured by net income; or

(B) That another state has jurisdiction to subject the taxpayer to any of such taxes regardless of whether, in fact, the state does or does not;

(21) “Transportation property” means vehicles and vessels capable of moving under their own power such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

History. Acts 1995, No. 495, § 1.

U.S. Code. The Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 1 et seq. The federal Bank Holding Company Act of 1956, referred to in this section, is codified as 12 U.S.C. § 1841 et seq. The National Housing Act, referred to in this section, is codified as 12 U.S.C. § 1701 et seq. The Federal Deposit Insurance Act, referred to in this section, is primarily codified as 12 U.S.C. § 1811 et seq. The federal Farm Credit Act of 1933, referred to in this section, was codified as 12 U.S.C. § 1131 et seq., but was repealed in 1966. Section 595 of the federal Internal Revenue Code referred to in this section was codified as 26 U.S.C. § 595, but was repealed in 1996, by P.L. 104-188.

26-51-1403. Receipts factor.

(a) Generally.

(1) (A) The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year.

(B) The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(2) The receipts factor shall include only those receipts described herein which constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts From the Lease of Real Property. The numerator of the receipts factor includes:

(1) Receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state; or

(2) Receipts from the sublease of real property if the property is located within this state.

(c) Receipts From the Lease of Tangible Personal Property.

(1) Except as described in subdivision (c)(2) of this section, the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(2) (A) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(B) The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(C) If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(D) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) Interest From Loans Secured by Real Property.

(1) (A) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is

located within this state.

(B) If the property is located both within this state and one (1) or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent (50%) of the fair market value of the real property is located within this state.

(C) If more than fifty percent (50%) of the fair market value of the real property is not located within any (1) one state, then the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

(2) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

(e) Interest From Loans Not Secured by Real Property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) Net Gains From the Sale of Loans.

(1) The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code, as in effect January 1, 1995.

(2) The amount of net gains, but not less than zero (0), from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(3) The amount of net gains, but not less than zero (0), from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) Receipts From Credit Card Receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to cardholders, such as annual fees, if the billing address of the cardholder is in this state.

(h) Net Gains From the Sale of Credit Card Receivables. The numerator of the receipts factor includes net gains, but not less than zero (0), from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Credit Card Issuer's Reimbursement Fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card

receivables and fees charged to cardholders.

(j) Receipts From Merchant Discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts shall be computed net of any card holder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders.

(k) Loan Servicing Fees.

(1) (A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(2) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include such fees if the borrower is located in this state.

(l) Receipts From Services.

(A) The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state.

(B) If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section, if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

(m) Receipts From Investment Assets and Activities and Trading Assets and Activities.

(1) (A) Interest, dividends, net gains, but not less than zero (0), and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

(B) Investment assets and activities and trading assets and activities include, but are not limited to:

- (i)** Investment securities;
- (ii)** Trading account assets;
- (iii)** Federal funds;
- (iv)** Securities purchased and sold under agreements to resell or repurchase;
- (v)** Options;
- (vi)** Futures contracts;
- (vii)** Forward contracts;
- (viii)** Notional principal contracts such as swaps;
- (ix)** Equities; and
- (x)** Foreign currency transactions.

(C) With respect to the investment and trading assets and activities

described in subdivisions (m)(1)(D) and (E) of this section, the receipts factor shall include the amounts described in those subdivisions.

(D) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(E) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(2) (A) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero (0), and other income from investment assets and activities and from trading assets and activities described in subdivision (m)(1) of this section that are attributable to this state.

(B) The amount of interest, dividends, net gains, but not less than zero (0), and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(C) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in subdivision (m)(1)(D) of this section from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(D) The amount of interest, dividends, gains, and other income from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book and in foreign currency transactions, but excluding amounts described in subdivision (m)(2)(B) or (C) of this section, attributable to this state and included in the numerator is determined by multiplying the amount described in subdivision (m)(1)(E) of this section by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(E) For purposes of this subdivision (m)(2), average value shall be determined using the rules for determining the average value of tangible personal property set forth in § 26-51-1404(c) and (d).

(3) (A) In lieu of using the method set forth in subdivision (m)(2) of this section, the taxpayer may elect, or the Director of the Department of Finance and Administration may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subdivision (m)(3).

(B) The amount of interest, dividends, net gains, but not less than zero

(0), and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(C) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in subdivision (m)(1)(D) of this section from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(D) The amount of interest, dividends, gains, and other income from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book and in foreign currency transactions, but excluding amounts described in subdivision (m)(3)(B) or (C) of this section, attributable to this state and included in the numerator is determined by multiplying the amount described in subdivision (m)(1)(E) of this section by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(4) If the taxpayer elects or is required by the Director of the Department of Finance and Administration to use the method set forth in subdivision (m)(3) of this section, it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the Director of the Department of Finance and Administration to use, or the Director of the Department of Finance and Administration requires, a different method.

(5) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one (1) regular place of business and one (1) such regular place of business is in this state and one (1) such regular place of business is outside this state, such asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(n) All Other Receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in §§ 26-51-715 — 26-51-717.

(o) Attribution of Certain Receipts to Commercial Domicile. All receipts which would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor, if the taxpayer's commercial domicile

is in this state.

History. Acts 1995, No. 495, § 1.

U.S. Code. Section 1286 of the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 1286.

26-51-1404. Property factor.

(a) Generally. The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable year, the average value of the taxpayer's real and tangible personal property owned that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year; and the denominator of which is the average value of all such property located or used within and without this state during the taxable year.

(b) Property Included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

(c) Value of Property Owned by the Taxpayer.

(1) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(2) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged off, in whole or in part, for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines which is treated as charged off for federal income tax purposes shall be treated as charged off for purposes of this section.

(3) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged off, in whole or in part, for federal income tax purposes, the portion of the receivable charged off is not outstanding.

(d) Average Value of Property Owned by the Taxpayer.

(1) The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two (2).

(2) If averaging on this basis does not properly reflect average value, the Director of the Department of Finance and Administration may require averaging on a more frequent basis.

(3) The taxpayer may elect to average on a more frequent basis.

(4) When averaging on a more frequent basis is required by the Director of the Department of Finance and Administration or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the Director of the Department of Finance and Administration or the

Director of the Department of Finance and Administration requires a different method of determining average value.

(e) Average Value of Real Property and Tangible Personal Property Rented to the Taxpayer.

(1) The average value of real property and tangible personal property that the taxpayer has rented from another, and which is not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight (8).

(2) (A) Where the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method which properly reflects the value may be adopted by the Director of the Department of Finance and Administration or by the taxpayer when approved in writing by the Director of the Department of Finance and Administration.

(B) Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the Director of the Department of Finance and Administration or unless the Director of the Department of Finance and Administration requires a different method of valuation.

(f) Location of Real Property and Tangible Personal Property Owned by or Rented to the Taxpayer.

(1) Except as described in subdivision (f)(2) of this section, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated, or used within this state.

(2) (A) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(B) The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(C) If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(D) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(g) Location of Loans.

(1) (A) A loan is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(B) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts.

(2) (A) A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(i) The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(ii) Such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and

(iii) The taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(B) The presumption of proper assignment of a loan provided in subdivisions (g)(1)(B) and (g)(2)(A) of this section may be rebutted upon a showing by the Director of the Department of Finance and Administration, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records.

(C) When such presumption has been rebutted, the loan shall then be located within this state if:

(i) The taxpayer had a regular place of business within this state at the time the loan was made; and

(ii) The taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within this state.

(3) In the case of a loan which is assigned by the taxpayer to a place without this state which is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state, if, at the time the loan was made, the taxpayer's commercial domicile, as defined by § 26-51-1402(3), was within this state.

(4) (A) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to such activities as the solicitation, investigation, negotiation, approval, and administration of the loan.

(B) The terms “solicitation”, “investigation”, “negotiation”, “approval”, and “administration” are defined as follows:

(i) (a) “Solicitation” is either active or passive.

(b) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed.

(c) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case;

(ii) “Investigation” is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer, as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed;

(iii) “Negotiation” is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, e.g., the amount, duration, interest rate, frequency of repayment, currency denomination, and security

required. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed;

(iv) "Approval" is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer; and

(v) "Administration" is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business which oversees this activity.

(h) Location of Credit Card Receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of subsection (g) of this section.

(i) Period for Which Properly Assigned Loan Remains Assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to said state for the length of the original term of the loan. Thereafter, said loan may be properly assigned to another state if said loan has a preponderance of substantive contact to a regular place of business there.

History. Acts 1995, No. 495, § 1.

26-51-1405. Payroll factor.

(a) Generally. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid both within and without this state during the taxable year. The payroll factor shall include only that compensation which is included in the computation of the apportionable income tax base for the taxable year.

(b) Compensation Relating to Nonbusiness Income and Independent Contractors. The compensation of any employee for services or activities which are connected with the production of nonbusiness income, which is income that is not includable in the apportionable income base, and payments made to any independent contractor or any other person not properly classifiable as an employee shall be excluded from both the numerator and denominator of the factor.

(c) When Compensation Paid in this State. Compensation is paid in this state if any one (1) of the following tests, applied consecutively, is met:

- (1) The employee's services are performed entirely within this state;
- (2) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; and
- (3) If the employee's services are performed both within and without this state,

the employee's compensation will be attributed to this state:

(A) If the employee's principal base of operations is within this state;

(B) If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

History. Acts 1995, No. 495, § 1.

Subchapter 15

— Private Wetland and Riparian Zone Creation and Restoration Incentive

26-51-1501. Title.

26-51-1502. Legislative findings.

26-51-1503. Definitions.

26-51-1504. Applicability.

26-51-1505. Credits granted.

26-51-1506. Administration.

26-51-1507. Application and approval procedure.

26-51-1508. Development, operation, and tax credits.

26-51-1509. Recordkeeping requirement.

26-51-1510. Annual compilation of credits — Expiration of subchapter — Tax credit availability.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-14 may not apply to this subchapter which was enacted subsequently.

Effective Dates. Acts 1995, No. 561, § 4(a): the tax credits provided by this subchapter shall apply to taxable years beginning on or after January 1, 1996, and all taxable years thereafter. Acts 2009, No. 351, § 11: July 31, 2009. Effective date clause provided: “This act is effective for tax years beginning on or after January 1, 2009.”

26-51-1501. Title.

This subchapter may be cited as the “Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act”.

History. Acts 1995, No. 561, § 1; 2009, No. 351, § 1.

Amendments. The 2009 amendment substituted “Creation, Restoration, and Conservation Tax Credits” for “Creation and Restoration Incentives,” and made related changes.

Effective Dates. Acts 2009, No. 351, § 11, provided: “This act is effective for tax years beginning on or after January 1, 2009.”

26-51-1502. Legislative findings.

(a) Wetlands and riparian zones have significant benefits to the state. They include:

(1) Flood impact mitigation by slowing storm water runoff;

(2) Water quality enhancement by removing sediment, nitrogen, phosphorus, and other pollutants from surface water;

(3) Habitats for fish and wildlife, including waterfowl and rare or endangered species;

(4) Groundwater recharge can occur in wetlands that will assist in ensuring that groundwater is available for the future;

(5) Recreational uses for hunting, fishing, hiking, et cetera, that not only add to the quality of life, but also have a significant economic impact on the state; and

(6) Timber and food production in properly managed wetlands can provide wood products, plants, and animals for human and livestock consumption.

(b) Arkansas has lost over seventy percent (70%) of its pre-European settlement wetlands. Even though the rate of wetland loss in the United States has declined in recent years, wetlands in Arkansas continue to experience significant loss.

(c) The majority of lands suitable for wetlands and riparian zones are held by private owners. The state should encourage these owners to restore and enhance existing wetlands and riparian zones and, when possible, create new wetlands and riparian zones.

(d) The donation of wetland and riparian zone qualified real property interests should be encouraged by the state so that permanent protection of the conservation values of these lands is ensured.

History. Acts 1995, No. 561, § 2; 2009, No. 351, § 2.

Amendments. The 2009 amendment added (d).

Effective Dates. Acts 2009, No. 351, § 11, provided: "This act is effective for tax years beginning on or after January 1, 2009."

26-51-1503. Definitions.

As used in this subchapter:

(1) "Application" means a written plan for development and operation of the project, including all requirements the Arkansas Natural Resources Commission may adopt by rule;

(2) "Commission" means the Arkansas Natural Resources Commission;

(3) "Committee" means the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee, which is a committee made up of:

(A) The directors or their designees of:

(i) The Arkansas Forestry Commission;

(ii) The Arkansas State Game and Fish Commission;

(iii) The Department of Finance and Administration;

(iv) The Department of Arkansas Heritage; and

(v) The Arkansas Department of Environmental Quality; and

(B) (i) Two (2) public members with expertise in wetlands and riparian zone ecology appointed by the Arkansas Natural Resources Commission.

(ii) In appointing public members, the Arkansas Natural Resources Commission should consider the wide variety of interests in wetlands and riparian zones;

(4) "Department" means the Revenue Division of the Department of Finance and Administration;

(5) (A) "Eligible donee" means a qualified organization under 26 U.S.C. § 170(h)(3), as in effect on January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.170A-14(c), as in effect on January 1, 2009.

(B) A non-governmental qualified organization must have adopted the Land Trust Alliance's Land Trust Standards and Practices, as in effect on January 1, 2009, in order to qualify as an "eligible donee";

(6) "Eligible donor" means any person or entity that owns a qualified real property interest, including without limitation an individual, corporation, trust, estate, and partnership or other pass-through legal entity;

(7) "Private Lands Restoration Committee" is a committee made up of:

(A) The directors or their designees of:

(i) The Arkansas Forestry Commission;

(ii) The Arkansas State Game and Fish Commission;

(iii) The Department of Finance and Administration;

(iv) The Department of Arkansas Heritage; and

(v) The Arkansas Department of Environmental Quality; and

(B) (i) Two (2) public members with expertise in wetlands ecology appointed by the Arkansas Natural Resources Commission.

(ii) In appointing public members, the Arkansas Natural Resources Commission should consider the wide variety of interests in wetlands;

(8) "Project" means wetlands or riparian zones created or restored by activities for which tax credits are claimed;

(9) "Project cost" means the actual expenditure for a project, less any reimbursement received by the taxpayer from cost-share programs;

(10) "Qualified appraisal" means an appraisal in accordance with 26 C.F.R. § 1.170A-13(c)(3), as in effect on January 1, 2009, and the Uniform Standards of Professional Appraisal Practice, as in effect on January 1, 2009;

(11) "Qualified conservation purpose" means a conservation purpose as defined by 26 U.S.C. § 170(h)(4), as in effect on January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.170A-14(d), as in effect on January 1, 2009;

(12) "Qualified real property interest" means an interest in real property located completely in this state and containing wetlands or riparian zones, which also meets the definition of a qualified real property interest under 26 U.S.C. § 170(h)(2), as in effect on January 1, 2009, and the corresponding regulations in 26 C.F.R. § 1.170A-14(b), as in effect on January 1, 2009;

(13) "Riparian zone" means:

(A) An area of land along the bank of a natural watercourse or contiguous to a body of water that is set aside to reduce impacts of adjoining land use on the stream or water body; or

(B) Any other definition promulgated by the Arkansas Natural Resources Commission; and

(14) "Wetlands" means:

(A) An area that:

(i) Has water at or near the surface of the ground at some time during the growing season, wetland hydrology;

(ii) Contains plants that are adapted to wet habitats, hydrophytic vegetation; and

(iii) Is made up of soils that have developed under wet conditions, hydric soils; or

(B) Any other definition promulgated by the Arkansas Natural Resources Commission.

History. Acts 1995, No. 561, § 3; 1999, No. 1164, § 189; 2009, No. 351, §§ 3, 4.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided:

“‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

Amendments. The 2009 amendment, in present (3), rewrote the introductory language, which read: “Private Lands Restoration Committee is a committee made up of,” inserted “and riparian zones” in (3)(B)(ii), and made related changes; added (5), (6), and (10) through (12); and redesignated the remaining subdivisions accordingly.

Effective Dates. Acts 2009, No. 351, § 11, provided: “This act is effective for tax years beginning on or after January 1, 2009.”

26-51-1504. Applicability.

(a) There are two (2) types of tax credits available under this subchapter:

(1) Wetland and riparian zone creation and restoration tax credits, which shall apply to taxable years beginning on or after January 1, 1996, and all taxable years thereafter; and

(2) Wetland and riparian zone conservation tax credits, which shall apply to taxable years beginning on or after January 1, 2009, and all taxable years thereafter.

(b) (1) Any taxpayer claiming a tax credit under this subchapter may not claim a credit under the Water Resources Conservation and Development Incentives Act of 1985, § 26-51-1001 et seq., or any similar act for any costs related to the same project.

(2) Any taxpayer claiming a tax credit under this subchapter may not claim a tax credit under any other act for any costs related to the same project.

(c) Any tax credits issued to partnerships, limited liability companies, Subchapter S corporations, or fiduciaries may pass through to their members, managers, partners, shareholders, and/or beneficiaries.

History. Acts 1995, No. 561, §§ 4, 7; 2009, No. 351, § 5.

Amendments. The 2009 amendment rewrote (a).

Effective Dates. Acts 2009, No. 351, § 11, provided: “This act is effective for tax years beginning on or after January 1, 2009.”

26-51-1505. Credits granted.

(a) There shall be allowed a wetland and riparian zone creation and restoration tax credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount as determined in subsection (c) of this section for any taxpayer engaged in the

creation or restoration of wetlands and riparian zones.

(b) There shall be allowed a wetland and riparian zone conservation tax credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount as determined in subsection (c) of this section for any eligible donor who donates a qualified real property interest for a qualified conservation purpose to an eligible donee.

(c) (1) The amount of the wetland and riparian zone creation and restoration tax credit allowed under subsection (a) of this section shall be equal to the project cost incurred in the creation or restoration of wetlands and riparian zones and shall not exceed fifty thousand dollars (\$50,000).

(2) The amount of the wetland and riparian zone conservation tax credit allowed under subsection (b) of this section shall equal fifty percent (50%) of the fair market value of the qualified real property interest donation calculated to exclude any short term capital gain under 26 U.S.C. § 170(e)(1)(A), as in effect on January 1, 2009, and shall not exceed fifty thousand dollars (\$50,000).

(3) (A) The amount of the tax credit under this subchapter that may be used by a taxpayer for a taxable year may not exceed the lesser of:

(i) The amount of individual or corporate income tax otherwise due; or

(ii) Five thousand dollars (\$5,000).

(B) Any unused tax credit under this subchapter may be carried over for a maximum of nine (9) consecutive taxable years following the taxable year in which the tax credit originated.

(C) Any unused tax credit under this subchapter shall survive the death of an individual taxpayer and may be used by the individual taxpayer's estate, subject to the limitations in this subdivision (c)(3).

(4) Tax credits under this subchapter may only be used by the taxpayer certified to earn a tax credit to offset the taxpayer's state income tax liability and are nontransferable.

(5) (A) Only one (1) wetland and riparian zone conservation tax credit may be earned per qualified real property interest donation.

(B) If the qualified real property interest is held in common ownership, the wetland and riparian zone conservation tax credit shall be allocated in proportion to each respective ownership share.

(C) If the qualified real property interest is held by a pass-through entity, the wetland and riparian zone conservation tax credit shall be allocated as prescribed under 26 U.S.C. § 704(b), as in effect on January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.704-1(b)(4)(ii), as in effect on January 1, 2009.

(6) An eligible donor may earn only one (1) wetland and riparian zone conservation tax credit per income tax year.

(d) To claim the benefits of this section, a taxpayer must obtain a certification from the Arkansas Natural Resources Commission certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer has met all the requirements and qualifications set forth in §§ 26-51-1504(b)(2) and 26-51-1507(a) for a wetland and riparian zone creation and restoration tax credit or § 26-51-1507(b) for a wetland and riparian zone conservation tax credit.

(e) The division shall promulgate such rules and regulations as may be deemed necessary

to carry out the tax credit provisions of this subchapter.

History. Acts 1995, No. 561, § 6; 2009, No. 351, § 6.

Amendments. The 2009 amendment inserted (b), (c)(2), (c)(3)(C), and (c)(4) through (c)(6) and redesignated the remaining subdivisions accordingly; inserted “wetland and riparian zone creation and restoration tax” in (a) and (c)(1); substituted “creation” for “development” in (a) and (c)(1); substituted “subsection (c)” for “subsection (b)” in (a); inserted “and shall not exceed fifty thousand dollars (\$50,000)” in (c)(1); inserted “(a) for a wetland and riparian zone creation and restoration tax credit or § 26-51-1507(b) for a wetland and riparian zone conservation tax credit” in (d); and made minor stylistic changes.

Effective Dates. Acts 2009, No. 351, § 11, provided: “This act is effective for tax years beginning on or after January 1, 2009.”

26-51-1506. Administration.

(a) (1) The Arkansas Natural Resources Commission is charged with the responsibility of promulgating and administering rules related to the creation, restoration, and conservation of wetlands and riparian zones with the intent of qualifying for the tax credits provided for in this subchapter.

(2) Prior to adoption of any rules under this subchapter, the commission shall obtain comments on the proposed rules from the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee.

(b) (1) The commission may charge a reasonable application fee for the processing of tax credit applications.

(2) All fees collected shall be deposited into the Arkansas Water Development Fund.

History. Acts 1995, No. 561, § 5; 2009, No. 351, § 7.

Amendments. The 2009 amendment, in (a), inserted “and conservation” and substituted “credits” for “incentives” in (a)(1), substituted “from the committee” for “of the Private Lands Restoration Committee” in (a)(2), and made related changes.

Effective Dates. Acts 2009, No. 351, § 11, provided: “This act is effective for tax years beginning on or after January 1, 2009.”

26-51-1507. Application and approval procedure.

(a) (1) (A) Wetland and Riparian Zone Creation and Restoration Tax Credit.

(B) A taxpayer wishing to obtain a wetland and riparian zone creation and restoration tax credit shall submit an application to the Arkansas Natural Resources Commission.

(C) Upon receipt of the application, the commission shall make the application available to the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee for its review and comment.

(D) After review of the committee comments, the commission may issue a wetland and riparian zone creation and restoration tax credit approval certificate for those applications proposing projects that meet the requirements of this subchapter and rules promulgated thereunder.

(2) (A) Project costs incurred after issuance of a wetland and riparian zone creation and restoration tax credit approval certificate may be claimed for a wetland and riparian zone creation and restoration tax credit, subject to the limitations in § 26-51-

1505.

(B) A taxpayer must file the certificate of wetland and riparian zone creation and restoration tax credit approval with the taxpayer's income tax return for the first year in which the taxpayer claims a tax credit under this subchapter.

(3) (A) Upon completion and proper functioning of the project, the commission shall issue a certificate of completion.

(B) A taxpayer must file the certificate of completion with the first tax return filed after issuance of the certificate of completion.

(b) (1) (A) Wetland and Riparian Zone Conservation Tax Credit.

(B) An eligible donor wishing to obtain a wetland and riparian zone conservation tax credit shall submit an application to the commission.

(C) Upon receipt of the application, the commission shall make the application available to the committee for its review and comment. The committee's review shall include the following considerations:

(i) Whether the appraisal of the qualified real property interest meets the minimum standards of the Uniform Standards of Professional Appraisal Practice and the Internal Revenue Service requirements for a qualified appraisal;

(ii) Whether the qualified real property interest's valuation does not appear to be manifestly abusive;

(iii) Whether the conservation purpose of the donation complies with the requirements of a qualified conservation purpose and contributes to the wetland and riparian zone benefits in § 26-51-1502;

(iv) Whether the real property interest meets the requirements for a qualified real property interest; and

(v) Whether the donee of the qualified real property interest meets the requirements of an eligible donee.

(D) After review of the committee comments, the commission may issue a wetland and riparian zone conservation tax credit approval certificate for those applications that meet the requirements of this subchapter and the rules promulgated under this subchapter.

(2) (A) An eligible donor may apply for conditional approval of a wetland and riparian zone conservation tax credit before a qualified real property interest donation has been recorded.

(B) If conditional approval of a wetland and riparian zone conservation tax credit is granted, the application must be resubmitted to the commission after the qualified real property interest donation has been recorded for the limited purpose of demonstrating conformity with the originally submitted draft documents.

(3) (A) If the commission denies approval of a wetland and riparian zone conservation tax credit, it shall provide a brief written statement to the applicant of the reason for a decision to deny approval.

(B) When a problem identified by the commission is remedied, an eligible donor may resubmit the application for approval of the wetland and riparian zone conservation tax credit.

(4) A decision on an application for approval or conditional approval of a wetland and riparian zone conservation tax credit or on a resubmission of a conditionally approved or previously denied application shall be issued in the order in which the

completed applications or resubmissions are received.

(5) For good cause shown, the Department of Finance and Administration may review and either accept or reject in whole or in part any wetland and riparian zone conservation tax credit claimed by a taxpayer and may require information from a taxpayer regarding the:

- (A) Appraisal value of the qualified real property interest;
- (B) Amount of the wetland and riparian zone conservation tax credit;
- (C) Validity of the wetland and riparian zone conservation tax credit; and
- (D) Other relevant matters.

History. Acts 1995, No. 561, §§ 7, 8; 2009, No. 351, § 8.

Amendments. The 2009 amendment redesignated (a) through (c) as (a); in (a); inserted the subsection headings and inserted “wetland and riparian zone creation and restoration” in five places; added (b); and made related and minor stylistic changes.

Effective Dates. Acts 2009, No. 351, § 11, provided: “This act is effective for tax years beginning on or after January 1, 2009.”

26-51-1508. Development, operation, and tax credits.

(a) (1) All projects must be completed and properly functioning within three (3) years of the date of the certificate of tax credit approval, except if the commission determines that failure to comply with this subdivision (a)(1) is the result of conditions beyond the control of the taxpayer, an additional year to comply with this subdivision (a)(1) may be granted by the commission.

(2) If the taxpayer does not complete the project within the period provided in subdivision (a)(1) of this section, all credits claimed must be repaid to the department, and the project will be disallowed as a project for tax credit purposes.

(b) (1) Project activities shall meet or exceed those standards as established by the commission, and the project must be maintained for a minimum life of ten (10) years after it is certified as being complete.

(2) (A) If the taxpayer terminates the project prior to expiration of the minimum project life, the taxpayer shall provide written notification to the commission and the department.

(B) In addition, the taxpayer shall file an amended tax return and repay the amount of tax credit claimed which was not allowable.

(3) If the commission determines that the taxpayer has terminated the project, it shall notify the department.

(4) (A) Upon the termination of the project, the taxpayer shall not be allowed any further tax credits provided in this subchapter and the department shall recapture the pro rata share of any tax credits claimed under this subchapter for the period of termination.

(B) The pro rata share for recapture of the disallowed tax credits shall be determined by dividing the period of time from termination of the project until the expiration of the minimum life of the project by the required minimum life of the project times the tax credit claimed.

(C) Notwithstanding the provisions of § 26-18-306, the department may make necessary assessments to recapture disallowed tax credits for a period of three (3) years from the date of expiration of the minimum life of the project.

History. Acts 1995, No. 561, § 8.

26-51-1509. Recordkeeping requirement.

For purposes of this subchapter, the recordkeeping provisions of § 26-18-506 requiring a taxpayer to maintain records for six (6) years after a return is filed shall be extended to require the taxpayer claiming a wetland and riparian zone creation and restoration tax credit under this subchapter to maintain the required records for the required minimum life of the project plus three (3) years.

History. Acts 1995, No. 561, § 8; 2009, No. 351, § 9.

Amendments. The 2009 amendment inserted “wetland and riparian zone creation and restoration tax.”

Effective Dates. Acts 2009, No. 351, § 11, provided: “This act is effective for tax years beginning on or after January 1, 2009.”

26-51-1510. Annual compilation of credits — Expiration of subchapter — Tax credit availability.

(a) Following the end of every calendar year, the Department of Finance and Administration shall compile the cumulative total amount of tax credits used pursuant to the provisions of this subchapter.

(b) (1) The tax credits established by this subchapter and the availability of those tax credits shall expire on December 31 of the calendar year following the calendar year in which the tax credits used pursuant to the provisions of this subchapter exceed five hundred thousand dollars (\$500,000).

(2) However, any taxpayer having been issued a certificate of tax credit approval on or prior to such December 31 shall be entitled to the tax credits provided under this subchapter without regard to the fact that the availability of the tax credits has otherwise expired.

History. Acts 1995, No. 561, § 9; 2009, No. 351, § 10.

Amendments. The 2009 amendment rewrote (a); in (b), deleted “When the total amount of tax credits used pursuant to the provisions of this subchapter exceeds five hundred thousand dollars (\$500,000)” and inserted “and the availability of those tax credits” in (b)(1), deleted “may complete the project and” following “December 31” in (b)(2), and made related changes.

Effective Dates. Acts 2009, No. 351, § 11, provided: “This act is effective for tax years beginning on or after January 1, 2009.”

Subchapter 16

— Youth Apprenticeship/Work-Based Learning Program Tax Credit

26-51-1601. Legislative findings and intent.

26-51-1602. Definitions.

26-51-1603. Credit permitted.

26-51-1604. Claiming the credit.

26-51-1605. Limits on amount of credit — Applicability of credit.

26-51-1606. Rules and regulations.

Cross References. Youth apprenticeship program, § 26-51-509.

26-51-1601. Legislative findings and intent.

The General Assembly finds that some of the youth apprenticeship/work-based learning programs in the state, while of high quality and standards, are not in occupations that are covered by Title 29, Subtitle (a), Part 29 of the Code of Federal Regulations which would allow the programs to be registered by the Bureau of Apprenticeship and Training of the U. S. Department of Labor. Employers of youth apprentices who are in programs/occupations registered by the Bureau of Apprenticeship and Training are allowed to participate in a two thousand dollar (\$2,000) tax credit as provided in § 26-51-509. It is the intent of this subchapter to provide guidelines and a process for certifying high quality youth apprentice/work-based learning programs/occupations that meet the criteria set forth by the Vocational and Technical Education Division of the Department of Education in order that they may also participate in a two thousand dollar (\$2,000) tax credit. The qualifying programs/occupations must meet the standards and program designs that are nationally recognized by business and industry and/or trade associations and have support by such groups in this state. No apprentice program may be certified as meeting the intent of the subchapter if its curriculum and standards are not nationally recognized and/or do not meet the criteria established for such programs.

History. Acts 1997, No. 1168, § 1.

A.C.R.C. Notes. The Vocational and Technical Education Division of the Department of Education was abolished and transferred to the Department of Workforce Education by a type 3 transfer under § 25-2-106 by Acts 1997, No. 803, § 4.

26-51-1602. Definitions.

For the purposes of this subchapter:

(a) “Department” means the Department of Finance and Administration;

(b) “Division” means the Vocational and Technical Education Division of the Department of Education; and

(c) “Youth apprentice” means an individual between the ages of sixteen (16) and twenty-one (21) who is enrolled in a public or private secondary or postsecondary school.

History. Acts 1997, No. 1168, § 2.

A.C.R.C. Notes. The Vocational and Technical Education Division of the Department of Education was abolished and transferred to the Department of Workforce Education by a type 3 transfer under § 25-2-106 by Acts 1997, No. 803, § 4.

26-51-1603. Credit permitted.

A taxpayer who employs a youth apprentice in an apprenticeship/work-based learning program which meets the standards of program design for nationally recognized curriculum and/or business and industry or trade association standards and which meets the criteria for vocationally approved youth apprentice/work-based learning programs and which is not in an occupation eligible for registration as provided in Title 29, Subtitle (a), Part 29 of the Code of Federal Regulations, as in effect on January 1, 1995, shall be allowed a credit in the amount of two thousand dollars (\$2,000) or ten percent (10%) of the wages earned by the youth apprentice, whichever is less, against the tax imposed by

the Arkansas Income Tax Act of 1929, as amended, § 26-51-101 et seq., for each such apprentice.

History. Acts 1997, No. 1168, § 3.

26-51-1604. Claiming the credit.

To claim the benefits of this subchapter, a taxpayer must obtain certification from the division certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer has met all the requirements and qualifications set forth in this subchapter. The certification to the department shall include the total amount of wages paid to each youth apprentice employed by the taxpayer or 501(c)(3) corporation in the taxable year for which the taxpayer claims the credit provided in this subchapter.

History. Acts 1997, No. 1168, § 4.

A.C.R.C. Notes. The Vocational and Technical Education Division of the Department of Education was abolished and transferred to the Department of Workforce Education by a type 3 transfer under § 25-2-106 by Acts 1997, No. 803, § 4.

26-51-1605. Limits on amount of credit — Applicability of credit.

- (a) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of individual or corporate income tax otherwise due. Any unused credit may be carried over for a maximum of two (2) consecutive taxable years.
- (b) If the business is an “S” corporation, the pass-through provisions of § 26-51-409, as in effect for the taxable year the credit is earned, shall be applicable.
- (c) A partner's or member's distributive share of the credit shall be determined by the partnership or limited liability company agreement, unless the agreement does not have substantial economic effect or does not provide for the allocation of credits. If the agreement does not have substantial economic effect or does not provide for the allocation of the credit, the credit shall be allocated according to the partner's or member's interest in the partnership, pursuant to federal Internal Revenue Code Section 704(b), as in effect on January 1, 1995.
- (d) A taxpayer who trains a youth apprentice in a certified youth apprenticeship program as provided in § 26-51-1603 shall be entitled to the tax credit provided in this subchapter for such youth apprentice, even though the apprentice receives his or her wages for such training from a 501(c)(3) corporation.
- (e) The tax credit provided by this subchapter shall apply to taxable years beginning January 1, 1998, and all taxable years thereafter.

History. Acts 1997, No. 1168, § 5.

26-51-1606. Rules and regulations.

The Revenue Division of the Department of Finance and Administration shall promulgate such rules and regulations as may be deemed necessary to carry out the purposes of this subchapter. The Revenue Division shall consult with the Vocational and Technical Education Division of the Department of Education during the promulgation of the rules and regulations.

History. Acts 1997, No. 1168, § 6.

A.C.R.C. Notes. The Vocational and Technical Education Division of the Department of Education was abolished and transferred to the Department of Workforce Education by a type 3 transfer under § 25-2-106 by Acts 1997, No. 803, § 4.

Subchapter 17 **— Low Income Housing Tax Credit**

26-51-1701. Definitions.

26-51-1702. Allowance and calculation of tax credit.

26-51-1703. Eligibility statement.

26-51-1704. Sale, assignment, and transfer of tax credit allowed.

26-51-1705. Rules and regulations.

26-51-1701. Definitions.

As used in this subchapter, unless the context clearly requires otherwise, the following words and phrases shall mean:

(1) “Authority” shall mean the Arkansas Development Finance Authority, or its successor agency;

(2) “Director” shall mean the Director of the Arkansas Department of Finance and Administration;

(3) “Eligibility statement” shall mean a statement authorized and issued by the authority certifying that a given project qualifies for the Arkansas low income housing tax credit. The authority shall promulgate rules establishing criteria upon which the eligibility statements will be issued. The eligibility statement shall specify the amount of the Arkansas low income housing tax credit allowed;

(4) “Federal low income housing tax credit” shall mean the federal tax credit as provided in Section 42 of the Internal Revenue Code of 1986, as amended;

(5) “Qualified project” shall mean a qualified low income building as that term is defined in Section 42 of the Internal Revenue Code of 1986, as amended, which is located in Arkansas;

(6) “Taxpayer” shall mean a person, firm or corporation subject to the state income tax imposed by provisions of §§ 26-51-101 — 26-51-1510, or an insurance company paying an annual tax on its gross premium receipts in this state, or a financial institution paying income taxes to the State of Arkansas.

History. Acts 1997, No. 1332, § 1.

26-51-1702. Allowance and calculation of tax credit.

(a) A taxpayer owning an interest in a qualified project shall be allowed a state tax credit, to be termed the Arkansas low income housing tax credit, if the authority issues an eligibility statement for that project. For any taxpayer which is, for state income tax purposes, taxed as a partnership or an S corporation, the tax credits allocated to the taxpayer shall be allocated to each partner, member or shareholder of the taxpayer in accordance with the provisions of the articles of incorporation, bylaws, partnership agreement, operating agreement or other agreement setting forth such allocation.

(b) The Arkansas low income housing tax credit available to a qualified project shall be calculated by multiplying an amount equal to the federal low income housing tax credit for a qualified project for a federal tax period, by twenty percent (20%) and such amount

shall be subtracted from the amount of state income or premium tax otherwise due from the taxpayer for the same tax period.

(c) The Arkansas low income housing tax credit shall be taken against the state income or premium taxes due from the taxpayer. The credit authorized by this subchapter shall not be refundable. Any amount of credit that exceeds the tax due for a taxable year may be carried forward to any of the five (5) subsequent taxable years or carried forward to any of the five (5) subsequent taxable years.

(d) All or any portion of the Arkansas low income housing tax credits may be allocated to parties who are eligible under the provisions of subsection (a) of this section. An owner of a qualified project shall certify to the director the amount of the Arkansas low income housing tax credit allocated to each taxpayer.

(e) In the event that recapture of Arkansas low income housing tax credits is required pursuant to subsection (b) of § 26-51-1703 of this subchapter, any statement submitted to the director as provided in this section shall include the proportion of the Arkansas low income housing tax credit required to be recaptured, the identity of each taxpayer subject to the recapture and the amount of Arkansas low income housing tax credit previously allocated to such taxpayer.

(f) The total amount of tax credit granted under this subchapter shall not exceed two hundred fifty thousand dollars (\$250,000) in any taxable year.

History. Acts 1997, No. 1332, § 2.

26-51-1703. Eligibility statement.

(a) The owner of a qualified project eligible for the Arkansas low income housing tax credit shall submit, at the time of filing the owner's income or gross premium tax return, an eligibility statement. In the case of failure to attach the eligibility statement, no Arkansas low income housing tax credit under the subchapter shall be allowed with respect to such project for that year until these copies are provided to the Department of Finance and Administration.

(b) If under Section 42 of the Internal Revenue Code of 1986, as amended, a portion of any federal low income housing tax credit taken with respect to a qualified project is required to be recaptured, the taxpayer claiming Arkansas low income housing tax credit with respect to such project shall also be required to recapture a portion of any Arkansas low income housing tax credit authorized by this subchapter. The state recapture amount shall be equal to the proportion of the Arkansas low income housing tax credit claimed by the taxpayer that equals the proportion the federal recapture amount bears to the original federal low income housing credit claimed by the taxpayer.

History. Acts 1997, No. 1332, § 3.

26-51-1704. Sale, assignment, and transfer of tax credit allowed.

(a) All or any portion of Arkansas low income housing tax credit issued in accordance with the provisions of this subchapter may be transferred, sold or assigned but only in connection with the sale or transfer of the interest in the qualified project or in the taxpayer.

(b) An owner or transferee desiring to make a transfer, sale, or assignment as described in subsection (a) of this section shall submit to the director a statement which describes the amount of Arkansas low income housing tax credit for which transfer, sale, or

assignment of Arkansas low income housing tax credit is eligible. The owner shall provide to the director such information as is specified by the department in regulations so that the Arkansas low income housing tax credit may be properly allocated.

(c) In the event that recapture of Arkansas low income housing tax credit is required pursuant to subsection (b) of § 26-51-1703 of this subchapter, the statements submitted to the director as provided in this section shall include the proportion of the Arkansas low income housing tax credit required to be recaptured, the identity of each transferee subject to recapture, and the amount of Arkansas low income housing tax credit previously transferred to such transferee and such other information as is specified by the department in regulations.

History. Acts 1997, No. 1332, § 4.

26-51-1705. Rules and regulations.

The director and the authority shall promulgate rules and regulations necessary to administer the provisions of this subchapter. No rule or portion of a rule promulgated under the authority of this section shall become effective until it has been approved by the director in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1997, No. 1332, § 5.

Subchapter 18 **— Small Business Capital Formation Act**

26-51-1801. Small business stock capital gains.

26-51-1802. Effective date.

Effective Dates. Acts 1997, No. 883, § 2: effective for taxable years beginning on and after January 1, 1998.

26-51-1801. Small business stock capital gains.

(a) There shall be allowed a deduction from net income for a qualified small business net capital gain recognized on the sale of qualified small business stock for any taxable year in an amount equal to the following:

(1) For qualified small business stock held for a period of five (5) years from the date of the purchase of the stock, fifty percent (50%);

(2) For qualified small business stock held for a period of six (6) years from the purchase of the stock, sixty percent (60%);

(3) For qualified small business stock held for a period of seven (7) years from the purchase of the stock, seventy percent (70%);

(4) For qualified small business stock held for a period of eight (8) years from the purchase of the stock, eighty percent (80%);

(5) For qualified small business stock held for a period of nine (9) years from the purchase of the stock, ninety percent (90%); and

(6) For qualified small business stock held for a period of ten (10) years from the purchase of the stock, one hundred percent (100%).

(b) For purposes of this subchapter:

(1) “Qualified small business net capital gain” means the net capital gain for the

taxable year determined by taking into account only gain or loss from sales or exchanges of qualified small business stock;

(2) “Qualified small business stock” means stock issued directly by a qualified small business after December 31, 1998;

(3) “Qualified small business” means any domestic corporation whose total capitalization does not exceed one hundred million dollars (\$100,000,000) and no more than ten percent (10%) of the firm's assets are held in the form of real estate during the holding periods set forth in subsection (a) of this section.

(c) Any taxpayer who seeks to qualify for the income tax deduction set forth in this section must:

(1) Obtain a certified statement from the corporation issuing the qualified business stock stating:

(i) The name and address of the purchaser;

(ii) The number of shares of qualified business stock purchased;

(iii) The amount paid by the original purchaser for the qualified business stock; and

(iv) The dates of purchase and sale of the qualified business stock.

(2) Attach a copy of the statement described in subdivision (c) (1) of this section to the income tax return for the year the deduction is claimed.

History. Acts 1997, No. 883, § 1.

26-51-1802. Effective date.

The provisions of this subchapter shall be in effect for taxable years beginning on and after January 1, 1998.

History. Acts 1997, No. 883, § 2.

Subchapter 19 — Employee Tuition Reimbursement Tax Credit

26-51-1901. Legislative intent.

26-51-1902. Creation of tax incentive.

26-51-1903. Eligibility.

26-51-1901. Legislative intent.

It is recognized that the reimbursement or payment by an employer of or for tuition for employee training or courses that aid in improving job skills is in the best interest of the state. Increasing the skills and abilities of the workforce allows Arkansas to compete for jobs that require specialized knowledge and talent not available in sufficient supply. In order to reward those employers who subsidize educational opportunities for their employees and to encourage other employers to make such benefits available to their employees, it is necessary to create an incentive.

History. Acts 1999, No. 1036, § 1; 2005, No. 1232, § 7.

A.C.R.C. Notes. Acts 2005, No. 1232, § 1, provided:

“Legislative intent.

(a) Accelerate Arkansas, a statewide group of volunteers whose mission is to foster economic growth in Arkansas by raising the average Arkansas wage to the level of the national

average wage by using the essential building blocks of the knowledge-based economy to create an environment supporting entrepreneurship and continuous innovation, developed its five-point strategy to increase per capita income:

- “(1) Support research and development that creates jobs;
- “(2) Provide incentives that make risk capital available in the funding gap;
- “(3) Encourage entrepreneurship and new enterprise development;
- “(4) Sustain successful existing companies; and
- “(5) Increase achievement in science, technology, engineering, and

mathematics education.

“(b) These core strategies focus on the economic building blocks of research, entrepreneurship, risk capital, and the science and engineering workforce.

“(c) These core strategies are consistent with and supported by the findings in:

“(1) The Department of Economic Development's Report of the Task Force for the Creation of Knowledge-Based Jobs;

“(2) The Winthrop Rockefeller Foundation's Entrepreneurial Arkansas: Connecting the Dots; and

“(3) 'Arkansas' Position in the Knowledge-Based Economy', a report prepared by the Milken Institute and the Center for Business and Economic Research at the University of Arkansas.”

Amendments. The 2005 amendment substituted “or payment by an employer of or for tuition for employee training” for “by an employer of tuition paid by the employee for training.”

26-51-1902. Creation of tax incentive.

(a) There shall be allowed a credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., equal to thirty percent (30%) of the cost of tuition reimbursed or paid by an employer to on behalf of a full-time, permanent employee for the cost of tuition, books, and fees for a program of undergraduate or postgraduate education from an accredited institution of postsecondary education located in Arkansas.

(b) In order to qualify for the income tax credit, the employer shall document that the employee has successfully completed the course.

(c) The incentive authorized by this section shall not exceed twenty-five percent (25%) of a business's income tax liability in any year.

History. Acts 1999, No. 1036, § 2; 2005, No. 1232, § 8.

A.C.R.C. Notes. Acts 2005, No. 1232, § 1, provided:

“Legislative intent.

(a) Accelerate Arkansas, a statewide group of volunteers whose mission is to foster economic growth in Arkansas by raising the average Arkansas wage to the level of the national average wage by using the essential building blocks of the knowledge-based economy to create an environment supporting entrepreneurship and continuous innovation, developed its five-point strategy to increase per capita income:

- “(1) Support research and development that creates jobs;
- “(2) Provide incentives that make risk capital available in the funding gap;
- “(3) Encourage entrepreneurship and new enterprise development;
- “(4) Sustain successful existing companies; and
- “(5) Increase achievement in science, technology, engineering, and

mathematics education.

“(b) These core strategies focus on the economic building blocks of research, entrepreneurship, risk capital, and the science and engineering workforce.

“(c) These core strategies are consistent with and supported by the findings in:

“(1) The Department of Economic Development's Report of the Task Force for the Creation of Knowledge-Based Jobs;

“(2) The Winthrop Rockefeller Foundation's Entrepreneurial Arkansas:

Connecting the Dots; and

“(3) ‘Arkansas’ Position in the Knowledge-Based Economy’, a report prepared by the Milken Institute and the Center for Business and Economic Research at the University of Arkansas.”

Amendments. The 2005 amendment inserted the subsection (a) and (c) designations; substituted “or paid by an employer on behalf of” for “by an employer to” in (a); and inserted (b).

26-51-1903. Eligibility.

The following types of businesses are eligible for the tax benefit provided by § 26-51-1902:

- (1) A manufacturer classified in sectors 31-33 in the North American Industry Classification System, as it existed on January 1, 2005;
- (2) A business:
 - (A) Primarily engaged in:
 - (i) The design and development of prepackaged software;
 - (ii) Digital content production and preservation;
 - (iii) Computer processing and data preparation services; and
 - (iv) Information retrieval services; and
 - (B) That derives at least seventy-five percent (75%) of its revenue from out-of-state sales and has less than ten percent (10%) of its retail sales to the general public;
- (3) A business primarily engaged in motion picture productions and that derives at least seventy-five percent (75%) of its revenue from out-of-state sales and has less than ten percent (10%) of its retail sales to the general public;
- (4) A distribution center for the reception, storage, or shipping of:
 - (A) A business's own products or products that the business wholesales to retail businesses or ships to its own retail outlets;
 - (B) Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenues are from out-of-state customers; or
 - (C) Products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers;
- (5) An office sector business with less than ten percent (10%) of its retail sales to the general public;
- (6) A national or regional corporate headquarters with less than ten percent (10%) of its retail sales to the general public;
- (7) A firm primarily engaged in commercial, physical, and biological research as classified in the North American Industry Classification System Code 541710, as in effect on January 1, 2005;
- (8) A scientific and technical services business if:
 - (A) The business derives at least seventy-five percent (75%) of its revenue from out of state; and
 - (B)
 - (i) The average hourly wages paid by the business exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less.
 - (ii) The average hourly wage threshold determined at the signing date of the financial incentive agreement shall be the threshold for the term of the

agreement; and

(9) Any other business classified as an eligible business by the Director of the Arkansas Economic Development Commission if the following conditions exist:

(A) The business receives at least seventy-five percent (75%) of its revenue from out of state; and

(B) The business proposes to pay wages in excess of one hundred ten percent (110%) of the county or state average wage, whichever is less.

History. Acts 1999, No. 1036, § 3; 2005, No. 1232, § 9.

A.C.R.C. Notes. Acts 2005, No. 1232, § 1, provided:

"Legislative intent.

(a) Accelerate Arkansas, a statewide group of volunteers whose mission is to foster economic growth in Arkansas by raising the average Arkansas wage to the level of the national average wage by using the essential building blocks of the knowledge-based economy to create an environment supporting entrepreneurship and continuous innovation, developed its five-point strategy to increase per capita income:

“(1) Support research and development that creates jobs;

“(2) Provide incentives that make risk capital available in the funding gap;

“(3) Encourage entrepreneurship and new enterprise development;

“(4) Sustain successful existing companies; and

“(5) Increase achievement in science, technology, engineering, and mathematics education.

(b) These core strategies focus on the economic building blocks of research, entrepreneurship, risk capital, and the science and engineering workforce.

(c) These core strategies are consistent with and supported by the findings in:

(1) The Department of Economic Development's Report of the Task Force for the Creation of Knowledge-Based Jobs;

(2) The Winthrop Rockefeller Foundation's Entrepreneurial Arkansas: Connecting the Dots; and

(3) 'Arkansas' Position in the Knowledge-Based Economy', a report prepared by the Milken Institute and the Center for Business and Economic Research at the University of Arkansas.”

Amendments. The 2005 amendment rewrote this section.

Subchapter 20 **— Manufacturer's Investment Tax Credit**

26-51-2001. Title.

26-51-2002. Definitions.

26-51-2003. Certain other benefits precluded.

26-51-2004. Credit granted.

26-51-2005. Qualification and determination of credit.

26-51-2006. Administration.

26-51-2007. Availability.

A.C.R.C. Notes. References to “this chapter” in subchapters 1 through 19 may not apply to this subchapter which was enacted subsequently.

Cross References. Economic Investment Tax Credit Act, § 26-52-701 et seq.

26-51-2001. Title.

This subchapter may be known and cited as the “Manufacturer's Investment Tax Credit

Act”.

History. Acts 2001, No. 1661, § 1.

26-51-2002. Definitions.

As used in this subchapter:

(1) “Director” means the Director of the Arkansas Economic Development Commission;

(2) “Eligible business” means any person engaged in a business classified as manufacturing-paper and allied products in federal Standard Industrial Classification code 26 that has been in continuous operation in Arkansas for at least two (2) years prior to the initial application to the director for income tax credits under the provision of this subchapter;

(3) “Modernization” means to increase efficiency or to increase productivity of the business through investment in machinery or equipment, or both, and shall not include costs for routine maintenance;

(4) “Person” means a person as defined by § 26-18-104;

(5) “Project” means any construction, expansion, or modernization in Arkansas by an eligible business whose investment shall exceed one hundred million dollars (\$100,000,000) between August 13, 2001, and December 31, 2004, for projects involving either single or multiple locations within the State of Arkansas, including the cost of the land, buildings, and equipment used in the construction, expansion, or modernization and which construction, expansion, or modernization has been approved by the department as a construction, expansion, or modernization project that qualifies for the credit under the provisions of this subchapter; and

(6) “Routine maintenance” means the replacement of existing machinery parts with like parts.

History. Acts 2001, No. 1661, § 2.

26-51-2003. Certain other benefits precluded.

(a) A recipient of benefits under this subchapter is precluded from receiving benefits under the Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq., for the same project.

(b) A recipient of benefits under this subchapter is precluded from receiving benefits under the Economic Investment Tax Credit Act, § 26-52-701 et seq., for the same project.

History. Acts 2001, No. 1661, § 3.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-51-2004. Credit granted.

There is granted a credit against the state income tax liability of an eligible business of seven percent (7%) of the amount of the total project cost of any project, subject to the limit set out in § 26-51-2005.

History. Acts 2001, No. 1661, § 4.

26-51-2005. Qualification and determination of credit.

(a) (1) In order to qualify for and receive the credits afforded by this subchapter, any eligible business undertaking a project shall submit a project plan to the Director of the Arkansas Economic Development Commission at least thirty (30) calendar days prior to the start of construction.

(2) The plan submitted to the Arkansas Economic Development Commission shall contain such information as may be required by the Director of the Arkansas Economic Development Commission to determine eligibility.

(b) (1) Upon determination by the Director of the Arkansas Economic Development Commission that the project qualifies for credit under this subchapter, the Director of the Arkansas Economic Development Commission shall certify to the Director of the Department of Finance and Administration that the project is qualified and transmit with his or her certification the documents upon which the certification was based or copies.

(2) Upon receipt by the Director of the Department of Finance and Administration of a certification from the Director of the Arkansas Economic Development Commission that an eligible business is entitled to credit under this subchapter, the Director of the Department of Finance and Administration shall provide forms to the eligible business on which to claim the credit.

(c) (1) At the end of the calendar year in which the application was made to the Director of the Arkansas Economic Development Commission and at the end of each calendar year thereafter until the project is completed, the eligible business shall certify on the form provided by the Director of the Department of Finance and Administration the amount of expenditures on the project during the preceding calendar year.

(2) (A) Upon receipt of the form certifying expenditures, the Director of the Department of Finance and Administration shall determine the amount due as a credit for the preceding calendar year and issue a memorandum of credit to the eligible business in the amount of seven percent (7%) of the expenditure.

(B) (i) (a) Except as provided in § 26-51-2007, the credit shall then be applied against the eligible business' state income tax liability in the year following the year of the expenditure.

(b) However, if the credit is not used in the calendar year following the expenditure, it may be carried over to the next succeeding calendar year for a total period of six (6) years following the year in which the credit was first available for use or until the credit is exhausted, whichever occurs first.

(ii) In no event shall the credit used on any regular return be more than fifty percent (50%) of the eligible business' total state income tax liability for the reporting period.

(iii) The Director of the Department of Finance and Administration may require proof of these expenditures.

(iv) The Director of the Department of Finance and Administration may examine those records necessary and specific to the project to determine credit eligibility. Any credits disallowed shall be subject to payment in full.

(d) In order to receive credit for project costs, the costs must be incurred within five (5) years from the date of certification of the project plan by the Director of the Arkansas Economic Development Commission.

History. Acts 2001, No. 1661, § 5.

26-51-2006. Administration.

(a) A person claiming credit under this subchapter is a “taxpayer” within the meaning of § 26-18-104 and shall be subject to all applicable provisions of that statute.

(b) Administration of the provisions of this subchapter shall be under the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(c) The Director of the Arkansas Economic Development Commission may promulgate such rules and regulations as are necessary to carry out the intent and purposes of this subchapter.

History. Acts 2001, No. 1661, § 6.

26-51-2007. Availability.

(a) The state income tax credit provided by this subchapter shall not be claimed on any income tax return filed or required by law to be filed prior to July 1, 2003.

(b) State income tax credits arising under this subchapter that but for the provisions of this section would be available to be claimed on an income tax return required to be filed before July 1, 2003, shall first be available on income tax returns due after July 1, 2003, and shall be subject to the same carryover provisions for unused credits as otherwise provided in this subchapter.

History. Acts 2001, No. 1661, § 7.

Subchapter 21
— Gift of Life Act

26-51-2101. Title.

26-51-2102. Legislative findings and intent.

26-51-2103. Income tax deduction for human organ donation.

A.C.R.C. Notes. Acts 2005, No. 668, § 2, provided:

“The members of the Eighty-fifth General Assembly recognize and commend the selfless act of human generosity displayed by Representative Eric Harris in the donation of a kidney to his son, Jackson Harris, and Representative Joyce Elliott in the donation of a kidney to her sister, Gloria Elliott.”

Effective Dates. Acts 2005, No. 668, § 3: effective for tax years beginning on and after January 1, 2005.

26-51-2101. Title.

This subchapter shall be known as and may be cited as the “Gift of Life Act”.

History. Acts 2005, No. 668, § 1.

26-51-2102. Legislative findings and intent.

The General Assembly finds that organ donation is a courageous, admirable, and vital demonstration of one's commitment to the value of human life and, in many instances, is necessary for the preservation of life itself.

History. Acts 2005, No. 668, § 1.

26-51-2103. Income tax deduction for human organ donation.

(a) As used in this section, “human organ” means all or part of a human's liver, pancreas, kidney, intestine, lung, or bone marrow.

(b) In computing net income, a taxpayer may deduct up to ten thousand dollars (\$10,000) if, while living, the taxpayer or the taxpayer's dependent who is claimed under § 26-51-501, donates one (1) or more of his or her human organs to another human for human organ transplantation.

(c) A deduction that is claimed under subsection (b) of this section may only be claimed in the taxable year in which the human organ transplantation occurs.

(d) (1) A taxpayer may claim the deduction under subsection (b) of this section only one (1) time in his or her lifetime.

(2) The deduction may be claimed for only the following unreimbursed expenses that are incurred by the taxpayer and are related to the human organ donation of the taxpayer or the taxpayer's dependent:

- (A) Travel expenses;
- (B) Lodging expenses;
- (C) Lost wages; and
- (D) Medical expenses.

History. Acts 2005, No. 668, § 1.

Subchapter 22

— Arkansas Historic Rehabilitation Income Tax Credit Act

26-51-2201. Title.

26-51-2202. Purpose.

26-51-2203. Definitions.

26-51-2204. Arkansas historic rehabilitation income tax credit.

26-51-2205. Procedure to claim tax credit — Transferring credit.

26-51-2206. Fees.

26-51-2207. Rules.

26-51-2201. Title.

This subchapter shall be known and may be cited as the “Arkansas Historic Rehabilitation Income Tax Credit Act”.

Acts 2009, No. 498, § 1.

Effective Dates. Acts 2009, No. 498, § 4, provided: “This act is effective for tax years beginning on and after January 1, 2009, and ending on or before December 31, 2015.”

26-51-2202. Purpose.

The purpose of this subchapter is to encourage economic development and community revitalization within existing state and federal infrastructure by providing an income tax credit to promote the rehabilitation of historic structures throughout Arkansas.

Acts 2009, No. 498, § 1.

Effective Dates. Acts 2009, No. 498, § 4, provided: “This act is effective for tax years beginning on and after January 1, 2009, and ending on or before December 31, 2015.”

26-51-2203. Definitions.

As used in this subchapter:

(1) “Arkansas historic rehabilitation income tax credit” means an income tax credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., and the premium tax levied under §§ 26-57-601 — 26-57-605 that includes:

(A) An income tax credit for an income-producing property that qualifies for a federal rehabilitation tax credit; and

(B) An income tax credit for a nonincome-producing property;

(2) “Certified rehabilitation” means a substantial rehabilitation of an eligible property that has been issued an eligibility certificate;

(3) “Certification of completion” means a certificate issued by the Department of Arkansas Heritage certifying that a project is a certified rehabilitation of an eligible property that qualifies for the Arkansas historic rehabilitation income tax credit;

(4) “Eligible property” means property that is located in the state that is:

(A) Income-producing property that:

(i) Qualifies as a certified historic structure under 26 U.S.C. § 47, as it existed on January 1, 2009; or

(ii) Will qualify as a certified historic structure following certified rehabilitation; or

(B) Nonincome-producing property that is:

(i) Listed in the National Register of Historic Places;

(ii) Designated as contributing to a district listed in the National Register of Historic Places; or

(iii) Eligible for designation as contributing to a district listed in the National Register of Historic Places following certified rehabilitation;

(5) “Federal rehabilitation tax credit” means the federal tax credit as provided under 26 U.S.C. § 47, as it existed on January 1, 2009;

(6) “Holder” means the holder of a certification of completion that is:

(A) A person, firm, or corporation subject to the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq.; or

(B) An insurance company paying the premium tax on its gross premium receipts;

(7) “Owner” means a person or an entity that owns eligible property and is the initial recipient of the certification of completion from the department;

(8) “Premium tax” means a tax levied under §§ 26-57-603 — 26-57-605; and

(9) “Qualified rehabilitation expenses” means costs and expenses incurred to complete a certified rehabilitation that are qualified rehabilitation expenses under the federal rehabilitation tax credit or under the Arkansas historic rehabilitation income tax credit.

Acts 2009, No. 498, § 1.

Effective Dates. Acts 2009, No. 498, § 4, provided: “This act is effective for tax years beginning on and after January 1, 2009, and ending on or before December 31, 2015.”

26-51-2204. Arkansas historic rehabilitation income tax credit.

(a) There is allowed an income tax credit up to the amount of tax imposed by the Income

Tax Act of 1929, § 26-51-101 et seq., or the premium tax to a holder of an Arkansas historic rehabilitation income tax credit.

(b) The Arkansas historic rehabilitation income tax credit shall be in an amount equal to twenty-five percent (25%) of the total qualified rehabilitation expenses incurred by the owner to complete a certified rehabilitation up to the first:

(1) Five hundred thousand dollars (\$500,000) of qualified rehabilitation expenses on income-producing property; or

(2) One hundred thousand dollars (\$100,000) of qualified rehabilitation expenses on nonincome-producing property.

(c) (1) The Department of Arkansas Heritage shall only issue Arkansas historic rehabilitation income tax credits for up to four million dollars (\$4,000,000) in any one (1) fiscal year.

(2) Any unused Arkansas historic rehabilitation income tax credits shall not be carried over to the following fiscal year for use by the department.

(3) Any certification of completion that would cause the Arkansas historic rehabilitation income tax credit to exceed the amounts listed in subdivision (c)(1) of this section during the fiscal year will be carried forward for consideration during the following fiscal year.

(d) The Arkansas historic rehabilitation income tax credit shall be available to an owner of an eligible property that:

(1) Completes a certified rehabilitation that is placed in service after January 1, 2009;

(2) Has a minimum investment of twenty-five thousand dollars (\$25,000) in qualified rehabilitation expenses; and

(3) Is not receiving a tax credit under any other state law for the same eligible property.

(e) Upon completion of a rehabilitation, the owner shall submit documentation required by the department to verify that the completed rehabilitation qualifies as a certified rehabilitation.

(f) If the department determines that a rehabilitation qualifies as a certified rehabilitation and that the certified rehabilitation is complete, the department shall issue a freely transferable certification of completion specifying the total amount of the qualified rehabilitation expenses and Arkansas historic rehabilitation income tax credit allowed.

(g) (1) If the owner requests a review of the department's determination under subsection (f) of this section, the owner shall submit a written request for review of the determination.

(2) The owner shall submit the request in writing to the department within thirty (30) days of the date of notification to the owner of the determination.

(h) (1) The owner shall certify to the department the validity of costs and expenses claimed as qualified rehabilitation expenses and shall maintain a record supporting the claim for at least five (5) years after the issuance of the certification of completion.

(2) An owner's record supporting a claim for qualified rehabilitation expenses may be reviewed by the department, the appropriate tax collection authority, or a holder. Acts 2009, No. 498, § 1.

Effective Dates. Acts 2009, No. 498, § 4, provided: "This act is effective for tax years beginning on and after January 1, 2009, and ending on or before December 31, 2015."

26-51-2205. Procedure to claim tax credit — Transferring credit.

(a) (1) A holder shall submit the certification of completion and documents proving an assignment, if any, with the appropriate tax collection authority at the time of filing the holder's income tax return or premium tax return.

(2) The appropriate tax collection authority may refuse to recognize the Arkansas historic rehabilitation income tax credit claimed if the holder fails to submit the certification of completion and any assignment documents.

(b) The amount of the Arkansas historic rehabilitation income tax credit that may be used by a holder for a taxable year may equal but shall not exceed the amount of income tax or premium tax due.

(c) A holder of an unused Arkansas historic rehabilitation income tax credit may carry forward part or all of an Arkansas historic rehabilitation income tax credit for five (5) consecutive taxable years to apply against the holder's income taxes due or the holder's premium tax due.

(d) (1) An owner of an Arkansas historic rehabilitation income tax credit may freely transfer, sell, or assign part or all of the Arkansas historic rehabilitation income tax credit amount identified in the certification of completion.

(2) A subsequent holder may transfer, sell, or assign part or all of the remaining Arkansas historic rehabilitation income tax credit.

(e) An owner may sell the owner's eligible property after the issuance of the certification of completion.

(f) An Arkansas historic rehabilitation income tax credit granted to a partnership, Subchapter S corporation, a limited liability company taxed as a partnership, or multiple owners of property shall be passed through to the partners, members, or owners respectively on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method.

(g) (1) A holder may use the Arkansas historic rehabilitation income tax credit to offset up to one hundred percent (100%) of the state income taxes due or premium tax due from the holder.

(2) A holder is not required to have any ownership or other interest in the eligible property for which an Arkansas historic rehabilitation income tax credit is claimed.

(3) An Arkansas historic rehabilitation income tax credit may be used up to its total amount by any holder without limitation and is not subject to limits imposed by federal law or regulation on the use of federal rehabilitation tax credits.

(h) An owner or holder that assigns part or all of an Arkansas historic rehabilitation income tax credit shall perfect the transfer by notifying the Department of Arkansas Heritage and the appropriate tax collection authority in writing within thirty (30) calendar days following the effective date of the transfer and shall provide any information as may be required by the department and the appropriate tax collection authority to administer and carry out this subchapter and to ensure proper tracking of the ownership of the unused Arkansas historic rehabilitation income tax credit.

(i) (1) Any consideration received for the transfer of the Arkansas historic rehabilitation income tax credit shall not be included as income taxable by the State of Arkansas.

(2) Any consideration paid for the transfer of the Arkansas historic rehabilitation income tax credit shall not be deducted from income taxable by the State of Arkansas.

Acts 2009, No. 498, § 1.

Effective Dates. Acts 2009, No. 498, § 4, provided: "This act is effective for tax years beginning on and after January 1, 2009, and ending on or before December 31, 2015."

26-51-2206. Fees.

(a) (1) The Department of Arkansas Heritage may charge a fee to process:

(A) An application for an Arkansas historic rehabilitation income tax credit; and

(B) A request to record transfers of interests in an Arkansas historic rehabilitation income tax credit to other holders.

(2) The fee for processing an application for an Arkansas historic rehabilitation income tax credit shall not exceed two and five-tenths percent (2.5%) of the amount of the Arkansas historic rehabilitation income tax credit applied for or seventy-five hundredths percent (0.75%) of the amount of the Arkansas historic rehabilitation income tax credit transferred, whichever is less.

(b) A fee collected under this subchapter by the department shall be considered cash funds of the department and shall be used for the administration of this subchapter.

Acts 2009, No. 498, § 1.

Effective Dates. Acts 2009, No. 498, § 4, provided: "This act is effective for tax years beginning on and after January 1, 2009, and ending on or before December 31, 2015."

26-51-2207. Rules.

(a) The Department of Arkansas Heritage shall promulgate rules to implement this subchapter that shall include criteria for the prioritizing of the rehabilitation applications and that will stimulate the local economy where the property is located, including without limitation the criteria that the rehabilitation project will be prioritized in the following order:

(1) Result in the creation of a new business;

(2) Result in the expansion of an existing business;

(3) Establish or contribute to the establishment of a tourism attraction as defined by the Department of Parks and Tourism;

(4) Contribute to the revitalization of a specific business district; or

(5) Be a key property in the revitalization of a specific neighborhood.

(b) The Department of Arkansas Heritage shall consult with the Department of Finance and Administration, the Arkansas Economic Development Commission, and the State Insurance Department in promulgating rules under this subchapter.

(c) The Department of Parks and Tourism shall promulgate rules to define a "tourism attraction" as provided in subdivision (a)(3) of this section.

Acts 2009, No. 498, § 1.

Effective Dates. Acts 2009, No. 498, § 4, provided: "This act is effective for tax years beginning on and after January 1, 2009, and ending on or before December 31, 2015."

Chapter 52
Gross Receipts Tax

- Subchapter 1 — General Provisions
- Subchapter 2 — Permits
- Subchapter 3 — Imposition of Tax
- Subchapter 4 — Exemptions
- Subchapter 5 — Returns and Remittance of Tax
- Subchapter 6 — Equalization of Taxes For Border Cities and Towns
- Subchapter 7 — Economic Investment Tax Credit Act
- Subchapter 8 — Custom Manufactured Homes
- Subchapter 9 — Steel Mill Tax Incentives
- Subchapter 10 — Tourism Gross Receipts Tax
- Subchapter 11 — Arkansas Medicaid Gross Receipts Tax Act
- Subchapter 12 — Medicaid Provider Excise Tax
- Subchapter 13 — Personal Care Services Excise Tax
- Subchapter 14 — Home Health and Personal Care Services Tax
- Subchapter 15 — Bingo Games
- Subchapter 16 — Arkansas Sales Tax Advisory Committee

Cross References. Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.
 Direct deposits by the State into local government cash management trust account, § 19-8-311.
 Municipal Aid Fund, § 19-5-601 et seq.
 Revenue Classification Law, § 19-6-201 et seq.

Research References

A.L.R.

Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement. 8 A.L.R.4th 1068.
 Failure to file, or deficiency in, state or local sales tax return. 20 A.L.R.4th 952.
 Sales, use, or privilege tax on sales of, or revenues from, sales of advertising. 40 A.L.R.4th 1114.
 Validity of state or local gross receipts tax on gambling. 21 A.L.R.5th 812.

Am. Jur. 3 Am. Jur. 2d Advert. § 6.
 9B Am. Jur. 2d Bankr. § 2846 et seq.
 68 Am. Jur. 2d, Sales Tax, § 1 et seq.
C.J.S. 85 C.J.S., Tax. § 1231 et seq.

Case Notes

In General.

In General.

Acts 1935, No. 233 was not invalid as imposing an unreasonable burden on retail dealers. *Wiseman v. Phillips*, 191 Ark. 63, 84 S.W.2d 91 (1935) (decision under prior law).
 The tax levied by this chapter is an excise or privilege tax. *Hardin v. Vestal*, 204 Ark. 492, 162 S.W.2d 923 (1942).
 Tax levied by this chapter is in reality a retail sales tax and not a use tax. *McLeod v. J. E. Dilworth Co.*, 205 Ark. 780, 171 S.W.2d 62 (1943), *aff'd*, 322 U.S. 327, 64 S. Ct. 1023, 88 L. Ed. 1304 (1944); *Cook v. Southeast Ark. Transp. Co.*, 211 Ark. 831, 202 S.W.2d 772 (1947).
 The Gross Receipts Tax Act, Acts 1941, No. 386, is a sales tax act. *Little Rock Mun. Water Works v. Ragland*, 279 Ark. 324, 651 S.W.2d 78 (1983).
Cited: *WSC, Inc. v. City of Jacksonville*, 302 Ark. 295, 789 S.W.2d 448 (1990).

Subchapter 1 — General Provisions

26-52-101. Title.

- 26-52-102. Purposes of chapter.
- 26-52-103. Definitions.
- 26-52-104. Tax additional to other taxes.
- 26-52-105. Administration — Rules and regulations.
- 26-52-106. Cost of administration of chapter — Distribution of surplus annually.
- 26-52-107. Disposition of taxes, interest, and penalties.
- 26-52-108. Changes in law — Notice to permit holders.
- 26-52-116. [Transferred.]

Cross References. Sales and use tax, § 26-74-601 et seq.

Vending devices, § 26-57-1201 et seq.

Effective Dates. Acts 1965, No. 181, § 2: Mar. 9, 1965. Emergency clause provided: "Whereas, it is necessary to clarify the applicability of the Gross Receipts Tax in instances where tangible personal property is consumed or used under a lease or rental contract, and it has been found that increased population and increased cost of operation have placed heavy demands on funds available for the operation of government, and it is necessary to supplement said funds so that the proper functions of government may be performed. Therefore, in order to provide the supplemental funds for the operation of government, and this Act being necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 340, § 3: Mar. 2, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present law the Department of Finance and Administration is including the federal manufacturer's excise taxes on motor vehicles and motor vehicle tires as gross receipts derived from the sale of such motor vehicles and motor vehicle tires and is requiring the payment of the sales tax upon the total price of such vehicles and tires including the federal excise taxes; that it appears to be entirely inequitable and inappropriate to collect Arkansas gross receipts taxes upon the amount paid as federal manufacturer excise taxes on vehicles and vehicle tires; that this Act is designed to correct this situation by excluding federal manufacturer's excise taxes from the definition of gross receipts or gross proceeds for the purpose of determining the amount of gross receipts taxes due on such vehicles and tires and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 401, § 50: Jan. 1, 1980.

Acts 1987 (1st Ex. Sess.), No. 13, § 6: June 12, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the State is in serious danger of losing revenues which are necessary to provide adequate funding for schools and other essential services required by the citizens of this State and that the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 510, § 8: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that this Act establishes a new tax known as the 'Rental Vehicle Tax' and provides persons engaged in the business of renting licensed motor vehicles a credit for portion of the sales tax paid by the person on certain licensed motor vehicles purchased on or after July 1, 1989, and that for the effective administration of this act, the Act should become effective on July 1, 1989. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1989."

Acts 1995, No. 835, § 9: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas law is unclear as it applies to the taxation of contractors and subcontractors who construct and repair buildings and other improvements and structures affixed to real estate; that Arkansas gross receipts and use tax laws which impose

tax on certain services to motors, electrical appliances and devices, household appliances, and machinery were never intended by the General Assembly to apply to nonmechanical, passive or manually operated building systems or components; that none of the charges made by a contractor for labor or materials used in performing such nontaxable services are properly subject to tax; that contractors and subcontractors are suffering substantial losses on audits after making best efforts to comply with existing law; and that the gross receipts and use tax laws need to be clarified to specifically exclude certain services to buildings and other improvements or structures affixed to real estate from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995.”

Acts 1995, No. 848, § 7: Mar. 31, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that the General Assembly has previously passed Act 1237 of 1975 and Act 983 of 1981 to exempt railroad parts, railroad cars and equipment and the repair and maintenance of such railroad parts, railroad cars and equipment from Arkansas Gross Receipts and Compensating Use Tax; that on January 1, 1987 the Arkansas Department of Finance and Administration issued new regulations which provide that parts, materials and supplies used in such repairs are still subject to tax; that Arkansas law specifically exempts parts and other tangible personal property incorporated into commercial jet aircraft and vessels, barges and towboats from tax; that a substantial number of Arkansans are employed in Arkansas facilities where such repairs are performed; and that these jobs are at risk due to the relocation of such repair facilities to other states which clearly exempt such parts, materials and supplies from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 1266, § 5: Apr. 9, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that businesses which are donating merchandise to certain state and national personnel and emergency service workers and volunteers are being charged sales tax on their donations; that these donations are vital to the health and welfare of the citizens of this state; that taxation of these items will reduce the donations and assistance provided by businesses in this state to state disaster area workers and volunteers; and that this act will eliminate the tax on these donations thereby encouraging continued donations during times of state disaster. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1220, § 7: Apr. 7, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that certain Code provisions affecting the lease of property are in urgent need of clarification; that previous amendments to the Code concerning the lease of motor vehicles resulted in taxpayer confusion, particularly with respect to whether the short term rental of diesel-powered trucks was subject to gross receipts tax; and, that this act is necessary to clarify that the short-term rental of all vehicles is subject to gross receipts tax. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 599, § 2: Mar. 24, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current law excludes the transfer of a damaged vehicle to an insurance company from the definition of 'sale' for purposes of gross receipts tax; that this definition is in need of clarification to ensure that the original legislative intent is fulfilled; and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2003, No. 1273, § 88: as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008: "Effective date. It is found and determined by the Eighty fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 154, § 7: Mar. 1, 2007. Effective date clause provided: "Sections 1–6 of this act shall be effective on the first day of the calendar month following the effective date of this act."

Acts 2007, No. 154, § 8: Feb. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the tax for free admission defeats the primary intent of a 'free' admission; that the recordkeeping for the seller or person furnishing the free admission is cost prohibitive and unnecessarily burdensome to the philanthropist and that the tax does not yield significant revenues to the state to justify the expense of the recordkeeping and submission of the tax; and that this act is immediately necessary for the state to enjoy the economic benefit from persons and entities giving free tickets to tourist attractions during the springtime. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 181, § 45: Jan. 1, 2008.

Acts 2009, No. 384, § 15: Mar. 10, 2009. Emergency clause provided: "It is found and determined

by the General Assembly of the State of Arkansas that certain provisions of the law require amendment to provide consistency with the Streamlined Sales and Use Tax Agreement, that a withdrawal from stock is subject to gross receipts tax under current law, that clarification is needed to ensure that the original legislative intent is fulfilled, and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

26-52-101. Title.

This chapter shall be known and cited as the “Arkansas Gross Receipts Act of 1941”.

History. Acts 1941, No. 386, § 1; A.S.A. 1947, § 84-1901; Acts 2003, No. 1273, § 3.

Amendments. The 2003 amendment substituted “chapter” for “act.”

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Case Notes

In General.

In General.

Acts 1941, No. 386 is a sales tax notwithstanding its short title. *U-Drive-'Em Serv. Co. v. Hardin*, 205 Ark. 501, 169 S.W.2d 584 (1943); *Cook v. Sears-Roebuck & Co.*, 212 Ark. 308, 206 S.W.2d 20 (1947).

Cited: *Jefferson Coop. Gin, Inc. v. Milam*, 255 Ark. 479, 500 S.W.2d 932 (1973).

26-52-102. Purposes of chapter.

The purposes of this chapter are to provide:

- (1) Relief of the common schools;
- (2) Funds to buy free textbooks for the first eight (8) grades thereof;
- (3) Funds for state charitable institutions;
- (4) Funds for circulating library service in connection with the public schools and funds to take the place of homestead exemptions;
- (5) For the wards of the state who will receive support through the Department of Human Services; and
- (6) For worthy causes.

History. Acts 1941, No. 386, § 17; A.S.A. 1947, § 84-1917n.

Case Notes

Cited: Pledger v. Simpson Press, Inc., 304 Ark. 274, 801 S.W.2d 44 (1990).

26-52-103. Definitions.

As used in this chapter:

- (1) “Alcoholic beverage” means a beverage that is suitable for human consumption and contains five-tenths of one percent (0.5%) or more of alcohol by volume;
- (2) (A) “Bundled transaction” means a retail sale of two (2) or more products, except real property and services to real property, in which:
 - (i) The products are otherwise distinct and identifiable; and
 - (ii) The products are sold for one (1) nonitemized price.(B) “Bundled transaction” does not include the sale of any product in which the sales price varies or is negotiable based on the selection by the purchaser of the products included in the transaction.
- (C) The Department of Finance and Administration shall promulgate rules to implement this subdivision (2);
- (3) (A) “Consumer”, “purchaser”, or “user” means the person to whom the taxable sale is made or to whom taxable services are furnished.
- (B) All contractors are deemed to be consumers or users of all tangible personal property, including materials, supplies, and equipment used or consumed by them in performing any contract.
- (C) The sales of all such tangible personal property to contractors are taxable sales within the meaning of this chapter;
- (4) “Contract” means any agreement or undertaking to construct, manage, or supervise the construction, erection, alteration, or repair of any building or other improvement or structure affixed to real estate, including any of their component parts;
- (5) “Contractor” means any person who contracts or undertakes to construct, manage, or supervise the construction, erection, alteration, or repair of any building or other improvement or structure affixed to real estate, including any of their component parts;
- (6) (A) “Delivery charge” means a charge by a seller of tangible personal property or services for preparation and delivery to a location designated by the purchaser of the tangible personal property or services, including without limitation transportation, shipping, postage, handling, crating, and packing.

(B) If a shipment includes tax-exempt property and taxable property, the seller shall pay the tax imposed by this chapter only on the percentage of the delivery charge allocated to the taxable property by using:

- (i)** A percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or
- (ii)** A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment;

(7) “Dietary supplement” means any product, other than tobacco, intended to supplement the diet that:

- (A)** Contains one (1) or more of the following dietary ingredients:
 - (i)** A vitamin;
 - (ii)** A mineral;
 - (iii)** An herb or other botanical;
 - (iv)** An amino acid;
 - (v)** A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
 - (vi)** A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subdivision (7)(A) and is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(B) Is required to be labeled as a dietary supplement, identifiable by the “Supplement Facts” box found on the label and as required pursuant to 21 C.F.R. § 101.36, as in effect on January 1, 2007;

(8) **(A)** “Direct mail” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients.

(B) “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material.

(C) “Direct mail” does not include multiple items of printed material delivered to a single address;

(9) “Director” means the Director of the Department of Finance and Administration or any of his or her authorized agents;

(10) **(A)** “Doing business” or “engaging in business” includes any and all local activity regularly and persistently pursued by any seller or vendor through agents, employees, or representatives with the object of gain, profit, or advantage and that results in a sale, delivery, or the transfer of the physical position of any tangible personal property by the vendor to the vendee at or from any point within Arkansas, whether from warehouse, store, office, storage point, rolling store, motor vehicle, delivery conveyance, or by any method or device under the control of the seller effecting such a local delivery without regard to the terms of sale with respect to point of acceptance of the order, point of payment, or any other condition.

(B) As set out in this subdivision (10), “doing business” or “engaging in business” is equally applicable to sellers of services as are made the subject matter of the

tax imposed by this chapter.

(C) (i) The provisions of this subdivision (10) shall be cumulative to the gross receipts tax law and shall not be construed as levying a tax on any receipts derived from personal or professional services not before made the subject matter and within the scope of the present gross receipts tax law, as amended.

(ii) The provisions of this subdivision (10)(C) shall not be construed as repealing or modifying any of the provisions therein;

(11) “Established business” means any business operated or conducted by any person in a continuous manner for any length of time from an established place or in an established manner;

(12) (A) “Food” and “food ingredients” mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(B) “Food” and “food ingredients” do not include an alcoholic beverage, tobacco, or a dietary supplement;

(13) (A) “Gross receipts”, “gross proceeds”, or “sales price” means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, any loss, any cost of transportation to the seller, any tax imposed on the seller, and any other expense of the seller;

(iii) Any charge by the seller for any service necessary to complete the sale, other than a delivery charge or an installation charge;

(iv) Delivery charge;

(v) (a) Installation charge.

(b) Installation charges will not be included in the “gross receipts”, “gross proceeds”, or “sales price” if they are not a specifically taxable service under this chapter or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and the installation charges have been separately stated on the invoice, billing, or similar document given to the purchaser; or

(vi) Credit for any trade-in.

(B) “Gross receipts”, “gross proceeds”, or “sales price” does not include:

(i) A discount including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, or a carrying charge from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(14) “Motor vehicle” means a vehicle that is self-propelled and is required to be registered for use on the highway;

(15) (A) (i) “Lease” or “rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.

(ii) A lease or rental may include future options to purchase or extend.

(B) "Lease" or "rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or

(iii) (a) Providing tangible personal property along with an operator for a fixed or indeterminate period of time.

(b) A condition of this exclusion in this subdivision (15)(B)(iii) is that the operator is necessary for the equipment to perform as designed.

(c) For the purpose of this subdivision (15)(B)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(C) "Lease" or "rental" does include agreements covering motor vehicles and trailers if the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(2), as in effect on January 1, 2007.

(D) This definition of "lease" or "rental" shall:

(i) Be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code of 1986, as in effect on January 1, 2007, the Uniform Commercial Code, § 4-1-101 et seq., or another federal, state, or local law;

(ii) Be applied only prospectively from January 1, 2008, and shall have no retroactive impact on existing leases or rentals; and

(iii) Impact neither any existing sale-leaseback exemption nor exclusion;

(16) "Person" includes any individual, partnership, limited liability company, limited liability partnership, corporation, estate, trust, fiduciary, or any other legal entity;

(17) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(C) (i) Food sold with an eating utensil provided by the seller, including a plate, knife, fork, spoon, glass, cup, napkin, or straw.

(ii) As used in subdivision (17)(C)(i) of this section, "plate" does not include a container or packaging used to transport the food;

(18) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

(19) (A) "Sale" means the transfer of either the title or possession except in the case of a lease or rental for a valuable consideration of tangible personal property regardless of the manner, method, instrumentality, or device by which the transfer is accomplished.

(B) "Sale" includes the:

(i) Exchange, barter, lease, or rental of tangible personal property;
or

(ii) Sale, exchanging, or other disposition of admissions, dues, or fees to clubs, to places of amusement, or to recreational or athletic events or for the privilege of having access to or the use of amusement, athletic, or entertainment facilities.

(C) "Sale" does not include the:

(i) Furnishing or rendering of services except as otherwise provided in this section; or

(ii) Transfer of title to a vehicle by the vehicle owner to an insurance company as a result of the settlement of a claim for damages to the vehicle.

(D) (i) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for less than thirty (30) days, the tax shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental regardless of whether Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property.

(ii) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for thirty (30) days or more, the tax shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental unless Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property;

(20) "Seller" means every person making a sale, lease, or rental of tangible personal property or services;

(21) (A) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses.

(B) "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(22) "Tax period" or "taxable period" means either the calendar period or the taxpayer's fiscal period when a taxpayer has obtained a permit from the director or from any of his or her authorized agents to use a fiscal period in lieu of a calendar period;

(23) "Taxpayer" means any person liable to remit a tax under this chapter or to make a report for the purpose of claiming any exemption from payment of a tax levied by this chapter; and

(24) "Tobacco" means a cigarette, cigar, chewing or pipe tobacco, or any other item that contains tobacco.

History. Acts 1941, No. 386, § 2; 1953, No. 387, §§ 1, 2; 1965, No. 181, § 1; 1977, No. 340, § 1; A.S.A. 1947, §§ 84-1902, 84-1902.1, 84-1902.1n; Acts 1987 (1st Ex. Sess.), No. 13, § 1; 1989, No. 510, § 5; 1995, No. 835, § 1; 1995, No. 1160, § 21; 1997, No. 1076, § 1; 1997, No. 1266, § 1; 1999, No. 1220, § 1; 2003, No. 599, § 1; 2003, No. 1273, § 4; 2007, No. 154 §§ 1, 2; 2007, No. 181, § 11; 2007, No. 550, §§ 1, 2; 2009, No. 384, §§ 1, 2; .2009, No. 655, § 10

Amendments. The 2003 amendment by No. 599 added present (18)(C)(ii).

The 2003 amendment by No. 1273 rewrote the introductory paragraph; added present (8), (14), and (17) and alphabetized the section; substituted "this chapter" for "this act" in present (3)(C)

and (22); rewrote present (13); in present (15), inserted “fiduciary” and “or any other legal entity”; deleted former (b); and made stylistic and related changes.

The 2007 amendment by No. 154 deleted “giving away” following “sale” in former (a)(9)(D) and “giving away” following “Sale” in present (18)(B)(ii).

The 2007 amendment by No. 181 added present (1), (2), (6), (7), (12), (16), (20), and (23), and redesignated subdivisions accordingly; inserted “purchaser” in present (3)(A); in present (10), redesignated references; rewrote present (13); in present (14), substituted “(14)(B)(iii) for “(9)(B)(iii)” in (14)(B)(iii)(b) and (c), and inserted “as in effect on January 1, 2007” in (14)(B)(iv) and twice in (14)(C); rewrote present (15); deleted former (18)(D)(iii); rewrote present (19); and made related and stylistic changes.

The 2007 amendment by No. 550 deleted former (a)(9)(C)(iii) and former (18)(D)(iii).

The 2009 amendment by No. 384 deleted (13)(A)(vi), redesignated the subsequent subdivision accordingly, and made related changes; and added present (14).

The 2009 amendment by No. 655, in (15)(D)(i), deleted “as in effect on January 1, 2007” following “§ 4-1-101 et. seq.,” and made related and minor stylistic changes.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Research References

U. Ark. Little Rock L.J.

Survey of Arkansas Law, Taxation, 1 U. Ark. Little Rock L.J. 258.

Case Notes

Constitutionality.
Consumer or User.
Doing Business.
Gross Receipts or Proceeds.
Lease.
Person.

Sale.
Seller.
Service.
Taxpayer.

Constitutionality.

The application of the sales tax to transfer of food, clothing, and services by businesses operated for profit and owned by a nonprofit charitable organization in exchange for the services of its members or employees does not violate the religion clauses of the United States and Arkansas Constitutions. *Tony & Susan Alamo Found., Inc. v. Ragland*, 295 Ark. 12, 746 S.W.2d 45 (1988), cert. denied, *Alamo Foundation v. Ragland*, 488 U.S. 852, 109 S. Ct. 137, 102 L. Ed. 2d 109 (1988).

Consumer or User.

Construction contracts involved sale of materials just as it would be if contractor would agree on price of material and labor separately. *Wiseman v. Gillioz*, 192 Ark. 950, 96 S.W.2d 459 (1936) (decision under prior law).

Manufacturer of pasteboard boxes that were sold to a company for use in preparation of its packaged articles for sale to wholesaler, jobbers, or retailers who in turn sold the package in unchanged form to the ultimate consumer, cost of box being an element in cost of packaged article and computed in arriving at selling price of the finished article same as other ingredients, was not required to pay retail sales tax. *McCarroll v. Scott Paper Box Co.*, 195 Ark. 1105, 115 S.W.2d 839 (1938) (decision under prior law).

Contractor installing equipment and performing other construction work is the consumer of the materials and equipment used in fulfilling such contract and liable for the gross receipts tax thereon. *John B. May Co. v. McCastlain*, 244 Ark. 495, 426 S.W.2d 158 (1968).

Equipment purchased by private contractors as agents of the U.S. Navy under a contract with the Navy to build an ammunition depot was not subject to the Arkansas sales tax. *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 74 S. Ct. 403, 98 L. Ed. 546 (1954); *Parker v. Kern-Limerick, Inc.*, 223 Ark. 464, 266 S.W.2d 298 (1954).

If a general contractor purchases a precast concrete component, the tax due is based upon the price of that component; however, if a general contractor purchases the raw materials and produces the component from those raw materials, it is taxed only on the price paid for the raw materials. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Doing Business.

Corporation not licensed to do business in state that sold merchandise to residents of Arkansas at its out-of-state store and by mail, but which delivered merchandise by truck in Arkansas to purchasers, was not liable for gross receipts tax. *Thompson v. Rhodes-Jennings Furn. Co.*, 223 Ark. 705, 268 S.W.2d 376 (1954), cert. denied, *Branyan & Peterson, Inc. v. Thompson*, 348 U.S. 872, 75 S. Ct. 108, 99 L. Ed. 686 (1954).

Gross Receipts or Proceeds.

Permitting employees of hotel who prepare and serve food to consume meals without charge, there being no agreement as to such meals in the contract of employment, did not constitute a withdrawal of merchandise from the established business for consumption or use by such person or any other person within definition of "gross receipts," and the value of such meals was therefore not taxable. *Cook v. Southwest Hotels, Inc.*, 213 Ark. 140, 209 S.W.2d 469 (1948).

If sales price for monuments erected at graves includes price for labor in erection of monuments, owner of monument works must pay sales tax on total sales price without any deduction for labor. *Ferguson v. Cook*, 215 Ark. 373, 220 S.W.2d 808 (1949).

The withdrawal by a corporation from stock of materials manufactured in Arkansas for use in a facility of the corporation located in Arkansas is subject to a sales tax. *Georgia Pac. Corp. v. Larey*, 242 Ark. 428, 413 S.W.2d 868 (1967).

Where company hired independent haulers to deliver its product to purchasers as required by the company's f.o.b. destination contract, gross receipts tax was properly assessed on full delivery price without any deduction for freight. *Belvedere Sand & Gravel Co. v. Heath*, 259 Ark. 767, 536 S.W.2d 312 (1976), overruled in part, *Foote's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607

S.W.2d 323, 21 A.L.R.4th 565 (1980).

Administrative regulation carried out legislative intent as expressed in definition of "gross receipts" and thus was valid. *Belvedere Sand & Gravel Co. v. Heath*, 259 Ark. 767, 536 S.W.2d 312 (1976), overruled in part, *Foot's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323, 21 A.L.R.4th 565 (1980).

While inspection services provided by a service agency as part of a "full service" inspection, service, and repair contract are not specifically mentioned in § 26-52-301, as are the service and repair activities, inspection services do enhance the value of a full coverage contract and increase the marketability of the taxable services provided; accordingly, the cost of the unlisted services cannot be deducted under subdivision (a)(4) of this section, from the total consideration received for the contract, and the entire amount is subject to the three percent gross receipts tax. *Ragland v. Miller Trane Serv. Agency, Inc.*, 274 Ark. 227, 623 S.W.2d 520 (1981).

Manufacturer's actions were subject to sales tax under subdivision (a)(4) of this section despite the fact that the barges were ferried to another state where prefabricated fiberglass hatch covers were installed. *Cargo Carriers, Inc. v. Ragland*, 278 Ark. 401, 646 S.W.2d 681 (1983).

Because uncollected accounts are clearly "losses" in the context of this section, they cannot be excluded in computing the tax due on gross receipts. *Little Rock Mun. Water Works v. Ragland*, 279 Ark. 324, 651 S.W.2d 78 (1983).

Where the taxpayer billed the general contractor for components, erection charges, and delivery charges, and the Revenue Division assessed a tax deficiency based on all of these, including the delivery charges, the Revenue Division was not attempting to collect a tax on hauling services as such, but was collecting a tax on the total consideration received by the vendor for the sale of tangible personal property, which included delivery. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992). Trial court did not err in denying car manufacturer a refund or deduction of the pro rata portion of gross receipts tax related to bad debts arising out of the sale and financing of motor vehicles as the car manufacturer was not a "taxpayer" for the purposes of the Arkansas Bad Debt Statute, § 26-52-101 et seq.; for the purposes of the motor vehicle gross receipts tax, the person liable to remit the tax was the consumer. *DaimlerChrysler Servs. N. Am., LLC v. Weiss*, 360 Ark. 188, 200 S.W.3d 405 (2004).

Trial court erred in finding that a corporation was a "taxpayer" for the purposes of § 26-52-309, commonly known as the Bad Debt Statute, and in granting a refund or deduction of the pro rata portion of gross receipts tax related to bad debts arising out of the sale and financing of motor vehicles in Arkansas; it was possible to be a taxpayer for one kind of tax, while not a taxpayer for another kind of tax. *Weiss v. Am. Honda Fin. Corp.*, 360 Ark. 208, 200 S.W.3d 381 (2004).

Lease.

Where company, for a consideration, divested itself for a period of time of the right to the possession of its portable toilets, and invested the customer with the right of possession of its property, the transactions fit within the definition of leases, and were leases subject to the gross-receipts tax. *Weiss v. Best Enters., Inc.*, 323 Ark. 712, 917 S.W.2d 543 (1996).

In determining whether a transaction constitutes a lease that is taxable under this chapter, the court looks to all of the factors involved to determine the true nature of the transaction. *Weiss v. Best Enters., Inc.*, 323 Ark. 712, 917 S.W.2d 543 (1996).

Person.

Definition of "person" as found in Sales Tax Act specifically includes this state, any county, city, municipality, school district, or any other political subdivision of the state, whereas, the Use Tax Act, does not contain any such language. In failing to define "person" the General Assembly thereby necessarily intended to exclude the state and its subdivisions from the latter act.

Commissioner of Revenues v. Arkansas State Hwy. Comm'n, 232 Ark. 255, 337 S.W.2d 665 (1960).

Sale.

Automobiles, whether old or new, sold subsequent to the effective date of Acts 1935, No. 233 were subject to tax, unless received as part of the purchase price. *S.R. Thomas Auto Co. v. Wiseman*, 192 Ark. 584, 93 S.W.2d 138 (1936) (decision under prior law).

No tax was imposed unless transaction constituted a sale. *Wiseman v. Gillioz*, 192 Ark. 950, 96 S.W.2d 459 (1936) (decision under prior law).

Sale by retail of electricity to consumer, generally, for his use was subject to sales tax. *McCarroll v. Ozark Rural Elec. Coop. Corp.*, 201 Ark. 329, 146 S.W.2d 693 (1940) (decision under prior law).

Rental of automobiles, owned by corporation engaged in automobile rental business, to users without drivers, mostly for short periods of time, with right to terminate the rental and retake the automobile at any time was not within subdivision (a)(3) of this section. *U-Drive-'Em Serv. Co. v. Hardin*, 205 Ark. 501, 169 S.W.2d 584 (1943).

The broad statutory definition of a sale does not include every transaction in which there is a transfer of possession for a consideration; rather, this section must be read as a whole for, if the reference to a transfer of possession is applied literally in every instance, absurd results will follow. *Hervey v. Southern Wooden Box, Inc.*, 253 Ark. 290, 486 S.W.2d 65 (1972).

There was a distinct difference between the 1941 Sales Tax Act definition of "sale" and the Use Tax Act definition; however, after the 1965 amendment of the Sales Tax Act, the two acts complemented each other. *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973).

Although the definition of "sale" in this section includes "dues or fees to clubs," that term is absent from the tax imposing section, § 26-52-301, and therefore membership dues paid by members of a country club were not subject to gross receipt tax imposed by § 26-52-301. *Heath v. El Dorado Golf & Country Club*, 258 Ark. 664, 528 S.W.2d 394 (1975).

To establish its claim that repair parts were purchased for "resale," a taxpayer must show that the parts were purchased outside this state, that it is regularly engaged in the business of reselling goods purchased, and that the parts were purchased for resale. *Federal Express Corp. v. Skelton*, 265 Ark. 187, 578 S.W.2d 1 (1979).

When delivery of items was for purpose of transportation to the place where they would be installed, such a transaction was not a sale subject to sales tax. *Gaddy v. DLM, Inc.*, 271 Ark. 311, 609 S.W.2d 6 (1980).

The Arkansas Gross Receipts Tax is applicable when there is a transfer of either title or possession for a valuable consideration. *State, Dep't of Fin. & Admin. v. Dunhall Pharmaceuticals, Inc.*, 288 Ark. 16, 702 S.W.2d 402 (1986).

Where company gives samples of products without charge and the state is unable to show that there is a valuable consideration in the form of advertising, the distribution is not taxable. *State, Dep't of Fin. & Admin. v. Dunhall Pharmaceuticals, Inc.*, 288 Ark. 16, 702 S.W.2d 402 (1986).

Under subdivision (a)(3) of this section, the transfer of title or possession requirement must occur in the sale of tangible personal property before the tax is imposed; the legislature provided no such requirement when imposing the tax on services. *Ragland v. Allen Transformer Co.*, 293 Ark. 601, 740 S.W.2d 133 (1987), cert. denied, 486 U.S. 1007, 108 S. Ct. 1734, 100 L. Ed. 2d 197 (1988).

Meals, clothing, goods, and services furnished by retail businesses owned by a nonprofit charitable institution to members or employees who are called associates, in exchange for their work, are sales and subject to the sales tax. Transfers within a company are taxable at the value of the finished product (retail), rather than at the value of the raw materials used to make the finished product (wholesale). *Tony & Susan Alamo Found., Inc. v. Ragland*, 295 Ark. 12, 746 S.W.2d 45 (1988), cert. denied, *Alamo Foundation v. Ragland*, 488 U.S. 852, 109 S. Ct. 137, 102 L. Ed. 2d 109 (1988).

Fifteen percent surcharge or gratuity, added to each ticket as part of employees wages, is not a sale as contemplated in subdivisions (a)(3)(A) and (E) of this section and is not subject to the gross receipts tax. *Ragland v. Meadowbrook Country Club*, 300 Ark. 164, 777 S.W.2d 852 (1989).

Neither, "services," "wages," nor "gratuities" are included as taxable transactions within the meaning of a sale as defined in the Gross Receipts Act. *Ragland v. Meadowbrook Country Club*, 300 Ark. 164, 777 S.W.2d 852 (1989).

Where a printer performed postage and mailing services as a convenience for its customers and billed its customers for the estimated cost of the postage and used the money to purchase postage and to mail the brochures pursuant to its customers' instructions, the service of printing is subject to sales tax but the postage and mailing services are not taxable under subdivision (a)(3)(E) of this section. *Pledger v. Simpson Press, Inc.*, 304 Ark. 274, 801 S.W.2d 44 (1990).

Seller.

If transaction came within terms of law, it made no difference what the seller and the buyer might be called. *Wiseman v. Gillioz*, 192 Ark. 950, 96 S.W.2d 459 (1936) (decision under prior law).

Service.

The purchase price of a motor vehicle extended warranty contract is not taxable under § 26-52-301(3)(C)(i) nor under subdivision (4) of this section, because an extended warranty is not "service" of a motor vehicle. *State, Dep't of Fin. & Admin. v. Staton*, 325 Ark. 341, 942 S.W.2d 804 (1996).

Taxpayer.

Lender was not entitled to bad-debt refunds, under § 26-52-309, of sales taxes paid on defaulted consumer credit accounts with retailers because: (1) the retailer, not the lender, was the "taxpayer" under § 26-52-309; and (2) the lender was not entitled to such refunds as an assignee of the retailer, as the Gross Receipts Act did not include "assignee" in the definition of a "taxpayer." *Citifinancial Retail Servs. Div. of Citicorp Trust Bank, Fsb v. Weiss*, 372 Ark. 128, 271 S.W.3d 494 (2008).

Cited: *Cook v. Sears-Roebuck & Co.*, 212 Ark. 308, 206 S.W.2d 20 (1947); *Scurlock v. Springdale*, 224 Ark. 408, 273 S.W.2d 551 (1954); *Frank Lyon Co. v. United States*, 435 U.S. 561, 98 S. Ct. 1291, 55 L. Ed. 2d 550 (1978); *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987); *Jones v. Ragland*, 293 Ark. 320, 737 S.W.2d 641 (1987); *Dunhall Pharmaceuticals, Inc. v. State*, 295 Ark. 483, 749 S.W.2d 666 (1988); *Pledger v. Grapevine, Inc.*, 302 Ark. 18, 786 S.W.2d 825 (1990); *WSC, Inc. v. City of Jacksonville*, 302 Ark. 295, 789 S.W.2d 448 (1990); *Pledger v. Arkla, Inc.*, 309 Ark. 10, 827 S.W.2d 126 (1992); *Pledger v. Baldor Int'l, Inc.*, 309 Ark. 30, 827 S.W.2d 646 (1992); *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995); *Weiss v. Central Flying Serv., Inc.*, 326 Ark. 685, 934 S.W.2d 211 (1996); *Little Rock Cleaning Sys. v. Weiss*, 326 Ark. 1007, 935 S.W.2d 268 (1996).

26-52-104. Tax additional to other taxes.

The tax imposed by this chapter shall be in addition to any or all taxes except as otherwise provided in this chapter.

History. Acts 1941, No. 386, § 8; A.S.A. 1947, § 84-1909.

Case Notes

Cited: *Pledger v. Halvorson*, 324 Ark. 302, 921 S.W.2d 576 (1996).

26-52-105. Administration — Rules and regulations.

(a) The administration of this chapter is vested in and shall be exercised by the Director of the Department of Finance and Administration.

(b) The director shall promulgate rules and regulations and prescribe forms for the proper enforcement of this chapter.

History. Acts 1941, No. 386, § 15; 1979, No. 401, § 48; A.S.A. 1947, § 84-1916.

Case Notes

Cited: *Weiss v. Bryce Co., LLC*, 2009 Ark. 412, — S.W.3d — (2009).

26-52-106. Cost of administration of chapter — Distribution of surplus annually.

(a) The administration cost of this chapter shall not exceed three percent (3%) of the actual revenues collected.

(b) If any funds appropriated for the administration of this chapter shall remain in the hands of the Director of the Department of Finance and Administration at the end of each fiscal year that shall not have been actually used in the administration of this chapter,

then the funds shall be remitted by the director to the Treasurer of State for distribution in the same manner and for the same purposes provided for in § 26-52-107.

History. Acts 1941, No. 386, § 16; A.S.A. 1947, § 84-1917.

26-52-107. Disposition of taxes, interest, and penalties.

All taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration under the provisions of this chapter shall be general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund. The Treasurer of State shall allocate and transfer the same to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by, and to be used for the respective purposes set forth in, the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1941, No. 386, § 18, as added by Acts 1953, No. 118, § 32(A); A.S.A. 1947, § 84-1918.

Case Notes

Cities and Counties.

Cities and Counties.

Cities and counties were not beneficiaries of funds arising from the sales tax until made to share by Acts 1943, No. 187, and since the act was not in effect until June 10, prior to the beginning of a new fiscal year July 1, 1943, cities and counties could participate only in money paid by the taxpayer during the last 21 days of June. *Page v. Alexander*, 206 Ark. 479, 177 S.W.2d 415 (1943) (decision under prior law).

26-52-108. Changes in law — Notice to permit holders.

The Director of the Department of Finance and Administration shall give each gross receipts tax permit holder under § 26-52-201 written notice of any new state sales and use tax law or any change in the present state sales and use tax law within thirty (30) days after the adjournment of the General Assembly.

History. Acts 1991, No. 535, § 1.

26-52-116. [Transferred.]

A.C.R.C. Notes. This section has been renumbered as § 26-53-139.

Subchapter 2 — Permits

26-52-201. Permit required.

26-52-202. Application for permit.

26-52-203. Fee deposit or bond required.

26-52-204. Permit not assignable.

26-52-205. Display required.

26-52-206. Expiration.

26-52-207. Discontinuance of business — Unpaid taxes.

26-52-208. [Repealed.]

26-52-209. Applicability of tax procedure provisions.

26-52-210. Automatic expiration of permit.

Effective Dates. Acts 1987, No. 372, § 3: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that a deposit should be required by the Commissioner of Revenue prior to the issuance of any new Arkansas Gross Receipts Tax permits and to provide a method allowing a credit against future Arkansas Gross Receipts Tax due against the deposit which has been posted. Said system shall insure the initial payment of Arkansas Gross Receipts Tax for new business and prevent the abusive use of permits for resale purchases only. Therefore, an emergency is declared to exist and this legislation shall be in effect on or after July 1, 1987."

Acts 1993, No. 620, § 5: Mar. 22, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the two hundred fifty dollar (\$250.00) deposit required to obtain a new gross receipts tax permit creates an undue burden on the party applying for such permit; that it creates an administrative burden on the Department of Finance and Administration to have this deposit as a credit to maintain and refund the deposit upon request after the appropriate time has elapsed; that a non-refundable fee of fifty dollars (\$50.00) is less of a burden on the applicant and the department; and that this act will effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 835, § 9: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas law is unclear as it applies to the taxation of contractors and subcontractors who construct and repair buildings and other improvements and structures affixed to real estate; that Arkansas gross receipts and use tax laws which impose tax on certain services to motors, electrical appliances and devices, household appliances, and machinery were never intended by the General Assembly to apply to nonmechanical, passive or manually operated building systems or components; that none of the charges made by a contractor for labor or materials used in performing such nontaxable services are properly subject to tax; that contractors and subcontractors are suffering substantial losses on audits after making best efforts to comply with existing law; and that the gross receipts and use tax laws need to be clarified to specifically exclude certain services to buildings and other improvements or structures affixed to real estate from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax

Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-52-201. Permit required.

- (a) It shall be unlawful for any taxpayer to transact business within this state prior to issuance and receipt of an Arkansas gross receipts tax permit from the Director of the Department of Finance and Administration.
- (b) A separate permit for each business location must be obtained from the director.
- (c) This permit shall be in addition to all other permits required by the Arkansas Code.
- (d) Any taxpayer who engages in business without a permit, or after a permit has been suspended, shall be subject to the provisions and sanctions set forth in the Arkansas Tax Procedure Act, § 26-18-101 et seq.
- (e) The director is authorized to establish types and classifications of Arkansas gross receipts tax permits, including, not by limitation, special permits for taxpayers whose principal line of business does not include the retail selling of tangible personal property or performing taxable services.

History. Acts 1941, No. 386, §§ 12, 19; A.S.A. 1947, §§ 84-1913, 84-1919; Acts 1987, No. 372, § 1; 1995, No. 835, § 4.

Case Notes

Cited: Cook v. Sears-Roebuck & Co., 212 Ark. 308, 206 S.W.2d 20 (1947); Thompson v. Chadwick, 221 Ark. 720, 255 S.W.2d 687 (1953); Tony & Susan Alamo Found., Inc. v. Ragland, 295 Ark. 12, 746 S.W.2d 45 (1988); Spencer v. Langston, — F. Supp.2d —, 2006 U.S. Dist. LEXIS 23349 (E.D. Ark. Apr. 24, 2006).

26-52-202. Application for permit.

- (a) Every taxpayer shall file with the Director of the Department of Finance and Administration an application for a gross receipts tax permit to conduct the taxpayer's business, setting forth such information as the director may require.
- (b) (1) The application shall be signed by the owner of the business as a natural person or in the case of a corporation by a legally constituted officer of the corporation.
 - (2) However, a seller that registers electronically shall not be required to provide a written signature.
- (c) A taxpayer is permitted to file an application through an agent if the registration is filed with the director and is made in writing.

History. Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913; Acts 1987, No. 372, § 1; 2003, No. 1273, § 5.

Amendments. The 2003 amendment added (b)(2) and (c) and made related changes.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of

internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Case Notes

Cited: Cook v. Sears-Roebuck & Co., 212 Ark. 308, 206 S.W.2d 20 (1947); Thompson v. Chadwick, 221 Ark. 720, 255 S.W.2d 687 (1953).

26-52-203. Fee deposit or bond required.

(a) The Director of the Department of Finance and Administration shall require prior to the issuance of any new Arkansas gross receipts tax permit the payment of a nonrefundable fee of fifty dollars (\$50.00), which shall be remitted with each new application for a permit.

(b) All persons doing a retail business in this state, which business is subject to the provisions of this chapter, who do not have a permanent domicile in this state, shall make a sufficient cash deposit or sufficient bond with the director to cover their annual sales tax before doing business in this state or before receiving a permit to do business in this state as provided in § 26-52-201.

(c) All revenues derived from the fees imposed by this section shall be deposited into the State Treasury as nonrevenue receipts credited to the State Central Services Fund for use by the Revenue Division of the Department of Finance and Administration.

History. Acts 1941, No. 386, §§ 12, 13; A.S.A. 1947, §§ 84-1913, 84-1914; Acts 1987, No. 372, § 1; 1993, No. 620, § 1.

26-52-204. Permit not assignable.

The permit shall not be assignable and shall be valid only for the person in whose name it is issued and for business transactions at the place designated therein.

History. Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913; Acts 1987, No. 372, § 1.

Case Notes

Construction With Other Law.

Construction With Other Law.

To have a sales and use tax permit at a store does not preclude prosecution under § 5-64-1101 for possession of more than nine grams of pseudoephedrine away from the store. *Spencer v. Langston*, — F. Supp.2d —, 2006 U.S. Dist. LEXIS 23349 (E.D. Ark. Apr. 24, 2006).

Cited: *Cook v. Sears-Roebuck & Co.*, 212 Ark. 308, 206 S.W.2d 20 (1947); *Thompson v. Chadwick*, 221 Ark. 720, 255 S.W.2d 687 (1953).

26-52-205. Display required.

The permit shall at all times be conspicuously displayed at the place of business for which the permit was issued.

History. Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913; Acts 1987, No. 372, § 1.

Case Notes

Construction With Other Law.

Construction With Other Law.

To have a sales and use tax permit at a store does not preclude prosecution under § 5-64-1101 for possession of more than nine grams of pseudoephedrine away from the store. *Spencer v. Langston*, — F. Supp.2d —, 2006 U.S. Dist. LEXIS 23349 (E.D. Ark. Apr. 24, 2006).

Cited: *Cook v. Sears-Roebuck & Co.*, 212 Ark. 308, 206 S.W.2d 20 (1947); *Thompson v. Chadwick*, 221 Ark. 720, 255 S.W.2d 687 (1953).

26-52-206. Expiration.

All permits issued under the provisions of this chapter shall expire at the time of cessation of business at the place or location of the business within this state.

History. Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913.

Case Notes

Cited: *Cook v. Sears-Roebuck & Co.*, 212 Ark. 308, 206 S.W.2d 20 (1947); *Thompson v. Chadwick*, 221 Ark. 720, 255 S.W.2d 687 (1953).

26-52-207. Discontinuance of business — Unpaid taxes.

(a) (1) Any taxpayer operating under a permit as provided in this subchapter, upon discontinuance of business by sale or otherwise, shall return the permit to the Director of the Department of Finance and Administration for cancellation together with a remittance of any unpaid or accrued taxes.

(2) Failure to surrender a permit and pay any and all accrued taxes shall be sufficient cause for the director to refuse the issuance of any permit in the future to the taxpayer to engage in or transact any other business in this state.

(3) In the case of a sale of any business, the tax shall be deemed to be due at the time of the sale of the fixtures and equipment incident to the business and shall constitute a lien against the stock and the fixtures and equipment in the hands of the purchaser thereof or any other third party until the tax is paid.

(b) The director shall not issue a permit to continue or conduct the business to the purchaser of the business until all tax claims due in the State of Arkansas under this section have been settled and paid.

History. Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913; Acts 1987, No. 372, § 1.

Case Notes

Cited: Cook v. Sears-Roebuck & Co., 212 Ark. 308, 206 S.W.2d 20 (1947); Thompson v. Chadwick, 221 Ark. 720, 255 S.W.2d 687 (1953).

26-52-208. [Repealed.]

Publisher's Notes. This section, concerning revocation or suspension and renewal, was repealed by Acts 2009, No. 655, § 11. The section was derived from Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913.

For current law, see § 26-52-209 and the Arkansas Tax Procedure Act, § 26-18-101 et seq.

26-52-209. Applicability of tax procedure provisions.

All proceedings relative to the issuance, revocation, or suspension of a permit under this subchapter shall be governed by the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913; Acts 1987, No. 372, § 1.

26-52-210. Automatic expiration of permit.

(a) (1) (A) The gross receipts tax permit of any taxpayer shall automatically expire when the taxpayer has filed twelve (12) consecutive monthly reports reporting zero (0) sales.

(B) (i) The Director of the Department of Finance and Administration shall notify the taxpayer in writing that the gross receipts tax permit has expired.

(ii) Within thirty (30) days after the date of the notice, the taxpayer shall return the permit to the director.

(2) This section shall not apply to a permit that is issued pursuant to § 26-52-201(e) to a taxpayer whose principal line of business does not include the retail selling of tangible personal property or the performing of taxable services.

(b) (1) Any taxpayer who has been notified that his or her gross receipts tax permit will expire may petition the director to retain the taxpayer's gross receipts tax permit if the taxpayer reasonably expects to engage in business within the twelve-month period immediately following the notification.

(2) The director may allow a taxpayer to retain the taxpayer's gross receipts tax permit if the taxpayer demonstrates to the director's satisfaction that the taxpayer will require a gross receipts tax permit within the following twelve (12) months to engage in business.

History. Acts 1999, No. 1031, § 1.

Subchapter 3 — Imposition of Tax

26-52-301. Tax levied.

26-52-302. Additional taxes levied.

26-52-303. Border cities or towns — Tax rate — Exemptions.

26-52-304. Tax levied on sales of computer software and maintenance of computer hardware.

- 26-52-305. Financial institutions.
- 26-52-306. Sales of alcoholic beverages.
- 26-52-307. Contractors as consumer users.
- 26-52-308. Receipts from certain coin-operated machines taxed.
- 26-52-309. Deduction for bad debts generally.
- 26-52-310. [Repealed.]
- 26-52-311. [Repealed.]
- 26-52-312. [Repealed.]
- 26-52-313. [Repealed.]
- 26-52-314. Prepaid calling service and prepaid wireless calling service.
- 26-52-315. Telecommunications and related services.
- 26-52-316. Services subject to tax.
- 26-52-317. Food and food ingredients.
- 26-52-318. Heavy equipment.
- 26-52-319. Natural gas and electricity used by manufacturers.
- 26-52-320. Portable toilets and associated services.
- 26-52-321. Fishing guide services.
- 26-52-322. Withdrawals from stock.

A.C.R.C. Notes. Acts 2007, No. 185, § 3, provided: "All existing exemptions from the gross receipts tax levied by the Arkansas Gross Receipts Act or 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or other purposes that are otherwise provided by law shall continue in full force and effect."

Cross References. Arkansas Tourism Development Act, § 15-11-501 et seq.
Tax levy in cities adjacent to city one mile from state line, § 26-25-104.

Effective Dates. Acts 1945, No. 64, § 3: approved Feb. 21, 1945. Emergency clause provided: "It being considered necessary by the Legislature to more effectively collect Sales Tax on new and used cars as provided in this Act and to expedite such collection, that this Act should be in effect as soon as possible and it thereby being necessary for the public peace, health and protection of the State an emergency is hereby declared and this Act shall be in full force and effect immediately upon and after its passage."

Acts 1949, No. 405, § 3: Apr. 1, 1949. Emergency clause provided: "Because of the need for additional revenues for necessary operation of state services and institutions and this Act being necessary for preservation of the public peace, health and safety, an emergency is declared and this Act shall be in full force and effect from and after April 1, 1949."

Acts 1957, No. 19, § 6: Feb. 7, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, and the University of Arkansas and the other state-supported institutions of higher learning, the Public School System, the Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment to all of the people of this State; and (4) that only the provisions of this act will provide funds in amounts sufficient to alleviate the aforementioned conditions. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1957, No. 158, § 3: Mar. 5, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are

having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, and the University of Arkansas and the other state-supported institutions of higher learning, the Public School System, the Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment of all of the people of this State; and (4) that only the provisions of this Act will provide funds in amounts sufficient to alleviate the aforementioned conditions. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1957, No. 233, § 3: Mar. 12, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, and the University of Arkansas and the other state-supported institutions of higher learning, the Public School System, the Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment of all of the people of this State; and (4) that only the provisions of this Act will provide funds in amounts sufficient to alleviate the aforementioned conditions. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1961, No. 252, § 2: approved Mar. 14, 1961. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the present law in regard to the exemptions provided for gross receipts or gross proceeds derived from the sale of motor vehicles in border cities and incorporated towns is inequitable and thereby creates many hardships in the automobile sales industry surrounding such border cities and incorporated towns, and that only by the immediate passage and approval of this Act can this situation be alleviated. Therefore, this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage."

Acts 1963, No. 265, § 6: Mar. 18, 1963. Emergency clause provided: "It is hereby found and declared that the failure to collect Gross Receipts Tax from the gross receipts or gross proceeds derived from the operation or use of coin-operated pinball machines, coin-operated music machines, coin-operated mechanical games and similar devices, gives an advantage to the operators of such devices over other operators engaged in similar operations conducted without the use of coin-operated devices, and is therefore discriminatory, resulting in a substantial loss of revenues to the State of Arkansas. Therefore, an emergency is hereby found and declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1971, No. 214, §§ 5, 6: emergency failed to pass.

Acts 1973, No. 181, § 2: Feb. 23, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that coin-operated car washes do not require the presence of an attendant, that in order to collect the gross receipts tax an attendant would have to be employed for that sole purpose; that this requirement is unfair and discriminatory to the owners and operators of coin-operated car washes, and that only by the immediate passage of this Act will this inequity be remedied. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1973, No. 182, §§ 9, 10: Jan. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to the taxation of banks and savings and loan associations is somewhat vague and indefinite, that such institutions should pay the same taxes as other business corporations in the State, and this Act is immediately

necessary to clarify the laws with respect to the taxation of financial institutions and to assure that such institutions pay the same taxes as other business corporations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved Feb. 22, 1973.

Acts 1979, No. 401, § 50: Jan. 1, 1980.

Acts 1979, No. 585, § 3: Mar. 27, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that subsection (b) of Section 3 of Act 386 of 1941 provides that the Gross Receipts Tax applies to 'Natural or artificial gas, electricity, water, ice, steam, or any other utility or public service except transportation services', and that this language has been interpreted by the Revenue Department for 37 years as not applying to sewer or garbage service charges; that the Revenue Department now is attempting to collect the sales tax on sewer and garbage services charges and this Act is immediately necessary to clearly state that such charges are not subject to the Arkansas Gross Receipts Tax. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate protection of the public peace, health and safety shall take effect on its passage and approval."

Acts 1981, No. 983, § 3: became law without Governor's signature, Apr. 8, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that clarification of the Gross Receipts Tax Law is needed to affirm the legislative intent that the Gross Receipts Tax applicable to services in this State is not intended to apply to the repair or maintenance of railroad cars brought into the State solely and exclusively for repair within this State, and that the immediate passage of this Act is necessary to accomplish such purpose. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983 (1st Ex. Sess.), No. 63, § 3: Nov. 1, 1983. Emergency clause provided: "It is hereby found and determined by the 74th General Assembly that the Arkansas Supreme Court has held that the current method of allocating State financial aid to public elementary and secondary education is unconstitutional and must be revised to meet constitutional standards; that reallocation of existing State financial aid would cause massive disruption of the system of public elementary and secondary education in this State; that the current level of State financial aid to public elementary and secondary education is inadequate to meet the mandate of Article 14 of the Arkansas Constitution that the State maintain a general, suitable and efficient system of free public schools; that experienced faculty members at the institutions of higher education are leaving the State of Arkansas because salary levels in Arkansas are not competitive with salaries in institutions of higher education in other states; that accreditation of certain essential programs operated by various institutions of higher education is in jeopardy because of inadequate financial support; that the present level of funding for essential State services will cause the curtailing of activities of necessary State agencies; that additional State revenues are required to alleviate these conditions. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect November 1, 1983."

Acts 1983 (1st Ex. Sess.), No. 94, § 3: Nov. 9, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that a deduction for bad debts should be allowed under Arkansas' sales tax laws; that such deduction is not authorized by law and therefore the present law is inequitable and fundamentally unfair to that extent; that this Act should go into effect immediately to correct such inequity. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 27, § 4: Feb. 11, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that in-state sellers of property and services are being discriminated against as a result of out-of-state vendors, who solicit sales by advertisements, not being required to collect and pay to the State compensating (use) tax upon such sales that, as a result of the foregoing, this State is being deprived of much-needed revenue to which it is rightfully entitled; that providers of interstate telecommunication services have not been required to collect and remit gross receipts tax on interstate access and long distance telecommunications

services which are hereby declared to be subject to the gross receipts tax. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 188, § 3: July 1, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for schools and other essential services required by the citizens of this State and the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1987.”

Acts 1987 (1st Ex. Sess.), No. 13, § 6: June 12, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the State is in serious danger of losing revenues which are necessary to provide adequate funding for schools and other essential services required by the citizens of this State and that the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1989, No. 510, § 8: July 1, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that this Act establishes a new tax known as the ‘Rental Vehicle Tax’ and provides persons engaged in the business of renting licensed motor vehicles a credit for portion of the sales tax paid by the person on certain licensed motor vehicles purchased on or after July 1, 1989, and that for the effective administration of this act, the Act should become effective on July 1, 1989. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1989.”

Acts 1989, No. 769, § 4: July 1, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need of additional revenue for the purpose of funding critical education programs and other essential services required by the citizens of the state and the provisions of this act are necessary to raise needed revenue. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1989.”

Acts 1989 (3rd Ex. Sess.), No. 89, § 4: Nov. 17, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that the application of current law results in the citizens of the State of Arkansas being placed at an economic disadvantage and inability to compete in the marketplace, thereby resulting in loss of industry and jobs to this State. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 3, § 14: May 1, 1991. Emergency clause provided: “It is hereby found and determined that the State of Arkansas is lacking adequate funds to provide for the education of its citizens and for other essential services: that increased funds must be raised to adequately provide for those needs; that certain persons are assisting taxpayers in evading or defeating the payment or collection of lawfully imposed state taxes depriving the state of needed revenues and that this act is designed to provide the necessary revenues to the state sufficient to meet these needs. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective on and after May 1, 1991.”

Acts 1992 (1st Ex. Sess.), Nos. 58 and 61, § 8: July 1, 1993. Emergency clause provided: “It has been found and is hereby declared by the General Assembly that unemployment in Arkansas has reached emergency proportions, and that this situation can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist, and this act, being necessary for the immediate preservation of the public

peace, health and safety, shall be in full force and effect from and after its passage and approval.” Approved Mar. 19, 1992.

Acts 1992 (2nd Ex. Sess.), No. 5, § 7: Mar. 1, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that this act levies a tax upon certain services; that for the effective administration of this act, this act should become effective immediately that unless this emergency clause is adopted, this act may not become effective on that date.

Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after March 1, 1993.”

Acts 1993, No. 282, § 5: Mar. 1, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that Act 5 of the Second Extraordinary Session of 1992 levies a gross receipts tax on the service of collecting a debt or account receivable; that this act has caused confusion as to who is subject to the tax and what constitutes taxable services in connection with the collection of debts or accounts receivable; that this act will clarify some of the confusion that exists; and that since the tax becomes effective on March 1, 1993, this act is necessary immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 1059, § 5: Sept. 1, 1994.

Acts 1993, No. 1162, § 6: Apr. 14, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that this act is necessary in order to eliminate confusion and simplify the collection of tax for the rental truck industry. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993.”

Acts 1995, No. 257, § 5: Feb. 10, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that the repair or remanufacture of metal platens should be exempt from the state sales tax when they are brought into this state merely for repair and then shipped back to the state of origin; that this act so provides; and this act should go into effect immediately in order to eliminate an unfair tax burden on those Arkansas businesses which repair metal platens to be shipped back to the state of origin. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 284, § 6: July 1, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that recent court decisions resulted in disparate treatment by requiring hotels, motels and lodging houses furnishing lodging to transient guests to collect sales tax on such lodging while property management companies which provide similar services are not taxed; that this act is necessary to specify that these provisions of law apply to all entities which furnish accommodations of any type to transient guests and is designed to correct the current unequal treatment. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995.”

Acts 1995, No. 835, § 9: July 1, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas law is unclear as it applies to the taxation of contractors and subcontractors who construct and repair buildings and other improvements and structures affixed to real estate; that Arkansas gross receipts and use tax laws which impose tax on certain services to motors, electrical appliances and devices, household appliances, and machinery were never intended by the General Assembly to apply to nonmechanical, passive or manually operated building systems or components; that none of the charges made by a contractor for labor or materials used in performing such nontaxable services are properly subject to tax; that contractors and subcontractors are suffering substantial losses on audits after making best efforts to comply with existing law; and that the gross receipts and use tax laws need to be clarified to specifically exclude certain services to buildings and other improvements or structures affixed to real estate from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995.”

Acts 1995, No. 1008, § 10: emergency clause failed. Emergency clause provided: “It is hereby

found and determined by the General Assembly that the Arkansas State Highway System is in dire need of improvement, rehabilitation, reconstruction and expansion; that the Arkansas State Highway and Transportation Department lacks sufficient funding for statewide highway improvements, rehabilitation, reconstruction and expansion projects; that necessary funding may be obtained by the issuance of bonds secured by an increase in the sales and use taxes; that this act is designed to provide the necessary revenues for such projects. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Acts 1997, No. 1263, § 5: Apr. 9, 1997. Emergency clause provided: "It is hereby found that the inclusion of the very broad language in the phrases 'service of providing a credit report' and 'service of collecting a debt or account receivable' has presented many unforeseen problems in the actual imposing of the Gross Receipts Tax upon such described services for both the Revenue Division of the Department of Finance & Administration and many businesses and professionals in Arkansas who provide all manner of these services in the aid of the credit reporting on the collection of debts and accounts receivable; and it appears that the state taxing authorities have not been able to secure universal compliance with the reporting and payment of these Gross Receipt Taxes by many businesses that are engaged in Arkansas in either credit reporting or debt collection businesses, but not with similar businesses located outside the State of Arkansas. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1359, § 41: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 1999, No. 1152, § 7: Apr. 6, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the revenues generated by taxing bingo are dwindling; that many bingo parlors have been enjoined by court order as illegal gambling operations; that bingo operators are currently required to register on July 1 of each year and pay a registration fee; that the repeal of the bingo tax provisions will also repeal the need to pay a registration fee; that taxpayers and the Department of Finance and Administration will be relieved of performing unnecessary administrative tasks related to the registration fees if the tax provisions and annual registration requirements are repealed prior to July 1, 1999. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1220, § 7: Apr. 7, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that certain Code provisions affecting the lease of property are in urgent need of clarification; that previous amendments to the Code concerning the lease of motor vehicles resulted in taxpayer confusion, particularly with respect to whether the short term rental of diesel-powered trucks was subject to gross receipts tax; and, that this act is necessary to clarify that the short-term rental of all vehicles is subject to gross receipts tax. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall

become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1348, § 7: July 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that due to the inability to track and audit calls made with prepaid calling cards, the current system of collecting sales tax based upon the usage of prepaid calling cards creates an administrative burden on the telecommunication companies; that this act will promote uniform tax collection on prepaid calling cards; that this act will more fairly tax telecommunications and prevent the likelihood of taxes being avoided.

Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999.”

Acts 1999, No. 1492, § 8: if contingency met, sections 1, 2, 3, 4 and 6 shall become effective on Jan. 1, 2001, and Section 7 shall become effective on Jan. 1, 2002. Effective date clause provided: “Effective Date. The provisions of Section 5 shall be effective 90 days after adjournment. The provisions of Sections 1, 2, 3, 4, 6 and 7 shall not be effective unless; a) the General Assembly refers a constitutional amendment to be approved during the 2000 general election; b) the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and c) the amendment is approved. If those conditions are met, Sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Claims for refund may be filed in 2001 pursuant to §§ 26-51-601 — 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999.”

Acts 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 11. Dec. 15, 2000. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Amendment 79 to the Arkansas Constitution requires the General Assembly to provide for a property tax credit of not less than \$300 for each homestead; that providing such a property tax credit results in a significant reduction in revenues for funding county services and public schools; that without an alternative source of funding counties and public schools cannot operate effectively; that an increase in the state sales and use tax provides a source of funding for counties and public schools; that this act will accomplish the purposes of Amendment 79 in providing a property tax credit and source of funding. It is necessary that this act become effective immediately in order to facilitate the administration of the property tax credit and to generate sufficient revenues to fully fund the credit. Therefore, an emergency is declared to exist and Sections 1, 2, 3, 4, 5, 6, 8 and 9 of this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2001, No. 907, § 2: effective by its own terms Aug. 1, 2002.

Acts 2001, No. 949, § 2: July 1, 2001. Emergency clause provided: “It is found and determined by the General Assembly that public transportation vehicles, equipment, and facilities need to be replaced or purchased in order to ensure the safety of the citizens on the roads in the State of Arkansas. Matching federal funds enables the State of Arkansas to receive assistance in the purchase of these items. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001.”

Acts 2003, No. 1112, § 2: Apr. 7, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the taxation of amounts billed to members of health spas, health clubs, fitness clubs, and private clubs for services not otherwise taxable under the Arkansas Gross Receipts Tax Act of 1941, § 26-52-101 et seq., is contrary to the legislative intent of § 26-52-301(6); that this law clarifies the proper taxation of dues and membership fees, which excludes amounts billed to a member of a health spa, health club, fitness club, or private club that are not within the meaning of the Arkansas Gross Receipts Tax Act of 1941, § 26-52-101 et seq.; and that this act is immediately necessary to ensure that the State of Arkansas properly and correctly applies the tax on dues and membership fees. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of

the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2003 (2nd Ex Sess.), No. 107, § 6: July 1, 2004. The amendment was effective by its own terms on July 1, 2004.

Acts 2003 (2nd Ex. Sess.), No. 107, § 12: became law without Governor's signature, Mar. 1, 2004. Emergency clause provided: “It is found and determined by the General Assembly, that the provision of an equal opportunity for an adequate education to all the citizens of the state is imperative; that additional funds are immediately needed to provide an equal opportunity for an adequate education; that this act is designed to provide the additional revenues needed to provide this equal opportunity to all citizens; and that a delay in the effective date of this act will cause irreparable harm upon the provision of essential education opportunities and the proper administration of educational programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of March 1, 2004.”

Acts 2005, No. 664, § 2: July 1, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that public transportation vehicles, equipment, and facilities need to be purchased and replaced in order to serve the citizens of Arkansas and ensure their safety on the roads within this state; that matching federal funds are available that enables the State of Arkansas to receive financial assistance to purchase public transportation vehicles, equipment and facilities; and that for the proper administration of this act it should become effective at the beginning of the next fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005.”

Acts 2005, No. 1693, § 3: July 1, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the payment of sales and use tax is required on the purchase of new or used heavy equipment; that Arkansas law provides that

heavy equipment used in some types of professions or businesses is exempt from tax; that enforcement of the sales and use tax laws on heavy equipment is very difficult for the Department of Finance and Administration; that requiring a decal to be affixed to each piece of heavy equipment as proof that the tax has been paid or as proof that it is legally exempt would assist in the enforcement of the sales and use tax laws; and that this act would accomplish that purpose. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005.”

Acts 2005, No. 1879, § 3: Apr. 8, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that changes in technology have created confusion as to the taxability of various innovative and rapidly growing telecommunications services and that such confusion threatens to disrupt the flow of revenues that are critically needed by the state for the support of schools, to address deficiencies in school facilities as determined by the Supreme Court, to maintain prisons, and to ensure the uninterrupted provisions of critical services to the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto 1 the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 110, § 9: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of Arkansas are having to pay more in fuel costs due to the rise in oil prices; that the rise in fuel costs has resulted in an increase in the price of food and other goods; and that in order to offset these rising prices the sales and use tax rate on food and food ingredients should be reduced. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007.”

Acts 2007, No. 154, § 7: Mar. 1, 2007. Effective date clause provided: “Sections 1–6 of this act shall be effective on the first day of the calendar month following the effective date of this act.”

Acts 2007, No. 154, § 8: Feb. 28, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the tax for free admission defeats the primary intent of a ‘free’ admission; that the recordkeeping for the seller or person furnishing the free admission is cost prohibitive and unnecessarily burdensome to the philanthropist and that the tax does not yield significant revenues to the state to justify the expense of the recordkeeping and submission of the tax; and that this act is immediately necessary for the state to enjoy the economic benefit from persons and entities giving free tickets to tourist attractions during the springtime. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 181, § 45: Jan. 1, 2008.

Acts 2007, No. 182, § 32: Jan. 1, 2008.

Acts 2007, No. 185, § 4: Mar. 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly that the current sales and use tax on utilities consumed by manufacturers located within this state creates a competitive disadvantage, that this bill is intended to address that problem by providing a reduced tax rate on utilities consumed by manufacturers located in this state; and that this act is immediately necessary to prevent the loss of manufacturing jobs to other states that provide lower taxes on utilities consumed in manufacturing. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 368, § 2: July 1, 2007. Emergency clause provided: “It is found and determined by

the General Assembly of the State of Arkansas that the portable toilet industry is currently applying tax on tangible personal property and services differently and that in order to achieve equity in the portable toilet industry, additional legislation is needed. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007.”

Acts 2007, No. 860, § 7: Jan. 1, 2008.

Acts 2009, No. 384, § 15: Mar. 10, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law require amendment to provide consistency with the Streamlined Sales and Use Tax Agreement, that a withdrawal from stock is subject to gross receipts tax under current law, that clarification is needed to ensure that the original legislative intent is fulfilled, and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 436, § 3: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that unemployment is rising in Arkansas, that the rise in unemployment has resulted in an increase in the number of Arkansans unable to afford basic necessities; and that in order to aid the people of Arkansas, the sales and use tax rate on food and food ingredients should be reduced. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009.”

Acts 2009, No. 691, § 3: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly that manufacturers in this state have suffered losses due to sharp increases in energy costs; that these manufacturers are unable to set the price for the products they produce and are particularly vulnerable to price volatility; that the current sales and use tax on utilities consumed by these manufacturers located within this state creates a competitive disadvantage; that this act is intended to address that problem by providing a reduced tax rate on utilities consumed by manufacturers located in this state; and that this act is necessary to prevent the loss of manufacturing jobs. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health, and safety shall become effective on July 1, 2009.”

Acts 2009, No. 695, § 3: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly that manufacturers in this state have suffered losses due to sharp increases in energy costs; that these manufacturers are unable to set the price for the products they produce and are particularly vulnerable to price volatility; that the current sales and use tax on utilities consumed by these manufacturers located within this state creates a competitive disadvantage; that this act is intended to address that problem by providing a reduced tax rate on utilities consumed by manufacturers located in this state; and that this act is necessary to prevent the loss of manufacturing jobs. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health, and safety shall become effective on July 1, 2009.”

Research References

U. Ark. Little Rock L.J.

Legislative Survey, Bonds, 8 U. Ark. Little Rock L.J. 551.

26-52-301. Tax levied.

Except for food and food ingredients that are taxed under § 26-52-317, there is levied an excise tax of three percent (3%) upon the gross proceeds or gross receipts derived from all sales to any person of the following:

- (1) Tangible personal property;
- (2) Natural or artificial gas, electricity, water, ice, steam, or any other tangible

personal property sold as a utility or provided as a public service;

(3) The following services:

(A) (i) Service of furnishing rooms, suites, condominiums, townhouses, rental houses, or other accommodations by hotels, apartment hotels, lodging houses, tourist camps, tourist courts, property management companies, or any other provider of accommodations to transient guests.

(ii) As used in subdivision (3)(A)(i) of this section, “transient guests” means those who rent accommodations other than their regular place of abode on less than a month-to-month basis;

(B) (i) Service of initial installation, alteration, addition, cleaning, refinishing, replacement, and repair of:

- (a)** Motor vehicles;
- (b)** Aircraft;
- (c)** Farm machinery and implements;
- (d)** Motors of all kinds;
- (e)** Tires and batteries;
- (f)** Boats;
- (g)** Electrical appliances and devices;
- (h)** Furniture;
- (i)** Rugs;
- (j)** Flooring;
- (k)** Upholstery;
- (l)** Household appliances;
- (m)** Televisions and radios;
- (n)** Jewelry;
- (o)** Watches and clocks;
- (p)** Engineering instruments;
- (q)** Medical and surgical instruments;
- (r)** Machinery of all kinds;
- (s)** Bicycles;
- (t)** Office machines and equipment;
- (u)** Shoes;
- (v)** Tin and sheetmetal;
- (w)** Mechanical tools; and
- (x)** Shop equipment.

(ii) (a) However, the provisions of this section shall not apply to a coin-operated car wash.

(b) As used in subdivision (3)(B)(ii)(a) of this section, “coin-operated car wash” means a car wash in which the car washing equipment is activated by the insertion of coins into a slot or receptacle and the labor of washing the exterior of the car or motor vehicle is performed solely by the customer or by mechanical equipment.

(iii) Additionally, the gross receipts tax levied in this section shall not apply to the repair or maintenance of railroad parts, railroad cars, and equipment brought into the State of Arkansas solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within this state.

(iv) The General Assembly determines and affirms that the original intent of subdivision (3) of this section which provides that gross receipts derived from certain services would be subject to the gross receipts tax was not intended to be applicable, nor shall Arkansas gross receipts taxes be collected, with respect to services performed on watches and clocks which are received by mail or common carrier from outside this state and which, after the service is performed, are returned by mail or common carrier or in the repairer's own conveyance to points outside this state.

(v) Additionally, the gross receipts tax levied in this section shall not apply to the repair or remanufacture of industrial metal rollers or platens that have a remanufactured, nonmetallic material covering on all or part of the roller or platen surface which are brought into the State of Arkansas solely and exclusively for the purpose of being repaired or remanufactured in this state and are then shipped back to the state of origin.

(vi) (a) The gross receipts tax levied in this section shall not apply to the service of alteration, addition, cleaning, refinishing, replacement, or repair of commercial jet aircraft, commercial jet aircraft components, or commercial jet aircraft subcomponents.

(b) "Commercial jet aircraft" means any commercial, military, private, or other turbine or turbo jet aircraft having a certified maximum take-off weight of more than twelve thousand five hundred pounds (12,500 lbs.).

(vii) The provisions of subdivision (3)(B)(i) of this section shall not apply to the services performed by a temporary or leased employee or other contract laborer on items owned or leased by the employer. The following criteria must be met for a person to be a temporary or leased employee:

(a) There must be a written contract with the temporary employment agency, employee leasing company, or other contractor providing the services;

(b) The employee, temporary employment agency, employee leasing company, or other contractor must not bear the risk of loss for damages caused during the performance of the contract. The person for whom the services are performed must bear the risk of loss; and

(c) The temporary or leased employee or contract laborer is controlled by the employer as if he or she were a full-time permanent employee. "Control" includes, but is not limited to, scheduling work hours, designating work duties, and directing work performance.

(viii) (a) Additionally, the gross receipts tax levied in this section shall not apply to the initial installation, alteration, addition, cleaning, refinishing, replacement, or repair of nonmechanical, passive, or manually operated components of buildings or other improvements or structures affixed to real estate, including, but not limited to, the following:

- (1) Walls;
- (2) Ceilings;
- (3) Doors;
- (4) Locks;
- (5) Windows;
- (6) Glass;

- (7) Heat and air ducts;
- (8) Roofs;
- (9) Wiring;
- (10) Breakers;
- (11) Breaker boxes;
- (12) Electrical switches and receptacles;
- (13) Light fixtures;
- (14) Pipes;
- (15) Plumbing fixtures;
- (16) Fire and security alarms;
- (17) Intercoms;
- (18) Sprinkler systems;
- (19) Parking lots;
- (20) Fences;
- (21) Gates;
- (22) Fireplaces; and
- (23) Similar components which become a part of

real estate after installation, except flooring.

(b) A contractor is deemed to be a consumer or user of all tangible personal property used or consumed by the contractor in providing such nontaxable services, in the same manner as when performing any other contract.

(c) This subdivision (3)(B)(viii) shall not apply to any services subject to tax pursuant to the terms of subdivision (3)(D) of this section.

(ix) The gross receipts tax levied in subdivision (3)(B)(i) of this section shall not apply to the service of initial installation of any property that is specifically exempted from the tax imposed by this chapter;

(C) (i) Service of cable television, community antenna television, and any and all other distribution of television, video, or radio services with or without the use of wires provided to subscribers or paying customers or users, including all service charges and rental charges, whether for basic service, premium channels, or other special service, and including installation and repair service charges and any other charges having any connection with the providing of these services.

(ii) The tax levied by this section does not apply to services purchased by a radio or television company for use in providing its services; and

(D) (i) Service of:

- (a) Providing transportation or delivery of money, property, or valuables by armored car;
- (b) Providing cleaning or janitorial work;
- (c) Pool cleaning and servicing;
- (d) Pager services;
- (e) Telephone answering services;
- (f) Lawn care and landscaping services;
- (g) Parking a motor vehicle or allowing the motor vehicle to be parked;
- (h) Storing a motor vehicle;
- (i) Storing furs; and

(j) Providing indoor tanning at a tanning salon.

(ii) As used in subdivision (3)(D)(i) of this section:

(a) "Landscaping" means the installation, preservation, or enhancement of ground covering by planting trees, bushes and shrubbery, grass, flowers, and other types of decorative plants;

(b) "Lawn care" means the maintenance, preservation, or enhancement of ground covering of nonresidential property and does not include planting trees, bushes and shrubbery, grass, flowers, and other types of decorative plants; and

(c) "Residential" means a single family residence used solely as the principal place of residence of the owner;

(4) Printing of all kinds, types, and characters, including the service of overprinting, and photography of all kinds;

(5) Tickets or admissions to places of amusement or to athletic, entertainment, or recreational events, or fees for access to or the use of amusement, entertainment, athletic, or recreational facilities;

(6) (A) Dues and membership fees to:

(i) Health spas, health clubs, and fitness clubs; and

(ii) Private clubs within the meaning of § 3-9-202(10) which hold any permit from the Alcoholic Beverage Control Board allowing the sale, dispensing, or serving of alcoholic beverages of any kind on the premises.

(B) (i) Except as provided in subdivision (6)(B)(ii) of this section, the gross receipts derived from services provided by or through a health spa, health club, fitness club, or private club shall not be subject to gross receipts tax unless the service is specifically enumerated as a taxable service under this chapter.

(ii) The gross receipts derived by a private club from the charges to members for the preparation and serving of mixed drinks or for the cooling and serving of beer and wine shall be subject to gross receipts tax as well as any supplemental taxes as provided by law;

(7) (A) Contracts, including service contracts, maintenance agreements and extended warranties, which in whole or in part provide for the future performance of or payment for services which are subject to gross receipts tax.

(B) The seller of the contract must collect and remit the tax due on the sale of the contract except when the contract is sold simultaneously with a motor vehicle in which case the purchaser of the vehicle shall pay gross receipts tax on the purchase of the contract at the time of vehicle registration; and

(8) The total gross receipts derived from the retail sale of any device used in playing bingo and any charge for admittance to facilities or for the right to play bingo or other games of chance regardless of whether such activity might otherwise be prohibited by law.

History. Acts 1941, No. 386, § 3; 1945, No. 64, § 1; 1951 (1st Ex. Sess.), No. 8, § 1; 1957, No. 19, § 1; 1959, No. 260, § 1; 1971, No. 214, § 1; 1973, No. 181, § 1; 1977, No. 500, § 1; 1979, No. 585, § 1; 1981, No. 471, § 1; 1981, No. 983, § 1; A.S.A. 1947, §§ 84-1903, 84-1903.4; Acts 1987, No. 27, § 2; 1987, No. 188, § 1; 1989, No. 769, § 1; 1989 (3rd Ex. Sess.), No. 89, § 1; 1992 (1st Ex. Sess.), No. 58, § 2; 1992 (1st Ex. Sess.), No. 61, § 2; 1992 (2nd Ex. Sess.), No. 5, §§ 1, 2; 1993, No. 282, § 1; 1993, No. 1245, § 4; 1995, No. 257, § 1; 1995, No. 284, § 1; 1995, No. 835, § 2; 1995, No. 1040, § 1; 1997,

No. 1076, § 2; 1997, No. 1252, § 1; 1997, No. 1263, § 1; 1997, No. 1359, § 32; 1999, No. 1152, § 2; 1999, No. 1348, § 1; 2001, No. 907, § 2; 2001, No. 1064, § 1; 2003, No. 1112, § 1; 2003, No. 1273, § 6; 2003 (2nd Ex. Sess.), No. 107, §§ 5, 6; 2005, No. 1879, § 1; 2007, No. 154, §§ 3, 4; 2007, No. 110, § 3; 2009, No. 384, § 3.

A.C.R.C. Notes. Acts 1997, No. 1359, § 32, added a subdivision (3)(E)(ii)(g) to this section which read as follows:

“The provisions of subdivision (3)(E)(i) of this section shall not be applicable to services provided in collecting dishonored checks.” However, Acts 1997, No. 1263, § 1, specifically repealed the language of former subdivisions (3)(E)(i) and (ii) that applied the tax imposed by this section on debt collection services.

Publisher's Notes. Acts 1992 (2nd Ex. Sess.), No. 5, § 6, provided:

“The revenues derived from the tax collected under this act shall be remitted to the State Treasurer, who shall deposit the revenues in the State Treasury as general revenues.”

Amendments. The 2003 amendment by No. 1112 redesignated former (6) as present (6)(A); in present (6)(A), inserted “membership”; in (6)(A)(ii), inserted “within the meaning of § 3-9-202(10)” and added (6)(B).

The 2003 amendment by No. 1273 repealed (3)(A).

The 2003 (2nd Ex. Sess.) amendment inserted “initial installation” and “flooring” in the introductory language of (3)(C)(i); inserted “initial installation” in (3)(C)(viii)(a); deleted former (3)(C)(viii)(a)(2) and redesignated the remaining subdivisions accordingly; added “except flooring” to the end of (3)(C)(viii)(a)(23); and added (3)(C)(ix).

The 2005 amendment added (3)(A)(viii) and (3)(A)(ix).

The 2007 amendment by No. 110, substituted “Except for food and food ingredients that are taxed under § 26-52-317, there” for “There” in the introductory language.

The 2007 amendment by No. 154, § 3 rewrote (5)(B). Section 4 deleted former (5)(B) and made related changes.

The 2009 amendment rewrote (2).

Effective Dates. Acts 2001, No. 907, § 2: amendment effective by its own terms on Aug. 1, 2002.

Acts 2003 (2nd Ex Sess.), No. 107, § 6: amendment effective by its own terms on July 1, 2004.

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific

effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2007, No. 154, § 7, provided: “Effective Date. Sections 1-6 of this act shall be effective on the first day of the calendar month following the effective date of this act.”

Research References

A.L.R.

Sales and use tax exemption for medical supplies. 30 A.L.R.5th 494.

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

Case Notes

Applicability.

Construction Materials.

Federal Cable Act.

Mobile Homes.

Satellite Transmissions.

Service.

Sewer Services.

Applicability.

Subdivision (3)(B) of this section does not apply to the business of renting and managing privately owned houses and townhouses for individual owners. *Leathers v. Active Realty, Inc.*, 317 Ark. 214, 876 S.W.2d 583 (1994).

Entities not described in this section are not included in the services taxable under subdivision (3)(B) of this section. *Leathers v. Active Realty, Inc.*, 317 Ark. 214, 876 S.W.2d 583 (1994).

Construction Materials.

The General Assembly intended to impose tax on materials such as gravel to be used in the construction of a temporary road to an oil-extraction project at the time of the sale between the supplier and the contractor, but the materials cannot again be taxed when the contractor bills his customers for constructing the roads on the sites. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Federal Cable Act.

Subdivision (3)(D)(i) of this section fits within the area of discretion left by the Federal Cable Communications Policy Act (47 U.S.C. § 521(1), (3)) to allow state and local communities to regulate and tax cable services as they choose. *Medlock v. Leathers*, 311 Ark. 175, 842 S.W.2d 428 (1992), cert. denied, 508 U.S. 960, 113 S. Ct. 2929, 124 L. Ed. 2d 680 (1993).

Mobile Homes.

Chancellor erred in holding that taxpayers' mobile homes, which were attached to rented lots in a mobile home park, were fixtures and not tangible personal property subject to the gross receipts tax; evidence did not support the finding that the annexation of the mobile homes was intended to be permanent. *Pledger v. Halvorson*, 324 Ark. 302, 921 S.W.2d 576 (1996).

Satellite Transmissions.

This state, primarily a rural state, may classify between satellite and cable for taxation purposes because the state needs a satellite television transmission in those geographic areas where cable services are not feasible. *Medlock v. Leathers*, 311 Ark. 175, 842 S.W.2d 428 (1992), cert. denied, 508 U.S. 960, 113 S. Ct. 2929, 124 L. Ed. 2d 680 (1993).

Service.

The purchase price of a motor vehicle extended warranty contract is not taxable under subdivision (3)(C)(i) of this section nor under § 26-52-103(a)(4), because an extended warranty is not “service” of a motor vehicle. *State, Dep't of Fin. & Admin. v. Staton*, 325 Ark. 341, 942 S.W.2d 804 (1996).

Sewer Services.

Company that leased toilets failed to prove beyond a reasonable doubt that it was exempt from

the gross-receipts tax as a public sewer service. *Weiss v. Best Enters., Inc.*, 323 Ark. 712, 917 S.W.2d 543 (1996).

Cited: *Leathers v. A & B Dirt Movers, Inc.*, 311 Ark. 320, 844 S.W.2d 314 (1992); *Arkansas Glass Container Corp. v. Pledger*, 320 Ark. 10, 894 S.W.2d 599 (1995); *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995); *Weiss v. Central Flying Serv., Inc.*, 326 Ark. 685, 934 S.W.2d 211 (1996); *Russell v. State*, 367 Ark. 557, 242 S.W.3d 265 (2006).

26-52-302. Additional taxes levied.

(a) (1) In addition to the excise tax levied upon the gross proceeds or gross receipts derived from all sales by this chapter, except for food and food ingredients that are taxed under § 26-52-317, there is levied an excise tax of one percent (1%) upon all taxable sales of property and services subject to the tax levied in this chapter.

(2) This tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(3) In computing gross receipts or gross proceeds as defined in § 26-52-103, a deduction shall be allowed for bad debts resulting from the sale of tangible personal property.

(b) (1) In addition to the excise tax levied upon the gross proceeds or gross receipts derived from all sales by this chapter, except for food and food ingredients that are taxed under § 26-52-317, there is hereby levied an excise tax of one-half of one percent (0.5%) upon all taxable sales of property and services subject to the tax levied in this chapter.

(2) This tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(3) However, in computing gross receipts or gross proceeds as defined in § 26-52-103, a deduction shall be allowed for bad debts resulting from the sale of tangible personal property.

(c) (1) Except for food and food ingredients that are taxed under § 26-52-317, there is levied an additional excise tax of one-half of one percent (0.5%) upon all taxable sales of property and services subject to the tax levied by this chapter.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this chapter, for the collection, reporting, and payment of Arkansas gross receipts taxes.

(d) (1) Except for food and food ingredients that are taxed under § 26-52-317, there is levied an additional excise tax of seven-eighths of one percent (0.875%) upon all taxable sales of property and services subject to the tax levied by this chapter.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as prescribed by this chapter, for the collection, reporting, and payment of Arkansas gross receipts taxes.

History. Acts 1971, No. 214, § 2; 1979, No. 401, § 48; 1983 (1st Ex. Sess.), No. 63, § 1; A.S.A. 1947, § 84-1903.1; Acts 1991, No. 3, § 1; 1999, No. 1492, § 3; 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 8; 2003 (2nd Ex. Sess.), No. 107, § 1; 2007, No. 110, § 4.

A.C.R.C. Notes. As to distribution of moneys collected pursuant to subsection (a) of this section to the Court-Ordered Desegregation Trust Fund, see A.C.R.C. Notes, Title 6, Chapter 20, Subchapter 1.

The amendment of this section by Acts 1999, No. 1492, § 3, added subsection (c) to the section,

but made the effectiveness of the addition of the subsection contingent upon the occurrence of the following: (a) That the General Assembly refers a constitutional amendment to be approved during the 2000 general election; (b) That the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and (c) That the constitutional amendment is approved.

Subsection (c) of this section became effective because in House Joint Resolution 1015 of 1999 the General Assembly referred to a vote of the electors at the 2000 general election a constitutional amendment that provided for a limit on the increase in the assessed value of real property as a result of a county-wide reappraisal, and the constitutional amendment was approved. This constitutional amendment is now incorporated into the Arkansas Constitution as Amendment 79.

As enacted by Acts 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 8, subdivision (c)(1) began: "Beginning January 1, 2001,".

As enacted by Acts 2003 (2nd Ex. Sess.), No. 107, § 1, subdivision (d)(1) began: "Beginning March 1, 2004,".

Publisher's Notes. Acts 1983 (1st Ex. Sess.), No. 108, §§ 1, 2, provided that tangible personal property which becomes a recognizable part of a completed structure or improvement to real property and which is purchased for use or consumption in the performance of construction contracts shall be exempt from any additional gross receipts tax or compensating tax levied by the 74th General Assembly during the First Extraordinary Session, 1983, when the construction contract for which the property was purchased is entered into prior to the effective date of the act levying an additional gross receipts tax or compensating tax; for the purposes of this act "construction contract" means a contract to construct, manage, or supervise the construction, erection, or substantial modification of a building or other improvement or structure affixed to real property, and the term "construction contract" shall not mean contract to produce tangible personal property.

Amendments. The 2003 (2nd Ex. Sess.) amendment added (d).

The 2007 amendment inserted "except for food and food ingredients that are taxed under § 26-52-317" in (a)(1) and (b)(1) and substituted "Except for food and food ingredients that are taxed under § 26-52-317, there" for "There" at the beginning of (c)(1) and (d)(1).

Effective Dates. Acts 1999, No. 1492, § 8, provided:

"The provisions of Section 5 shall be effective 90 days after adjournment. The provisions of Sections 1, 2, 3, 4, 6 and 7 shall not be effective unless; a) the General Assembly refers a constitutional amendment to be approved during the 2000 general election; b) the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and c) the amendment is approved. If those conditions are met, Sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Claims for refund may be filed in 2001 pursuant to §§ 26-51-601 — 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999."

Research References

U. Ark. Little Rock L.J.

Survey, Constitutional Law, 14 U. Ark. Little Rock L.J. 301.

Case Notes

Cited: Arkansas Writers' Project, Inc. v. Ragland, 481 U.S. 221, 107 S. Ct. 1722, 95 L. Ed. 2d 209 (1987).

26-52-303. Border cities or towns — Tax rate — Exemptions.

(a) The rate of tax shall be one percent (1%) above the state sales tax rate as levied by the General Assembly, by initiatives enacted by the people of the State of Arkansas, and by amendments to the Arkansas Constitution if:

(1) An Arkansas city or incorporated town is divided by a state line from an incorporated city or town in an adjoining state;

(2) The city or town in the adjoining state is of greater population than the Arkansas city or town;

(3) A tax imposed in the adjoining state is in the nature of a selective sales tax or limited to specific items as a special excise tax; and

(4) The border city has voted to levy an additional one percent (1%) gross receipts tax in the city in lieu of paying state income taxes by individuals who are residents of the city as authorized by § 26-52-601 et seq.

(b) With respect to a motor vehicle sold in any such city or incorporated town, the exemption authorized in this section shall be applicable only to a motor vehicle sold to and registered by a bona fide resident of such an Arkansas city or incorporated town and shall not be applicable to a motor vehicle sold to a nonresident.

(c) (1) The Director of the Department of Finance and Administration shall require any person claiming this exemption to file a sworn statement in writing that the person is a resident of that city or incorporated town and such other information as the director may determine is necessary to establish the residence of the person.

(2) Upon conviction, a person filing a false statement or otherwise falsely obtaining or assisting another person to falsely obtain the benefits of the exemption authorized in this section is guilty of a violation and shall be fined in a sum of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History. Acts 1941, No. 386, § 4; 1957, No. 158, § 1; 1957, No. 233, § 1; 1961, No. 252, § 1; 1965, No. 122, § 1; 1971, No. 214, § 2; 1979, No. 401, § 48; 1983 (1st Ex. Sess.), No. 63, § 1; A.S.A. 1947, §§ 84-1903.1, 84-1904; Acts 1991, No. 3, § 2; 1995, No. 1008, § 3; 1999, No. 1492, § 5; 2003, No. 1273, § 7; 2009, No. 655, § 12.

Amendments. The 2003 amendment rewrote (a); deleted former (b); and redesignated former (c) and (d) as present (b) and (c), respectively.

The 2009 amendment inserted "Upon conviction" and "is guilty of a violation and" in (c)(2), and made related and minor stylistic changes.

Effective Dates. Acts 1999, No. 1492, § 8, provided:

"The provisions of Section 5 shall be effective 90 days after adjournment. The provisions of Sections 1, 2, 3, 4, 6 and 7 shall not be effective unless; a) the General Assembly refers a constitutional amendment to be approved during the 2000 general election; b) the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and c) the amendment is approved. If those conditions are met, Sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Claims for refund may be filed in 2001 pursuant to §§ 26-51-601 — 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999." Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the

Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Case Notes

Exemptions.

Exemptions.

A sale by an Arkansas corporation located in a city adjoined to a city across the state line in a state with no sales tax is exempt from taxation under this section even though the item sold is delivered out side the city limits of either city. Commissioner of Revenues v. Dillard's, Inc., 224 Ark. 826, 276 S.W.2d 424 (1955).

Cited: Frank Lyon Co. v. United States, 435 U.S. 561, 98 S. Ct. 1291, 55 L. Ed. 2d 550 (1978); Southern Steel & Wire Co. v. Wooten, 276 Ark. 37, 631 S.W.2d 835 (1982).

26-52-304. Tax levied on sales of computer software and maintenance of computer hardware.

(a) The excise tax levied by this chapter and by any act supplemental thereto, is levied on gross receipts or gross proceeds received from the following:

(1) (A) Sales of computer software, including prewritten computer software, which shall be taxed as sales of tangible personal property.

(B) As used in this section:

(i) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(ii) (a) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(b) "Computer software" does not include software that is delivered electronically or by load and leave;

(iii) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(iv) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(v) "Load and leave" means delivery to the purchaser by use of a tangible storage media in which the tangible storage media is not physically transferred to the purchaser; and

(vi) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser; and

(2) Service of repairing or maintaining computer equipment or hardware in any form.

(b) [Repealed.]

(c) [Repealed.]

History. Acts 1983 (1st Ex. Sess.), No. 88, §§ 1, 3; A.S.A. 1947, §§ 84-1903.5, 84-1903.5n; Acts 2007, No. 181, § 12; 2009, No. 384, § 4; 2009, No. 655, § 13.

Amendments. The 2007 amendment added (a)(1)(B); rewrote present (a)(1)(A); and made related changes.

The 2009 amendment by No. 384 inserted “not” in (a)(1)(B)(vi).

The 2009 amendment by No. 655 deleted (b) and (c).

Effective Dates. Acts 2007, No. 181, § 1: Jan. 1, 2008, by its own terms.

Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

Research References

A.L.R.

Computer software or printout transactions as subject to state sales or use tax. 36 A.L.R.5th 133. **Am. Jur.** 71 Am. Jur. 2d State Tax. § 264.5.

26-52-305. Financial institutions.

Sales of tangible personal property and services to financial institutions shall be subject to the Arkansas gross receipts tax levied in this chapter the same as such sales to other business corporations.

History. Acts 1973, No. 182, § 6; A.S.A. 1947, § 84-1937.

Publisher's Notes. For definitions applicable to, and legislative intent concerning, this section, see §§ 26-26-1502 and 26-50-101.

Effective Dates. Acts 1973, No. 182, § 9 provided that this act shall be in effect on and after January 1, 1973, and shall apply to tax years after said date.

26-52-306. Sales of alcoholic beverages.

All sales of beer, wine, liquor, or any intoxicating beverages shall be regularly reported by vendors as taxable receipts under the provisions of this chapter.

History. Acts 1941, No. 386, § 4; 1949, No. 405, § 1; A.S.A. 1947, § 84-1904.

Publisher's Notes. Acts 1949, No. 405, § 2, provided that this act shall be cumulative and a repeal only of the law which exempts the proceeds from the sales of beer, wine, liquor, and/or any intoxicating beverage from the Gross Receipts Tax Law.

Case Notes

Cited: Frank Lyon Co. v. United States, 435 U.S. 561, 98 S. Ct. 1291, 55 L. Ed. 2d 550 (1978); Southern Steel & Wire Co. v. Wooten, 276 Ark. 37, 631 S.W.2d 835 (1982).

26-52-307. Contractors as consumer users.

(a) (1) Sales of services and tangible personal property, including materials, supplies, and equipment, made to contractors who use them in the performance of any contract are declared to be sales to consumers or users and not sales for resale.

(2) Subsequent transfers of title or possession of such property used in the performance of a contract by contractors are not subject to the tax imposed by this chapter.

(b) Provided that, if the performance of a contract or any portion thereof by a contractor constitutes the performance of a taxable service under the terms of § 26-52-301(3), then

the entire gross proceeds or gross receipts derived from the performance of such taxable services, including the sale or transfer of title or possession of any materials or supplies used or consumed in performing such taxable services shall be subject to the tax imposed by this chapter.

(c) Contractors shall be entitled to receive a gross receipts tax credit, tax offset, or refund for any gross receipts tax or use tax paid on materials or supplies used or consumed by them which become a part of real estate in performing taxable services.

History. Acts 1941, No. 386, § 3; 1945, No. 64, § 1; 1959, No. 260, § 1; 1977, No. 500, § 1; A.S.A. 1947, § 84-1903; Acts 1995, No. 835, § 3.

Case Notes

Constitutionality.
Federal Contracts.
Materials.

Constitutionality.

Collection of sales tax on sale of materials by contractor to builder involved in contract made prior to effective date of sales tax law was not unconstitutional as impairing the obligation of the contract. *Wiseman v. Gillioz*, 192 Ark. 950, 96 S.W.2d 459 (1936) (decision under prior law).

Federal Contracts.

Equipment purchased by private contractors as agents of the U.S. Navy under a contract with the Navy to build an ammunition depot was not subject to the Arkansas sales tax. *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 74 S. Ct. 403, 98 L. Ed. 546 (1954); *Parker v. Kern-Limerick, Inc.*, 223 Ark. 464, 266 S.W.2d 298 (1954).

Materials.

General Assembly intended to impose the tax on materials, such as gravel to be used in the construction of a temporary road to an oil-extraction project, at the time of the sale between the supplier and the contractor, but the materials cannot again be taxed when the contractor bills his customers for constructing the roads on the sites. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Cited: *U-Drive-'Em Serv. Co. v. Hardin*, 205 Ark. 501, 169 S.W.2d 584 (1943); *Commissioner of Revenues v. Belote*, 226 Ark. 295, 289 S.W.2d 665 (1956); *Republic Steel Corp. v. McCastlain*, 240 Ark. 979, 403 S.W.2d 90 (1966); *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992).

26-52-308. Receipts from certain coin-operated machines taxed.

(a) Every person engaged in the business of owning, operating, or leasing coin-operated pinball machines, coin-operated music machines, coin-operated mechanical games, and all other similar devices, shall:

- (1) Obtain and hold a permit as provided by this chapter; and
- (2) Make a monthly report and remittance of gross receipts tax of three percent (3%) of the gross receipts or gross proceeds derived from the operation or use of coin-operated pinball machines, coin-operated music machines, coin-operated mechanical games, and similar devices.

(b) (1) The provisions of this section shall be cumulative to the provisions of this chapter.

(2) The purpose of this section is that the gross receipts tax levied by this chapter shall apply to gross receipts or gross proceeds derived from the operation or use of coin-operated pin-ball machines, coin-operated music machines, coin-operated mechanical

games, and all other similar devices.

History. Acts 1963, No. 265, §§ 1, 2, 4; A.S.A. 1947, §§ 84-1930, 84-1930n, 84-1932.

26-52-309. Deduction for bad debts generally.

(a) (1) A taxpayer is allowed a deduction from taxable sales for a bad debt.

(2) Any deduction taken under this section that is attributed to a bad debt shall not include interest.

(b) The federal definition of “bad debt” in 26 U.S.C. § 166, as in effect on January 1, 2007, is the basis for calculating a bad debt deduction under this section except that the amount calculated pursuant to 26 U.S.C. § 166 shall be adjusted to exclude:

(1) A financing charge or interest;

(2) A sales or use tax charged on the purchase price;

(3) An uncollectible amount on property that remains in the possession of the taxpayer or seller, until the full purchase price is paid; and

(4) An expense incurred in attempting to collect any debt or repossessed property.

(c) (1) A bad debt may be deducted on the sales and use tax return of a taxpayer for the tax period during which:

(A) The bad debt is written off as uncollectible in the taxpayer's books and records; and

(B) The taxpayer is eligible to deduct the bad debt for federal income tax purposes if the taxpayer or seller kept accounts on a cash basis or could be eligible to be claimed if the taxpayer or seller kept accounts on an accrual basis.

(2) For purposes of this subsection, a taxpayer who is not required to file a federal income tax return may deduct a bad debt on a sales and use tax return filed for the period in which the bad debt is written off as uncollectible in the taxpayer's books and records if the taxpayer would be eligible for a bad debt deduction for federal income tax purposes if the taxpayer were required to file a federal income tax return.

(d) If a bad debt deduction under this section is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax imposed by this chapter on the amount collected shall be paid and reported on the sales and use tax return filed for the tax period in which the collection is made.

(e) (1) If the amount of bad debt exceeds the amount of taxable sales for the tax period during which the bad debt is written off, the taxpayer may file a claim for a refund.

(2) The refund claim shall be filed within three (3) years from the due date of the sales and use tax return on which the bad debt could first be claimed.

(f) (1) If filing responsibilities have been assumed by a certified service provider, the certified service provider may claim, on behalf of the taxpayer, any bad debt deduction provided by this section.

(2) The certified service provider shall credit or refund the full amount of any bad debt deduction or refund received to the taxpayer.

(g) For the purposes of reporting a payment received on a previously claimed bad debt, any payment made on a debt or account is applied first proportionally to the taxable price of the tangible personal property or service and the sales tax on the tangible personal property or service and second to interest, service charges, and any other charges.

(h) If the books and records of a taxpayer claiming a bad debt deduction under this

section support an allocation of the bad debt among the states which are members of the Streamlined Sales and Use Tax Agreement, the allocation is permitted.

(i) Except as provided in subsection (f) of this section, the only party entitled to a bad debt deduction or refund pursuant to this section is the taxpayer that originally reported and remitted the tax in question.

History. Acts 1983 (1st Ex. Sess.), No. 94, § 1; A.S.A. 1947, § 84-1950; Acts 2003, No. 1273, § 8; 2007, No. 181, § 13.

Amendments. The 2003 amendment inserted the subdivision designations in (a); inserted “on the return ... income tax purposes” in (a)(1); added (b)(1)(B); substituted “return filed for the period in which the collection is made” for “next return due after the collection” in (e); and added (f).

The 2007 amendment rewrote the section.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

Case Notes

Applicability.

Applicability.

Trial court did not err in denying car manufacturer a refund or deduction of the pro rata portion of gross receipts tax related to bad debts arising out of the sale and financing of motor vehicles as the car manufacturer was not a “taxpayer” for the purposes of the Arkansas Bad Debt Statute, § 26-52-101 et seq. *DaimlerChrysler Servs. N. Am., LLC v. Weiss*, 360 Ark. 188, 200 S.W.3d 405 (2004).

Trial court erred in finding that a corporation was a “taxpayer” for the purposes of this section and in granting a refund or deduction of the pro rata portion of gross receipts tax related to bad debts

arising out of the sale and financing of motor vehicles in Arkansas; it was possible to be a taxpayer for one kind of tax, while not a taxpayer for another kind of tax. *Weiss v. Am. Honda Fin. Corp.*, 360 Ark. 208, 200 S.W.3d 381 (2004).

Lender was not entitled to bad-debt refunds, under this section, of sales taxes paid on defaulted consumer credit accounts with retailers because: (1) the retailer, not the lender, was the "taxpayer" this section; and (2) the lender was not entitled to such refunds as an assignee of the retailer. *Citifinancial Retail Servs. Div. of Citicorp Trust Bank, Fsb v. Weiss*, 372 Ark. 128, 271 S.W.3d 494 (2008).

26-52-310. [Repealed.]

Publisher's Notes. This section, concerning short-term rentals of tangible personal property, was repealed by Acts 2007, No. 182, § 2. The section was derived from Acts 1987 (1st Ex. Sess.), No. 13, §§ 2, 4; 1989, No. 510, §§ 2-4; 1991, No. 1026, § 1; 1999, No. 1220, § 2.

26-52-311. [Repealed.]

Publisher's Notes. This section, concerning rental vehicle tax, was repealed by Acts 2007, No. 182, § 3. The section was derived from Acts 1989, No. 510, §§ 1, 3, 4; 1993, No. 1059, § 1; 1993, No. 1152, § 1; 1993, No. 1162, § 1; 1999 No. 1220, § 3; 2001, No. 949, § 1; 2003 (2nd Ex. Sess.), No. 107, § 2; 2005, No. 664, § 1.

26-52-312. [Repealed.]

Publisher's Notes. This section, concerning residential moving tax, was repealed by Acts 2007, No. 182, § 4. The section was derived from Acts 1993, No. 1162, § 2.

26-52-313. [Repealed.]

Publisher's Notes. This section, concerning long-term rental vehicle tax, was repealed by Acts 2007, No. 182, § 5. The section was derived from Acts 1997, No. 1076, § 3.

26-52-314. Prepaid calling service and prepaid wireless calling service.

(a) Sales of a prepaid calling service or a prepaid wireless calling service and the recharge of a prepaid calling service or a prepaid wireless calling service shall be subject to the Arkansas gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) As used in this subchapter:

(1) "Prepaid calling service" means the right to exclusively access a telecommunication service, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(2) "Prepaid telephone calling card" or "prepaid authorization number" mean the exclusive purchase of telephone or telecommunications services, paid for in advance, which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed;

(3) "Prepaid wireless calling service" means a telecommunication service that

provides the right to utilize a mobile wireless service as well as other non-telecommunications services, including the download of a digital product delivered electronically and ancillary services, which must be paid for in advance and that is sold in predetermined units of dollars of which the number declines with use in a known amount; and

(4) “Recharge” means the purchase of additional telephone or telecommunication services for a previously purchased prepaid calling service or prepaid wireless calling service.

(c) (1) A sale of a prepaid calling service or a prepaid wireless calling service or the recharge of a prepaid calling service or a prepaid wireless calling service is subject to gross receipts tax at the point of sale by the retail vendor.

(2) If the sale or recharge of a prepaid calling service or a prepaid wireless calling service does not take place at the retail vendor's place of business, it shall be sourced in accordance with § 26-52-521(b).

(d) The gross receipts tax levied by this section on the sale of a prepaid calling service or a prepaid wireless calling service and the recharge of a prepaid calling service or a prepaid wireless calling service shall be due on all such sales occurring on or after July 1, 1999.

(e) The Director of the Department of Finance and Administration shall promulgate rules to implement this section.

History. Acts 1999, No. 1348, § 2; 2007, No. 181, § 44; 2007, No. 827, § 221.

A.C.R.C. Notes. Present subsection (d) was also amended by Act 2007, No. 827, § 221. However, pursuant to Acts 2007, No. 827, § 240, present subsection (d) is set out as amended by Acts 2007, No. 181, § 44.

Amendments. The 2007 amendment by No. 181 substituted “Prepaid calling service and prepaid wireless service calling service” for “Prepaid telephone calling cards” in the section heading; substituted “a prepaid calling service or a prepaid wireless calling service” for “prepaid telephone calling cards or prepaid authorization numbers” or similar language twice in (a), twice in (c)(1), once in (c)(2), and twice in (d)(1); in (a), deleted “Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and by any act supplemental to the” following “tax levied by the,” and added “and the compensating use tax ... § 26-53-101 et seq.”; inserted present (b)(1) and (b)(3), redesignated the remaining subdivisions of (b) accordingly, and substituted “for a previously purchased ... calling service” for “without having to acquire a different prepaid telephone calling card or prepaid authorization number” in present (b)(4); rewrote (c)(2); added (e); and made related changes. The 2007 amendment by No. 827 deleted (d)(2).

26-52-315. Telecommunications and related services.

(a) The gross receipts or gross proceeds derived from the sale of the following are subject to the gross receipts tax levied by this chapter:

(1) Any intrastate, interstate, and international telecommunications service that is sourced in this state in accordance with subsection (d) of this section;

(2) Any ancillary service; and

(3) Any installation, maintenance, or repair service of telecommunication equipment.

(b) The following services shall not be taxable under this section:

(1) Any interstate or international private communications service;

(2) Any interstate or international 800 service or 900 service; or

(3) (A) Any prepaid calling service or prepaid wireless calling service.

(B) However, prepaid calling service and prepaid wireless calling service are taxed under § 26-52-314.

(c) (1) (A) The Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. §§ 116-126, as in effect on January 1, 2007, is adopted in its entirety.

(B) All charges for mobile telecommunications services are deemed to be provided by the customer's home service provider and sourced to the customer's place of primary use and are subject to gross receipts tax based upon the customer's place of primary use as determined by the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. §§ 116-126, as in effect on January 1, 2007.

(2) (A) (i) Any customer who alleges that an amount of tax, charge, or fee or that the assignment of the place of primary use or taxing jurisdiction included on a billing is erroneous shall notify the home service provider in writing.

(ii) The customer must include the street address for the customer's place of primary use, the account name and number for which the correction of tax assignment is sought, a description of the alleged error, and any other information requested by the home service provider necessary to process the request.

(B) (i) The home service provider shall conduct a review of its records and the electronic database or enhanced zip code used to determine the place of primary use within sixty (60) days of receiving the notice from its customer.

(ii) If it is determined that the amount of the tax, charge, or fee or that the assignment of the place of primary use or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax, charge, or fee erroneously collected from the customer for a period of up to three (3) years.

(iii) If it is determined that the amount of the tax, charge, or fee or assignment of the place of primary use or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer.

(C) A customer seeking correction of assignment of place of primary use or taxing jurisdiction or a refund or credit of taxes, charges, or fees erroneously collected by the home service provider must seek to have the error corrected under subdivision (c)(2)(A) of this section before any cause of action arises as a result of the error.

(3) (A) Charges for nontaxable services that are aggregated with other charges for communications services that are taxable and are not separately stated on the bill or invoice shall not be subject to the gross receipts tax if the seller can reasonably identify the nontaxable charges on the seller's books and records kept in the regular course of business.

(B) If the nontaxable charges cannot reasonably be identified, the gross receipts from the sales of both taxable and nontaxable communications services billed on a combined basis shall be attributed to the taxable communications services.

(C) The burden of proving nontaxable receipts or charges is on the seller of the communications services.

(d) (1) Except for the telecommunications services in subdivision (d)(3) of this section, the sale of telecommunications services sold on a call-by-call basis shall be sourced to:

(A) Each state, county, or city jurisdiction where the call originates and terminates in that jurisdiction; or

(B) Each state, county, or city where the call either originates or

terminates and in which the service address is also located.

(2) Except for the telecommunications services in subdivision (d)(3) of this section, a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

(3) The sale of the following telecommunication services shall be sourced to each state, county, or city as follows:

(A) A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. §§ 116-126, as in effect on January 1, 2007;

(B) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

(i) The seller's telecommunications system; or

(ii) Information received by the seller from its service provider if the system used to transport the signals is not that of the seller;

(C) (i) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with § 26-52-521(b).

(ii) Except for a sale of prepaid wireless calling service that is a prepaid telecommunications service, the rule provided in § 26-52-521(b)(5) shall include as an option the location associated with the mobile telephone number; or

(D) A sale of a private communication service is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to each state, county, or city in which the customer channel termination point is located;

(ii) Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in the state, county, and city in which the customer channel termination points are located;

(iii) Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of a channel are separately charged is sourced fifty percent (50%) in each state, county, and city in which the customer channel termination points are located; or

(iv) Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(4) The sale of an ancillary service is sourced to the customer's place of primary use.

(e) As used in this section:

(1) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 C.F.R. § 22.99, as in effect on January 1, 2007, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(2) "Ancillary service" means a service that is associated with or incidental to the provision of a telecommunications service, including without limitation detailed telecommunications billing, directory assistance, vertical service, and voice mail services;

(3) “Call-by-call basis” means any method of charging for a telecommunications service when the price is measured by individual calls;

(4) “Communications channel” means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(5) (A) “Customer” means the person or entity that contracts with the seller of a telecommunications service.

(B) If the end user of a telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but this subdivision (e)(5)(B) only applies for the purpose of sourcing sales of a telecommunications service under subsection (d) of this section.

(C) “Customer” does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(6) “Customer channel termination point” means the location where the customer either inputs or receives the communications;

(7) (A) “End user” means the person who utilizes the telecommunications service.

(B) In the case of an entity, “end user” means the individual who utilizes the telecommunications service on behalf of the entity;

(8) “Home service provider” means the same as that term is defined in the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 124(5), as in effect on January 1, 2007;

(9) (A) “International” means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively.

(B) United States includes the District of Columbia or a United States territory or possession;

(10) “Interstate” means a telecommunications service that originates in one (1) United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession;

(11) “Intrastate” means a telecommunications service that originates in one (1) United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession;

(12) “Mobile telecommunications service” means the same as that term is defined in the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 124(7), as in effect on January 1, 2007;

(13) (A) “Place of primary use” means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(B) In the case of a mobile telecommunications service, “place of primary use” must be within the licensed service area of the home service provider;

(14) (A) “Postpaid calling service” means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card or by charge made to which a telephone number which is not associated with the origination

or termination of the telecommunications service.

(B) “Postpaid calling service” includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service;

(15) “Prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(16) “Prepaid wireless calling service” means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the downloading of digital products delivered electronically, content, and ancillary services that must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(17) “Private communication service” means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points regardless of the manner in which the channel or channels are connected and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels;

(18) (A) “Service address” means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates regardless of where the call is billed or paid.

(B) If the location in subdivision (e)(18)(A) of this section is not known, “service address” means the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or in information received by the seller from its service provider if the system used to transport the signals is not that of the seller.

(C) If the location in subdivisions (e)(18)(A) and (B) of this section is not known, “service address” means the location of the customer's place of primary use;

(19) (A) “Telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point or between or among points.

(B) “Telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.

(C) “Telecommunications service” does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser when such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a

customer's premises;

- (iii) Tangible personal property;
- (iv) Advertising, including but not limited to directory advertising;
- (v) Billing and collection services provided to third parties;
- (vi) Internet access service;
- (vii) (a) Radio and television audio and video programming

services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider.

(b) Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 U.S.C. § 522(6), as in effect on January 1, 2007, and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3, as in effect on January 1, 2007;

(viii) Ancillary services; or

(ix) A digital product delivered electronically, including but not limited to software, music, video, reading material, or a ring tone;

(20) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call; and

(21) (A) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service.

(B) "900 service" does not include:

(i) The charge for collection services provided by the seller of the telecommunications service to the subscriber; or

(ii) Service or product sold by the subscriber to the subscriber's customer.

(f) The Department of Finance and Administration shall promulgate rules to implement this section.

History. Acts 2003, No. 1273, § 9; 2005, No. 1879, § 2; 2007, No. 181, § 14; 2007, No. 860, § 2.

Amendments. The 2005 amendment added (b)(4).

The 2007 amendment by No. 181 inserted "and related" in the section heading; rewrote (a) through (c) as present (a) and (b), added present (d)(4), (e)(2), (e)(9) through (11), (e)(16), (e)(19) through (21), and (f), and redesignated subdivisions accordingly; inserted "as in effect January 2007" or similar language in (c)(1)(A), (c)(1)(B), (d)(3)(A), (e)(1), (e)(8), and (e)(12); substituted "(c)(2)(A)" for "(d)(2)(A)" in present (c)(ii)(C); substituted "(d)(3)" for "(e)(3)" in present (d)(1) and (d)(2); inserted "or a sale of a prepaid wireless calling service" in present (d)(3)(C)(i); substituted "prepaid wireless calling service" for "mobile telecommunications service" in present (d)(3)(C)(ii); substituted "(e)(5)(B)" for "(f)(4)(B)" and "(d)" for "(e)" in present (e)(5)(B); inserted "except a prepaid wireless calling service" in present (e)(14)(B); in present (e)(18), substituted "(e)(18)(A)" for "(f)(13)(A)" in (e)(18)(B) and substituted "(e)(18)(A) and (B)" for "(f)(13)(A) and (B)" in (e)(18)(C); and made related changes.

The 2007 amendment by No. 860 added "or prepaid wireless calling service" at the end of (b)(3)(A); and substituted "and prepaid wireless calling service are" for "is" in (b)(3)(B).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses,

and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 181, § 45, provided: "Sections 1 through 43 of this act are effective on January 1, 2008."

Acts 2007, No. 860, § 7, provided: "Sections 1–6 of this act will become effective on January 1, 2008."

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-52-316. Services subject to tax.

(a) The gross proceeds or gross receipts derived from the following services are subject to this chapter:

- (1) Wrecker and towing services;
- (2) Collection and disposal of solid wastes;
- (3) The cleaning of parking lots and gutters;
- (4) Dry cleaning and laundry services;
- (5) Industrial laundry services;
- (6) Body piercing, tattooing, and electrolysis services;
- (7) Pest control services;
- (8) Security and alarm monitoring services;
- (9) Boat storage and docking fees;
- (10) The furnishing of camping spaces or trailer spaces at public or privately owned campgrounds, except for federal campgrounds, on less than a month-to-month basis;
- (11) Locksmith services; and
- (12) Pet grooming and kennel services.

(b) (1) As used in this section, "locksmith services" means repairing, servicing, or installing locks and locking devices, whether the locks and locking devices are:

- (A) Incorporated into real property;
- (B) Incorporated into tangible personal property; or
- (C) Separate and apart from other property.

(2) “Locksmith services” also includes unlocking locks or locking devices for another person.

(3) “Locksmith services” shall not include the initial installation of locks by a contractor in new construction.

(c) (1) **[Effective until July 1, 2011.]** The gross proceeds or gross receipts derived from mini-warehouse and self-storage rental services are subject to this chapter.

(2) Effective July 1, 2011, the gross receipts tax levied on mini-warehouse and self-storage rental services levied under §§ 26-52-301 and 26-52-302 and under this section is repealed.

History. Acts 2003 (2nd Ex. Sess.), No. 107, § 7; 2009, No. 1274, §§ 1, 2.

Amendments. The 2009 amendment deleted former (a)(6) and redesignated the remaining subdivisions accordingly; and added (c).

Effective Dates. Acts 2003 (2nd Ex Sess.), No. 107, § 6: amendment effective by its own terms on July 1, 2004.

26-52-317. Food and food ingredients.

(a) (1) The Director of the Department of Finance and Administration shall determine the following conditions:

(A) That federal law authorizes the state to collect sales and use tax from some or all of the sellers that have no physical presence in the State of Arkansas and that make sales of taxable goods and services to Arkansas purchasers;

(B) That initiating the collection of sales and use tax from these sellers would increase the net available general revenues needed to fund state agencies, services, and programs; and

(C) (i) That during a six-month consecutive period, the amount of net available general revenues attributable to the collection of sales and use tax from sellers that have no physical presence in the State of Arkansas is equal to or greater than one hundred fifty percent (150%) of sales and use tax collected under subsection (c) of this section and § 26-53-145 on food and food ingredients.

(ii) The director shall make the determination under subdivision (a)(1)(C)(i) of this section on a monthly basis following the determination that the conditions under subdivision (a)(1)(A) of this section have been met.

(2) When the director finds that all of the conditions in subdivision (a)(1) of this section have been met, then the gross receipts or gross proceeds taxes levied under subsection (c) of this section shall be levied at the rate of zero percent (0%) on the sale of food and food ingredients beginning on the first day of the second calendar month following the determination of the director.

(b) As used in this section:

(1) “Food” and “food ingredients” mean the same as defined in § 26-52-103 except that “food” and “food ingredients” do not include prepared food; and

(2) “Prepared food” means the same as defined in § 26-52-103 except that “prepared food” does not include food that is only cut, repackaged, or pasteurized by the seller or eggs, fish, meat, poultry, and foods containing these raw animal foods requiring

cooking by the consumer to prevent food-borne illnesses as recommended by the Food and Drug Administration in its 2005 Food Code, § 3-401.11, as it existed on January 1, 2007.

(c) (1) Beginning July 1, 2009, in lieu of the gross receipts or gross proceeds taxes levied on food and food ingredients under §§ 26-52-301 and 26-52-302, there is levied a tax on the gross receipts or gross proceeds derived from the sale of food and food ingredients at the rate of one and seven-eighths percent (1.875%), to be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited into the Educational Adequacy Fund.

(2) The gross receipts or gross proceeds taxes levied under subdivision (c)(1) of this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(d) The gross receipts or gross proceeds derived from the sale of food and food ingredients shall continue to be subject to the:

(1) Excise tax levied under Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county gross receipts taxes.

(e) The Department of Finance and Administration shall promulgate rules to implement the provisions of this section.

History. Acts 2005, No. 647, § 1; 2007, No. 110, § 1; 2009, No. 436, § 1; 2009, No. 655, § 14.

Amendments. The 2007 amendment substituted “subsection (c) of this section and § 26-53-145” for “§§ 26-52-301, 26-52-302(a), (b), and (d), 26-53-106, and 26-53-107(a), (b), and (d)” in (a)(1)(C)(i); substituted “subsection (c) of this section” for “§§ 26-52-301 and 26-52-302(a), (b), and (d)” in (a)(2); added (b) and (c); redesignated former (b) and (c) as present (d) and (e); deleted former (b)(1); and redesignated former (b)(2) and (b)(3) as present (d)(1) and (d)(2). The 2009 amendment by No. 436, in (c)(1), substituted “July 1, 2009” for “July 1, 2007” and “one and seven-eighths percent (1.875%)” for “two and seven-eighths percent (2.875%).” The 2009 amendment by No. 655 deleted (b)(1), (b)(2), and (b)(5), which defined “alcoholic beverage,” “dietary supplement,” and “tobacco,” respectively, redesignated the remaining subdivisions accordingly, rewrote (b)(1) and (b)(2), and made related changes.

26-52-318. Heavy equipment.

(a) As used in this section, “heavy equipment” means:

(1) Asphalt pavers;

(2) Boring machines;

(3) Bulldozers;

(4) Cable plows;

(5) Compaction equipment;

- (6) Concrete pavers;
- (7) Cranes;
- (8) Crawler tractors and loaders;
- (9) Demolition equipment;
- (10) Earth movers;
- (11) Excavators;
- (12) Loader backhoes;
- (13) Motor graders;
- (14) Portable air compressors;
- (15) Rock drills;
- (16) Rough terrain fork lifts;
- (17) Scrapers;
- (18) Skid-steer loaders;
- (19) Trenchers;
- (20) Wheel loaders; or
- (21) Any other equipment determined by the Director of the Department of Finance and Administration to be heavy equipment.

(b) The gross receipts tax levied under this chapter on the sale of new or used heavy equipment shall be collected, reported, and remitted by the heavy equipment dealer.

(c) A heavy equipment dealer shall file a quarterly report with the Department of Finance and Administration identifying all sales of heavy equipment that are exempt from the gross receipts tax levied in this chapter, including without limitation the:

- (1) Name and address of the purchaser;
- (2) Item purchased;
- (3) Invoice number;
- (4) Amount of sales or use tax paid; and
- (5) Basis for the exemption.

History. Acts 2005, No. 1693, § 1; 2009, No. 682, § 1.

Amendments. The 2009 amendment deleted (c) through (e), which pertained to a decal affixed to heavy equipment to prove that Arkansas tax was paid on the equipment, and added (c).

Effective Dates. Acts 2009, No. 682, § 3, provided: "Sections 1 and 2 of this act are effective on the first day of the calendar quarter following the effective date of this act."

26-52-319. Natural gas and electricity used by manufacturers.

(a) (1) Beginning July 1, 2007, in lieu of the gross receipts or gross proceeds tax levied in §§ 26-52-301 and 26-52-302(a)-(d), there is levied an excise tax on the gross receipts or gross proceeds derived from the sale of natural gas and electricity to a manufacturer for use directly in the actual manufacturing process at the rate of four and three-eighths percent (4.375%).

(2) Beginning July 1, 2008, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of three and seven-eighths percent (3.875%).

(3) (A) Beginning July 1, 2009, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of three and one-eighth percent (3.125%).

(B) (i) The Director of the Department of Finance and Administration shall monitor the amount of tax savings received by all taxpayers as a result of the reduction in the tax rate from that levied in §§ 26-52-301 and 26-52-302 to that levied in

subdivision (a)(3)(A) of this section.

(ii) When the director determines that the amount of tax savings resulting from the determination described in subdivision (a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-148(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a fiscal year, the director shall not process any further refund claims through a refund process during the fiscal year for taxpayers seeking to claim the reduced tax rate provided by this section. The amount of twenty-seven million dollars (\$27,000,000) is intended to cover the accumulated but unclaimed reduction of sales and use tax on natural gas and electricity as provided by Acts 2007, No. 185, as well as the additional reduction provided by Acts 2009, No. 695.

(iii) If the director determines that discontinuing refund payments as provided in subdivision (a)(3)(B)(ii) of this section is insufficient to prevent the amount of tax savings from exceeding twenty-seven million dollars (\$27,000,000) during a fiscal year, the director may decline to accept any amended return filed by a taxpayer to claim an overpayment resulting from the reduced tax rate provided by this section for a period other than the period for which a tax return is currently due.

(C) (i) Refund requests and amended returns filed with the director to claim the overpayment resulting from the reduced rate in subdivision (a)(3)(A) of this section shall be processed in the order they are received by the director. A taxpayer that does not receive a refund after the refund and amended return process has ceased under subdivision (a)(3)(B) of this section shall be given priority to receive a refund during the subsequent fiscal year. The unpaid refunds from the prior fiscal year shall be processed before any refund claims filed in the current fiscal year to claim the benefit of this section.

(ii) The statute of limitations for refunds and amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to allow the payment of a refund under the process provided in subdivision (a)(3)(C)(i) of this section.

(4) The taxes levied in this subsection (a) shall be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the tax, interest, penalties, and costs received by the director shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Educational Adequacy Fund.

(5) (A) The excise tax levied in this section applies only to natural gas and electricity sold for use directly in the actual manufacturing process.

(B) Natural gas and electricity sold for any other purpose shall be subject to the full gross receipts or gross proceeds tax levied under §§ 26-52-301 and 26-52-302(a)-(d).

(6) The excise tax levied in this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(b) As used in this section, “manufacturer” means a manufacturer classified within sectors 31 through 33 of the North American Industry Classification System, as in effect

on January 1, 2007.

(c) Natural gas and electricity subject to the reduced tax rate levied in this section shall be separately metered from natural gas and electricity used for any other purpose by the manufacturer or otherwise established in accordance with the rules issued under subsection (e) of this section.

(d) Prior to the sale of natural gas or electricity at the reduced excise tax rate levied in this section, the director may require any seller of natural gas or electricity to obtain a certificate from the consumer, in the form prescribed by the director, certifying that the manufacturer is eligible to purchase natural gas and electricity at the reduced excise tax rate.

(e) The director shall have and be invested with full power and authority to promulgate rules for the proper administration of this section.

(f) The gross receipts or gross proceeds derived from the sale of natural gas and electricity to a manufacturer shall continue to be subject to:

(1) The excise tax levied under the Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county gross receipts taxes.

(g) All existing exemptions from the gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or for other purposes that are otherwise provided by law shall continue in effect.

History. Acts 2007, No. 185, § 1; 2009, No. 655, § 15; 2009, No. 691, § 1; 2009, No. 695, § 1.

A.C.R.C. Notes. Acts 2007, No. 185, § 3, provided: "All existing exemptions from the gross receipts tax levied by the Arkansas Gross Receipts Act or 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or other purposes that are otherwise provided by law shall continue in full force and effect."

Acts 2009, No. 691, and Acts 2009, No. 695, are identical acts that amended subsection (a) of this section. Acts 2009, No. 695, was used to codify subsection (a) of this section pursuant to § 1-2-207(a).

Amendments. The 2009 amendment by No. 655 added (g).

The 2009 amendment by identical acts Nos. 691 and 695 substituted "seven-eighths" for "seven-eighths" in (a)(2), inserted (a)(3), and redesignated the subsequent subdivisions accordingly.

26-52-320. Portable toilets and associated services.

(a) The excise tax levied by this chapter and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., is levied on the gross receipts or gross proceeds derived from the following:

(1) The lease or rental of a portable toilet on a long-term or short-term basis; and

(2) Any service associated with the lease or rental of a portable toilet provided by the lessor or otherwise, including without limitation:

(A) Pumping;

(B) Recharging with chemicals;

(C) Disinfecting;

(D) Cleaning;

(E) Deodorizing;

- (F) Refilling toilet paper;
- (G) General maintenance or repair;
- (H) Pick-up or delivery; or
- (I) Any other related service.

(b) The gross receipts or gross proceeds derived from the sale of a portable toilet purchased for subsequent rental or lease may be purchased exempt from the gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., pursuant to § 26-52-401(12).

(c) The Director of the Department of Finance and Administration may promulgate rules to implement this section.

History. Acts 2007, No. 368, § 1.

26-52-321. Fishing guide services.

(a) The excise tax levied by this chapter and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., is levied on the gross receipts or gross proceeds derived from a fishing guide service provided as a part of a guided fishing trip if the fishing guide service is purchased in conjunction with the sale or lease of taxable tangible personal property by the person providing the fishing guide service, including without limitation:

- (1) A boat or a boat motor;
- (2) Fish bait; or
- (3) Meals.

(b) The Director of the Department of Finance and Administration shall promulgate rules to implement this section.

History. Acts 2007, No. 1011, § 1.

26-52-322. Withdrawals from stock.

(a) As used in this section, “withdrawal from stock” means the withdrawal or use of goods, wares, merchandise, or tangible personal property from an established business or from the stock in trade of the established reserves of an established business for consumption or use in the established business or by any other person.

(b) (1) The gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., are levied on a withdrawal from stock.

(2) For purposes of calculating the gross receipts tax or the compensating use tax under subdivision (b)(1) of this section, the gross receipts or gross proceeds for a withdrawal from stock is the value of any goods, wares, merchandise, or tangible personal property withdrawn.

(c) The Director of the Department of Finance and Administration may promulgate rules to implement this section.

History. Acts 2009, No. 384, § 5.

Subchapter 4 — Exemptions

26-52-401. Various products and services.

26-52-402. Certain machinery and equipment.

- 26-52-403. Farm equipment and machinery.
- 26-52-404. Feedstuffs used for livestock.
- 26-52-405. Products used for livestock, poultry, and agricultural production.
- 26-52-406. Prescription drugs and oxygen.
- 26-52-407. Certain vessels.
- 26-52-408. Certain bagging, packaging, or tying materials.
- 26-52-409. Aircraft held for resale and used for rental or charter.
- 26-52-410. Motor vehicles sold to political subdivisions and schools.
- 26-52-411. Admission tickets sold by municipalities and counties.
- 26-52-412. Admission tickets sold by schools, universities, and colleges.
- 26-52-413. Products sold to orphans' or children's homes.
- 26-52-414. Products sold to humane societies.
- 26-52-415. New automobiles sold to blind veterans.
- 26-52-416. Electricity sold to low-income households.
- 26-52-417. Motor fuels used in municipal buses.
- 26-52-418. Out-of-state telephones sent to Arkansas for repairs.
- 26-52-419. Insulin and test strips.
- 26-52-420. New motor vehicles purchased by nonprofit organizations or with Urban Mass Transit Administration funds.
- 26-52-421. Nonprofit food distribution agencies.
- 26-52-422. Manufacturing forms.
- 26-52-423. Natural gas used to make glass.
- 26-52-424. Sales to Fort Smith Clearinghouse.
- 26-52-425. Substitute fuel for manufacturing.
- 26-52-426. Railroad rolling stock manufactured for use in interstate commerce.
- 26-52-427. Property purchased for use in performance of construction contract.
- 26-52-428. Railroad parts, cars, and equipment.
- 26-52-429. Gas and energy produced from biomass.
- 26-52-430. Charitable organizations.
- 26-52-431. Timber harvesting equipment.
- 26-52-432. [Repealed.]
- 26-52-433. Durable medical equipment, mobility-enhancing equipment, prosthetic devices, and disposable medical supplies.
- 26-52-434. Fire protection equipment and emergency equipment.
- 26-52-435. Wall and floor tile manufacturers.
- 26-52-436. Certain classes of trucks or trailers.
- 26-52-437. Textbooks and instructional materials for public schools.
- 26-52-438. Chlor-alkali manufacturing process.
- 26-52-439. Livestock reproduction equipment or substances.
- 26-52-440. Exemption for qualified museums.
- 26-52-441. Natural gas and electricity used in the manufacturing of tires.
- 26-52-442. Thermal imaging equipment.
- 26-52-443. Exemption for Arkansas Search Dog Association, Inc.

A.C.R.C. Notes. Acts 1991, No. 548, § 1, provided:

“Tangible personal property which becomes a recognizable part of a completed structure or improvement to real property and which is purchased for use or consumption in the performance

of construction contracts shall be exempt from any additional Gross Receipts Tax or Compensating (Use) Tax levied by the 78th General Assembly during Regular Session, 1991, when the construction contract for which the property was purchased is entered into prior to the effective date of the Act levying an additional Gross Receipts Tax or Compensating (Use) Tax." Acts 1991, No. 548, § 2, provided:

"For the purposes of this Act 'construction contract' means a contract to construct, manage or supervise the construction, erection, or substantial modification of a building or other improvement or structure affixed to real property. The term 'construction contract' shall not mean contract to produce tangible personal property."

Acts 1991, No. 548, § 3, provided:

"The exemption provided by this Act shall apply to tangible personal property purchased prior to January 1, 1997. This exemption shall not apply to cost plus contracts which allow the contractor to pass any additional tax onto the principal as a part of the contractor's costs."

Acts 2007, No. 185, § 3, provided:

"All existing exemptions from the gross receipts tax levied by the Arkansas Gross Receipts Act or 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or other purposes that are otherwise provided by law shall continue in full force and effect."

Preambles. Acts 1973, No. 516 contained a preamble which read:

"Whereas, the athletic departments of the various institutions of higher learning in the State of Arkansas, both State-supported and private, athletic and/or interscholastic activities of public and private elementary and secondary schools, depend largely if not entirely on funds derived from admissions to athletic events and do not participate in tax revenues; and

"Whereas, it is in the best interest of higher education and public and private elementary and secondary schools and in the overall improvement of interest and participation in athletic events at colleges and universities and public and private elementary and secondary schools throughout the State that sales taxes paid by such institutions of higher learning and public and private elementary and secondary schools on admissions tickets to athletic events be refunded to the particular institution collecting such taxes, or exempted from the provisions of the Gross Receipts Tax"

Acts 1979, No. 449 contained a preamble which read:

"Whereas, the levy of sales and use taxes upon towboats, barges and the repair and construction of the same results in an undue hardship on Arkansas purchasers and Arkansas vendors of towboats and barges; and

"Whereas, adjoining states exempt barges and towboats from sales and use taxes resulting in Arkansas vendors and purchasers having a competitive disadvantage; and

"Whereas, this bill would merely put Arkansas towboat and barge vendors and purchasers on an equal footing with competitors in adjoining states; and

"Whereas, the result of this Act would be to boost the economy in this particular industry with the probable result of increased production and sales and increased tax collections resulting from the economic boost to this industry;

"Now, therefore"

Effective Dates. Acts 1947, No. 102, § 2: approved Feb. 19, 1947. Emergency clause provided:

"It is found by the Legislature that this act is necessary, in order to protect the finances of the State Hospitals and Sanitariums of the State of Arkansas and this act being necessary for the public peace, health and safety, an emergency is hereby declared to exist, and this act shall become in full force and effect from and after its passage."

Acts 1947, No. 339, § 3: Mar. 28, 1947. Emergency clause provided: "Whereas the school districts are in dire need of additional funds; now, therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1949, No. 15, § 3: Mar. 29, 1949. Emergency clause provided: "Whereas, the production and sale of baby chickens is one of the newest and most important industries within the State of Arkansas; and

"Whereas, it is imperative that this General Assembly assist this new industry in every way possible so that it may be competitive with similar industries of other states; and

"Whereas, the levy of a sales tax made by such industries will be an undue burden and hardship; NOW THEREFORE, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1949, No. 82, § 3: Feb. 14, 1949. Emergency clause provided: "Whereas, there is a great need to remove unjustified burdens from religious and charitable institutions and whereas, institutions which are performing charitable work for orphans should be assisted in their operation wherever possible, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval by the Governor."

Acts 1955, No. 94, § 8: Feb. 22, 1955. Emergency clause provided: "It has been found and is determined by the General Assembly of Arkansas that the Gross Receipts Tax and the Compensating Tax Act as now levied and collected works undue hardships and competition upon the many livestock and poultry growers of this State, and the passage of this Act will eliminate this situation and thereby work to the welfare of the public at large; therefore, it being necessary for the preservation of the public peace, health and safety of the State, an emergency is hereby declared and this act shall be in full force and effect from and after its approval."

Acts 1967, No. 113, § 5: Feb. 20, 1967. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that certain exemptions in the sales tax and use tax to encourage capital investment in industrial, utility and manufacturing enterprises will be of great value to the economic and industrial development of the State; that it is important for such purposes and to correct inequities now existing that exemptions in the sales tax be identical to those of the use tax and that enactment of this bill will accomplish these purposes and aims. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its approval."

Acts 1968 (1st Ex. Sess.), No. 5, § 5: Feb. 15, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that the 'manufacturing and processing' exemptions in certain statutes of this State are confusing and difficult to administer and enforce; that revenues are being lost as a result thereof; that such confusion and loss of revenues have created an emergency, which emergency is hereby found and declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, welfare, and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 49, § 3: Feb. 5, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the municipalities and counties of this State are in desperate need of additional funds to support essential services of local government; that cities and counties are presently required to pay sales and/or use taxes on motor vehicles purchased for use by such cities or counties in performing needed public services; that the repeal of the requirement for paying such taxes on motor vehicles would enable cities and counties to utilize the moneys being spent therefor for other services essential to the public safety, health and welfare; and, that only by the immediate passage of this Act may such financial relief be provided cities and counties. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 600, § 6: Apr. 7, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the maintenance and operation of economical mass transportation for the general public is essential to the public welfare, that the owners and/or operators of motor buses on designated streets according to regular schedules under franchise from municipalities in this State are in dire circumstances thereby jeopardizing the efficient and economical mass transportation of the public, and that the immediate passage of this Act is necessary to provide financial relief to the operation of mass transit facilities in municipalities in this State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 68, § 6: Feb. 6, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the levy of the Arkansas Gross Receipts Tax and the

Arkansas Compensating Tax upon agricultural fertilizers, agricultural limestone, agricultural chemicals, and upon vaccines, medication, and medicinal preparations used in treating livestock and poultry, places a severe hardship upon the agricultural industry of this State and that this Act should be given effect immediately in order to remedy this inequitable situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1975, No. 759, § 3: became law without Governor's signature, Apr. 7, 1975. Emergency clause provided: “It is hereby found and determined by the General Assembly that cotton is one of the State's most important agricultural products and the sales of cotton and cotton seed are specifically exempt from the Arkansas gross receipts tax; that the ginning of cotton is defined as ‘manufacturing’ for certain purposes in the gross receipts tax law and packaging materials used by manufacturers to contain manufactured products are normally exempt from the gross receipts tax on the basis that such packaging materials are for resale; that the present Arkansas law is not clear as to whether or not bagging and tie materials used by cotton ginners in the State are exempt from the gross receipts tax, and that it is in the best interests of the citizens of this State that such materials be specifically exempt from the tax; that this Act is designed to provide such specific exemption and should be given effect immediately. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1975, No. 760, § 5: Apr. 7, 1975. Emergency clause provided: “It is hereby found and determined by the General Assembly that uncertainty exists to the intended meanings of the terms ‘manufacturing’ and/or ‘processing’ as the same are used in Section 4 of the Arkansas Gross Receipts Act, as amended, and Section 6 of the Arkansas Compensating Tax Act, as amended, as a result of which the legislative intent is not being carried out and implemented; that the failure to carry out the legislative intent expressed in the sections amended herein is highly detrimental to the public interest of the State and that this inequitable situation should be corrected immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1975, No. 922, § 3: Apr. 7, 1975. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Boy Scouts of America chartered by the United States Congress in 1916 and the Girl Scouts of the U.S.A. chartered by the United States Congress in 1950 and the various councils, troops and subdivisions thereof are nonprofit organizations dedicated to assist the youth of this country to grow up to properly appreciate and respect the many wonderful opportunities in this free land and to be self-sufficient, responsible, patriotic citizens; that the Boy Scouts of America and the Girl Scouts of the U.S.A. contribute immeasurably to the general well being of the adults as well as the youth in this country by providing the youth opportunities which might not otherwise be available to them and which contribute significantly to their development into highly useful and well rounded adults; that these organizations are nonprofit organizations and that it is in the best interest of all the citizens of this State that such organizations be granted appropriate incentives to continue their outstanding work; and that this Act is designed to provide such incentive by exempting purchases by such organizations from the Arkansas gross receipts tax and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1975 (Extended Sess., 1976), No. 1013, § 3: Jan. 23, 1976. Emergency clause provided: “It is hereby found and determined, and declared, by the General Assembly that the levy of the Arkansas Gross Receipts Tax upon electricity purchased for use in the manufacture by the electrolytic reduction process of aluminum metal imposes a severe hardship on such manufacturing industry in this State, retards expansion of such manufacturing industry, and places it at a competitive disadvantage to like manufacturing industries in other states where such levy does not exist, thereby threatening to cause the relocation of such manufacturing industry to states where such gross receipts tax does not exist, and that the elimination of the Arkansas Gross Receipts Tax upon electricity purchased for use in the manufacture of aluminum metal by

the electrolytic reduction process will be of great value to the economic and industrial stability and development of this State, and is essential in reducing unemployment in this State. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1979, No. 54, § 4: July 1, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that it is essential to the effective and efficient administration and application of the exemption provided herein that the exemption be in effect on and after July 1, 1979; that acts of the General Assembly which do not contain an emergency clause take effect ninety days after adjournment of the General Assembly and that an extension of the regular session of 1979 beyond the normal sixty days could delay the effective date of this Act beyond July 1, 1979 and could thereby create serious administrative problems. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect on and after July 1, 1979.”

Acts 1979, No. 324, § 18: July 1, 1979. Emergency clause provided: “It is hereby found and determined by the Seventy-Second General Assembly, that the effectiveness of this Act on July 1, 1979 is essential to the operation of the agency established in this Act and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1979 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1979.”

Acts 1979, No. 417, § 4: Mar. 20, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that humane societies for the prevention of cruelty to animals, organized in compliance with the provisions of Act 44 of 1939 are public organizations necessary to protect the health, safety and general welfare of the citizens of this State and have been recognized by laws of this State for many years as performing and discharging a governmental function and that it is in the public interest that said humane societies enjoy the same exemption from sales tax as is enjoyed by a number of other benevolent nonprofit organizations and that the immediate passage of this Act is necessary to provide for such tax exemption and thereby encourage and promote the operation of such humane societies. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1979, No. 449, § 3: Mar. 21, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that the levy of the Arkansas Sales and Use Taxes on towboats and barges has resulted in an inequitable taxation of Arkansas vendors and purchasers, that surrounding states exempt such items from their sales and use tax, and that the Arkansas vendors and purchasers have thereby been placed in an unfavorable position in the competitive market place, and that this Act is immediately necessary to provide relief from this inequity. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1979, No. 630, § 3: Mar. 28, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that under the present law, sales to 4-H Clubs and FFA Clubs are subject to the Arkansas Gross Receipts Tax; that this tax creates a hardship on such clubs in Arkansas and it is in the best interest of the 4-H Clubs Program, the FFA Club Program and of the State that such sales be exempted from the Gross Receipts Tax at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 791, § 6: Mar. 24, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that the taxpayers of the State of Arkansas will be burdened in a manner not intended by this General Assembly; therefore, an emergency is therefore declared to exist and, this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its date of passage and

approval.”

Acts 1983 (1st Ex. Sess.), No. 120, § 4: Jan. 15, 1984. Emergency clause provided: “It is hereby found and determined by the General Assembly that moderate and low income residential electricity customers should be exempt from the State Sales Tax levied on the first five hundred (500) kilowatt of electricity per month, as well as the franchise taxes levied on such sale; that such exemption should become effective on January 15, 1984; that this Act provides such exemption and will not go into effect until after January 15, 1984 unless this emergency clause is adopted. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after January 15, 1984.”

Acts 1985, No. 941, § 3: July 1, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that prescription drugs sold or used by hospitals should not be subject to the State sales tax; that this Act would grant such exemption and should go into effect as soon as possible; that July 1, 1985, is the proper date for implementing the provisions of this Act, and that unless this emergency clause is adopted this Act will probably not go into effect on July 1, 1985 because the General Assembly will probably not have adjourned ninety (90) days prior to July 1, 1985. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985.”

Acts 1987, No. 7, § 2: Feb. 1, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the current level of State financial aid to public and elementary and secondary education is inadequate to meet the mandate of Article 14 of the Arkansas Constitution that the State maintain a general, suitable and efficient system of free public schools; that the present level of funding for essential State services will cause the curtailing of activities of necessary State agencies; that additional State revenues are required to alleviate these conditions. Therefore, an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect on and after February 1, 1987.”

Acts 1987, No. 350, § 3: Mar. 23, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present definition of farm machinery and equipment which are exempt from the State sales and use tax has been misinterpreted by the Revenue Commissioner; that this Act is immediately necessary to eliminate the confusion resulting from the misinterpretation and until this Act goes into effect, unfair burdens will be placed upon some taxpayers as a result of the misunderstanding. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 416, § 3: Mar. 26, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that prescription drugs sold and administered by oncologists are now subject to the sales and use taxes; that granting an exemption in such circumstances will to a degree reduce the tremendous financial burden cancer patients must bear for their treatment; that this act provides that degree of assistance and that this act should go into effect immediately in order to help cancer patients as soon as possible. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 986, § 5: Apr. 14, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that because of the case of *Ricarte v. State*, CR 86-31 [290 Ark. 100, 717 S.W.2d 488 (1986)], a question has arisen over the validity of Act 1013 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 215, § 5: July 1, 1991. Emergency clause provided: “It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that formerly such items were exempted from sales tax because such were covered as prescription drugs; that

these items are now off the prescription drug list; further that the effectiveness of this act on July 1, 1991, is essential to the operation of all retail drug stores in this state and the Department of Finance and Administration and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1991, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991.”

Acts 1991, No. 910, § 2: Aug. 1, 1991.

Acts 1992 (1st Ex. Sess.), Nos. 58 and 61, § 8: July 1, 1993. Emergency clause provided: “It has been found and is hereby declared by the General Assembly that unemployment in Arkansas has reached emergency proportions, and that this situation can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.” Approved Mar. 19, 1992.

Acts 1993, Nos. 820 and 987, § 5: sales tax provisions in full force and effect on July 1, 1993.

Acts 1993, Nos. 820 and 987, § 9: Apr. 1, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly of this state that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this state and the state as a whole has been unable to compete with other state's incentive programs for economic development, and, that the incentives afforded by this Act are critical to the development and expansion of job opportunities in the state. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 1001, § 5: emergency failed to pass. Emergency clause provided: “It is hereby found and determined by the General Assembly that under present law certain Arkansas businesses are put at an unfair advantage against out of state businesses due to the ‘forms’ used by the business being subjected to the state sales tax; that substantial employment opportunity is jeopardized in the state unless the relief provided by this act is granted immediately; that this act should go into effect as soon as possible in order to protect the employment opportunities within this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 1144, § 5: Apr. 14, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that non-profit agencies distributing free food-stuffs contribute immeasurably to the general well being of the poor and needy individuals in this state; that these organizations are non-profit organizations and that it is in the best interest of all the citizens of this State that such organizations be granted appropriate incentives to continue their outstanding work; and that this act is necessary to provide such incentive and allow these organizations to continue their work by exempting purchases by such organizations from the Arkansas gross receipts tax and should be given effect immediately. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 387, § 7: approved Feb. 20, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that the application of any additional Gross Receipts or Compensating (Use) Tax levied by the state or any city or county to tangible personal property purchased for the performance of construction contracts entered into prior to the effective date of the tax increase will substantially increase the cost of performing contracts; that contractors are not able to include the additional tax in their contract price at the time the contract is entered into and, therefore, imposition of the tax to purchases of construction contractors would cause undue hardship. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.”

Acts 1995, No. 499, § 5: Mar. 1, 1995. Emergency clause provided: “It is hereby found and

determined by the General Assembly that persons engaged in the business of buying, refurbishing and reselling aircraft are at a competitive disadvantage with other aircraft sellers; that the one year tax-free holding period that currently exists is not an adequate amount of time to refurbish and resell aircraft used in rental or charter services; that there is a need to clarify that gross receipts and short term rental tax are due on aircraft rented during the holding period; and that this act will accomplish those purposes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 504, § 5: Mar. 1, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that a commercial vehicle owner operating a truck in interstate commerce could purchase the vehicle and register it under an international registration plan (IRP) in another state and subsequently operate the vehicle in Arkansas without being required to pay Arkansas sales or use tax; that an Arkansas transportation company which leases a vehicle registered under an international registration plan must pay sales tax or the lease payments; that this bill is necessary to clarify that Arkansas sales tax is not due on the lease of IRP registered commercial vehicles operating in Arkansas; and that an immediate effective date is necessary for the fair and efficient administration of taxes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 587, § 5: Mar. 13, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that aboveground farm irrigation pipe is presently exempted from sales taxes but farm irrigation pipe which is to be buried underground is not provided the same exemption; that such different treatment is not the intent of the General Assembly; that this act corrects the inequity; and that this act should go into effect immediately in order to correct the inequity as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 848, § 7: Mar. 31, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that the General Assembly has previously passed Act 1237 of 1975 and Act 983 of 1981 to exempt railroad parts, railroad cars and equipment and the repair and maintenance of such railroad parts, railroad cars and equipment from Arkansas Gross Receipts and Compensating Use Tax; that on January 1, 1987 the Arkansas Department of Finance and Administration issued new regulations which provide that parts, materials and supplies used in such repairs are still subject to tax; that Arkansas law specifically exempts parts and other tangible personal property incorporated into commercial jet aircraft and vessels, barges and towboats from tax; that a substantial number of Arkansans are employed in Arkansas facilities where such repairs are performed; and that these jobs are at risk due to the relocation of such repair facilities to other states which clearly exempt such parts, materials and supplies from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 850, § 8: effective for taxable years beginning Jan. 1, 1995.

Acts 1995, No. 850, § 12: Mar. 31, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need to provide for the health, welfare and education of the State's children by encouraging child care facilities to offer an ‘appropriate early childhood program’ and this Act is designed to meet that need by providing tax incentives to encourage construction of these facilities. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 1005, § 9: Apr. 7, 1995. Emergency clause provided: “It is hereby found and determined that the Arkansas state highway system is in desperate need of improvement, repair, and expansion; that the county road systems and municipal street systems are in desperate need of improvement, rehabilitation, and repair; that the Arkansas State Highway and Transportation Department is without sufficient funds for state-wide highway improvement projects; that necessary funding may be obtained by the issuance of bonds secured by an increase in fuel excise taxes for such highway projects; that necessary funding may also be obtained by an

increase in such fuel excise taxes for county road and municipal street projects; and, that this act is designed to provide the necessary revenues for such highway, road and street projects. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effective from and after passage and approval.”

Acts 1997, No. 603, § 5: Mar. 18, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Salvation Army is an organization which provides assistance to the community and is necessary to protect the health, safety and welfare of the citizens of this State and has been recognized by this State for many years as performing a necessary function to the citizens of this State and that it is in the public interest that the Salvation Army enjoy the same exemption from sales tax as other benevolent nonprofit organizations and that the immediate passage of this Act is necessary to provide this tax exemption and thereby encourage and promote the operation of the Salvation Army. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1997, No. 704, § 5: Mar. 20, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the current tax exemption for prescription drugs does not apply to all physicians and that the application of this law is confusing to the public; that by expanding the exemption the citizens of this state will benefit; and that this act is immediately necessary to aid the citizens of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1997, No. 884, § 5: Mar. 27, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the current tax exemption for prescription drugs does not apply to all physicians and that the application of this law is confusing to the public; that by expanding the exemption the citizens of this state will benefit; and that this act is immediately necessary to aid the citizens of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1334, § 1, as amended by Acts 2001, No. 622, § 1: July 1, 1999.

Acts 1999, No. 1334, § 5: July 1, 1999. Emergency clause provided: “It is found and determined by the General Assembly that a sales and use tax exemption should be allowed for the sale of equipment and machinery used for the harvesting of timber; that the exemption should be limited to a two-year period in order to study the financial impact of the exemption; and that the exemption should begin on July 1, 1999 so that the next General Assembly will have sufficient data to evaluate the exemption. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999.”

Acts 2001, No. 622, § 2: Mar. 8, 2001. Emergency clause provided: “It is found and determined by the General Assembly that the exemption from the Arkansas Gross Receipts Tax and the Arkansas Compensating Tax for purchases of timber harvesting equipment will expire on June 30, 2001 unless it is extended; that the exemption should be continued; and that this act should become effective immediately in order to keep the exemption from expiring. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on

the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2001, No. 1375, § 2: July 1, 2003. Effective date clause provided: “This act shall be effective on and after July 1, 2003.”

Acts 2003, No. 551, § 3: May 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there are a substantial number of Arkansas truckers who have registered their trucks in the state of Oklahoma; that their Oklahoma registrations expire on March 31; that this act will encourage those truckers to register their vehicles in the State of Arkansas; that unless this act goes into effect as soon as possible, that incentive will not exist for another year; and that the Department of Finance and Administration needs thirty (30) days lead time to implement this act. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on May 1, 2003.”

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1 and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also [become] effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

Acts 2005, No. 2132, § 2: July 1, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Symphony Orchestra Society, Inc. is a nonprofit corporation; that since its founding in 1966, it has made substantial contributions to the musical and cultural life in Arkansas through its concert series, children's concerts, and youth orchestra; that through its partnership program it has provided music education to children in primary, elementary, and middle schools throughout this state; that it is in

the public interest that the Arkansas Symphony Orchestra Society, Inc. enjoy the same tax exemption that other benevolent nonprofit organizations enjoy because it performs essential functions to the citizens of this state; that this act is necessary to encourage and promote the operation of the Arkansas Symphony Orchestra Society, Inc.; and that for the effective administration of this act it should become effective on July 1, 2005. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005.”

Acts 2007, No. 87, § 8: July 1, 2007: Emergency clause provided: “It is found and determined by the General Assembly that due to sharp increases in oil prices, traditional fuel taxation has become a large percentage of the cost of production for Arkansas farmers thereby creating burdensome price increases for Arkansas consumers; that a change in the manner in which tax is paid on dyed diesel fuel is necessary to reduce the cost of production for Arkansas farmers; and that this act is necessary in order to provide tax relief as soon as reasonably possible. Therefore, an emergency is declared to exist and this act being necessary for the preservation of public peace, health, and safety shall become effective on July 1, 2007.”

Acts 2007, No. 140, § 5: Oct. 1, 2007. Effective date clause provided: “Sections 1–4 of this act are effective on the first day of the calendar quarter following the effective date of the act.”

Acts 2007, No. 181, § 45: Jan. 1, 2008.

Acts 2007, No. 182, § 32: Jan. 1, 2008.

Acts 2007, No. 548, § 2: Jan. 1, 2008.

Acts 2007, No. 860, § 7: Jan. 1, 2008.

Acts 2009, No. 384, § 15: Mar. 10, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law require amendment to provide consistency with the Streamlined Sales and Use Tax Agreement, that a withdrawal from stock is subject to gross receipts tax under current law, that clarification is needed to ensure that the original legislative intent is fulfilled, and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 767, § 2: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that county governments that use county owned or county controlled aircraft for law enforcement purposes should be exempt from paying Arkansas sales and use tax on thermal imaging equipment purchased for law enforcement purposes; and that for the effective administration of this act it should become effective on July 1, 2009. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009.”

Acts 2009, No. 1205, § 2: Apr. 7, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that farmers have a primary harvesting season that begins in early Spring and continues throughout the Summer and Fall; that farmers’ markets begin to open and sell their produce in early Spring and sell continuously throughout the Spring, Summer, and Fall; that in order for the farmers to reap the benefit of their labors during this growing and harvesting season this act must be enacted with all due haste. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 1208, § 3: Apr. 7, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that differences of opinion have developed between the Department of Finance and Administration and Arkansas manufacturers concerning the meaning of important sections of the manufacturing machinery and equipment sales and use tax exemption, including particularly the exemption for the purchase and installation of machinery and equipment to modernize and improve the efficiency of existing machinery and equipment,

expand production or create new jobs that may not require the replacement of machines in their entirety, as well as the sales and use tax exemption for dies and molds used directly in manufacturing; that it is critical to encourage manufacturers to modernize and retool their plants as economically as possible in order to remain competitive and preserve Arkansas jobs; and that clarifications to confirm the intent and purpose of the manufacturing machinery and equipment sales and use tax exemption is appropriate. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Research References

A.L.R.

Sales or use tax upon containers or packaging materials purchased by manufacturer or processor for use with goods he distributes. 4 A.L.R.4th 581.

Sales, use, or privilege tax on sales of, or revenues from, advertising space or services. 40 A.L.R.4th 1114.

Sales and use tax exemption for medical supplies. 30 A.L.R.5th 494.

26-52-401. Various products and services.

There is specifically exempted from the tax imposed by this chapter the following:

- (1) The gross receipts or gross proceeds derived from the sale of tangible personal property or services by churches, except when the organizations may be engaged in business for profit;
- (2) The gross receipts or gross proceeds derived from the sale of tangible personal property or service by charitable organizations, except when the organizations may be engaged in business for profit;
- (3) Gross receipts or gross proceeds derived from the sale of food, food ingredients, or prepared food in public, common, high school, or college cafeterias and lunch rooms operated primarily for teachers and pupils, not operated primarily for the public and not operated for profit;
- (4) Gross receipts or gross proceeds derived from the sale of newspapers;
- (5) Gross receipts or gross proceeds derived from sales to the United States Government;
- (6) Gross receipts or gross proceeds derived from the sale of motor vehicles and adaptive equipment to disabled veterans who have purchased the motor vehicles or adaptive equipment with the financial assistance of the United States Department of Veterans Affairs as provided under 38 U.S.C. § 3901 et seq.;
- (7) Gross receipts or gross proceeds derived from the sale of tangible personal property including but not limited to office supplies; office equipment; program items at camp such as bows, arrows, and rope; rifles for rifle range and other rifle items; food, food ingredients, or prepared food for camp; lumber and supplies used in camp maintenance; camp equipment; first aid supplies for camp; the leasing of cars used in promoting scouting; or services to the Boy Scouts of America chartered by the United States Congress in 1916 or the Girl Scouts of the United States of America chartered by the United States Congress in 1950 or any of the scout councils in the State of Arkansas;
- (8) Gross receipts or gross proceeds derived from sales of tangible personal property or services to the:
 - (A) Boys Clubs of America chartered by the United States Congress in

1956 or any local councils or organizations of the Boys Clubs of America; or

(B) Girls Clubs of America or any local councils or organizations of the Girls Clubs of America;

(9) Gross receipts or gross proceeds derived from sales of tangible personal property or services to the Poets' Roundtable of Arkansas;

(10) Gross receipts or gross proceeds derived from sales of tangible personal property or services to 4-H Clubs and FFA Clubs in this state, to the Arkansas 4-H Foundation, the Arkansas Future Farmers of America Foundation, and the Arkansas Future Farmers of America Association;

(11) (A) Gross receipts or gross proceeds derived from the sale of:

(i) Gasoline or motor vehicle fuel on which the motor vehicle fuel or gasoline tax has been paid to the State of Arkansas;

(ii) Special fuel or petroleum products sold for consumption by vessels, barges, and other commercial watercraft and railroads;

(iii) Dyed distillate special fuel on which the tax levied by § 26-56-224 has been paid; and

(iv) (a) Biodiesel fuel.

(b) As used in this subdivision (11)(A)(iv), "biodiesel fuel" means a diesel fuel substitute produced from nonpetroleum renewable resources.

(B) Nothing in this subdivision (11) shall exempt gasoline from the wholesale gross receipts tax imposed pursuant to Acts 1995, No. 1005;

(12) (A) Gross receipts or gross proceeds derived from sales for resale to persons regularly engaged in the business of reselling the articles purchased, whether within or without the state if the sales within the state are made to persons to whom gross receipts tax permits have been issued as provided in § 26-52-202.

(B) (i) Goods, wares, merchandise, and property sold for use in manufacturing, compounding, processing, assembling, or preparing for sale can be classified as having been sold for the purposes of resale or the subject matter of resale only in the event the goods, wares, merchandise, or property becomes a recognizable integral part of the manufactured, compounded, processed, assembled, or prepared products.

(ii) The sales of goods, wares, merchandise, and property not conforming to this requirement are classified for the purpose of this act as being "for consumption or use";

(13) Gross proceeds derived from sales of advertising space in newspapers and publications and billboard advertising services;

(14) Gross receipts or gross proceeds derived from sales of publications sold through regular subscription, regardless of the type or content of the publication or the place printed or published;

(15) Gross receipts or gross proceeds derived from gate admission fees at state, district, county, or township fairs or at any rodeo if the gross receipts or gross proceeds derived from gate admission fees to the rodeo are used exclusively for the improvement, maintenance, and operation of the rodeo and if no part of the net earnings of the state, district, county, or township fair or rodeo inures to the benefit of any private stockholder or individual;

(16) Gross receipts or gross proceeds derived from sales for resale which the state

is prohibited by the Constitution and laws of the United States from taxing or further taxing, or which the state is prohibited by the Arkansas Constitution from taxing or further taxing;

(17) Gross receipts or gross proceeds derived from isolated sales not made by an established business;

(18) (A) Gross receipts or gross proceeds derived from the sale of:

(i) Any cotton or seed cotton or lint cotton or baled cotton, whether compressed or not, or cotton seed in its original condition;

(ii) Seed for use in the commercial production of an agricultural product or of seed;

(iii) Raw products from the farm, orchard, or garden, when the sale is made by the producer of the raw products directly to the consumer and user, including the sale of raw products from a farm, orchard, or garden that are produced and sold by the producer of the raw products at a farmers' market, including without limitation cut or dried flowers, plants, vegetables, fruits, nuts, and herbs;

(iv) Livestock, poultry, poultry products, and dairy products of producers owning not more than five (5) cows; and

(v) Baby chickens.

(B) (i) An exemption granted by this subdivision (18) shall not apply when the articles are sold at or from an established business, even though sold by the producer of the articles.

(ii) A farmers' market is not an established business if the farmers' market sells raw product directly to the user of the raw product and the farmers' market is:

(a) Comprised of one (1) or more producers of a raw product;

(b) Operated seasonally; and

(c) Held out-of-doors or in a public space.

(C) (i) However, nothing in subdivision (18)(B) of this section shall be construed to mean that the gross receipts or gross proceeds received by the producer from the sale of the products mentioned in this subdivision (18) shall be taxable when the producer sells commodities produced on his or her farm at an established business located on his or her farm.

(ii) The provisions of this subdivision (18) are intended to exempt the sale by livestock producers of livestock sold at special livestock sales.

(iii) The provisions of this subdivision (18) shall not be construed to exempt sales of dairy products by any other businesses.

(iv) The provisions of this subdivision (18) shall not be construed to exempt sales by florists and nurserymen. As used in this subdivision (18), "nurserymen" does not include Christmas tree farmers;

(19) Gross receipts or gross proceeds derived from the sale of food, food ingredients, or prepared food to governmental agencies for free distribution to any public, penal, and eleemosynary institutions or for free distribution to the poor and needy;

(20) (A) Gross receipts or gross proceeds derived from the rental or sale of medical equipment, for the benefit of persons enrolled in and eligible for Medicare or Medicaid programs as contained in Titles XVIII and XIX of the Social Security Act, 42

U.S.C. §§ 1395 et seq. and 1396 et seq., respectively, or successor programs or any other present or future United States Government subsidized health care program, by medical equipment suppliers doing business in the State of Arkansas.

(B) However, this exemption applies only to receipts or proceeds received directly or indirectly through an organization administering such program in the State of Arkansas pursuant to a contract with the United States Government in accordance with the terms thereof;

(21) (A) Gross receipts or gross proceeds derived from the sale of any tangible personal property or services as specifically provided in this subdivision (21) to any hospital or sanitarium operated for charitable and nonprofit purposes or any nonprofit organization whose sole purpose is to provide temporary housing to the family members of patients in a hospital or sanitarium.

(B) However, gross proceeds and gross receipts derived from the sale of materials used in the original construction or repair or further extension of the hospital or sanitarium or temporary housing facilities, except state-owned tax-supported hospitals and sanitariums, shall not be exempt from this chapter;

(22) Gross receipts or gross proceeds derived from the sale of used tangible personal property when the used property was:

(A) Traded in and accepted by the seller as part of the sale of other tangible personal property; and

(B) (i) The state gross receipts tax was collected and paid on the total amount of consideration for the sale of the other tangible personal property without any deduction or credit for the value of the used tangible personal property.

(ii) The condition that the state gross receipts tax was collected and paid on the total amount of consideration is not required for entitlement to this exemption when the sale of the other tangible personal property was otherwise exempt under other provisions of this chapter.

(iii) This subdivision (22) does not apply to transactions involving used automobiles under § 26-52-510(b), used mobile homes, used manufactured homes, or used modular homes under § 26-52-801 et seq., or used aircraft under § 26-52-505;

(23) Gross receipts or gross proceeds derived from the sale of unprocessed crude oil;

(24) The gross receipts or gross proceeds derived from the sale of electricity used in the manufacture of aluminum metal by the electrolytic reduction process;

(25) The gross receipts or gross proceeds derived from the sale of articles sold on the premises of the Arkansas State Veterans Home;

(26) That portion of the gross receipts or gross proceeds derived from the sale of automobile parts which constitute core charges which are received for the purpose of securing a trade-in for the article purchased, except that when the article is not traded in, then the tax is due on the core charge;

(27) (A) Gross receipts and gross proceeds derived from the sale of:

(i) Tangible personal property lawfully purchased with food stamps or food coupons issued in accordance with the Food Stamp Act of 1964, 7 U.S.C. § 2011 et seq.;

(ii) Tangible personal property lawfully purchased with food instruments or vouchers issued under the Special Supplemental Nutrition Program for

Women, Infants, and Children in accordance with Section 17 of the Child Nutrition Act of 1966, 42 U.S.C § 1786, as amended; and

(iii) Food or food ingredients purchased through bids under the Special Supplemental Nutrition Program for Women, Infants, and Children.

(B) If consideration other than food stamps, food coupons, food instruments, or vouchers is used in any sale, that portion of the sale shall be fully taxable.

(C) The tax exemption provided by this subdivision (27) shall expire if the exemption becomes no longer required for full participation in the food stamp program and the Special Supplemental Nutrition Program for Women, Infants, and Children;

(28) (A) Parts or other tangible personal property incorporated into or which become a part of commercial jet aircraft components, or commercial jet aircraft subcomponents.

(B) As used in this subdivision (28) “commercial jet aircraft” means any commercial, military, private, or other turbine or turbo jet aircraft having a certified maximum take-off weight of more than twelve thousand five hundred pounds (12,500 lbs.);

(29) Gross receipts or gross proceeds derived from the sale of any tangible personal property specifically exempted from taxation by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.;

(30) (A) The gross receipts proceeds charged to a consumer or user for the transfer of fill material by a business engaged in transporting or delivering fill material, provided:

(i) Such fill material was obtained free of charge by a business engaged in transporting or delivering fill material; and

(ii) The charge to the consumer or user is only for delivery.

(B) Any business claiming the exemption under subdivision (30)(A) of this section shall keep suitable records necessary to determine that fill material was obtained without charge;

(31) Gross receipts or gross proceeds derived from sales of tangible personal property or services to Habitat for Humanity;

(32) Gross receipts or gross proceeds derived from the long-term lease, thirty (30) days or more, of commercial trucks used for interstate transportation of goods if the trucks are registered under an international registration plan similar to § 27-14-501 et seq. and administered by another state which offers reciprocal privileges for vehicles registered under § 27-14-501 et seq.;

(33) Gross receipts or gross proceeds derived from sales of tangible personal property or services to The Salvation Army;

(34) Gross receipts or gross proceeds derived from sales of tangible personal property and services to Heifer Project International, Inc.;

(35) (A) Gross receipts or gross proceeds derived from the sale of catalysts, chemicals, reagents, and solutions which are consumed or used:

(i) In producing, manufacturing, fabricating, processing, or finishing articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas; and

(ii) By manufacturing or processing plants or facilities in the state

to prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the plant or facility.

(B) As used in this subdivision (35), “manufacturing” and “processing” mean the same as set forth in § 26-52-402(b);

(36) Gross receipts or gross proceeds derived from the sale of:

(A) Fuel packaging materials to a person engaged in the business of processing hazardous and non-hazardous waste materials into fuel products at a facility permitted by the Arkansas Department of Environmental Quality for hazardous waste treatment; and

(B) Machinery and equipment, including analytical equipment and chemicals used directly in processing and packaging of hazardous and non-hazardous waste materials into fuel products at a facility permitted by the Arkansas Department of Environmental Quality for hazardous waste treatment;

(37) Gross receipts or gross proceeds derived from sales of tangible personal property or services to the Arkansas Symphony Orchestra Society, Inc.; and

(38) Gross receipts or gross proceeds from the sale of any good, ware, merchandise, or tangible personal property withdrawn or used from an established business or from the stock in trade of the established reserves for consumption or use in an established business or by any other person if the good, ware, merchandise, or tangible personal property withdrawn or used is donated to a National Guard member, emergency service worker, or volunteer providing services to a county which has been declared a disaster area by the Governor.

History. Acts 1941, No. 386, § 4; 1947, No. 102, § 1; 1949, No. 15, § 1; 1949, No. 152, § 1; 1961, No. 213, § 1; 1965, No. 133, § 1; 1967, No. 113, § 1; 1968 (1st Ex. Sess.), No. 5, § 1; 1973, No. 403, § 1; 1975, No. 922, § 1; 1975, No. 927, § 1; 1975 (Extended Sess., 1976), No. 1013, § 1; 1977, No. 252, § 1; 1977, No. 382, § 1; 1979, No. 324, § 16; 1979, No. 630, § 1; 1981, No. 706, § 1; 1985, No. 518, § 1; A.S.A. 1947, § 84-1904; Acts 1987, No. 7, § 1; 1987, No. 986, §§ 1-3; 1987, No. 1033, §§ 11, 12; 1989, No. 753, § 1; 1991, No. 458, § 2; 1992 (1st Ex. Sess.), No. 58, § 3; 1992 (1st Ex. Sess.), No. 61, § 3; 1993, No. 617, §§ 1, 2; 1993, No. 820, § 1; 1993, No. 987, § 1; 1993, No. 1183, § 1; 1995, No. 504, § 1; 1995, No. 516, § 1; 1995, No. 850, § 2; 1995, No. 1005, § 2; 1997, No. 603, § 1; 1997, No. 1222, § 1; 1999, No. 854, § 1; 2001, No. 1683, § 1; 2005, No. 2132, § 1; 2007, No. 87, § 1; 2007, No. 181, §§ 15-19; 2007, No. 860, § 3; 2009, No. 655, § 16; 2009, No. 1205, § 1.

A.C.R.C. Notes. Former subsection (t) of this section, now subdivision (24), was reenacted by Acts 1987, No. 986, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Acts 1968 (1st Ex. Sess.), No. 5, § 3, provided, in part, that the amendment of former subsection (r) of this section (now subdivision 23) and § 26-52-402(a)(1), (a)(2)(A), (a)(3), and (b) and (c) in part, shall not be construed so as to narrow the scope of the specific exemptions set out under Acts 1941, No. 386.

Section 26-52-504 referred to in subdivision (22)(B)(iii) of this section was repealed by Acts 2005, No. 2254, § 2. For current law, see § 26-52-801 et seq.

Publisher's Notes. Acts 1937, No. 189, § 1, exempted the sale of any cotton, or seed cotton, or lint cotton, or bale cotton, whether compressed or not, or cotton seed in its original condition from any retail sales tax.

Acts 1949, No. 15, § 2, provided that it was the intention of the act to exempt the sale of baby

chickens from the provisions of Acts 1941, No. 386.

Acts 1991, No. 458, § 1, provided:

"It is found and determined by the General Assembly that Arkansas law provides an exemption from the Arkansas Gross Receipts Tax for the gross receipts or gross proceeds derived from the sale of raw products from farms, orchards and gardens, where the sale is made by the producer of the raw products directly to the consumer and user; that this exemption was always intended to include the sale of Christmas trees; that there has been confusion over this exemption because the Christmas tree farmers were erroneously classified by regulations as nurserymen; that a recent chancery court decision declared Christmas tree farmers to be entitled to the exemption; and that the purpose of this act is to clarify the law by stating that Christmas tree farmers are not nurserymen."

Acts 1995, No. 516 became law without the Governor's signature.

Sections 1—5 of Act 1005 of 1995 referred to in this section are set out in a note under chapter 57 of this title.

Amendments. The 2005 amendment added present (37) and made related changes.

The 2007 amendment by No. 87 added (11)(A)(iii) and (iv) and made related changes.

The 2007 amendment by No. 181 inserted "or food ingredients" in (3) and (27)(A)(iii); inserted "or food ingredients or prepared food" in (7); substituted "food or food ingredients or prepared food" for "foodstuffs" in (19); and added (38).

The 2007 amendment by No. 860 inserted "or prepared food" in (3).

The 2009 amendment by No. 655, in (22)(B)(iii), inserted "used manufactured homes, or used modular homes," substituted "§ 26-52-801 et seq." for "§ 26-52-504 [repealed]," and made related and minor stylistic changes.

The 2009 amendment by No. 1205 inserted "including the sale ... fruits, nuts, and herbs" in (18)(A)(iii), rewrote (18)(B)(ii), and made a related change.

Cross References. Wholesale motor fuel excise tax, § 26-57-1101 et seq.

Effective Dates. Acts 1985, No. 518, § 3 provided that the act was effective for tax years on and after July 1, 1985.

Acts 1987, No. 986, § 3, and Acts 1987, No. 1033, § 12, provided, in part, that the provisions of present subdivision (27) of this section shall be effective beginning October 1, 1987.

Acts 1992 (1st Ex. Sess.), Nos. 58 and 61, § 4, provided:

"The provisions contained in Section 2 and Section 3 of this act shall be effective on and after July 1, 1993."

Acts 1993, Nos. 820 and 987, § 5 provided:

"The sales tax provisions of this act shall be in full force and effect on July 1, 1993."

Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

Acts 2007, No. 860, § 7, provided: "Section 1—6 of this act will become effective on January 1, 2008."

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

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Constitutionality.

A state sales tax scheme that taxes general interest magazines, but exempts newspapers and religious, professional, trade, and sports journals, violates the First Amendment's guarantee of freedom of the press. *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 107 S. Ct. 1722, 95 L. Ed. 2d 209 (1987).

Exemptions under subdivisions (7)-(10) of this section for purchases made by certain organizations were not violations of equal protection and due process clauses of the United States and Arkansas Constitutions as applied to the sales made by a nonprofit charitable organization. *Tony & Susan Alamo Found., Inc. v. Ragland*, 295 Ark. 12, 746 S.W.2d 45 (1988), cert. denied, *Alamo Foundation v. Ragland*, 488 U.S. 852, 109 S. Ct. 137, 102 L. Ed. 2d 109 (1988).

Construction.

Tax exemptions must be strictly construed against exemption, and to doubt is to deny the exemption. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Agriculture.

Acts 1935, No. 233, exempting all foods necessary to life, naming butter fats, exempted whole milk since whole milk was the only product that contained "butter fats" in commercial quantities. *Wiseman v. Affolter*, 192 Ark. 509, 92 S.W.2d 388 (1936) (decision under prior law).

Subdivision (18) of this section does not contain an unreasonable or arbitrary classification because, even though business of florist and nurseryman are subdivisions of agriculture, they can be distinguished from that of farmer. *Hardin v. Vestal*, 204 Ark. 492, 162 S.W.2d 923 (1942).

Nest pads, feeder lids, filter flats, litter, vaccine and medication, and spray used in the production of poultry held not recognizable, integral parts of the finished product and are not exempt from sales tax. *Hervey v. Tyson's Foods, Inc.*, 252 Ark. 703, 480 S.W.2d 592 (1972).

Taxpayer who grew grass sod and sold it directly to consumers was a nurseryman and, thus, not entitled to the raw farm products exemption of subdivision (18) of this section. *Pledger v. Boyd*, 304 Ark. 91, 799 S.W.2d 807 (1990).

The exemption for the sale of raw farm products does not apply to the sale of bermuda sod to be used as fairways and lawns. *Pledger v. Boyd*, 304 Ark. 91, 799 S.W.2d 807 (1990).

Amusements.

Tax assessed against owners of coin operated amusement games was not such a privilege or license tax as was referred to in Acts 1937, No. 154, § 15(b), as amended by Acts 1939, No. 364, and could not be deducted from the sales tax. *Bangs v. McCarroll*, 202 Ark. 103, 149 S.W.2d 53 (1941) (decision under prior law).

Billboards.

Painted bulletins, posters, facings, hardware, and paint, purchased out of state and used in connection with the taxpayer's billboard advertising service, were not exempt from the use tax. *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995).

The term "services," as contemplated by the legislature in enacting the exemption in subdivision (13) of this section, does not mean "business." *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995).

Burden of Proof.

The party claiming an exemption from taxes has the burden of proving his entitlement beyond a reasonable doubt. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Charitable Organizations.

Sales by businesses operated for profit and owned by charitable organizations are not exempt from sales tax under subdivision (2) of this section. *Tony & Susan Alamo Found., Inc. v. Ragland*, 295 Ark. 12, 746 S.W.2d 45 (1988), cert. denied, *Alamo Foundation v. Ragland*, 488 U.S. 852, 109 S. Ct. 137, 102 L. Ed. 2d 109 (1988).

Discrimination.

Acts 1935, No. 233, § 15, and Acts 1937, No. 154, § 15, which allowed a credit of severance tax against sales tax, did not create discrimination against foreign commerce. *Southern Kraft Corp. v. Hardin*, 205 Ark. 512, 169 S.W.2d 637 (1943) (decision under prior law).

Sales of natural gas produced in another state and transported into Arkansas by pipe line to industrial customer were not transactions in interstate commerce so as to be exempt from sales tax. *Arkansas-Louisiana Gas Co. v. Hardin*, 206 Ark. 593, 176 S.W.2d 903 (1944) (decision under prior law).

—Exemption Not Found.

Packaging materials purchased out-of-state by a taxpayer in connection with its business of hazardous waste disposal were not purchased for resale as part of a finished product, notwithstanding that packaged fuel sold by the taxpayer was burned in cement kilns and power plants and that the packaging materials were consumed as part of the fuel, as the taxpayer actually paid the cement kilns and power plants to take the packaged waste and burn it and those entities never paid the taxpayer for packaged fuel during the audit period. *Rineco Chem. Indus., Inc. v. Weiss*, 344 Ark. 118, 40 S.W.3d 257 (2001).

Hospitals.

The exemption of the sale of materials used in the construction or repair of state-owned, tax-supported hospitals and sanitariums applies only to sales made directly to such hospitals and sanitariums. *John B. May Co. v. McCastlain*, 244 Ark. 495, 426 S.W.2d 158 (1968).

Contractor installing equipment and performing other construction work at state medical center was not the agent of the medical center in the purchase of the materials and equipment used in fulfilling contract, but the consumer thereof and liable for the gross receipts tax thereon. *John B. May Co. v. McCastlain*, 244 Ark. 495, 426 S.W.2d 158 (1968).

Interstate Commerce.

Transaction through which Arkansas corporation ordered from distributors or manufacturers in other states merchandise not carried in stock, with directions that shipments be made to its customers, and nonresident manufacturer charged the amount involved to the corporation, which, in turn, billed its customers within the state, was not in interstate commerce and was subject to sales tax. *Hollis & Co. v. McCarroll*, 200 Ark. 523, 140 S.W.2d 420 (1940) (decision under prior law).

Gas and electricity brought from another state were taxable when sales lost characteristics of interstate commerce. *Southern Kraft Corp. v. Hardin*, 205 Ark. 512, 169 S.W.2d 637 (1943) (decision under prior law).

Judicial Review.

The standard of review for tax exemption cases is trial de novo on the record, and appellate court will not reverse the chancellor's findings of fact unless they are clearly erroneous. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Motor Vehicles.

The isolated-sale exemption in subdivision (17) of this section does not apply to the sale of used vehicles by sellers who are not regularly engaged in the business of selling vehicles; the clear intent of the General Assembly since 1959 has been that the private sale of used motor vehicles

be subject to the sales tax and that the general-isolated sales exemption has no application to such sales. *Pledger v. Mid-State Constr. & Materials, Inc.*, 325 Ark. 388, 925 S.W.2d 412 (1996).

Natural Gas.

Subdivision (12)(B) of this section does not provide a "sale for resale" exemption from the sales and use tax for natural gas used to manufacture glass. *Arkansas Glass Container Corp. v. Pledger*, 320 Ark. 10, 894 S.W.2d 599 (1995).

Newspapers.

Preprinted advertising supplements are not a component part of the newspapers in which they appear and are not exempt from use tax as newspapers under subdivision (4) of this section. *Ragland v. K-Mart Corp.*, 274 Ark. 297, 624 S.W.2d 430 (1981).

Public Agencies.

State Highway Commission was not exempt from tax on commodities bought by the highway department. *Arkansas State Hwy. Comm'n v. Wiseman*, 192 Ark. 873, 95 S.W.2d 557 (1936) (decision under prior law).

Public Utilities.

Former § 77-1130 (prior to 1969 amendment) exempting rural electric cooperative corporations from excise taxes did not exempt them from duty of collecting the sales tax under Acts 1937, No. 154 from their individual members to whom they distributed electricity, making a charge therefor, and who as consumers were subject to the sales tax. *McCarroll v. Ozark Rural Elec. Coop. Corp.*, 201 Ark. 329, 146 S.W.2d 693 (1940) (decision under prior law).

Sales for Resale.

—Advertising Space.

Where items were not exempt under subdivision (13) of this section, taxpayer was required to hold a retail sales permit in order to claim the sale for resale exemption under subdivision (12) of this section. *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995).

—Constitutionally Prohibited Taxes.

Where imposition of sales tax was not constitutionally impermissible, defendant was not entitled to an exemption under subdivision (16) of this section. *Pledger v. Arkla, Inc.*, 309 Ark. 10, 827 S.W.2d 126 (1992), cert. denied, 506 U.S. 870, 113 S. Ct. 203, 121 L. Ed. 2d 144 (1992).

—Construction.

General Assembly intended to impose the tax on materials, such as gravel to be used in the construction of a temporary road to an oil-extraction project, at the time of the sale between the supplier and the contractor, but the materials cannot again be taxed when the contractor bills his customers for constructing the roads on the sites. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

—Consumption or Use.

Sales by wholesaler to retailer of wrapping, paper bags and twine used by merchants for wrapping merchandise sold were "sales for consumption and use" and not "sales for resale" and therefore subject to the sales tax from the wholesaler within Acts 1935, No. 233. *Wiseman v. Arkansas Whsle. Grocers' Ass'n*, 192 Ark. 313, 90 S.W.2d 987 (1936) (decision under prior law). Sales to retail merchants of paper boxes, paper bags, twine, wrapping paper, and other material to be used by the merchants for the purpose of delivering merchandise sold by them to their customers, where no specific charge is made by the merchants to the customers for these commodities, except that in some instances they might be weighed along with the articles sold, are not sales for resale purposes and not exempt from tax imposed by this section. *Dermott Grocery & Comm'n Co. v. Hardin*, 203 Ark. 446, 156 S.W.2d 882 (1941).

Where most wooden cases were returned to soft drink seller, the cases were for the seller's own consumption or use, not a sale for resale, and cases were not exempt from use tax. *Hervey v. Southern Wooden Box, Inc.*, 253 Ark. 290, 486 S.W.2d 65 (1972).

Paper plates, paper and plastic straws and stirrers, plastic tableware and utensils, paper napkins, sacks, and premoistened towelettes used in the short order restaurant business are subject to tax, as these items are used for consumption in the course of the restaurant business and not resold as a part of the price of the finished food. *Heath v. Little Rock Paper Co.*, 257 Ark. 715, 520 S.W.2d 196 (1975).

—Exemption Found.

Purchase of disposable paper cups by vending machine beverage company from manufacturer

held to be exempt from use tax as a purchase for resale. *Hervey v. Southern Wooden Box, Inc.*, 253 Ark. 290, 486 S.W.2d 65 (1972).

Where a bottled water seller sold only to distributors, not directly to consumers, and its contracts with the distributors provided that it would sell bottles to the distributors at cost, the transactions fell within the sales tax exemption of sales for resale, which is carried forward into the use tax law. *Ragland v. Mountain Valley Spring Co.*, 287 Ark. 4, 696 S.W.2d 710 (1985).

—Legislative Intent.

While this section was designed to prevent the same property from being subjected twice to the same tax, there was a correlative legislative intent that all property be subjected to the tax at some point in the course of its manufacture and sale to the ultimate consumer, as indicated by the sale for resale requirement that, for the initial sale to be exempt, the resale must be to a person having a sales tax permit. *Hervey v. Southern Wooden Box, Inc.*, 253 Ark. 290, 486 S.W.2d 65 (1972).

—Manufacturing.

Traces of sulfur, defoaming agent, acetic acid, and soap chips found in finished manufactured paper product, use of which was merely incidental, economically impractical to remove, and did not improve the finished product, were not exempt from sales or use tax upon sales for resale. *Hervey v. International Paper Co.*, 252 Ark. 913, 483 S.W.2d 199 (1972).

Where chlorine is used in manufacture of bromine, the chlorine does not become a part of the bromine, but quite the opposite, the chlorine takes something from the bromine, becomes chloride, and is discarded as worthless; thus it is at best consumed in the manufacturing process, not resold to the purchaser as tangible property, and is subject to the use tax. *Great Lakes Chem. Corp. v. Wooten*, 266 Ark. 511, 587 S.W.2d 220 (1979).

Under subdivisions (12)(A) and (B) of this section, there is no exemption from paying use tax on purchases of hexane and toluol where the two chemicals do not become recognizable integral parts of manufactured tennis balls and rubber moldings. *Ragland v. General Tire & Rubber Co.*, 297 Ark. 394, 763 S.W.2d 70 (1989).

Items, such as molds or dies, that are destroyed or disposed of in the manufacturing process, do not qualify for the exemption in subdivision (12)(B) of this section because, if they are destroyed, there is no possibility of double taxation. *Pledger v. C.B. Form Co.*, 316 Ark. 22, 871 S.W.2d 333 (1994).

—Recognizable Integral Part.

Paper and styrofoam cups and their lids, paper bowls, wrappers, and boxes used as containers for food by short order restaurants are exempt as these items are not consumed by the restaurant, but are a component of the product sold, their price becoming a component of the food sold to the final customer. *Heath v. Little Rock Paper Co.*, 257 Ark. 715, 520 S.W.2d 196 (1975).

The word "integral" in subdivision (12)(B) of this section means necessary to the completeness of the final manufactured product. *Arkansas Glass Container Corp. v. Pledger*, 320 Ark. 10, 894 S.W.2d 599 (1995).

Where natural gas was used in the process of making glass, but most of the natural gas used in the process was used for heating the furnace, the natural gas did not become a recognizable and integral part of the product. *Arkansas Glass Container Corp. v. Pledger*, 320 Ark. 10, 894 S.W.2d 599 (1995).

Trace amounts of a compound or ingredient found in the finished product do not establish that the compound or ingredient was purchased for resale. *Arkansas Glass Container Corp. v. Pledger*, 320 Ark. 10, 894 S.W.2d 599 (1995).

Cited: *Frank Lyon Co. v. United States*, 435 U.S. 561, 98 S. Ct. 1291, 55 L. Ed. 2d 550 (1978); *Southern Steel & Wire Co. v. Wooten*, 276 Ark. 37, 631 S.W.2d 835 (1982); *State, Dep't of Fin. & Admin. v. Tedder*, 326 Ark. 495, 932 S.W.2d 755 (1996); *Weiss v. Central Flying Serv., Inc.*, 326 Ark. 685, 934 S.W.2d 211 (1996); *Ghegan & Ghegan, Inc. v. Barclay*, 345 Ark. 514, 49 S.W.3d 652 (2001).

26-52-402. Certain machinery and equipment.

(a) There is specifically exempted from the tax imposed by this chapter the following:

(1) (A) Gross receipts or gross proceeds derived from the sale of tangible personal property consisting of machinery and equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas, including facilities and plants for manufacturing of feed, processing of poultry or eggs, or both, and livestock, and the hatching of poultry, but only to the extent that the machinery and equipment is purchased and used for the purposes set forth in this subdivision (a)(1).

(B) The machinery and equipment will be exempt under this subdivision (a)(1) if it is purchased and used to create new manufacturing or processing plants or facilities within this state or to expand existing manufacturing or processing plants or facilities within this state;

(2) (A) Machinery purchased to replace existing machinery and used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in this state will be exempt under this subdivision (a)(2).

(B) (i) As used in subdivision (a)(2)(A) of this section, “machinery purchased to replace existing machinery” means that substantially all of the machinery and equipment required to perform an essential function is physically replaced with new machinery.

(ii) As used in subdivision (a)(2)(B)(i) of this section, “substantially” is intended to exclude routine repairs and maintenance and partial replacements that do not improve efficiency or extend the useful life of the entire machine, but it is not intended to mean that foundations and minor components that can be economically adapted, rebuilt, or refurbished must be completely replaced when replacement would be more expensive or impracticable than adapting, rebuilding, or refurbishing the old foundation or minor components.

(C) It is the intent of this subdivision (a)(2) to provide the exemptions in subdivision (a)(1) of this section and this subdivision (a)(2) as incentives to encourage the location of new manufacturing plants in Arkansas, the expansion of existing manufacturing plants in Arkansas, and the modernization of existing manufacturing plants in Arkansas through the replacement of old, inefficient, or technologically obsolete machinery and equipment; and

(3) Gross receipts or gross proceeds derived from the sale of tangible personal property consisting of machinery and equipment required by state law or regulations to be installed and utilized by manufacturing and processing plants or facilities in this state to prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the plant or facility.

(4) [Repealed.]

(b) As used in this section, “manufacturing” or “processing” refer to and include those operations commonly understood within their ordinary meaning and shall also include:

- (1)** Mining;
- (2)** Quarrying;
- (3)** Refining;
- (4)** Extracting oil and gas;
- (5)** Cotton ginning;
- (6)** Drying of rice, soybeans, and other grains;

- (7) Manufacturing of feed;
- (8) Processing of poultry or eggs and livestock and the hatching of poultry;
- (9) Printing of all kinds, types, and characters, including the services of overprinting and photographic processing incidental to printing;
- (10) Processing of scrap metal into grades and bales for further processing into steel and other metals;
- (11) Retreading of tires for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors;
- (12) Rebuilding or remanufacturing of used parts for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors if the rebuilt or remanufactured parts are not sold directly to the consumer but are sold for resale; and
- (13) Producing of protective coatings which increase the quality and durability of a finished product.

(c) (1) (A) It is the intent of this section to exempt only such machinery and equipment as shall be used directly in the actual manufacturing or processing operation at any time from the initial stage when actual manufacturing or processing begins through the completion of the finished article of commerce and the packaging of the finished end product.

(B) As used in this subsection, “directly” is used to limit the exemption to only the machinery and equipment used in actual production during processing, fabricating, or assembling raw materials or semifinished materials into the form in which such personal property is to be sold in the commercial market.

(2) For purposes of this subsection, the following definitions, specific inclusions, and specific exclusions shall apply and represent the intent of the General Assembly as to its interpretation of the term “used directly”:

(A) (i) Machinery and equipment used in actual production includes machinery and equipment that meet all other applicable requirements and which cause a recognizable and measurable mechanical, chemical, electrical, or electronic action to take place as a necessary and integral part of manufacturing, the absence of which would cause the manufacturing operation to cease.

(ii) “Directly” does not mean that the machinery and equipment must come into direct physical contact with any of the materials that become necessary and integral parts of the finished product.

(iii) Machinery and equipment which handle raw, semifinished, or finished materials or property before the manufacturing process begins are not used directly in the manufacturing process.

(iv) Machinery and equipment which are necessary for purposes of storing the finished product are not used directly in the manufacturing process.

(v) Machinery and equipment used to transport or handle a product while manufacturing is taking place are used directly;

(B) Machinery and equipment used directly in the manufacturing process includes without limitation the following:

(i) Molds, frames, cavities, and forms that determine the physical characteristics of the finished product or its packaging material at any stage of the manufacturing process;

- (ii) Dies, tools, and devices attached to or a part of a unit of machinery that determine the physical characteristics of the finished product or its packaging material at any stage of the manufacturing process;
- (iii) Testing equipment to measure the quality of the finished product at any stage of the manufacturing process;
- (iv) Computers and related peripheral equipment that directly control or measure the manufacturing process; and
- (v) Machinery and equipment that produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process but which are consumed during the course of the manufacturing process and do not become necessary and integral parts of the finished product;

(C) Machinery and equipment “used directly” in the manufacturing process shall not include the following:

- (i) Hand tools;
- (ii) Machinery, equipment, and tools used in maintaining and repairing any type of machinery and equipment;
- (iii) Transportation equipment, including conveyors, used solely before or after the manufacturing process has been started or completed;
- (iv) Office machines and equipment including computers and related peripheral equipment not directly used in controlling or measuring the manufacturing process;
- (v) Buildings;
- (vi) Machinery and equipment used in administrative, accounting, sales, or other such activities of the business;
- (vii) All furniture;
- (viii) All other machinery and equipment not used directly in manufacturing or processing operations as defined in this section; and
- (ix) Machinery and equipment used by a manufacturer to produce or repair replacement dies, molds, repair parts, or replacement parts used or consumed in the manufacturer's own manufacturing process.

(d) The Director of the Department of Finance and Administration may promulgate rules and regulations for the orderly and efficient administration of this section.

History. Acts 1941, No. 386, § 4; 1967, No. 113, § 1; 1968 (1st Ex. Sess.), No. 5, § 1; 1975, No. 760, § 1; 1983, No. 791, § 1; 1983, No. 870, §§ 1, 3; 1985, No. 492, § 1; 1985, No. 543, § 1; 1985, No. 841, § 1; A.S.A. 1947, §§ 84-1904, 84-1904n; Acts 1993, No. 1250, § 1; 1997, No. 1233, § 1; 1999, No. 854, § 2; 1999, No. 1110, § 1; 2009, No. 655, § 17; 2009, No. 1208, § 1.

A.C.R.C. Notes. Acts 1968 (1st Ex. Sess.), No. 5, § 3, provided, in part, that the amendment of former subsection (r) of Acts 1941, No. 386, now § 26-52-401(23) and § 26-52-402(a)(1), (a)(2)(A), (a)(3), and (b) and (c) in part, shall not be construed so as to narrow the scope of the specific exemptions set out under Acts 1941, No. 386.

The tax incentive for filming a motion picture, found at § 26-4-201 et seq., which is cited in (a)(4) has expired. The new “Motion Picture Incentive Act of 1997” is codified as § 15-4-2001 et seq.

Publisher's Notes. Acts 1983, No. 791, § 3, provided that the provisions of this act shall apply for all gross receipts tax returns and compensating tax returns for the periods beginning on or after the effective date of this act.

Acts 1983, No. 870, § 4, provided that the provisions of this act shall apply for all gross receipts

tax returns and compensating tax returns for the periods beginning on or after January 1, 1985. **Amendments.** The 2009 amendment by No. 655 deleted (a)(4). The 2009 amendment by No. 1208 substituted “frames, cavities, and forms” for “and dies” in (c)(2)(B)(i), inserted (c)(2)(B)(ii) and redesignated the subsequent subdivisions accordingly, inserted “at any stage of the manufacturing process” in (c)(2)(B)(i) and (c)(2)(B)(iii), and made related and minor stylistic changes.

Case Notes

Construction.
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Used Directly.

Construction.

Tax exemptions must be strictly construed against exemption, and to doubt is to deny the exemption. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987). A tax-exemption provision must be strictly construed against the exemption. *ALCOA v. Weiss*, 329 Ark. 225, 946 S.W.2d 695 (1997).

Burden of Proof.

The party claiming an exemption from taxes has the burden of proving his entitlement beyond a reasonable doubt. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Judicial Review.

The standard of review for tax exemption cases is trial de novo on the record, and appellate court will not reverse the chancellor's findings of fact unless they are clearly erroneous. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Machinery and Equipment.

General Assembly, by the use of the terms machinery and equipment, intended implements, tools, or devices of some degree of complexity and continuing utility and not materials that become fully integrated into a construction project, the utility of which ends upon the termination of each project. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

The taxpayer was entitled to an exemption for initial purchases of chemicals used in the manufacturing of aircraft parts since those chemicals came within the definition of equipment because (1) the chemicals served as instruments or tools to soften metal or mill away excess metal in the manufacturing process, and (2) the chemicals possessed continuing utility. *Weiss v. Chem-Fab Corp.*, 336 Ark. 21, 984 S.W.2d 395 (1999).

The taxpayer was not entitled to an exemption for replacement purchases of chemicals used in the manufacturing of aircraft parts in light of the contention of the Department of Finance and Administration that the issue of whether the replacement chemicals were more efficient or had a longer useful life than the initial chemicals should have been determined at the time the initial chemicals were originally purchased and not at the time of replacement. *Weiss v. Chem-Fab Corp.*, 336 Ark. 21, 984 S.W.2d 395 (1999).

Circuit court did not err in determining that the stickyback tape used by the taxpayer was equipment that was exempt from sales taxes; it met the statutory requirement under subdivision (c)(1)(A) of this section of equipment used directly in the actual manufacturing or processing operation and was necessary and integral, as provided under subdivision (c)(2)(A)(i). *Weiss v. Bryce Co., LLC*, 2009 Ark. 412, — S.W.3d — (2009).

Manufacturing.

Evidence that plaintiff produced its own syrup which was then mixed with other ingredients to produce the finished product was sufficient to show that plaintiff was in the business of producing and selling bottled carbonated soft drinks and entitled it to the exemption as a manufacturer from use tax. *Arkansas Beverage Co. v. Heath*, 257 Ark. 991, 521 S.W.2d 835 (1975).

Where seller of machinery or equipment sells such machinery to graphic arts manufacturers for use in manufacturing finished products such as stationery, wedding, and business announcements, flyers, books, and business cards, the seller is not entitled to exemption from the gross receipts (sales) tax under subsection (a) of this section, since commercial printers who purchase the machinery are not "manufacturers" under this section, because printing, binding, and photography processes are not manufacturing in the ordinary meaning of the term, which is the meaning with which the term must be construed under subsection (b) of this section. *Western Paper Co. v. Qualls*, 272 Ark. 466, 615 S.W.2d 369 (1981).

Ready-mix concrete plants that are used to mix cement, sand, gravel, and water to produce ready-mix concrete are not exempt from taxation under subsection (a) of this section as manufacturing equipment, since the machinery is just used for mixing materials and does not produce a truly finished product, such as concrete blocks. *Ragland v. Lyon's Mach. Co.*, 279 Ark. 147, 649 S.W.2d 401 (1983).

Molds and Dies.

Items, such as molds or dies, that are destroyed or disposed of in the manufacturing process, do not qualify for the exemption in § 26-52-401(12)(B) because if they are destroyed, there is no possibility of double taxation. *Pledger v. C.B. Form Co.*, 316 Ark. 22, 871 S.W.2d 333 (1994). Subdivision (c)(2)(B)(i) of this section provides an exemption for molds that determine the physical characteristics of the finished product; this section does not require that they be permanent since molds need not have a "continuing utility" to come within the statutory definition of equipment. *Pledger v. C.B. Form Co.*, 316 Ark. 22, 871 S.W.2d 333 (1994).

The meaning of the words used in mold and die exemption is clear: there is an exemption for molds that determine the physical characteristics of the finished product, and, when the sentence in the subsection exempting molds is read in full, there is no expressed legislative intent that equipment or machinery have "continuing utility." *Pledger v. C.B. Form Co.*, 316 Ark. 22, 871 S.W.2d 333 (1994).

Manufacturer's plaster and cardboard forms, or molds, sold to a single customer who utilized the forms to build fuel cells that fit into a cavity in the wing and fuselage of military and commercial aircraft, were exempt from the gross receipts or sales tax under subdivision (c)(2)(B)(i) of this section. *Pledger v. C.B. Form Co.*, 316 Ark. 22, 871 S.W.2d 333 (1994).

Pollution Control.

The exemption from taxes under subdivision (a)(3) of this section is based on the requirement that pollution-control equipment be installed and used to prevent or reduce air or water pollution that results from the operation of a plant or facility, and the exemption did not apply to taxpayer's lease of equipment for a reclamation project. *ALCOA v. Weiss*, 329 Ark. 225, 946 S.W.2d 695 (1997).

Used Directly.

Trucks used on private property to carry materials and not used in processing, fabricating, or assembly of raw material do not qualify for exemption from the sales tax under subsection (c) of this section. *Heath v. Midco Equip. Co.*, 256 Ark. 14, 505 S.W.2d 739 (1974).

Where diesel locomotive cranes and 72-inch magnet were used as tools not only to move but to roll and position the old railroad tank cars during the time that the culverts were being fabricated, and as such were necessary and integral parts of the manufacturing operation, the trial court erred in classifying such machinery as "transportation equipment." *Arkansas Ry. Equip. Co. v. Heath*, 257 Ark. 651, 519 S.W.2d 45 (1975).

Where there was a showing that a case conveyor, bottling conveyor, and an electronic bottle inspector in bottling plant were so much a part of a continuous and well-synchronized operation that, if one of the machines failed to operate, the entire operation stopped, there was sufficient evidence that the machines were an integral part of the manufactured product and exempt. *Arkansas Beverage Co. v. Heath*, 257 Ark. 991, 521 S.W.2d 835 (1975).

Cited: *Frank Lyon Co. v. United States*, 435 U.S. 561, 98 S. Ct. 1291, 55 L. Ed. 2d 550 (1978); *Southern Steel & Wire Co. v. Wooten*, 276 Ark. 37, 631 S.W.2d 835 (1982); *Bosworth v. Pledger*, 305 Ark. 598, 810 S.W.2d 918 (1991).

26-52-403. Farm equipment and machinery.

(a) As used in this section:

(1) (A) “Farm equipment and machinery” means implements used exclusively and directly in farming.

(B) “Farm equipment and machinery” includes:

(i) Irrigation pipe used to carry water from an irrigation well to the crops produced in farming regardless of whether the irrigation pipe is used above ground or is buried underground; and

(ii) Implements used to harvest crops produced in farming by others.

(C) However, “farm equipment and machinery” shall not include implements used in the production and severance of timber, motor vehicles of a type subject to registration, airplanes, or hand tools; and

(2) “Farming” means the agricultural production of food or fiber as a business or the agricultural production of grass sod or nursery products as a business.

(b) The gross receipts or gross proceeds derived from the sale of new and used farm equipment and machinery are exempt from the Arkansas gross receipts tax levied by this chapter.

(c) The Director of the Department of Finance and Administration shall promulgate rules and prescribe forms for claiming the exemption provided by this section.

History. Acts 1981, No. 432, § 1; A.S.A. 1947, § 84-1904.10; Acts 1987, No. 350, § 1; 1995, No. 587, § 1; 1999, No. 1033, § 1; 2005, No. 1994, § 208; 2007, No. 181, § 20; 2009, No. 655, § 18.

Amendments. The 2005 amendment inserted “Class A” in (c)(3).

The 2007 amendment rewrote (c).

The 2009 amendment, in (b), inserted “gross receipts or gross proceeds derived from,” substituted “this chapter” for “§ 26-52-301(1), (2), (3)(A), (3)(B)(i)-(iii), (4), and (5),” and made minor stylistic changes.

Effective Dates. Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

26-52-404. Feedstuffs used for livestock.

(a) All feedstuffs used in the commercial production of livestock or poultry in this state are exempt from the Arkansas gross receipts tax levied by this chapter.

(b) As used in this section, “feedstuffs” means:

(1) Processed or unprocessed grains;

(2) Mixed or unmixed grains;

(3) Whole or ground hay;

(4) Whole or ground straw;

(5) Hulls, whether or not mixed with other materials; and

(6) All food supplements, whether or not nutritional or medicinal, including hormones, antibiotics, vitamins, minerals, and medications ingested by poultry or livestock.

History. Acts 1955, No. 94, § 1; 1985, No. 1013, § 3; A.S.A. 1947, § 84-1924.

Publisher's Notes. This section is also codified as § 26-53-120.

Case Notes

Evidence.

Evidence.

Poultry distributor who fails to carry burden of showing that "water feed additives" are "feedstuffs" is not entitled to tax exemption. *Hervey v. Tyson's Foods, Inc.*, 252 Ark. 703, 480 S.W.2d 592 (1972).

26-52-405. Products used for livestock, poultry, and agricultural production.

The gross receipts or gross proceeds derived from sales of the following are exempt from the Arkansas gross receipts tax levied by this chapter:

(1) Agricultural fertilizer;

(2) Agricultural limestone; and

(3) Agricultural chemicals, including, but not limited to:

(A) Agricultural pesticides and herbicides used in commercial production of agricultural products;

(B) Vaccines, medications, and medicinal preparations used in treating livestock and poultry being grown for commercial purposes; and

(C) Chemicals, nutrients, and other ingredients used in the commercial production of yeast.

History. Acts 1973, No. 68, § 1; 1985, No. 1013, § 1; A.S.A. 1947, § 84-1905.2; Acts 1993, No. 98, § 1; 1993, No. 151, § 1; 1995, No. 1296, § 85.

26-52-406. Prescription drugs and oxygen.

(a) (1) The gross receipts or gross proceeds derived from the sale, purchase, or use of prescription drugs by licensed pharmacists, hospitals, or physicians when sold, purchased, or administered for human use and from the sale of oxygen sold for human use on prescription of a licensed physician shall be exempt from the Arkansas gross receipts tax levied by this chapter and the Arkansas compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(2) The withdrawal of prescription drug samples for free distribution from a stock or inventory, whether located within or outside the State of Arkansas, is exempt from the tax imposed by this chapter.

(b) The Director of the Department of Finance and Administration shall adopt such appropriate rules and regulations as the director deems necessary to assume the effective and efficient administration of the exemption provided for in this section and to prevent abuse thereof.

History. Acts 1979, No. 54, §§ 1, 2; 1985, No. 941, § 1; A.S.A. 1947, §§ 84-1904.3, 84-1904.4; Acts 1987, No. 416, § 1; 1997, No. 704, § 1; 1997, No. 884, § 1.

Research References

U. Ark. Little Rock L.J.

Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

Case Notes

Construction.

Applicability.

Construction.

The exemption provision must be strictly construed against the exemption. *Dunhall Pharmaceuticals, Inc. v. State*, 295 Ark. 483, 749 S.W.2d 666 (1988).

Applicability.

Purchases by dentists are not excluded from taxation by the exemption in this section. *Dunhall Pharmaceuticals, Inc. v. State*, 295 Ark. 483, 749 S.W.2d 666 (1988).

26-52-407. Certain vessels.

The gross receipts and gross proceeds derived from the sale and purchase of vessels, barges, and towboats of at least fifty (50) tons load displacement, and parts and labor used in the repair and construction of them, are exempt from the Arkansas gross receipts tax levied by this chapter.

History. Acts 1979, No. 449, § 1; A.S.A. 1947, § 84-1904.8.

26-52-408. Certain bagging, packaging, or tying materials.

(a) Gross receipts and gross proceeds derived from the sale of bagging and other packaging and tie materials sold to and used by cotton gins in Arkansas for packaging or tying baled cotton are exempt from the Arkansas gross receipts tax.

(b) Gross receipts and gross proceeds derived from the sale of twine which is used in the production of tomato crops are exempt from the Arkansas gross receipts tax.

History. Acts 1975, No. 759, § 1; A.S.A. 1947, § 84-1904.1.

26-52-409. Aircraft held for resale and used for rental or charter.

(a) (1) Any person, whether an established business or an individual, engaged in the business of selling aircraft in this state and holding a retail sales tax permit may purchase aircraft exempt for resale and use the aircraft for rental or charter service without payment of sales or use tax for a period of not to exceed one (1) year from the date of purchase of the aircraft.

(2) In the case of aircraft purchased for resale which require substantial modification or substantial refurbishing prior to resale, the purchaser may use the aircraft for rental or charter service without payment of sales or use tax for a period of not to exceed two (2) years from the date of purchase of the aircraft.

(b) The use of the aircraft for rental or charter during the applicable one-year or two-year holding period described in subsection (a) of this section shall not constitute a withdrawal from stock, and the purchaser shall not be required to pay the sales tax on the purchase price of the aircraft held in stock and used for such purposes.

(c) The aircraft purchaser shall collect and remit gross receipts and short-term rental tax on the rentals and shall subsequently collect and remit the gross receipts tax on the aircraft at the time of subsequent sale in the manner required by law.

(d) If the purchaser fails to sell the aircraft during the applicable holding period, the purchaser shall be liable for sales or use tax on his or her purchase price of the aircraft.

History. Acts 1975, No. 1008, § 1; A.S.A. 1947, § 84-1904.2; Acts 1995, No. 499, § 1.

Research References

U. Ark. Little Rock L.J.

Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

Case Notes

One-Year Period.

One-Year Period.

The language “at the time of subsequent sale” in subsection (c) of this section refers only to those aircraft sold during the one-year holding period. *Weiss v. Central Flying Serv., Inc.*, 326 Ark. 685, 934 S.W.2d 211 (1996).

This section provides that the gross receipts tax on the purchase of an airplane used for rental or charter service and held for more than one year without resale must be paid immediately after the lapse of one year from the date of purchase, not when the airplane is actually sold after the lapse of one year. *Weiss v. Central Flying Serv., Inc.*, 326 Ark. 685, 934 S.W.2d 211 (1996).

26-52-410. Motor vehicles sold to political subdivisions and schools.

(a) No tax shall be levied or collected upon gross receipts derived from the sale of motor vehicles to municipalities and counties or to state-supported colleges and universities or to public school districts in this state.

(b) No tax shall be levied or collected upon the gross receipts derived from the sale of school buses to school districts of Arkansas.

(c) No tax shall be levied or collected upon the gross receipts derived from the sale of school buses if at the time of sale the school bus purchaser has contracted with an Arkansas school district to provide school bus service for the school district, the school buses purchased are used exclusively in providing such service, and the obligation to pay any taxes related to the school buses is contractually assumed by the school district. This exemption shall apply only to school buses which are equipped in accordance with § 6-19-117(a)-(d).

History. Acts 1947, No. 339, § 1; 1971, No. 49, § 1; A.S.A. 1947, §§ 84-1904.9, 84-1905; Acts 1997, No. 1303, § 1.

26-52-411. Admission tickets sold by municipalities and counties.

The gross receipts or gross proceeds derived by municipalities and counties of this state from the following are exempt from the excise tax levied by this chapter:

(1) Sale of tickets or admissions to places of amusement or to athletic, entertainment, or recreational events;

(2) Fees for the privilege of having access to or the use of amusement, entertainment, athletic, or recreational facilities; and

(3) (A) Free or complimentary passes, tickets, dues, or fees for access to or the use of amusement, athletic, entertainment, or recreational facilities.

(B) Free or complimentary passes, tickets, dues, or fees described in subdivision (3)(A) of this section are declared to have a value equivalent to the sale price of passes, tickets, dues, or fees of like kind.

History. Acts 1981, No. 509, § 1; A.S.A. 1947, § 84-1904.11; Acts 2007, No. 657, § 1.

Amendments. The 2007 amendment added “and counties” to the section heading; and rewrote the section.

26-52-412. Admission tickets sold by schools, universities, and colleges.

(a) Gross receipts or gross proceeds from the sale of tickets for admission to athletic events and interscholastic activities at public and private elementary and secondary schools in this state shall be exempt from the provisions of the Arkansas gross receipts tax.

(b) Gross receipts or gross proceeds from the sale of tickets for admission to athletic

events at universities and colleges in this state, whether or not supported by public funds, shall be exempt from the provisions of the Arkansas gross receipts tax.

History. Acts 1973, No. 516, § 2; A.S.A. 1947, § 84-1942; Acts 1995, No. 124, § 2.

26-52-413. Products sold to orphans' or children's homes.

All sales to all orphans' homes in this state, or children's homes, which are not operated for profit and whether operated by a church, religious organization, or other benevolent charitable association shall be exempt from the gross receipts or gross proceeds tax, commonly referred to as the sales tax.

History. Acts 1949, No. 82, § 1; A.S.A. 1947, § 84-1905.1.

26-52-414. Products sold to humane societies.

(a) All sales to humane societies which are not operated for profit and are organized under the provisions of § 20-19-101 for the prevention of cruelty to animals shall be exempt from this chapter.

(b) The Director of the Department of Finance and Administration shall issue a certificate to the officers of each humane society organized under § 20-19-101, which shall indicate the identity of the humane society officer and the humane society with which the humane society officer is associated. Sales to a humane society shall be exempt from the Arkansas gross receipts tax upon presentation of the certificate.

History. Acts 1979, No. 417, §§ 1, 2; A.S.A. 1947, §§ 84-1904.6, 84-1904.7.

26-52-415. New automobiles sold to blind veterans.

(a) Gross receipts and gross proceeds derived from the sale of new automobiles to a veteran of the United States armed services who is blind as the result of a service-connected injury shall be exempt from the Arkansas gross receipts tax.

(b) This exemption shall apply only to those persons who furnish the Department of Finance and Administration a statement from the United States Department of Veterans Affairs certifying that the individual is a veteran of the United States armed services and has been blinded as the result of a service-connected injury. This statement shall be supplied to the department upon application for a vehicle license.

(c) The exemption allowed by this section shall be available only on the gross receipts or gross proceeds derived from the sale of one (1) new automobile every two (2) years to a veteran who complies with the requirements of this section.

(d) As used in this section, "automobile" means a passenger automobile or pickup truck but does not include trucks with a maximum gross load in excess of three-quarters ($\frac{3}{4}$) of one (1) ton and does not include any trailer.

History. Acts 1979, No. 70, § 1; A.S.A. 1947, § 84-1904.5.

26-52-416. Electricity sold to low-income households.

(a) The gross receipts or gross proceeds derived from the sale of the first five hundred kilowatt hours (500 kWh) of electricity per month and the total franchise taxes billed to each residential customer whose household income is no more than twelve thousand dollars (\$12,000) per year are exempt from the Arkansas gross receipts tax levied by this chapter and all other state excise taxes that would otherwise be levied on the gross

receipts or gross proceeds derived from the sale and the total franchise taxes.

(b) As used in this section:

(1) “Household income” means the combined income received by members of a household during a calendar year; and

(2) (A) “Income” means gross income as defined in the Income Tax Act of 1929, § 26-51-101 et seq., less deductions allowed under § 26-51-423.

(B) “Income” includes:

(i) Alimony;

(ii) Support money;

(iii) Cash public assistance and relief;

(iv) The gross amount of any pension or annuity, including all monetary retirement benefits from whatever source derived, including without limitation railroad retirement benefits, all payments received under the federal Social Security Act, and veterans' disability pensions;

(v) All dividends and interest from whatever source derived not included in gross income;

(vi) Workers' compensation benefits; and

(vii) The gross amount of “loss of time insurance”.

(C) “Income” does not include:

(i) Gifts from nongovernmental sources;

(ii) Surplus food;

(iii) In-kind relief supplied by a governmental agency; or

(iv) For a World War I veteran of the United States armed forces or the widow of a World War I veteran of the United States armed forces, federal or state retirement benefits, pension benefits, disability benefits, railroad retirement benefits, or social security benefits.

(c) The exemption in this section applies to sales by all electric utilities operating in this state, whether investor-owned utilities, electric cooperative corporations created or existing under § 23-18-301 et seq., or municipally owned electric utilities.

(d) On forms provided by the Director of the Department of Finance and Administration, a residential customer qualifying for the exemption in this section shall notify the electric utility providing service to the residential customer of the residential customer's intention to claim the exemption in this section.

(e) (1) After a residential customer has qualified for the exemption in this section, an additional application is not required.

(2) When a residential customer who has qualified for the exemption in this section has household income exceeding the twelve-thousand-dollar limit, the residential customer is disqualified from the exemption in this section and shall notify the electric utility on forms provided by the director. The notice form shall be mailed to the electric utility on or before March 1 of the year following the year the household income exceeds twelve thousand dollars (\$12,000).

(f) (1) If a residential customer does not notify the electric utility as provided in subsection (e) of this section and continues to receive the exemption in this section after his or her household income exceeds twelve thousand dollars (\$12,000), the residential customer is liable for the amount of the tax exemption received after March 1 of the year following the year the household income exceeds twelve thousand dollars (\$12,000).

(2) The electric utility shall bill a residential customer for the amount of tax due as a result of the residential customer's disqualification under this section and remit the tax to the director.

History. Acts 1983 (1st Ex. Sess.), No. 120, §§ 1, 2; A.S.A. 1947, §§ 84-1904.12, 84-1904.13; Acts 1991, No. 304, §§ 1, 2; 2009, No. 655, § 19.

A.C.R.C. Notes. Section 26-51-602 referred to in subsection (b) of this section was repealed by Acts 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 7. Section 26-51-602 provided the following definitions for "income" and "household income":

"Household income" means the combined income received by members of a household during a calendar year.

"Income" means gross income as defined in the Arkansas Income Tax Act, as amended, § 26-51-101 et seq., less deductions allowed under § 26-51-423(a)(1). It shall also include alimony, support money, cash public assistance and relief, but shall not include relief granted under this subchapter; the gross amount of any pension or annuity, including all monetary retirement benefits from whatever source derived including but not limited to railroad retirement benefits, all payments received under the federal social Security Act, and veterans' disability pensions; all dividends and interest from whatever source derived not included in gross income, workers' compensation, and the gross amount of 'loss of time insurance' but does not include gifts from nongovernmental sources, surplus food, or other relief in kind supplied by a governmental agency. However, in the case of a claimant who is a World War I veteran of the United States armed services or the widow of such a veteran, the term 'income' as used herein shall not include federal or state retirement or pension benefits or disability benefits, railroad retirement benefits, or social security benefits."

Amendments. The 2009 amendment rewrote the section.

26-52-417. Motor fuels used in municipal buses.

(a) The gross receipts or gross proceeds derived from the sale of motor fuel to an owner or operator of a motor bus operated on designated streets according to regular schedule and under municipal franchise which is used for municipal transportation purposes shall be exempt from the tax levied in this chapter.

(b) However, it shall be unlawful for the owner or operator of a motor bus operating under municipal franchise as provided in this section to use any or permit the use of any motor fuel upon which the gross receipts tax has not been paid in any motor vehicle other than a motor bus operated on designated streets according to regular schedules under municipal franchise.

(c) (1) Any owner or operator of a motor bus permitting motor fuel to be used in violation of this section shall be guilty of a violation and upon conviction shall be fined in an amount of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).

(2) In addition to the fine in subdivision (c)(1) of this section, the owner or operator shall be liable to the State of Arkansas for a penalty of triple the amount of gross receipts tax due the State of Arkansas on any motor fuel upon which the gross receipts tax has not been paid and which was used in violation of the provisions of this section.

History. Acts 1971, No. 600, § 3; A.S.A. 1947, § 75-1148.9; Acts 2005, No. 1994, § 173.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (c)(1).

26-52-418. Out-of-state telephones sent to Arkansas for repairs.

From and after July 1, 1989, the Arkansas gross receipts tax levied by §§ 26-52-301 et seq. and 26-52-501 et seq. and all city and county sales taxes shall not be levied against the repair or refurbishing of telephone instruments which are sent into this state for repair or refurbishing and then shipped back to the state of origin.

History. Acts 1987, No. 191, § 2.

26-52-419. Insulin and test strips.

There is hereby exempted from this chapter the gross receipts and gross proceeds derived from the sale of insulin and test strips for testing blood sugar levels in human beings.

History. Acts 1991, No. 215, § 1.

26-52-420. New motor vehicles purchased by nonprofit organizations or with Urban Mass Transit Administration funds.

Gross receipts or gross proceeds derived from the sale of new motor vehicles which are purchased by nonprofit organizations and used for the performance of contracts with the Department of Human Services or new motor vehicles purchased with Urban Mass Transit Administration funds shall be exempt from the taxes levied under this chapter, the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and all other state and local sales and use taxes, provided that the motor vehicles meet the following requirements:

- (1) The vehicles are purchased in lots of ten (10) vehicles or more and therefore are sold at fleet price by the manufacturer;
- (2) The vehicles meet or exceed the state specifications for that class of vehicles as prescribed in the state purchasing law and regulations promulgated thereunder; and
- (3) The vehicles are used for transportation under the Department of Human Services' programs for the aging, disabled, mentally ill, and children and family services.

History. Acts 1991, No. 910, § 1.

Effective Dates. Acts 1991, No. 910, § 2, provided:
"This act shall become effective on August 1, 1991."

26-52-421. Nonprofit food distribution agencies.

The gross receipts or gross proceeds derived from the sale of food and food ingredients to nonprofit agencies organized under the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., for free distribution to the poor and needy shall be exempt from the Arkansas gross receipts tax levied by this chapter.

History. Acts 1993, No. 1144, § 1; 2007, No. 181, § 21.

Publisher's Notes. Acts 1993, No. 1144, § 1, is also codified as § 26-53-136.

Amendments. The 2007 amendment substituted "food and food ingredients" for "foodstuffs."

Effective Dates. Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

26-52-422. Manufacturing forms.

Forms constructed of plaster, cardboard, fiberglass, natural fibers, synthetic fibers, or composites thereof which determine the physical characteristics of an item of tangible

personal property and which are destroyed or consumed during the manufacture of the item for which the destroyed or consumed form was built are hereby exempt from the taxes levied in this chapter.

History. Acts 1993, No. 1001, § 1.

Publisher's Notes. Acts 1993, No. 1001, § 1, is also codified as § 26-53-133.

26-52-423. Natural gas used to make glass.

The gross receipts or gross proceeds derived from sales of natural gas used as fuel in the process of manufacturing glass is hereafter exempt from:

- (1) The Arkansas gross receipts tax levied by §§ 26-52-301 and 26-52-302;
- (2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107;

and

- (3) All city and county sales and use taxes.

History. Acts 1993, No. 1140, § 1; 2007, No. 182, § 21.

Publisher's Notes. Acts 1993, No. 1140, § 1, is also codified as §§ 26-53-134, 26-74-102, and 26-75-101.

Amendments. The 2007 amendment substituted “§§ 26-52-301 and 26-52-302” for “§§ 26-52-301, 26-52-302, and 26-52-1002.”

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-52-424. Sales to Fort Smith Clearinghouse.

The gross receipts or gross proceeds derived from sales to the Community Service Clearinghouse, Inc., of Fort Smith are hereafter exempt from:

- (1) The Arkansas gross receipts tax levied by §§ 26-52-301, 26-52-302, and 26-63-402;

- (2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107;

and

- (3) All city and county sales and use taxes.

History. Acts 1993, No. 913, § 1; 2007, No. 182, § 22.

Publisher's Notes. Acts 1993, No. 913, § 1, is also codified as §§ 26-53-135, 26-74-103, and 26-75-102.

Amendments. The 2007 amendment substituted “26-63-402” for “26-52-1002.”

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-52-425. Substitute fuel for manufacturing.

(a) There is specifically exempted from the tax imposed by §§ 26-52-301 and 26-52-302, the gross receipts or gross proceeds derived from the sale of substitute fuel used in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas.

(b) As used in this section:

- (1) “Manufacturing” or “processing” means the same as set out in § 26-52-402(b);

- (2) (A) “Solid waste” means only solid waste as commonly understood on April

10, 1995.

(B) “Solid waste” does not include solid wood chips or other wood by-products; and

(3) “Substitute fuel” means products or materials that have been derived from tires, from municipal solid waste or other solid waste, from used motor oil, from used railroad ties, or from petroleum-based waste for use in producing heat or power by burning.

History. Acts 1993, No. 1024, § 1; 1995, No. 1134, § 1; 1995, No. 1296, § 86; 1997, No. 825, § 1; 2009, No. 655, § 20.

A.C.R.C. Notes. In regard to the phrase “on the date of enactment” in subdivision (b)(2)(B) of this section, Acts 1995, No. 1134, was signed by the Governor on April 10th, 1995.

Amendments. The 2009 amendment rewrote (b).

26-52-426. Railroad rolling stock manufactured for use in interstate commerce.

(a) The gross receipts or gross proceeds derived from the sale or lease of railroad rolling stock manufactured for use in transporting persons or property in interstate commerce is exempt from the gross receipts tax levied by this chapter.

(b) (1) As used in this section, “railroad rolling stock” means completed railroad locomotives and completed railroad cars designed to haul either passengers or freight.

(2) (A) “Railroad rolling stock” shall not include repair parts or materials used to repair locomotives or railroad cars, components of railroad cars or locomotives, trailers, or any property not used directly in the transportation of passengers or freight.

(B) “Railroad rolling stock” shall also not include machinery used to repair or maintain railroad cars, locomotives, track, railroad ties, or railroad roadway.

History. Acts 1994 (2nd Ex. Sess.), No. 25, § 1.

26-52-427. Property purchased for use in performance of construction contract.

(a) A contractor that purchases tangible personal property which becomes a recognizable part of a completed structure or improvement to real property and which is purchased for use or consumption in the performance of construction contracts shall be entitled to a rebate on any additional gross receipts tax or compensating use tax levied by the state or any city or county if:

(1) The construction contract for which the tangible personal property was purchased is entered into prior to the effective date of the levy of the additional state, city, or county gross receipts tax or compensating use tax; and

(2) The contractor paid the additional gross receipts or compensating use tax to the seller.

(b) As used in this section, “construction contract” means a contract to construct, manage, or supervise the construction, erection, or substantial modification of a building or other improvement or structure affixed to real property. “Construction contract” shall not mean a contract to produce tangible personal property.

(c) The rebate provided by this section shall apply to tangible personal property purchased within five (5) years from the effective date of the levy of the additional state, city, or county gross receipts tax or compensating use tax.

(d) The rebate provided by this section shall not apply to cost-plus contracts which allow

the contractor to pass any additional tax on to the principal as a part of the contractor's costs.

(e) Interest shall not accrue or be paid on an amount subject to a claim for rebate pursuant to this section.

(f) The Director of the Department of Finance and Administration shall promulgate rules and prescribe forms for claiming a rebate as provided by this section.

History. Acts 1995, No. 387, §§ 1-3; 2007, No. 181, § 22.

Publisher's Notes. Acts 1995, No. 387, §§ 1-3 are also codified as § 26-53-138.

Amendments. The 2007 amendment, in (a), added (2) and designated part of the existing provisions as (1), in present (a)(1) substituted "A contractor that purchases tangible personal property" for "Tangible personal property," and substituted "entitled to a rebate on" for "exempt from"; substituted "rebate" for "exemption" in (c); substituted "rebate provided by this section" for "exemption" in (d); added (e) and (f); and made related and stylistic changes.

Effective Dates. Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

26-52-428. Railroad parts, cars, and equipment.

There is specifically exempted from any tax imposed by this chapter, as amended, including, but not limited to, §§ 26-52-301 and 26-52-302, the gross receipts or gross proceeds derived from the sale of parts and other tangible personal property incorporated into or which ultimately become a part of railroad parts, railroad cars, and equipment brought into the State of Arkansas solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within this state.

History. Acts 1995, No. 848, § 1.

26-52-429. Gas and energy produced from biomass.

(a) (1) The gross receipts or gross proceeds derived from the sale of gas produced from biomass in a facility meeting all of the eligibility requirements for the credit allowed under 26 U.S.C. § 45k, as in effect on December 31, 1996, and sold to an entity for the purpose of generating steam, hot air, or electricity to be sold to the gas producer are exempt from the tax levied by this chapter.

(2) The gross receipts or gross proceeds derived from the sale of steam, hot air, or electricity from the entity purchasing the gas produced from biomass in a facility meeting all of the eligibility requirements for the credit allowed under 26 U.S.C. § 45k, as in effect on December 31, 1996, to the gas producer are exempt from the tax levied by this chapter.

(b) As used in this section, "gas produced from biomass" means gas produced from any organic material other than:

- (1) Oil and natural gas or any product thereof; or
- (2) Coal, including lignite, or any product thereof.

History. Acts 1997, No. 999, § 1.

26-52-430. Charitable organizations.

(a) The exemptions set forth in this subchapter for a charitable organization shall not extend to sales of new tangible personal property by the charitable organization if the sales compete with sales by for-profit businesses.

(b) A sale by a charitable organization does not compete with a sale by a for-profit business if:

(1) The sales transaction is conducted by a member of the charitable organization and not by any franchisee or licensee;

(2) All the proceeds derived from the sales transaction go to the charitable organization;

(3) The sales transaction is not a continuing one and is held not more than three (3) times a year; and

(4) The dominant motive of the majority of purchasers of the items sold is the making of a charitable contribution, with the purchase of an item being merely incidental and secondary to the dominant purpose of making a gift to the charitable organization.

(c) (1) The provisions of this section shall not apply to a sale made by a nonprofit hospital, a cafeteria at a nonprofit hospital, or a gift shop at a nonprofit hospital, whether operated by the hospital, a hospital auxiliary, or other nonprofit organization.

(2) The provisions of this section shall also not apply to a gift shop operated by a charitable organization at a for-profit hospital.

History. Acts 1999, No. 1062, § 1; 2001, No. 628, § 1.

26-52-431. Timber harvesting equipment.

(a) The first fifty thousand dollars (\$50,000) of the purchase price from the sale of machinery or equipment and related attachments that are sold to or used by a person engaged primarily in the harvesting of timber shall be exempt from the taxes levied by this chapter and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) The equipment and related attachments are not exempt unless they are:

(1) Purchased by a person whose primary activity is the harvesting of timber; and

(2) Used exclusively in the off-road activity of harvesting of timber.

(c) The exemption provided in this section shall not apply to a purchase of a repair or replacement part for the equipment.

(d) As used in this section:

(1) "Equipment used in the harvesting of timber" means all off-road equipment and related attachments used in every forestry procedure starting with the severing of a tree from the ground through the point at which the tree or its parts in any form have been loaded in the field in or on a truck or other vehicle for transport to the place of use;

(2) "Machinery or equipment" means only complete systems or units that operate exclusively and directly in the harvesting of timber;

(3) "Off-road equipment" means and includes skidders, feller bunchers, delimiters of all types, chippers of all types, loaders of all types, and bulldozers equipped with grapples used as skidders; and

(4) "Primary activity" means the principal activity in which a person is engaged and to which more than fifty percent (50%) of all the resources of his or her activities are committed.

(e) (1) The exemption provided by this section may be administered as a rebate.

(2) The Director of the Department of Finance and Administration is authorized to promulgate rules to administer this exemption in the form of a rebate.

History. Acts 1999, No. 1334, § 1; 2001, No. 622, § 1; 2007, No. 860, § 4.

A.C.R.C. Notes. As enacted by Acts 1999, No. 1334, § 1, and as amended by Acts 2001, No. 622, § 1, this section contained a subsection (e) that read “This section shall be effective beginning July 1, 1999.”

Amendments. The 2007 amendment added (e).

Effective Dates. Acts 2007, No. 860, § 7, provided: “Sections 1–6 of this act will become effective on January 1, 2008.”

26-52-432. [Repealed.]

Publisher's Notes. This section, concerning assistance to owners of agricultural aircraft damaged during January 1999, was repealed by Acts 2007, No. 827, § 222. The section was derived from Acts 1999, No. 952, § 1.

26-52-433. Durable medical equipment, mobility-enhancing equipment, prosthetic devices, and disposable medical supplies.

(a) (1) Gross receipts or gross proceeds derived from the rental, sale, or repair of durable medical equipment prescribed by a physician, mobility-enhancing equipment prescribed by a physician, a prosthetic device prescribed by a physician, and disposable medical supplies prescribed by a physician shall be exempt from all state and local sales and use taxes.

(2) This exemption shall apply only to durable medical equipment, mobility-enhancing equipment, a prosthetic device, and disposable medical supplies sold to a specific patient pursuant to a prescription written before the sale.

(b) As used in this section:

(1) “Disposable medical supplies” includes without limitation the following:

(A) Ostomy, urostomy, and colostomy supplies;

(B) Enemas, suppositories, and laxatives used in routine bowel care; and

(C) Disposable undergarments and linen savers;

(2) (A) “Durable medical equipment” means equipment, including repair and replacement parts for the equipment, that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury;

(iv) Is not worn in or on the body; and

(v) Is for home use.

(B) “Repair and replacement parts” includes all components or attachments used in conjunction with the durable medical equipment;

(C) “Durable medical equipment” does not include mobility-enhancing equipment;

(3) (A) “Mobility-enhancing equipment” means equipment, including repair and replacement parts for the equipment, that:

(i) Is primarily and customarily used to provide or increase the ability to move from one (1) place to another and which is appropriate for use either in a home or a motor vehicle;

(ii) Is not generally used by a person with normal mobility; and

(iii) Does not include any motor vehicle or equipment on a motor

vehicle normally provided by a motor vehicle manufacturer.

(B) "Mobility-enhancing equipment" does not include durable medical equipment;

(4) "Physician" means a person licensed under § 17-95-401 et seq.;

(5) "Prescription" means an order, formula, or recipe issued in any form and transmitted by an oral, written, electronic, or other means of transmission by a duly licensed physician or practitioner authorized to issue prescriptions under Arkansas law; and

(6) (A) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body.

(B) "Prosthetic device" does not include corrective eyeglasses, contact lenses, and dental prostheses.

(c) (1) Notwithstanding subdivision (a)(2) of this section, a patient may claim the exemption under this section for a wheelchair lift or automobile hand controls prescribed for the patient after the sale if:

(A) The wheelchair lift or automobile hand controls are purchased in conjunction with the purchase of a motor vehicle;

(B) The gross receipts or gross proceeds derived from the sale of the wheelchair lift or automobile hand controls are separately stated on the invoice or bill of sale for the purchase of the motor vehicle; and

(C) The patient has a prescription for the wheelchair lift or automobile hand controls at the time the motor vehicle is registered.

(2) A patient purchasing a wheelchair lift or automobile hand controls directly from a vendor of adaptive medical equipment for subsequent installation shall possess a prescription for the wheelchair lift or automobile hand controls prior to the sale in compliance with subdivision (a)(2) of this section.

History. Acts 1991, No. 414, § 1; 2003, No. 1273, § 2; 2003, No. 1473, § 64; 2007, No. 140, §§ 1, 2; 2007, No. 181, §§ 23, 45; 2007, No. 860, § 5; 2009, No. 384, § 6.

A.C.R.C. Notes. This section was formerly codified as § 26-3-307. Former § 26-3-307 was recodified by Acts 2003, No. 1473, § 64, as present §§ 26-52-433 and 26-53-141.

Amendments. The 2003 amendment by No. 1273 rewrote the section.

The 2007 amendment by No. 140 added (c) and (d).

The 2007 amendment by No. 181 inserted "prosthetic device" in the section heading; in (a), inserted "a prosthetic device prescribed by a physician" in (a)(1), in (a)(2) inserted "prosthetic device" and substituted "sold to a specific patient pursuant to a prescription written before the sale" for "prescribed for a specific patient before the sale," and deleted former (a)(3); and rewrote (b).

The 2007 amendment by No. 860 deleted former (b)(1)(B) and redesignated the remaining subsections accordingly; added (b)(2)(A)(v); and made related changes.

The 2009 amendment rewrote (b)(2)(B), and inserted the text of former (b)(2)(B) as (b)(2)(C).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses,

and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 140, § 5: Oct. 1, 2007. Effective date clause provided: "Effective date. Sections 1 – 4 of this act are effective on the first day of the calendar quarter following the effective date of this act."

Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

Acts 2007, No. 860, § 7, provided: "Sections 1–6 of this act will become effective on January 1, 2008."

Research References

A.L.R.

Sales and use tax exemption for medical supplies. 30 A.L.R.5th 494.

26-52-434. Fire protection equipment and emergency equipment.

(a) The gross receipts or gross proceeds derived from a purchase of or a repair to fire protection equipment and emergency equipment to be owned by and exclusively used by a volunteer fire department are exempt from the taxes levied under:

- (1) This chapter;
- (2) The Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.; and
- (3) All other state, local, and county sales and use taxes.

(b) The gross receipts or gross proceeds derived from a purchase of supplies and materials to be used in the construction and maintenance of volunteer fire departments, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith are exempt from the taxes levied under:

- (1) This chapter;
- (2) The Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.; and
- (3) All other state, local, and county sales and use taxes.

History. Acts 1995, No. 1010, § 1; 1997, No. 441, § 1; 2003, No. 1473, § 65.

A.C.R.C. Notes. This section was formerly codified as § 26-3-309. Former § 26-3-309 was recodified by Acts 2003, No. 1473, § 65, as present §§ 26-52-434 and 26-53-142.

26-52-435. Wall and floor tile manufacturers.

(a) The gross receipts or gross proceeds derived from sales of electricity and natural gas used in the process of manufacturing wall and floor tile by manufacturers of tile classified in Standard Industrial Classification 3253 are exempt from:

- (1) The Arkansas gross receipts tax levied by §§ 26-52-301 and 26-52-302;
- (2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107;
- (3) All city and county sales and use taxes.

(b) A manufacturer of wall or floor tile classified in Standard Industrial Classification 3253 must have begun construction of a manufacturing facility in the state prior to January 1, 2003, in order to claim this exemption.

History. Acts 2001, No. 1375, § 1; 2003, No. 1473, § 66; 2007, No. 182, § 23.

A.C.R.C. Notes. This section was formerly codified as § 26-3-310. Former § 26-3-310 was recodified by Acts 2003, No. 1473, § 66, as present §§ 26-52-435 and 26-53-143.

Amendments. The 2007 amendment substituted “§§ 26-52-301 and 26-52-302” for “§§ 26-52-301, 26-52-302, and 26-52-1002” in (a).

Effective Dates. Acts 2001, No. 1375, § 2, provided: “This act shall be effective on and after July 1, 2003.”

Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-52-436. Certain classes of trucks or trailers.

(a) As used in this section:

- (1) “Person” means a natural person who resided in this state at the time of purchasing a truck tractor or semitrailer in this state;
- (2) “Semitrailer” means every vehicle with or without motive power, including a pole trailer, drawn by a truck tractor and designed for carrying property; and
- (3) “Truck tractor” means a motor vehicle:

(A) Designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn; and

(B) Registered as a Class Five, Class Six, Class Seven, or Class Eight truck as defined by § 27-14-601(a)(3).

(b) Except as provided in subsection (d) of this section, the gross receipts or gross proceeds in excess of nine thousand one hundred fifty dollars (\$9,150) derived from the sale of a new or used truck tractor in this state are exempt from the Arkansas gross receipts tax levied by this chapter.

(c) Except as provided in subsection (d) of this section, the gross receipts or gross proceeds in excess of one thousand dollars (\$1,000) derived from the sale of a new or used semitrailer in this state are exempt from the Arkansas gross receipts tax levied by this chapter.

(d) The exemption in this section does not apply to gross receipts taxes levied by any Arkansas city, town, or county.

History. Acts 2003, No. 551, § 1.

26-52-437. Textbooks and instructional materials for public schools.

(a) (1) As used in this section, “instructional materials” includes:

(A) Traditional books, sheet music, and trade books in printed and bound form;

(B) Activity-oriented educational programs that may include manipulatives;

(C) Hand-held calculators;

(D) Technology-based educational materials and electronic software that require the use of electronic equipment in order to be used in the learning process, except for the equipment required to make use of these materials;

(E) Maps, globes, art supplies, workbooks, flash cards, educational blocks, educational models, manipulatives, and charts for classroom use; and

(F) Video tapes, DVDs, films, or cassettes containing instructional information designed to be presented to students as part of a course of study.

(2) "Instructional materials" does not include:

(A) Items purchased for use in:

(i) Interscholastic extracurricular activities; or

(ii) Administration or maintenance of a school; or

(B) Construction materials or supplies.

(b) Textbooks, library books, and other instructional materials shall be exempt from the gross receipts tax levied by this chapter if purchased by:

(1) An Arkansas school district or Arkansas public school that receives state funding; or

(2) The State of Arkansas for free distribution to Arkansas school districts or Arkansas public schools.

History. Acts 2003 (2nd Ex. Sess.), No. 32, § 1; 2005, No. 1441, § 1.

Amendments. The 2005 amendment redesignated former (a) and (a)(1)-(4) as present (a)(1) and (a)(1)(A)-(D); inserted "sheet music" in (a)(1)(A); deleted "or other hands on educational material; and" at the end of (a)(1)(C); inserted "and electronic software" in (a)(1)(D); and added present (a)(1)(E), (a)(1)(F) and (a)(2).

26-52-438. Chlor-alkali manufacturing process.

The gross receipts or gross proceeds derived from the sale of electricity used for the production of chlorine and other chemicals using a chlor-alkali manufacturing process are exempt from the gross receipts tax levied by this chapter.

History. Acts 2005, No. 877, § 1.

A.C.R.C. Notes. Acts 2005, No. 877, § 2, provided:
"Legislative intent.

(a) The General Assembly finds that Arkansas manufacturers that use the chlor-alkali manufacturing process are at a disadvantage when compared to manufacturers in surrounding states where the electricity used in the chlor-alkali process is exempt.

(b) The purpose of this act is to provide an exemption to Arkansas manufacturers for electricity used in the chlor-alkali manufacturing process, and place Arkansas chlor-alkali manufacturers on an equal footing with chlor-alkali manufacturers in surrounding states."

26-52-439. Livestock reproduction equipment or substances.

(a) As used in this section:

(1) "Livestock" means any mammal the products of which ordinarily are used for

food or human consumption;

(2) "Livestock reproduction equipment" means any of the following used in the reproduction of livestock:

(A) Nitrogen;

(B) Nitrogen tanks; or

(C) Any equipment used to implement the reproduction technique; and

(3) "Livestock reproduction substance" means any natural or artificial substance used in the reproduction of livestock, including semen or embryos.

(b) Any livestock reproduction equipment or livestock reproduction substance shall be exempt from the tax imposed by this chapter.

History. Acts 2005, No. 2168, § 1.

Effective Dates. Acts 2005, No. 2168, § 2, provided:

"This act shall apply to the sale of livestock reproduction equipment or livestock reproduction substances sold on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days."

26-52-440. Exemption for qualified museums.

(a) As used in this section:

(1) "Exemption certificate" means an exemption certificate issued by the Director of the Department of Finance and Administration under subdivision (d)(1) of this section;

(2) "Nonprofit organization" means any organization described in 26 U.S.C. § 501(c)(3), as in effect on January 1, 2005;

(3) "Qualified museum" means any nonprofit organization that acquires a collection of artwork for purposes of establishing and operating a qualified museum facility, regardless of whether the nonprofit organization may engage in any other charitable activity if the:

(A) Fair market value of the artwork collection of the nonprofit organization for public viewing and exhibition at the qualified museum facility exceeds one hundred million dollars (\$100,000,000) prior to January 1, 2013; and

(B) The director has issued an exemption certificate to the nonprofit organization; and

(4) "Qualified museum facility" means a facility, including the structures, buildings, and any ancillary or related structures or buildings and real property associated with the facility, including auditoriums, parking areas, and educational facilities that house a collection of artwork or other exhibits for public viewing and exhibition if the:

(A) Principal location and primary operations of the facility will be located within the State of Arkansas;

(B) Museum portion of the facility opens to the public after January 1, 2005, and prior to January 1, 2013; and

(C) Aggregate total costs of the construction and acquisition of the facility exceed thirty million dollars (\$30,000,000) prior to January 1, 2013.

(b) (1) The gross receipts or gross proceeds derived from the sale of any tangible personal property or services to a qualified museum are exempt from this chapter.

(2) The exemption provided in subdivision (b)(1) of this section shall also apply to the gross receipts or gross proceeds derived from the sale of materials to a qualified

museum or its contractor or agent used in the construction, repair, expansion, or operation of the qualified museum facility.

(c) A nonprofit organization requesting recognition as a qualified museum shall file with the director on forms prescribed by the director a written statement under oath:

(1) (A) Describing the facts upon which the nonprofit organization claims the exemption under this section.

(B) This statement shall be filed prior to first claiming the exemption under this section and shall include facts indicating that the nonprofit organization has a good faith plan and intent to satisfy the conditions under subdivision (c)(2) of this section; and

(2) On or before June 30, 2013, stating that the following conditions have been met:

(A) The nonprofit organization has established and operated prior to January 1, 2013, a facility that houses a collection of artwork or other exhibits for public viewing and exhibition;

(B) The principal location and primary operations of the facility are within the State of Arkansas;

(C) The museum portion of the facility first opened to the public after January 1, 2005, and prior to January 1, 2013;

(D) The aggregate total costs of construction and acquisition of the facility, including the structures, buildings, ancillary or related structures or buildings, real property used in connection with the facility, auditoriums, parking areas, and educational facilities exceeded thirty million dollars (\$30,000,000) prior to January 1, 2013; and

(E) Prior to January 1, 2013, the nonprofit organization acquired a collection of artwork with a fair market value in excess of one hundred million dollars (\$100,000,000) for public viewing and exhibition at the qualified museum facility.

(d) (1) After filing the statement required under subdivision (c)(1) of this section, if the director finds that the nonprofit organization has a good faith plan and intent to satisfy the conditions of subdivision (c)(2) of this section prior to January 1, 2013, the director shall issue an exemption certificate to the nonprofit organization within sixty (60) days after the filing of the statement.

(2) The director may revoke the exemption certificate at any time after it is issued if the director determines that the nonprofit organization is unable to satisfy the conditions under subdivision (c)(2) of this section prior to January 1, 2013.

(3) After filing the statement required under subdivision (c)(2) of this section, if the director determines that the nonprofit organization has not met the conditions under subdivision (c)(2) of this section, the director shall revoke the exemption certificate of the nonprofit organization.

(4) If the nonprofit organization fails to file the statement described in subdivision (c)(2) of this section on or prior to June 30, 2013, the director shall revoke the exemption certificate.

(5) Revocation by the director of an exemption certificate shall be retroactive to the date of its issuance subject to subsection (e) of this section.

(e) (1) If the director revokes the exemption certificate, any tax deficiency, related interest, and applicable penalties due under this chapter, the Arkansas Compensating Tax

Act of 1949, § 26-53-101 et seq., or the Arkansas Tax Procedure Act, § 26-18-101 et seq., may be assessed against the nonprofit organization but may not be assessed against a third party that has relied in good faith on the exemption certificate prior to its revocation.

(2) If the director revokes the exemption certificate, any tax deficiency, related interest, and applicable penalties assessed against the nonprofit organization shall also include any tax deficiency, related interest, and applicable penalties assessed on purchases made by the nonprofit organization's contractors and agents for the benefit of the nonprofit organization in reliance on the exemption certificate.

(3) (A) Any assessment by the director under subdivision (e)(1) or subdivision (e)(2) of this section shall be made in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(B) However, the time period for the director to make the assessment is extended to whichever of the following occurs first:

(i) Three (3) years from the date the nonprofit organization files the statement under subdivision (c)(2) of this section; or

(ii) July 1, 2016.

(4) The nonprofit organization may contest any assessment or other determination by the director in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 2005, No. 1865, § 1.

26-52-441. Natural gas and electricity used in the manufacturing of tires.

(a) The gross receipts or gross proceeds derived from the sale of natural gas and electricity used in the manufacturing of tires in this state are exempt from the:

(1) Gross receipts tax levied by this chapter; and

(2) Compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) As used in this section:

(1) "Manufacturing of tires" means the manufacturing of new motor vehicle tires and does not include the retreading of tires; and

(2) "Motor vehicle" means any vehicle required to be licensed for highway use under Arkansas law.

(c) The natural gas and electricity subject to the exemption in this section shall be separately metered from the natural gas and electricity used for any other purpose by the manufacturer or as otherwise established in the rules issued under subsection (d) of this section.

(d) The Director of the Department of Finance and Administration shall promulgate rules for the proper administration of this section.

History. Acts 2007, No. 548, § 1.

Effective Dates. Acts 2007, No. 548, § 2, provided: "Section 1 of this act will become effective on January 1, 2008."

26-52-442. Thermal imaging equipment.

The gross receipts or gross proceeds derived from the sale of thermal imaging equipment

purchased by a county government for use by law enforcement aircraft are exempt from the:

- (1) Gross receipts tax levied by this chapter; and
- (2) Compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 2009, No. 767, § 1.

26-52-443. Exemption for Arkansas Search Dog Association, Inc.

The gross receipts or gross proceeds from the sale of tangible personal property or a service to the Arkansas Search Dog Association, Inc., are exempt from the gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 2009, No. 1176, § 1.

Effective Dates. Acts 2009, No. 1176, § 2: Effective date clause provided: "Section 1 of this act is effective on the first day of the calendar quarter following the effective date of this act."

Subchapter 5 **— Returns and Remittance of Tax**

- 26-52-501. Preparation of returns — Payment of tax.
- 26-52-502. Tax return on basis of cash actually received.
- 26-52-503. Discount for prompt payment.
- 26-52-504. [Repealed.]
- 26-52-505. Sales of aircraft.
- 26-52-506. Taxable labor performed for retailer — Collection of tax.
- 26-52-507. Florists transmitting orders.
- 26-52-508. Collection of tax by sellers or admissions collectors.
- 26-52-509. Direct payment of tax by consumer or user generally.
- 26-52-510. Direct payment of tax by consumer-user — New and used motor vehicles, trailers, or semitrailers.
- 26-52-511. Prepaid funeral contracts.
- 26-52-512. Tax payments by retailers.
- 26-52-513. Sales of motor-driven and all-terrain vehicles.
- 26-52-514. Determining total consideration for sale of vehicle — Alternative method.
- 26-52-515. Refund of sales tax on vehicles returned as defective.
- 26-52-516. Refunds for construction of employer-operated child care facilities.
- 26-52-517. Exemption certificates.
- 26-52-518. Special events.
- 26-52-519. Credit voucher for sales tax on motor vehicles destroyed by catastrophic events.
- 26-52-520. Communication equipment for commercial trucks.
- 26-52-521. Sourcing of sales.
- 26-52-522. Direct mail sourcing.
- 26-52-523. Credit or rebate on local sales and use tax.

Cross References. Date of mailing of tax return or tax claim as date of delivery, § 26-18-105.

Preambles. Acts 1973, No. 516 contained a preamble which read:

"Whereas, the athletic departments of the various institutions of higher learning in the State of Arkansas, both State-supported and private, athletic and/or interscholastic activities of public and private elementary and secondary schools, depend largely if not entirely on funds derived from admissions to athletic events and do not participate in tax revenues; and

"Whereas, it is in the best interest of higher education and public and private elementary and secondary schools and in the overall improvement of interest and participation in athletic events at colleges and universities and public and private elementary and secondary schools throughout the State that sales taxes paid by such institutions of higher learning and public and private elementary and secondary schools on admissions tickets to athletic events be refunded to the particular institution collecting such taxes, or exempted from the provisions of the Gross Receipts Tax"

Acts 1975, No. 282 contained a preamble which read:

"Whereas, Section 3 of Act 214 of 1971 levied a sales tax of three per centum upon certain types of labor, to wit, service of or alteration, addition, cleaning, refinishing, replacement and repair of motor vehicles, aircraft, farm machinery and implements, motors of all kinds, tires and batteries, boats, electrical appliances and devices, furniture, rugs, upholstery, household appliances, television and radio, jewelry, watches, machinery of all kinds, bicycles, office machines and equipment, shoes, tin and sheetmetal, mechanical tools and shop equipment, but excluding coin operated car washes; and

"Whereas, this Act has created confusion concerning the propriety or impropriety of one collecting Sales Tax when performing taxable labor for another person who holds a Retailer's Permit, who in turn will collect Sales Tax on the labor when the labor is charged to the ultimate consumer"

Effective Dates. Acts 1941, No. 386, § 21: July 1, 1941.

Acts 1945, No. 64, § 3: approved Feb. 21, 1945. Emergency clause provided: "It being considered necessary by the Legislature to more effectively collect Sales Tax on new and used cars as provided in this Act and to expedite such collection, that this Act should be in effect as soon as possible and it thereby being necessary for the public peace, health and protection of the State an emergency is hereby declared and this Act shall be in full force and effect immediately upon and after its passage."

Acts 1957, No. 19, § 6: Feb. 7, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, and the University of Arkansas and the other state-supported institutions of higher learning, the Public School System, the Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment to all of the people of this State; and (4) that only the provisions of this act will provide funds in amounts sufficient to alleviate the aforementioned conditions. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1965, No. 146, §§ 5, 7: Apr. 1, 1965. Emergency clause provided: "It has been found that increased population and increased cost of operating have placed heavy demands on funds available for the operation of government and it is necessary to supplement said funds so that proper functions of government may be performed. Therefore, in order to provide supplemental funds for the operation of government, and this Act being necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval." Approved Mar. 9, 1965.

Acts 1975, No. 800, § 3: Apr. 4, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that a more efficient collection of gross receipts taxes by certain consumer users could be accomplished by instituting a system whereby the consumer user would pay the gross receipts taxes direct to the Revenue Services Division of the Department of Finance and Administration, and that the immediate passage of this Act is

necessary to enable the Revenue Services Division of the Department of Finance and Administration to promulgate appropriate rules and regulations for entering into agreements for direct payment of gross receipts taxes to the State of Arkansas by the user. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1979, No. 401, § 50: Jan. 1, 1980.

Acts 1979, No. 915, § 6: July 1, 1979. Emergency clause provided: “It is hereby found and determined by the Seventy-Second General Assembly that there is some doubt regarding the correct dates for the reporting and payment of the Arkansas gross receipts and compensating use taxes; that there is also some confusion as to whether the Gross Receipts Tax should be computed on the basis of the total combined gross receipts or gross proceeds derived by the taxpayer from all taxable sales during the month or upon the gross receipts or gross proceeds derived from each separate sale, and not upon any figure for gross receipts tax collected that may appear on taxpayer’s books of account, and that this Act is designed to clarify this matter by specifically providing that the tax is computed upon the total receipts for the month from all taxable sales and not upon the gross receipts derived from each sale; nor upon any figure for gross receipts tax collected that may appear on taxpayer’s books of account; that the effectiveness of this Act on July 1, 1979, is essential to the efficient collection of revenues for the State’s operations and that in the event of an extension of the regular session, delay in effective date of this Act beyond July 1, 1979, could work irreparable harm upon the proper collection of essential revenues for the State’s operations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1979.”

Acts 1985, No. 691, § 4: effective for tax years on and after July 1, 1985.

Acts 1987 (1st Ex. Sess.), No. 10, § 2: Jan. 1, 1988. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the State is in serious danger of losing revenues which are necessary to provide adequate funding for schools and other essential services required by the citizens of this State and that the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after January 1, 1988.”

Acts 1989, No. 395, § 6: Mar. 7, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the provisions of Arkansas Code of 1987 Annotated § 26-53-101 et seq. do not specifically provide for allowance to be given to persons for similar taxes paid in other states; that the proper and effective administration of the compensating (use) tax will be greatly enhanced by the provisions of a reciprocal tax credit given by the State of Arkansas to purchasers who have previously paid a compensating tax in another state, provided that such other state offers the same tax credit to Arkansas purchasers for tangible personal property brought into the other state; that this act is immediately necessary in order to eliminate the possibility that Arkansas taxpayers will be subject to undue multiple taxation by other states due to the failure of the states’ taxing authorities to equate the Arkansas Gross Receipts Tax to sales tax for purposes of allowing a reciprocal sales tax credit; that this act is also necessary to lessen the administrative burdens on taxpayers whose monthly gross receipts tax liability is relatively small in amount. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and welfare, shall be in full force and effect from and after its passage and approval.”

Acts 1989 (3rd Ex. Sess.), No. 9, § 5: Nov. 3, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that this State is losing sales and use tax revenues on new and used motor vehicles purchased by Arkansas residents from sellers in other states and that these revenues are essential to fund public education and other necessary services provided by State government and the loss of these funds if causing irreparable harm to this State. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 3, § 14: May 1, 1991. Emergency clause provided: “It is hereby found and

determined that the State of Arkansas is lacking adequate funds to provide for the education of its citizens and for other essential services: that increased funds must be raised to adequately provide for those needs; that certain persons are assisting taxpayers in evading or defeating the payment or collection of lawfully imposed state taxes depriving the state of needed revenues and that this act is designed to provide the necessary revenues to the state sufficient to meet these needs. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective on and after May 1, 1991."

Acts 1991, No. 688, § 10: Mar. 21, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that some taxpayers are not properly completing and timely filing tax returns; that these failures create an administrative burden upon the Department of Finance and Administration; and that this act is designed to impose a fifty dollar (\$50) penalty for failure to timely file returns, even if no tax is due, or if returns are not properly completed.

Therefore, an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1126, § 5: May 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that Act 3 of 1991, should be amended to provide that used manufactured homes valued at less than ten thousand dollars (\$10,000) should not be subject to the gross receipts tax; that this act shall amend Act 3 to that extent; that Act 3 of 1991, goes into effect on May 1, 1991, and therefore this act should go into effect at the same time. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after May 1, 1991."

Acts 1992 (2nd Ex. Sess.), No. 6, § 6: Dec. 18, 1992. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need of additional revenues which are necessary to provide adequate funding for essential services required by the citizens of this State and that the provisions of this act are necessary to increase State revenues. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 268, § 11: Feb. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that current law imposes a 10% penalty on late payment of sales or use tax on motor vehicles and trailers; that current law disallows the isolated sales exemption to a purchase of a motor vehicle or trailer; that each of these provisions are in need of clarification to ensure the original legislative intent is fulfilled; and that Sections 6 and 7 of this act should be effective immediately to prevent possible confusion among the taxpayers of this state. Therefore, an emergency is hereby declared to exist and Sections 6 and 7 of this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect immediately upon its passage and approval."

Acts 1995, No. 358, § 6: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that vendors in the ordinary course of business have relied to their detriment by accepting resale certificates from purchasers in good faith, only to later incur tax liability if the property purchased was not resold by the purchaser; that the purchaser in most cases will be in the best position to determine whether the resale exemption is valid but current law does not permit recourse against the purchaser if the property purchased is not in fact resold; and that the practicalities of business require that vendors be permitted to relieve themselves of tax liability upon good faith acceptance of a resale certificate and this act is designed to afford such relief. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1995, No. 835, § 9: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas law is unclear as it applies to the taxation of contractors and subcontractors who construct and repair buildings and other improvements and structures affixed to real estate; that Arkansas gross receipts and use tax laws which impose tax on certain services to motors, electrical appliances and devices, household appliances, and machinery were never intended by the General Assembly to apply to nonmechanical, passive or

manually operated building systems or components; that none of the charges made by a contractor for labor or materials used in performing such nontaxable services are properly subject to tax; that contractors and subcontractors are suffering substantial losses on audits after making best efforts to comply with existing law; and that the gross receipts and use tax laws need to be clarified to specifically exclude certain services to buildings and other improvements or structures affixed to real estate from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995.”

Acts 1995, No. 850, § 8: effective for taxable years beginning Jan. 1, 1995.

Acts 1995, No. 850, § 12: Mar. 31, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need to provide for the health, welfare and education of the State's children by encouraging child care facilities to offer an ‘appropriate early childhood program’ and this Act is designed to meet that need by providing tax incentives to encourage construction of these facilities. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 391, § 5: July 1, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that sellers have relied to their detriment in accepting sales tax exemption claims by purchasers in good faith, only later to incur tax liability if the purchaser was not entitled to an exemption; that the purchaser is in the best position to determine whether the exemption claim is valid but current law does not permit recourse against the purchaser if the sale is not tax exempt; that sellers be allowed to relieve themselves of tax liability upon good faith acceptance of a claim that a sale is tax exempt; and that this act will provide this relief. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997.”

Acts 1997, No. 635, § 2: Jan. 1, 1998.

Acts 1997, No. 1192, § 6: July 1, 1997. Emergency clause provided: “It is hereby found and determined by the Eighty-First General Assembly of the State of Arkansas that the sales tax laws regarding manufactured homes are confused and need clarification to prevent inequities and possible lawsuits over their misapplication; that the laws restrict somewhat the capacity of persons to know what is taxed and when; and that it is immediately necessary for the sales tax laws regarding manufactured homes to become more comparable with laws on all types and forms of housing. Therefore, in order to make the laws more compatible, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall become effective on and after July 1, 1997.”

Acts 1997, No. 1232, § 5: Jan. 1, 1998.

Acts 1997, No. 1359, § 41: July 1, 1997. Emergency clause provided: “It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997.”

Acts 1999, No. 598, § 2: Jan. 1, 2000.

Acts 2003, No. 664, § 5: Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

Acts 2003, No. 665, § 3: Jan. 1, 2004.

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the

playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 154, § 7: Mar. 1, 2007. Effective date clause provided: "Sections 1–6 of this act shall be effective on the first day of the calendar month following the effective date of this act."

Acts 2007, No. 154, § 8: Feb. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the tax for free admission defeats the primary intent of a 'free' admission; that the recordkeeping for the seller or person furnishing the free admission is cost prohibitive and unnecessarily burdensome to the philanthropist and that the tax does not yield significant revenues to the state to justify the expense of the recordkeeping and submission of the tax; and that this act is immediately necessary for the state to enjoy the economic benefit from persons and entities giving free tickets to tourist attractions during the springtime. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 179, § 2: Jan. 1, 2008.

Acts 2007, No. 181, § 45: Jan. 1, 2008.

Acts 2007, No. 860, § 7: Jan. 1, 2008.

Acts 2009, No. 384, § 15: Mar. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law require amendment to provide consistency with the Streamlined Sales and Use Tax Agreement, that a withdrawal from stock is subject to gross receipts tax under current law, that clarification is needed to ensure that the original legislative intent is fulfilled, and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Case Notes

Cited: Acxiom Corp. v. Leathers, 331 Ark. 205, 961 S.W.2d 735 (1998).

26-52-501. Preparation of returns — Payment of tax.

(a) (1) The tax levied under this chapter shall be due and payable on the first day of each month, except as provided in this subchapter, by any person liable for the payment of any tax due under this chapter.

(2) When a taxpayer becomes liable to file a report with the Director of the Department of Finance and Administration, the taxpayer must continue to file the report, even though no tax is due, until such time as the taxpayer notifies the director, in writing, that the taxpayer is no longer liable for the report.

(b) (1) For the purpose of ascertaining the amount of tax payable under this chapter, it shall be the duty of all taxpayers on or before the twentieth day of each month to deliver to the director, upon forms prescribed and furnished by the director, returns showing the total tax due derived from all taxable sales during the preceding calendar month.

(2) The returns shall show such further information as the director may require to enable the director to compute correctly and collect the tax levied.

(3) Whether an individual, corporation, partnership, limited liability company, or other entity, every taxpayer shall file a single report combining all taxes due derived from sales made from all Arkansas locations of the taxpayer's business which are registered and permitted with the director under the same federal employer's identification number or social security number.

(c) In addition to the information required on returns, the director may request and the taxpayer must furnish any information deemed necessary for a correct computation of the tax levied.

(d) The tax shall be computed by multiplying the tax rate by the amount of the total combined gross receipts or gross proceeds derived from all taxable sales during the preceding month without regard to the amount that may be allocated to gross receipts tax on the taxpayer's books of account.

(e) The taxpayer shall compute and remit to the director the required tax due for the preceding calendar month, with the remittance of the tax to accompany the returns required in this subchapter.

(f) The return and remittances by the taxpayer as required in subsections (a)-(e) of this section shall not be construed to constitute an assessment of the tax.

(g) (1) If not paid on or before the twentieth of that month, the tax shall be delinquent from that date.

(2) However, no penalty for delinquency shall be assessed if payment is made on or before the first day of the month next following.

(h) When the average amount of tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed one hundred dollars (\$100) per month, the director may notify the taxpayer that a quarterly report and remittance in lieu of a monthly report may be made on or before July 20, October 20, January 20, and April 20 of each year for the preceding three-month period.

(i) When the average amount of tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed twenty-five dollars (\$25.00) per month, the director may notify the taxpayer that a yearly report and remittance in lieu of a monthly report may be made on or before January 20 of each year for the preceding twelve-month period.

(j) The director may establish by regulation separate requirements for filing reports and

returns and paying the tax levied under this chapter for taxpayers whose principal line of business does not include the retail selling of tangible personal property or performing taxable services.

History. Acts 1941, No. 386, § 5; 1979, No. 915, § 1; A.S.A. 1947, § 84-1906; Acts 1989, No. 395, § 2; 1991, No. 688, § 2; 1995, No. 301, § 2; 1995, No. 835, § 5; 2003, No. 664, §§ 1, 2; 2007, No. 181, § 24.

Amendments. The 2003 amendment, in (h) and (i), substituted “average” for “total” and “previous fiscal ... June 30” for “month of January 1990 or any month thereafter” and inserted “per month, the director may notify the taxpayer that”; and inserted “in lieu of a monthly report” in (i). The 2007 amendment rewrote (b)(1) and (b)(3).

Effective Dates. Acts 2003, No. 664, § 5: Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.” Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

Case Notes

Taxpayer's Defense to Claims.

Taxpayer's Defense to Claims.

Where taxpayer's defense to state's claim for unpaid sales taxes was three year statute of limitations and he did not claim “no tax due,” venue of his suit to enjoin levy of execution was in the Pulaski Chancery Court, and not in the county in which the state had placed a certificate of indebtedness of record against him. *Scurlock v. Yarbrough*, 224 Ark. 113, 271 S.W.2d 916 (1954).

In proceeding to enjoin levy of execution for unpaid sales taxes where taxpayer claimed three-year statute of limitations barred action, court held that where record did not disclose what particular months the alleged unpaid taxes were charged against in situation where some of the months of the year in question might be barred and some months not, the entire total for the year could have been incurred in months not barred, and the plea of the statute of limitations as to that entire year was without merit. *Scurlock v. Yarbrough*, 224 Ark. 113, 271 S.W.2d 916 (1954).

Cited: *Thompson v. Chadwick*, 221 Ark. 720, 255 S.W.2d 687 (1953); *Ragland v. K-Mart Corp.*, 274 Ark. 297, 624 S.W.2d 430 (1981); *Farmers Coop. v. State*, 282 Ark. 434, 669 S.W.2d 440 (1984); *Weiss v. Central Flying Serv., Inc.*, 326 Ark. 685, 934 S.W.2d 211 (1996).

26-52-502. Tax return on basis of cash actually received.

(a) Any person taxable under this chapter doing business wholly or partly on a credit basis may make application to the Director of the Department of Finance and Administration for permission to prepare his or her returns on the basis of cash actually received.

(b) The application shall be granted by the director under such rules and regulations as the director may prescribe.

(c) Any person making the application shall be taxable on all moneys collected during the taxable period.

History. Acts 1941, No. 386, § 8; A.S.A. 1947, § 84-1909.

Case Notes

In General.
Credit Basis.

In General.

If from time to time audits of corporation's business were made by state agents and in consequence of such audits corporation made an assessment of items claimed to be interstate transactions, but did not pay tax because of state's ruling that it was not to be included in the declaration, then the tax for disclosed and reported periods would not be assessable. *Hollis & Co. v. McCarroll*, 200 Ark. 523, 140 S.W.2d 420 (1940) (decision under prior law).

Credit Basis.

Acts 1935, No. 233 was not discriminatory because it provided that any person doing a credit business might apply for permission to prepare returns on basis of cash actually received and that any person making such an application should be taxable on all moneys collected, regardless of the date of sale. *Wiseman v. Phillips*, 191 Ark. 63, 84 S.W.2d 91 (1935) (decision under prior law).

26-52-503. Discount for prompt payment.

(a) At the time of transmitting the returns required under this chapter to the Director of the Department of Finance and Administration, the taxpayer shall remit with the returns to the director ninety-eight percent (98%) of the state tax due under the applicable provisions of this chapter and ninety-eight percent (98%) of the city and county gross receipts taxes collected by the director.

(b) Failure of the taxpayer to remit the tax on or before the twentieth day of the applicable month shall cause the taxpayer to forfeit his or her claim to the discount, and the taxpayer must remit to the director one hundred percent (100%) of the amount of tax plus any penalty and interest due.

(c) (1) (A) For tax payments made on or after February 1, 1993, the discount for prompt payment of state tax shall not exceed one thousand dollars (\$1,000) per month for a taxpayer filing monthly gross receipts tax reports.

(B) A taxpayer filing a tax report on a quarterly, annual, or occasional basis shall be entitled to the discount for state tax, which shall not exceed one thousand dollars (\$1,000) for each month included in the tax report.

(2) (A) The aggregate state tax discount available to a taxpayer who operates more than one (1) permitted business location within this state and who does not file a consolidated monthly gross receipts tax report for all locations shall not exceed one thousand dollars (\$1,000) per month.

(B) In the case of a corporate taxpayer, parent corporation, that holds fifty percent (50%) or more of the outstanding shares of one (1) or more corporations, subsidiaries, that are subject to the tax imposed by this chapter, the aggregate state tax discount available to the parent corporation and all subsidiaries shall not exceed one thousand dollars (\$1,000) per month.

(C) There shall be no limitation on the discount for prompt payment of city and county gross receipts taxes collected by the director.

History. Acts 1941, No. 386, § 14; 1979, No. 915, § 4; A.S.A. 1947, § 84-1915; Acts 1992 (2nd Ex. Sess.), No. 6, § 1; 2003, No. 747, §§ 2, 3.

Amendments. The 2003 amendment, in (a), inserted "state" preceding "tax" and added "and ninety-eight percent ... director"; in (c)(1), inserted "of state tax" and "for state tax"; in (c)(2)(a) and (c)(2)(B) inserted "state tax" following "aggregate"; added (c)(2)(C); and deleted former (c)(3).

Case Notes

Cited: *Farmers Coop. v. State*, 282 Ark. 434, 669 S.W.2d 440 (1984).

26-52-504. [Repealed.]

Publisher's Notes. This section, concerning sale of manufactured homes or mobile homes, was repealed by Acts 2005, No. 2254, § 2. The section derived from Acts 1965, No. 146, §§ 1-4; 1985, No. 691, § 1; A.S.A. 1947, §§ 84-1933 — 84-1936; Acts 1987, No. 508, § 1; 1991, No. 3, § 4; 1991, No. 1126, § 1; 1995, No. 437, § 2; 1997, No. 1192, § 1.

26-52-505. Sales of aircraft.

(a) Every person selling new or used aircraft in this state, whether from an established business, under a dealership, as a flying service, or as a private individual, shall obtain and hold a permit as provided in § 26-52-202 and shall make a monthly report and remittance to the Director of the Department of Finance and Administration as provided in this chapter, together with copies of invoices, sales tickets, or bills of sale reflecting the date of all sales of aircraft, the purchaser's name and address, the make, year, model, serial number, and gross sales price of each aircraft, and the amount of tax collected from the purchaser.

(b) When a used aircraft is taken in trade as a credit or part payment on the sale of a new or used aircraft, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used aircraft sold and the credit for the used aircraft taken in trade. However, if the total consideration for the sale of the new or used aircraft is less than two thousand dollars (\$2,000), no tax shall be due.

(c) However, the gross receipts or gross proceeds derived from the sale of new aircraft manufactured or substantially completed within the State of Arkansas shall not be subject to the gross receipts tax when sold by the manufacturer or substantial completer to a purchaser for use exclusively outside this state, notwithstanding the fact that possession may be taken in the state for the sole purpose of removing the aircraft from the state under its own power.

History. Acts 1959, No. 270, § 1; 1981, No. 377, § 1; A.S.A. 1947, § 84-1929; Acts 1991, No. 3, § 5.

A.C.R.C. Notes. Acts 1991, No. 3, § 8, provides, in part, that the Director of the Department of Finance and Administration is authorized to adopt an alternative method for determining the total consideration for the sale of new or used aircraft under this section. See § 26-52-514 concerning such alternative method.

26-52-506. Taxable labor performed for retailer — Collection of tax.

(a) One performing taxable labor for another person who holds a retailer's permit shall not be required to collect and remit sales tax on the labor when the labor is to be charged to, and the sales tax collected from, the ultimate consumer.

(b) The intent of this section is that labor, under the aforementioned circumstance, be given wholesale status, and that the sales tax on labor be collected only one (1) time by the retailer who collects it from his or her customer.

History. Acts 1975, No. 282, §§ 1, 2; A.S.A. 1947, §§ 84-1903.2, 84-1903.3; Acts 2007, No. 361, § 1.

Amendments. The 2007 amendment, in (a), deleted “under § 26-52-301(3)” following “labor” and

made minor punctuation changes.

26-52-507. Florists transmitting orders.

(a) The gross receipts tax levied by this state shall be due and collected by a florist who transmits an order by telegraph, telephone, or other means of communication for flowers, floral arrangements, potted plants, or any other article common to the florist business for delivery to any other place within or without this state.

(b) The gross receipts tax collected by the florist transmitting the order by telegraph, telephone, or other means of communication shall be the only tax collected on that order regardless of whether the order originated within or without this state.

(c) The destination sourcing rules in § 26-52-521 do not apply to the florist transmitting the order by telegraph, telephone, or other means of communication.

History. Acts 2009, No. 384, § 7.

Publisher's Notes. Former § 26-52-507, concerning gross receipts tax due by florists transmitting orders, was repealed by Acts 2007, No. 181, § 25. The section was derived from Acts 1959, No. 116, § 1; A.S.A. 1947, § 84-1908.1.

26-52-508. Collection of tax by sellers or admissions collectors.

(a) The tax levied by this chapter shall be paid to the Director of the Department of Finance and Administration by:

(1) The seller of tangible personal property;

(2) The seller or collector of admissions to places of amusement, recreational, or athletic events;

(3) The seller of privileges of access to or the use of amusement, entertainment, athletic, or recreational facilities; and

(4) Any other person furnishing any service subject to the provisions of this chapter.

(b) The taxes, penalty, and interest shall at all times constitute a prior, superior, and paramount claim as against the claims of unsecured creditors.

(c) The seller or person furnishing the taxable service shall collect the tax levied from the purchaser.

(d) (1) No tax is due on admission to a place of amusement, entertainment, recreation, or an athletic event for which no consideration is paid.

(2) No tax is due on the access to or the use of an amusement, entertainment, athletic, or recreational facility for which no consideration is paid.

History. Acts 1941, No. 386, § 7; A.S.A. 1947, § 84-1908; Acts 2007, No. 154, §§ 5, 6; 2007, No. 181, § 26.

Amendments. The 2007 amendment by No. 154 rewrote (d).
The 2007 amendment by No. 181 deleted former (d).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order

for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 154, § 7, provided: "Effective Date. Sections 1-6 of this act shall be effective on the first day of the calendar month following the effective date of this act."

Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

Case Notes

Excess Collection.
Liability for Tax.

Excess Collection.

Doctrine of unjust enrichment did not apply where out-of-state corporation retained out of purchase price from Arkansas customers two (now three) percent of amount of sale but agreed to return the two (now three) percent to customers if corporation was not liable for gross receipts tax. *Thompson v. Rhodes-Jennings Furn. Co.*, 223 Ark. 705, 268 S.W.2d 376 (1954), cert. denied, *Branyan & Peterson, Inc. v. Thompson*, 348 U.S. 872, 75 S. Ct. 108, 99 L. Ed. 686 (1954).

A discount retailer that collected sales tax in accordance with a regulation promulgated pursuant to this section, and as a result held funds in excess of the three percent authorized by § 26-52-301, was entitled to retain the excess, since all statutory requirements were met, the consumers who paid the tax could not be identified, and a refund of the overcollection was not possible. *Ragland v. K-Mart Corp.*, 274 Ark. 297, 624 S.W.2d 430 (1981).

Liability for Tax.

Retailer was liable for the tax if he failed to collect it. *Arkansas Power & Light Co. v. Roth*, 193 Ark. 1015, 104 S.W.2d 207 (1937) (decision under prior law).

Extension of credit by power company did not operate to deprive it of the power of, nor relieve it from the duty of, making collection of tax, nor to relieve consumer from liability to pay tax. *Arkansas Power & Light Co. v. Roth*, 193 Ark. 1015, 104 S.W.2d 207 (1937) (decision under prior law).

Consumer of electricity was liable to power company for tax on sale of electricity made to him even though he had not expressly contracted to pay such tax, since the duty was imposed by law. *Arkansas Power & Light Co. v. Roth*, 193 Ark. 1015, 104 S.W.2d 207 (1937) (decision under prior law).

Lender was not entitled to bad-debt refunds, under § 26-52-309, of sales taxes paid on defaulted consumer credit accounts with retailers because: (1) the retailer, not the lender, was the

“taxpayer” liable for the tax; and (2) the lender was not entitled to such refunds as an assignee of the retailer, as the Gross Receipts Act did not include “assignee” in the definition of a “taxpayer.” Citifinancial Retail Servs. Div. of Citicorp Trust Bank, Fsb v. Weiss, 372 Ark. 128, 271 S.W.3d 494 (2008).

Cited: Kern-Limerick, Inc. v. Scurlock, 347 U.S. 110, 74 S. Ct. 403, 98 L. Ed. 546 (1954); Parker v. Kern-Limerick, Inc., 223 Ark. 464, 266 S.W.2d 298 (1954); Ragland v. Miller Trane Serv. Agency, Inc., 274 Ark. 227, 623 S.W.2d 520 (1981).

26-52-509. Direct payment of tax by consumer or user generally.

(a) In the exercise of his or her discretion, the Director of the Department of Finance and Administration by agreement with any consumer or user may permit a consumer or user under such agreement to accrue and remit gross receipts taxes directly to the Department of Finance and Administration, instead of such taxes being collected and paid by the seller as provided in § 26-52-508.

(b) The agreements may be revoked at any time by the director whenever the director determines that the revocation thereof should be in the best interests of collection of gross receipts taxes.

(c) A consumer or user being permitted to report gross receipts taxes directly to the department shall not be entitled to any discount for any collection and shall be subject to all provisions of this chapter in the same manner as the taxpayer liable to remit taxes under this chapter.

(d) This section is supplemental to this chapter.

History. Acts 1975, No. 800, §§ 1, 2; 1979, No. 401, § 47; A.S.A. 1947, §§ 84-1945, 84-1945n.

26-52-510. Direct payment of tax by consumer-user — New and used motor vehicles, trailers, or semitrailers.

(a) (1) On or before the time for registration as prescribed by § 27-14-903(a), a consumer shall pay to the Director of the Department of Finance and Administration the tax levied by this chapter and all other gross receipts taxes levied by the state with respect to the sale of a new or used motor vehicle, trailer, or semitrailer required to be licensed in this state, instead of the taxes being collected by the dealer or seller.

(2) The director shall require the payment of the taxes at the time of registration before issuing a license for the new or used motor vehicle, trailer, or semitrailer.

(3) (A) The taxes apply regardless of whether the motor vehicle, trailer, or semitrailer is sold by a vehicle dealer or an individual, corporation, or partnership not licensed as a vehicle dealer.

(B) The exemption in § 26-52-401(17) for isolated sales does not apply to the sale of a motor vehicle, trailer, or semitrailer.

(4) If the consumer fails to pay the taxes when due:

(A) There is assessed a penalty equal to ten percent (10%) of the amount of taxes due; and

(B) Before the director issues a license for the motor vehicle, trailer, or semitrailer, the consumer shall pay to the director the penalty under subdivision (a)(4)(A) of this section and the taxes due.

(b) (1) (A) Except as provided in this section, when a used motor vehicle, trailer, or semitrailer is taken in trade as a credit or part payment on the sale of a new or used motor

vehicle, trailer, or semitrailer, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer sold and the credit for the used vehicle, trailer, or semitrailer taken in trade.

(B) However, if the total consideration for the sale of the new or used motor vehicle, trailer, or semitrailer is less than two thousand five hundred dollars (\$2,500), no tax shall be due.

(C) (i) When a used motor vehicle, trailer, or semitrailer is sold by a consumer, rather than traded-in as a credit or part payment on the sale of a new or used motor vehicle, trailer, or semitrailer, and the consumer subsequently purchases a new or used vehicle, trailer, or semitrailer of greater value within forty-five (45) days of the sale, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer purchased subsequently and the amount received from the sale of the used vehicle, trailer, or semitrailer sold in lieu of a trade-in.

(ii) (a) Upon registration of the new or used motor vehicle, a consumer claiming the deduction provided by subdivision (b)(1)(C)(i) of this section shall provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle.

(b) A copy of the bill of sale shall be deposited with the revenue office at the time of registration of the new or used motor vehicle.

(c) The deduction provided by this section shall not be allowed unless the taxpayer claiming the deduction provides a copy of a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle.

(iii) If the taxpayer claiming the deduction provided in this section fails to provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle, tax shall be due on the total consideration paid for the new or used vehicle, trailer, or semitrailer without any deduction for the value of the item sold.

(2) (A) (i) When a motor vehicle dealer removes a vehicle from its inventory and the vehicle is used by the dealership as a service vehicle, the dealer shall register the vehicle, obtain a certificate of title, and pay sales tax on the listed retail price of the new vehicle.

(ii) (a) When the motor vehicle dealer returns the service vehicle to inventory as a used vehicle and replaces it with a new vehicle for dealership use as a service vehicle, the dealer shall pay sales tax on the difference between the listed retail price of the new service vehicle to be used by the dealership and the value of the used service vehicle being returned to inventory.

(b) The value of the used service vehicle shall be the highest listed wholesale price reflected in the most current edition of the National Automotive Dealers Association's Official Used Car Guide.

(B) (i) As used in this subsection, "service vehicle" means a motor vehicle driven exclusively by an employee of the dealership and used either to transport dealership customers or dealership parts and equipment.

(ii) "Service vehicle" does not include motor vehicles which are

rented by the dealership, used as demonstration vehicles, used by dealership employees for personal use, or used to haul or pull other vehicles.

(c) All parts and accessories purchased by motor vehicle sellers for resale or used by them for the reconditioning or rebuilding of used motor vehicles intended for resale are exempt from gross receipts tax, provided that the motor vehicle seller meets the requirements of § 26-52-401(12)(A) and applicable regulations promulgated by the director.

(d) Nothing in this section shall be construed to repeal any exemption from this chapter.

(e) A credit is not allowed for sales or use taxes paid to another state with respect to the purchase of a motor vehicle, trailer, or semitrailer that was first registered by the purchaser in Arkansas.

(f) (1) (A) Any motor vehicle dealer licensed pursuant to § 27-14-601(a)(6) who has purchased a used motor vehicle upon payment of all applicable registration and title fees may register the vehicle for the sole purpose of obtaining a certificate of title to the vehicle without payment of gross receipts tax, except as provided in subdivision (f)(1)(B) of this section.

(B) (i) The sale of a motor vehicle from the original franchise dealer to any other dealer, person, corporation, or other entity other than a franchise dealer of the same make of vehicle and which sale is reflected on the statement of origin shall be subject to gross receipts tax.

(ii) The vehicle shall be considered a used motor vehicle which shall be registered and titled, and tax shall be paid at the time of registration.

(iii) The provisions of subdivision (f)(1)(A) of this section shall not apply in those instances.

(2) No license plate shall be provided with the registration, and the used vehicle titled by a dealer under this subsection may not be operated on the public highways unless there is displayed on the used vehicle a dealer's license plate issued under the provisions of § 27-14-601(a)(6)(B)(ii).

(g) (1) (A) For purposes of this section, the total consideration for a used motor vehicle shall be presumed to be the greater of the actual sales price as provided on the bill of sale, invoice or financing agreement, or the average loan value price of the vehicle as listed in the most current edition of a publication which is generally accepted by the industry as providing an accurate valuation of used vehicles.

(B) If the published loan value exceeds the invoiced price, then the taxpayer must establish to the director's satisfaction that the price reflected on the invoice or other document is true and correct.

(C) If the director determines that the invoiced price is not the actual selling price of the vehicle, then the total consideration will be deemed to be the published loan value.

(2) (A) For purposes of this section, the total consideration for a new or used trailer or semitrailer shall be the actual sales price as provided on a bill of sale, invoice, or financing agreement.

(B) The director may require additional information to conclusively establish the true selling price of the new or used trailer or semitrailer.

History. Acts 1941, No. 386, § 3; 1945, No. 64, § 1; 1957, No. 19, §§ 1, 4; 1959, No. 260, § 1; A.S.A. 1947, §§ 84-1903, 84-3108n; Acts 1989 (3rd Ex. Sess.), No. 9, § 1;

1991, No. 3, § 6; 1993, No. 285, § 8; 1993, No. 297, § 8; 1995, No. 268, § 6; 1995, No. 390, § 1; 1995, No. 437, § 1; 1995, No. 1013, § 1; 1997, No. 1232, §§ 1, 2; 2001, No. 1047, § 1; 2001, No. 1834, § 1; 2009, No. 655, §§ 21–23.

A.C.R.C. Notes. Acts 1991, No. 3, § 8, provides, in part, that the Director of the Department of Finance and Administration is authorized to adopt an alternative method for determining the total consideration for the sale of new or used motor vehicles, trailers, or semitrailers under this section. See § 26-52-514 concerning such alternative method.

Publisher's Notes. Acts 1995, No. 1013 became law without the Governor's signature.

Amendments. The 2009 amendment rewrote (a); deleted (e)(2) and redesignated the remaining text accordingly; substituted "new or used trailer or semitrailer" for "trailer" in (g)(2)(B); and made minor stylistic changes.

Cross References. Refund of sales tax on vehicles returned as defective, § 26-52-515.

Effective Dates. Acts 1997, No. 1232, § 5 provided that the provisions of this act shall become effective on January 1, 1998.

Research References

U. Ark. Little Rock L.J.

Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

Case Notes

In General.

Automobiles.

Legislative Intent.

Trailers.

In General.

Since this section provided who is to pay the tax, a car dealer is not required to tell every purchaser who would pay the tax or have the contract subjected to rescission. *Lowell Perkins Agency, Inc. v. Jacobs*, 250 Ark. 952, 469 S.W.2d 89 (1971).

Trial court did not err in denying car manufacturer a refund or deduction of the pro rata portion of gross receipts tax related to bad debts arising out of the sale and financing of motor vehicles as the car manufacturer was not a "taxpayer" for the purposes of the Arkansas Bad Debt Statute, § 26-52-101 et seq.; for the purposes of the motor vehicle gross receipts tax, the person liable to remit the tax was the consumer. *DaimlerChrysler Servs. N. Am., LLC v. Weiss*, 360 Ark. 188, 200 S.W.3d 405 (2004).

Trial court erred in finding that a corporation was a "taxpayer" for the purposes of § 26-52-309, commonly known as the Bad Debt Statute, and in granting a refund or deduction of the pro rata portion of gross receipts tax related to bad debts arising out of the sale and financing of motor vehicles in Arkansas; it was possible to be a taxpayer for one kind of tax, while not a taxpayer for another kind of tax. *Weiss v. Am. Honda Fin. Corp.*, 360 Ark. 208, 200 S.W.3d 381 (2004).

Automobiles.

Automobiles, whether old or new, sold subsequent to the effective date of Acts 1935, No. 233, were subject to the tax, unless received as part of the purchase price. *S.R. Thomas Auto Co. v. Wiseman*, 192 Ark. 584, 93 S.W.2d 138 (1936) (decision under prior law).

This section relates to the method of collection and does not impose a use tax; therefore, sale of automobiles completed in another state and brought by owner into this state was not taxable under this section. *Cook v. Southeast Ark. Transp. Co.*, 211 Ark. 831, 202 S.W.2d 772 (1947) (decision prior to enactment of § 26-53-101 et seq.).

Legislative Intent.

The amendment of subsection (b) of this section by Acts 1995, No. 268 was not an attempt by the legislature to retroactively change subsection (a) of this section or § 26-53-126(a). *Pledger v. Mid-State Constr. & Materials, Inc.*, 325 Ark. 388, 925 S.W.2d 412 (1996).

Trailers.

There is no statutory authority to collect sales tax directly from purchaser of house trailer used as home and not required to be licensed. *Cheney v. Frederick*, 239 Ark. 466, 390 S.W.2d 121 (1965).

Cited: *U-Drive-'Em Serv. Co. v. Hardin*, 205 Ark. 501, 169 S.W.2d 584 (1943); *Commissioner of Revenues v. Belote*, 226 Ark. 295, 289 S.W.2d 665 (1956); *Republic Steel Corp. v. McCastlain*, 240 Ark. 979, 403 S.W.2d 90 (1966); *Martin v. Couey Chrysler Plymouth, Inc.*, 308 Ark. 325, 824 S.W.2d 832 (1992); *Pledger v. Brunner & Lay, Inc.*, 308 Ark. 512, 825 S.W.2d 599 (1992).

26-52-511. Prepaid funeral contracts.

(a) A person who purchases a prepaid funeral contract may pay gross receipts taxes on the tangible personal property purchased in the prepaid funeral contract on the date the prepaid funeral contract is purchased in lieu of paying such taxes at the time of the person's death.

(b) The rate of the tax shall be the gross receipts tax rate in effect pursuant to this chapter at the time the prepaid funeral contract is purchased.

(c) Each prepaid funeral contract shall state the following: "ALL SALES TAXES DUE UNDER THE ARKANSAS GROSS RECEIPTS ACT OF 1941 WHICH ARE NOT PAID IN FULL AS OF THE DATE OF THIS CONTRACT ARE DUE UPON THE DEATH OF THE INDIVIDUAL FOR WHOM THIS CONTRACT IS PURCHASED."

History. Acts 1999, No. 598, § 1; 2009, No. 655, § 24.

Publisher's Notes. Former § 26-52-511, concerning refund of athletic and interscholastic event admissions, was repealed by Acts 1995, No. 124, § 1. The section was derived from Acts 1973, No. 516, §§ 1, 3; A.S.A. 1947, §§ 84-1941, 84-1943. For present law, see § 26-52-412.

Amendments. The 2009 amendment substituted "Arkansas Gross Receipts Act of 1941" for "Gross Receipts Tax Act" in (c), and made minor stylistic and punctuation changes.

Cross References. Sale of prepaid funeral benefits, § 23-40-101 et seq.

Effective Dates. Acts 1999, No. 598, § 2, provided: "The provisions of this act are effective as of January 1, 2000."

26-52-512. Tax payments by retailers.

(a) All retailers within the State of Arkansas registered to collect the Arkansas gross receipts tax and having average net sales of more than two hundred thousand dollars (\$200,000) per month for the preceding calendar year shall make prepayment of sales tax by electronic funds transfer, as defined in § 26-19-101, according to one (1) of the following payment options:

(1) (A) The taxpayer may elect to make two (2) tax payments by electronic funds transfer for the current calendar month. Each payment shall be equal to forty percent (40%) of the tax due on the monthly average net sales on or before the twelfth and twenty-fourth of each month.

(B) The balance of actual collections for the month shall be remitted with the monthly gross receipts tax report due by the twentieth day of the following month; or

(2) (A) The taxpayer may elect to pay by electronic funds transfer an amount equal to or exceeding eighty percent (80%) of the gross receipts tax liability for the current calendar month on or before the twenty-fourth of each month.

(B) The balance of actual collections for the month shall be remitted with the monthly gross receipts tax report due by the twentieth day of the following month.

(b) (1) (A) Every taxpayer who timely remits the prepayments required by subsection

(a) of this section and who timely files and pays the taxpayer's monthly gross receipts tax report shall be entitled to a discount.

(B) The discount shall be the lesser of two percent (2%) of the reported monthly gross tax, or one thousand dollars (\$1,000).

(2) (A) Failure to pay tax prepayments when due shall result in the assessment of a penalty equal to five percent (5%) of the amount of each required tax prepayment.

(B) If a taxpayer elects to prepay according to subdivision (a)(2) of this section and fails to pay eighty percent (80%) of the tax liability by the twenty-fourth of the current month, no penalty shall be assessed if the taxpayer proves that more than twenty percent (20%) of the taxpayer's tax liability arose from sales occurring after the twenty-fourth of the current month but before the last day of the current month.

(3) (A) The aggregate discount available to a taxpayer who operates more than one (1) permitted business location within this state and who does not file a consolidated monthly gross receipts tax report for all locations shall not exceed one thousand dollars (\$1,000) per month.

(B) In the case of a corporate taxpayer that is a parent corporation and that holds fifty percent (50%) or more of the outstanding shares of one (1) or more corporations that are subsidiaries and that are subject to the tax imposed by this chapter, the aggregate discount available to the parent corporation and all subsidiaries shall not exceed one thousand dollars (\$1,000) per month.

(c) For any electronic funds transfer or report required under subsection (a) of this section, the due date of which falls on a Saturday, Sunday, or legal holiday, the electronic funds transfer or report shall be made on the next succeeding business day which is not a Saturday, Sunday, or legal holiday.

(d) As used in this section, "average net sales" means total gross proceeds or gross receipts as defined in this chapter less any deductions allowed by this chapter.

History. Acts 1987 (1st Ex. Sess.), No. 10, § 1; 1992 (2nd Ex. Sess.), No. 6, § 2; 1997, No. 635, § 1; 2003, No. 665, §§ 1, 2; 2003, No. 747, § 4; 2007, No. 827, §§ 223, 224.

Amendments. The 2003 amendment by No. 655, in (a), inserted "by electronic funds transfer, as defined in § 26-19-101"; in (a)(1) and (a)(2), added subdivision designations; in (a)(1)(A) and (a)(2)(A), inserted "by electronic funds transfer"; and added (c)(1) and redesignated former (c) as present (c)(2).

The 2003 amendment by No. 747 repealed (b)(4).

The 2003 amendment by No. 774 deleted (b)(4).

The 2007 amendment, in (b)(3)(B), substituted "taxpayer that is a parent corporation" for "taxpayer (parent corporation)" and "corporations that are subsidiaries" for "corporations (subsidiaries)," and made a stylistic change; and in (c), inserted "or report" in two places, and deleted former (2) and made related changes.

Effective Dates. Acts 1987 (1st Ex. Sess.), No. 10, § 2, provided that this section shall be effective from and after January 1, 1988.

Acts 1997, No. 635, § 2 provided that this act shall become effective on January 1, 1998.

Acts 2003, No. 665, § 3, provided: "This act shall become effective on January 1, 2004."

26-52-513. Sales of motor-driven and all-terrain vehicles.

(a) When any person engaged in the business of selling motor vehicles, motorcycles, motor-driven cycles, three-wheeled all-terrain vehicles, four-wheeled all-terrain vehicles, six-wheeled all-terrain vehicles, or motorized bicycles, sells any motorcycle or motor-

driven cycle that is designed or manufactured exclusively for competition or off-road use, or sells any three-wheeled all-terrain vehicle, four-wheeled all-terrain vehicle, six-wheeled all-terrain vehicle, or motorized bicycle, the person shall collect and remit the taxes at the same time and in the same manner as other gross receipts taxes collected by the person.

(b) However, nothing in this section shall be construed so as to affect the manner in which state and local taxes are collected on motorcycles and motor-driven cycles registered for use on the streets and highways of this state.

History. Acts 1989, No. 412, § 1; 2007, No. 305, § 1.

Amendments. The 2007 amendment substituted “all-terrain vehicles” for “all-terrain cycles” in the section heading, twice substituted “three-wheeled all-terrain vehicles, four-wheeled all-terrain vehicles, six-wheeled all-terrain vehicles” for “three or four-wheeled all-terrain cycles” or similar language, and made related changes.

26-52-514. Determining total consideration for sale of vehicle — Alternative method.

(a) The Director of the Department of Finance and Administration is authorized to adopt an alternative method for determining the total consideration for the sale of new or used:

(1) Manufactured homes, mobile homes, or modular homes under § 26-52-801 et seq.;

(2) Aircraft under § 26-52-505; and

(3) Motor vehicles, trailers, or semitrailers under §§ 26-52-510 and 26-53-126.

(b) (1) The alternative method adopted shall incorporate any generally accepted method of determining the value of the item being sold.

(2) If the consideration stated by the parties to the sale is less than the value determined by such generally accepted method of valuation, then for purposes of taxation it shall be presumed that the higher figure is the total consideration, unless the taxpayer provides a contract, bill of sale, or other evidence establishing that the true consideration is less than the value determined under the alternative method.

History. Acts 1991, No. 3, § 8; 2009, No. 655, § 25.

A.C.R.C. Notes. Section 26-52-504 referred to in subdivision (a)(1) of this section was repealed by Acts 2005, No. 2254, § 2. For current law, see § 26-52-801 et seq.

Amendments. The 2009 amendment rewrote (a)(1), which read: “House trailers or mobile homes under § 26-52-504 [repealed].”

26-52-515. Refund of sales tax on vehicles returned as defective.

(a) The Director of the Department of Finance and Administration shall refund to a manufacturer any state and local sales or use tax which the manufacturer refunded to the consumer, lessee, or lessor pursuant to the Arkansas New Motor Vehicle Quality Assurance Act, § 4-90-401 et seq., or other defective vehicle buy-back agreement, if the manufacturer provides to the Department of Finance and Administration:

(1) A written request for a refund in accordance with § 26-18-507;

(2) Evidence that the sales tax was paid when the vehicle was registered;

(3) Assignment of the tax refund by the taxpayer;

(4) Proof that the manufacturer refunded the sales tax to the consumer, lessee, or

lessor; and

(5) Such other information as shall be required by the director.

(b) Claims for refund of sales or use tax under this section shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq. Any claim must be made in writing and filed within three (3) years from the date the vehicle was first registered.

(c) (1) When a consumer has tendered a trade-in vehicle toward the purchase of the vehicle which is refunded under the Arkansas New Motor Vehicle Quality Assurance Act, § 4-90-401 et seq., or other defective vehicle buy-back agreement, the consumer may apply to the director for a voucher in the amount of the trade-in vehicle's consideration.

(2) The director shall prescribe the forms and other information necessary to issue the voucher.

(3) In calculating the sales tax due upon registration of a subsequent replacement vehicle, the voucher shall be used to reduce the sales price of the subsequent replacement vehicle.

(4) The voucher shall be valid for six (6) months from the date of issuance and may only be used by the consumer to whom it was issued.

History. Acts 1993, No. 285, § 9; 1993, No. 297, § 9.

26-52-516. Refunds for construction of employer-operated child care facilities.

(a) A business which operates, or contracts for the operation of, a child care facility for the primary purpose of providing child care services to its employees may obtain a refund of the gross receipts tax paid on the purchase of construction materials and furnishings used in the initial construction and equipping of the child care facility after the facility is licensed pursuant to § 20-78-201 et seq. and is certified as having an appropriate early childhood program pursuant to § 6-45-109.

(b) (1) As used in this section, "child care facility" means a child care facility licensed under § 20-78-201 et seq. To qualify as a child care facility, the child care facility shall provide an appropriate early childhood program as defined in § 6-45-103.

(2) A child care facility may be operated for the use of one (1) or more employers.

History. Acts 1995, No. 850, § 3; 2009, No. 655, § 26.

Amendments. The 2009 amendment inserted "As used in this section" in (b)(1), and made related and minor stylistic changes.

26-52-517. Exemption certificates.

(a) The sales tax liability for all sales of tangible personal property and taxable services is upon the seller unless the purchaser claims an exemption and the seller obtains identifying information of the purchaser and the reason the purchaser is claiming the exemption in the manner prescribed by the Director of the Department of Finance and Administration.

(b) (1) When tangible personal property or taxable services are purchased tax-free pursuant to subsection (a) of this section and the tangible personal property or taxable service is not resold by the purchaser, the purchaser is solely liable for reporting and remitting to the director any tax which should have been paid at the time of purchase.

(2) Use or disposition of the property other than for resale shall be deemed a withdrawal from stock for all purposes, including reporting and remittance of the tax due, and the tax shall be due from the purchaser at the time of the withdrawal from stock.

(c) (1) The director may provide sale for resale certificates to assist retailers in properly accounting for nontaxable sales of tangible personal property or taxable services.

(2) Such certificates must be completed as to the information required in order to be valid and cannot be used to establish any other exemption from sales or use tax.

(d) Any person repeatedly selling the same type of property to the same purchaser for resale may accept a blanket certificate covering more than one (1) transaction.

(e) A seller that follows the exemption requirements as prescribed by the director is relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption.

(f) The relief from liability provided in subsection (e) of this section does not apply to a seller that:

(1) Fraudulently fails to collect the sales tax;

(2) Solicits a purchaser to participate in the unlawful claim of an exemption; or

(3) Accepts an exemption certificate from a purchaser claiming an entity-based exemption if:

(A) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and

(B) The Department of Finance and Administration provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in Arkansas.

(g) (1) A seller may obtain a fully completed exemption certificate or capture the relevant data elements required by the department within ninety (90) days after the date of sale.

(2) If the seller has not obtained an exemption certificate or all relevant data elements and the department makes a request for substantiation of the exemption, the seller has one hundred twenty (120) days from the date of the request to prove by other means that the transaction was not subject to sales or use tax or to obtain in good faith a fully completed exemption certificate from the purchaser.

History. Acts 1995, No. 358, § 1; 2007, No. 181, § 27.

Amendments. The 2007 amendment substituted “Exemption” for “Resale” in the section heading; rewrote (a); inserted “or taxable services” or similar language in two places in (b)(1), and in (c)(1); rewrote (e) and (f); and made related changes.

Effective Dates. Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

26-52-518. Special events.

(a) As used in this section:

(1) “Person” means a person as defined in § 26-52-103;

(2) “Promoter” or “organizer” means a person who organizes or promotes a special event which results in the rental, occupation, or use of any structure, lot, tract of land, motor vehicle, sample or display case, table, or any other similar items for the exhibition and sale of tangible personal property by special events vendors;

(3) (A) “Special event” means an entertainment, amusement, recreation, or

marketing event which occurs at a single location on an irregular basis and where tangible personal property is sold.

(B) Such special events shall include, but are not limited to:

- (i) Auto shows;
- (ii) Boat shows;
- (iii) Gun shows;
- (iv) Knife shows;
- (v) Home shows;
- (vi) Craft shows;
- (vii) Flea markets;
- (viii) Carnivals;
- (ix) Circuses;
- (x) Bazaars;
- (xi) Fairs; and
- (xii) Art or other merchandise displays or exhibits.

(C) Such special events shall not include any county, district, or state fair or the four states livestock show that has been approved, pursuant to the rules and regulations of the Arkansas Livestock and Poultry Commission, to receive state funds; and

(4) “Special event vendor” means a person making sales of tangible personal property at a special event within the State of Arkansas and who is not permitted under § 26-52-201 et seq.

(b) (1) Special event vendors shall collect sales tax from purchasers of tangible personal property and remit the tax daily, along with a daily sales tax report, to the promoter or organizer.

(2) The isolated sale exemption found in § 26-52-401(17) shall not apply to sales of tangible personal property at special events.

(c) Promoters or organizers of special events shall register for sales tax collection with the Director of the Department of Finance and Administration and shall provide to special event vendors special event sales tax reporting forms and any other information which may be required by the director.

(d) Special event vendors shall file daily special event sales tax reports with organizers or promoters during the special event and remit daily sales tax due along with the daily report.

(e) Within thirty (30) days following the conclusion of the special event, the organizer or promoter shall forward all daily reports and payments to the Department of Finance and Administration along with a completed sales tax report combining all taxable sales and sales tax due.

(f) (1) Promoters and organizers shall not be liable for unreported taxes of special event vendors.

(2) Promoters and organizers shall be liable for their failure to remit to the director sales taxes which are remitted to them by special event vendors.

(3) Promoters and organizers shall be subject to applicable penalty and interest impositions.

History. Acts 1995, No. 370, § 1; 1997, No. 137, § 1; 1997, No. 1256, § 1.

26-52-519. Credit voucher for sales tax on motor vehicles destroyed by

catastrophic events.

(a) When a consumer has paid sales taxes on a motor vehicle within the last one hundred eighty (180) days and the motor vehicle is destroyed or damaged by some catastrophic event resulting from a natural cause to the extent that the value of the motor vehicle is less than thirty percent (30%) of its retail value, as found in the National Automobile Dealers Association's Official Price Guide, or other source approved by the Office of Motor Vehicle, the consumer may apply to the Director of the Department of Finance and Administration for a sales tax credit voucher in the amount of any state and local sales or use taxes paid on the motor vehicle transaction, if the consumer provides to the Department of Finance and Administration:

- (1) A written request for a credit voucher in accordance with § 26-18-507;
- (2) Evidence that the sales tax was paid when the motor vehicle was registered;
- (3) Evidence as to the extent of the destruction or damage to the value of the motor vehicle which is satisfactory to the department to prove the value of the motor vehicle prior to the event and the value after the destruction or damage occurred;
- (4) Evidence that the catastrophic event occurred within one hundred eighty (180) days of the motor vehicle's being first registered; and
- (5) Any other information as shall be required by the director as necessary to issue the voucher.

(b) Claims for credit vouchers of sales or use tax under this section shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq. Any claim must be made in writing and filed within one (1) year from the date the vehicle was first registered.

(c) When a consumer has tendered a trade-in motor vehicle toward the purchase of the vehicle which is credited under subsection (a) of this section, the consumer may apply to the director for a credit voucher in the amount of the trade-in vehicle's consideration also.

(d) The sales and use tax credit vouchers issued under this section shall be used only to reduce any sales and use taxes due upon registration of a subsequent replacement vehicle. In no event shall a cash refund be given for the sales tax credit voucher or for any excess value of the credit voucher. The credit voucher shall be valid for six (6) months from the date of issuance and may only be used by the consumer to whom it was issued.

(e) The director shall prescribe the forms, the nature of satisfactory proof of the vehicle's values, and any other information as is necessary to issue the credit vouchers under this section.

(f) As used in this section, "natural cause" means an act occasioned exclusively by the violence of nature in which all human agency is excluded from creating or entering into the cause of the damage or injury.

History. Acts 1997, No. 1348, § 1.

Publisher's Notes. A former version of § 26-52-519 as enacted by Acts 1997, No. 391, § 1, concerning liability of sellers for collection of tax and good faith reliance on claim or documentation of purchaser, was repealed by Acts 2007, No. 181, § 28, effective January 1, 2008.

26-52-520. Communication equipment for commercial trucks.

(a) As used in this section, "such property" means communication equipment or other property installed on commercial trucks or used by the owner to track the location of the

truck and to send, receive, or process information to or from the truck.

(b) It is the intent of the General Assembly that the State of Arkansas should not pursue collection of any claim now pending or the execution of any court order with respect to any such claim for the collection of sales or compensating use taxes upon such property.

(c) No taxpayer shall have a claim against the State of Arkansas for any sales of compensating use tax previously paid to the State of Arkansas with respect to such property, except for taxes paid under protest on or after July 1, 1996.

History. Acts 1997, No. 1359, § 31.

Publisher's Notes. Acts 1997, No. 1359, § 31 was disapproved by the Governor on April 5, 1997; the veto was overridden on April 17, 1997.

26-52-521. Sourcing of sales.

(a) (1) This section applies for purposes of determining a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product or service.

(2) This section does not affect the obligation of a purchaser or lessee to remit tax on the use of the product or service to the taxing jurisdictions of that use and does not apply to the sales or use taxes levied on the retail sale excluding lease or rental, of motor vehicles, trailers, or semitrailers that require licensing.

(b) Excluding a lease or rental, the retail sale of a product or service shall be sourced as follows:

(1) If the product or service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(2) If the product or service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's designated donee occurs, including the location indicated by instructions for delivery to the purchaser or donee known to the seller;

(3) If subdivisions (b)(1) and (2) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(4) If subdivisions (b)(1)-(3) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available if the use of this address does not constitute bad faith; or

(5) If none of the previous rules of subdivisions (b)(1)-(4) of this section apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, the location will be determined by the address from which tangible personal property was shipped or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(c) The lease or rental of tangible personal property other than property identified in subsection (d) or subsection (e) of this section shall be sourced as follows:

(1) (A) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section.

(B) Periodic payments made after the first payment are sourced to the primary property location for each period covered by the payment.

(C) The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business if use of this address does not constitute bad faith.

(D) The property location shall not be altered by intermittent use at different locations such as use of business property that accompanies employees on business trips and service calls;

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section; and

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.

(d) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment as defined in subsection (e) of this section shall be sourced as follows:

(1) (A) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location.

(B) The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business if use of this address does not constitute bad faith.

(C) This location shall not be altered by intermittent use at different locations;

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section; and

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.

(e) (1) Including a lease or rental, the retail sale of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section, notwithstanding the exclusion of a lease or rental in subsection (b) of this section.

(2) As used in this section, “transportation equipment” means any of the following:

(A) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(B) Trucks and truck tractors with a Gross Vehicle Weight Rating of ten thousand one pounds (10,001 lbs.) or greater, trailers, semitrailers, or passenger buses that are:

(i) Registered through the International Registration Plan; and

(ii) Operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal

authority to engage in the carriage of persons or property in interstate commerce;

(C) Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or

(D) Containers designed for use on and component parts attached or secured on the items under subdivision (e)(1) of this section and this subdivision (e)(2).

(f) As used in subsection (b) of this section:

(1) "Receive" and "receipt" mean:

(A) Taking possession of tangible personal property; or

(B) Making first use of services; and

(2) "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(g) When a motor vehicle, trailer, or semitrailer that requires licensing is sold to a person who resides in Arkansas, the sale is sourced to the residence of the purchaser.

(h) This section shall apply to all state and local taxes administered by the Department of Finance and Administration.

(i) The destination sourcing rules in this section do not apply to florists.

History. Acts 2003, No. 1273, § 11; 2007, No. 860, § 1; 2009, No. 384, § 8.

Amendments. The 2007 amendment added (i).

The 2009 amendment rewrote (i).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 860, § 7, provided: "Sections 1–6 of this act will become effective on January 1, 2008."

26-52-522. Direct mail sourcing.

(a) (1) Notwithstanding § 26-52-521, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the state and local jurisdictions to which the direct mail is delivered to recipients.

(2) (A) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax, and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis.

(B) A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(3) (A) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser.

(B) In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction if the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b) (1) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information as required by subsection (a) of this section, the seller shall collect the tax according to § 26-52-521(b)(5).

(2) Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller.

(d) The direct mail form must:

(1) Contain the purchaser's name and sales tax permit number;

(2) State that the purchaser will be remitting sales and use tax to the state; and

(3) Contain any additional information that the Director of the Department of

Finance and Administration may require.

History. Acts 2003, No. 1273, § 11.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the

Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-52-523. Credit or rebate on local sales and use tax.

(a) As used in this section:

(1) "Qualifying purchase" means a purchase of tangible personal property or a taxable service:

(A) For which the purchaser may take a business expense deduction pursuant to 26 U.S.C. § 162, as in effect on January 1, 2007;

(B) For which the purchaser may take a depreciation deduction pursuant to 26 U.S.C. § 167, as in effect on January 1, 2007;

(C) By an exempt organization under 26 U.S.C. § 501, as in effect on January 1, 2007, if the purchase would be subject to a business expense deduction or depreciation deduction if the purchaser were not an exempt organization under 26 U.S.C. § 501, as in effect on January 1, 2007; or

(D) By a state, or any county, city, municipality, school district, state-supported college or university, or any other political subdivision of a state, if the purchase would be subject to a business expense deduction or depreciation deduction if the purchaser were not one (1) of the entities enumerated in this subdivision (a)(1)(D);

(2) "Single transaction" means any sale of tangible personal property or a taxable service reflected on a single invoice, receipt, or statement for which an aggregate sales or use tax amount has been reported and remitted to the state for a single local taxing jurisdiction; and

(3) "Travel trailer" means a trailer that:

(A) Provides temporary living quarters for travel, recreation, or camping;

(B) Includes a chassis having wheels and a trailer hitch or fifth wheel for towing; and

(C) Is required to be licensed for highway use under Arkansas law.

(b) (1) A purchaser that pays any municipal sales or use tax in excess of the tax due on the first two thousand five hundred dollars (\$2,500) of gross receipts or gross proceeds from the purchase of a travel trailer or from a qualifying purchase of tangible personal property or a taxable service in a single transaction is entitled to a credit or rebate of the excess amount of municipal sales or use tax paid on each single transaction.

(2) A purchaser that pays any county sales or use tax in excess of the tax due on the first two thousand five hundred dollars (\$2,500) of gross receipts or gross proceeds from the purchase of a travel trailer or from a qualifying purchase of tangible personal property or a taxable service in a single transaction is entitled to a credit or rebate of the excess amount of county sales or use tax paid on each single transaction.

(c) (1) A purchaser that is required by § 26-52-501, § 26-52-509, or § 26-53-125 to file

a sales or use tax return may file a claim for a credit or rebate under this section with the Director of the Department of Finance and Administration in connection with the sales or use tax return and offset the amount of credit or rebate claimed against any municipal or county sales or use tax due to be remitted with the return.

(2) A purchaser that qualifies for a credit or rebate under this section and is not required to file a sales or use tax return as provided in subdivision (c)(1) of this section may file a claim for a credit or rebate under this section with the director.

(3) If a rebate would be due under this section as a result of the purchase of a travel trailer and if the gross receipts or compensating use tax on the travel trailer is collected directly from the purchaser by the Department of Finance and Administration under § 26-52-510 or § 26-53-126, then the department shall collect only the amount of tax due less the amount to which the purchaser would be entitled under the rebate provisions of this section.

(d) No credit or rebate under this section shall be paid for any claim filed after six (6) months from the date of the qualifying purchase or after six (6) months from the date of payment, if later.

(e) A claim for a credit or rebate under this section shall be filed with the local taxing jurisdiction if, at the time the claim is filed, the local sales or use tax that is the subject of the claim has been out of existence for more than sixty (60) days.

(f) No interest shall accrue or be paid on an amount subject to a claim for a credit or rebate under this section.

(g) The director may promulgate rules to administer this section, including without limitation providing an administratively feasible method for filing a claim for a credit or rebate and any necessary forms.

(h) This section does not apply to a local sales tax levied in accordance with § 26-52-303 or § 26-75-502.

(i) Except as provided in subsection (h) of this section, this section applies to any local sales or use tax collected by the director pursuant to any state tax law authorizing a county or municipality to levy a sales or use tax.

History. Acts 2007, No. 179, § 1; 2009, No. 941, § 1.

Amendments. The 2009 amendment inserted (a)(3) and made related changes; inserted “the purchase of a travel trailer or” in (b)(1) and (b)(2); and inserted (c)(3).

Effective Dates. Acts 2007, No. 179, § 2, provided: “Section 1 of this act is effective on January 1, 2008.”

Acts 2009, No. 941, § 2, provided: “Section 1 of this act is effective on the first day of the calendar quarter following the effective date of this act.”

Subchapter 6

— Equalization of Taxes For Border Cities and Towns

26-52-601. Legislative findings and intent.

26-52-602. Vote to equalize taxes authorized.

26-52-603. Benefits of subchapter for individual taxpayers only.

26-52-604. Individual taxpayers entitled to benefit of subchapter.

26-52-605. Election proceedings.

26-52-606. Election results — Effect.

26-52-607. Levy of use tax.

Effective Dates. Acts 1997, No. 735, § 5: July 1, 1997. Emergency clause provided: "Whereas the General Assembly has determined that the local sales tax rate on sales by vendors in Texarkana, Arkansas is 1% higher than the local use tax rate on sales by out-of-state vendors into Texarkana, Arkansas; that this disparity affects the ability of Texarkana, Arkansas merchants to compete with out-of-state merchants; that this act will correct the disparity and allow for fair competition. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1997."

Acts 2007, No. 181, § 45: Jan. 1, 2008.

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Case Notes

Constitutionality.

Constitutionality.

Acts 1977, No. 48, codified at this subchapter, is not an impermissible delegation of State legislature and taxing authority because the issue of equalizing taxes is localized, rather than State-wide, and the act presents a complete plan of what the tax plan would be, if approved, and the voters have no discretion to change the terms of the law as enacted. *Boyd v. Weiss*, 333 Ark. 684, 971 S.W.2d 237 (1998).

The geographical limitations contained in this act are rationally related to its purposes and the incidental circumstance that it provides a tax incentive for people in surrounding Arkansas cities to move to Texarkana is not determinative of the reasonableness of the act. *Boyd v. Weiss*, 333 Ark. 684, 971 S.W.2d 237 (1998).

Merely because Acts 1977, No. 48 ultimately affects less than all the State's territory does not render it unconstitutional for the purposes of equal protection. *Boyd v. Weiss*, 333 Ark. 684, 971 S.W.2d 237 (1998).

26-52-601. Legislative findings and intent.

(a) (1) In the passage of this subchapter, the General Assembly is cognizant of the inequities faced by cities and towns in this state and their inhabitants when the cities and towns are divided by a state line from an incorporated city or town in another state in which the tax burden of the citizens of the city or town in the adjoining state is substantially less than the tax burden imposed by the laws of this state upon the citizens of a border city or town in this state.

(2) The General Assembly is also cognizant that these tax inequities offer inducements to citizens who would otherwise settle in Arkansas and operate businesses in Arkansas to move to the border cities in the adjoining states.

(b) The passage of this subchapter is designed to establish a method of equalizing the inequities imposed under the tax laws of this state, thereby offering inducements to persons to establish their homes and businesses in the Arkansas border city or town.

History. Acts 1977, No. 48, § 1; A.S.A. 1947, § 84-1946n.

Case Notes

Purpose.

Purpose.

The stated purpose of Acts 1977, No. 48 is to protect border cities by exempting residents from state income taxes who might otherwise move to Texas; the mere fact that the revenue from the increased sales tax goes into the state treasury does not negate or supercede this purpose. *Boyd v. Weiss*, 333 Ark. 684, 971 S.W.2d 237 (1998).

Cited: *Leathers v. Warmack*, 341 Ark. 609, 19 S.W.3d 27 (2000).

26-52-602. Vote to equalize taxes authorized.

Whenever any city or town in this state is divided by a street state line from an incorporated city or town in an adjoining state in which the other state does not levy a state income tax, the qualified electors of the Arkansas border city or town may vote to equalize the state taxes paid by citizens in the border city or town in Arkansas with the tax advantages of the citizens of the adjoining city or town in the other state in the manner provided in this subchapter.

History. Acts 1977, No. 48, § 2; A.S.A. 1947, § 84-1946.

26-52-603. Benefits of subchapter for individual taxpayers only.

This subchapter is intended to exempt only individual taxpayers from the Arkansas income tax and not to provide exemption for corporations or any taxpayers other than individual taxpayers.

History. Acts 1977, No. 48, § 6; A.S.A. 1947, § 84-1949.

26-52-604. Individual taxpayers entitled to benefit of subchapter.

Any individual taxpayer residing in any border city or town located outside the State of Arkansas shall be entitled to the benefits of the provisions of this subchapter with respect to income derived by any individual taxpayer from employment or business activity engaged in the Arkansas border city upon which income tax is due the State of Arkansas under the provisions of the Income Tax Act of 1929, § 26-51-101 et seq.

History. Acts 1977, No. 48, § 4; A.S.A. 1947, § 84-1948.

26-52-605. Election proceedings.

(a) The governing body of an Arkansas border city or town, as described in § 26-52-602, by ordinance, may call a special election, or, upon petition of not less than ten percent (10%) of the qualified electors of the Arkansas border city or town, as determined by the number of votes cast in the Arkansas border city or town for all candidates for election to the Office of Governor of Arkansas in the immediately preceding general election, filed with the city clerk of the city or town petitioning that a special election be called, a special election shall be called in accordance with § 7-11-201 et seq. in the city or town on the question of the imposition of an additional state tax of one percent (1%) to be administered and collected as a local sales tax upon the gross receipts or gross proceeds derived from taxable sales within the border city or town under the provisions of this chapter, and the proceeds derived therefrom shall benefit the State of Arkansas in lieu of the state income tax law applying to the net taxable income derived by individuals who

are residents of the border city or town.

(b) The special election shall be called not later than one hundred twenty (120) days following the adoption of the ordinance by the governing body of the city or town, or the filing of a petition requesting the special election.

(c) Notice of the special election shall be given by publication in some newspaper of general circulation within the Arkansas border city or town on two (2) occasions not more than thirty (30) days and not less than ten (10) days prior to the date of the special election.

(d) The special election shall be held by the county board of election commissioners, and the special election judges and clerks shall be selected and the special election shall be conducted and the results shall be tabulated and certified in the manner now provided by law for the holding of elections in this state.

(e) On the ballot shall be printed the following issue:

FOR

the levy of an additional one percent (1%) state gross receipts tax on taxable sales in the City of -----, ----- County, Arkansas, paying state income taxes by individuals who are residents of ----- (town).

AGAINST

the levy of an additional one percent (1%) state gross receipts tax on taxable sales in the City of -----, ----- County, Arkansas, paying state income taxes by individuals who are residents of ----- (town).

(f) The voter shall cast the vote of his or her choice by placing an “X” opposite the issue of his or her choice.

History. Acts 1977, No. 48, § 3; 1977, No. 177, § 1; A.S.A. 1947, § 84-1947; Acts 2005, No. 2145, § 66; 2007, No. 181, § 29; 2007, No. 1049, § 88; 2009, No. 1480, § 107.

Publisher's Notes. Acts 1977, No. 48, § 5, provided that the election authorized by that act be held on or before October 1, 1977, and not thereafter. The section further provided that if at an election held under the act, the qualified electors voted to levy the additional gross receipts tax in lieu of payment of state income taxes, the tax would be effective January 1, 1978, and thereafter.

Amendments. The 2005 amendment redesignated former (b) as (b)(1); substituted “forty-five (45)” for “sixty (60)” in (b)(1); and added (b)(2).

The 2007 amendment by No. 181 inserted “to be administered and collected as a local sales tax” following “(1%)” in (a).

The 2007 amendment by No. 1049 inserted “in accordance with § 7-5-103(b)” in (a); and rewrote (b).

The 2009 amendment substituted “§ 7-11-201 et seq.” for “§ 7-5-103(b)” in (a).

Effective Dates. Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

26-52-606. Election results — Effect.

(a) (1) In the event a majority of the qualified electors of the Arkansas border city or town voting on the issue at the election vote FOR the imposition of an additional one percent (1%) gross receipts tax on taxable sales in the border city or town, then the

additional one percent (1%) tax shall be levied effective January 1 next following the date of the election and thereafter.

(2) For as long as the additional one percent (1%) gross receipts tax is levied in the city, individuals who are residents of the city shall not be subject to the imposition of the Arkansas income tax, as levied by the Income Tax Act of 1929, § 26-51-101 et seq.

(b) If a majority of the qualified electors of the Arkansas border city or town shall vote AGAINST the levy of an additional one percent (1%) gross receipts tax in lieu of payment of the state income tax in the city, then the citizens of the city or town shall continue to pay state gross receipts tax and state income tax, as provided by law.

History. Acts 1977, No. 48, § 3; 1977, No. 177, § 1; A.S.A. 1947, § 84-1947.

26-52-607. Levy of use tax.

In all cities in this state divided by a street state line from an incorporated city or town in an adjoining state which does not impose an income tax that have adopted a one percent (1%) state sales tax pursuant to this subchapter, there is also levied an additional one percent (1%) state use tax which shall be administered and collected as a local tax, and enforced in accordance with the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 1997, No. 735, § 1; 2007, No. 181, § 30.

Amendments. The 2007 amendment inserted “and collected as a local tax.”

Effective Dates. Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

Subchapter 7 — Economic Investment Tax Credit Act

26-52-701. Title.

26-52-702. Definitions.

26-52-703. Precluded provisions supplemental.

26-52-704. Credit granted.

26-52-705. Qualification and determination of credit.

26-52-706. Administration.

Cross References. Projects under Manufacturer's Investment Sales and Use Tax Credit Act of 1985, § 15-4-1705.

Effective Dates. Acts 1985, No. 529, §§ 8, 9: Jan. 1, 1985. Emergency clause provided: “There is hereby found and determined by the General Assembly that industrial concerns in Arkansas are experiencing intense competition, both domestic and from abroad; that to remain competitive in domestic and international markets requires, among other things, new investments in modern, efficient plants and equipment by industry; that the investments required for industrial plant modernization or expansion may represent extraordinary investments; that the incentives afforded by this Act can serve to stimulate the economy of the State of Arkansas and that failure to act immediately will result in the loss of jobs for Arkansans. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and welfare shall be in full force and effect from and after its passage and approval.” Approved Mar. 25, 1985.

Acts 1997, No. 807, § 28: Mar. 25, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly of this State that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this State, and that the

establishment of tax incentives afforded by this Act are critical to the development and expansion of job opportunities in those areas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 995, § 10: Mar. 31, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that existing Arkansas businesses must remain competitive in today's global economy; that the tax incentive provided by this act is necessary to provide businesses with the incentive to invest in Arkansas and hire Arkansans; that other states compete with Arkansas for the location or expansion of business activity and this incentive is also necessary to offer the companies a business environment compatible with other states; and that without this incentive companies considering locations or expansions of their businesses may choose to locate in another state, depriving Arkansans of these jobs and the economic benefit that the jobs bring to the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

26-52-701. Title.

This subchapter may be referred to and cited as the “Economic Investment Tax Credit Act”.

History. Acts 1985, No. 529, § 1; A.S.A. 1947, § 84-1951; Acts 1999, No. 995, § 1.

26-52-702. Definitions.

As used in this subchapter:

(1) “Corporate headquarters” means the home or center of operations, including research and development, of a national or multinational corporation;

(2) “Defense industry project” means an investment of at least five million dollars (\$5,000,000) and an increase in employment of at least two hundred fifty (250) full-time permanent employees by a company which manufactures components for the defense industry and whose unit cost exceeds five hundred thousand dollars (\$500,000);

(3) “Distribution center” means a facility for the reception, storage, or shipping of:

(A) A business' own products which the business wholesales to retail businesses or ships to its own retail outlets;

(B) Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenue is from out-of-state customers; or

(C) Products for sale to the general public if seventy-five percent (75%) of the sales revenue is from out-of-state customers;

(4) “Eligible business” means a business eligible for sales and use tax credits under the provisions of this subchapter that has been in continuous operation in Arkansas for at least two (2) years prior to the initial application to the Director of the Arkansas Economic Development Commission, has obtained a direct-pay sales and use tax permit from the Revenue Division of the Department of Finance and Administration under the

provisions of § 26-52-509, and is classified as one (1) or more of the following types of businesses:

(A) Manufacturers classified in federal Standard Industrial Classification codes 20-39, including semiconductor and microelectronic manufacturers;

(B) (i) Computer businesses primarily engaged in providing computer programming services, the design and development of prepackaged software, businesses engaged in digital content production and preservation, computer processing and data preparation services, information retrieval services, and computer and data processing consultants and developers.

(ii) All businesses in this group must derive at least seventy-five percent (75%) of their revenue from out-of-state sales and have no retail sales to the public;

(C) (i) Businesses primarily engaged in motion picture production.

(ii) All businesses in this group must derive at least seventy-five percent (75%) of their revenue from out-of-state sales and have no retail sales to the public;

(D) Businesses primarily engaged in commercial physical and biological research as classified by Standard Industrial Classification code 8731;

(E) A distribution center with no retail sales to the general public, unless seventy-five percent (75%) of the sales revenue is from out-of-state customers;

(F) An office sector business with no retail sales to the general public;

(G) A corporate or regional headquarters with no retail sales to the general public; and

(H) A coal mining operation that employs twenty-five (25) or more net full-time permanent positions;

(5) “Modernization” means to increase efficiency or to increase productivity of the business through investment in machinery or equipment, or both, and shall not include costs for routine maintenance;

(6) “Office sector” means control centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions that act as production centers;

(7) “Person” means a person as defined by § 26-18-104;

(8) (A) “Project” means any construction, expansion, or modernization in Arkansas by an eligible business.

(B) The investment must exceed five million dollars (\$5,000,000) or six million dollars (\$6,000,000) for projects involving multiple locations within the State of Arkansas, including the cost of the land, buildings, and equipment used in the construction, expansion, or modernization and which construction, expansion, or modernization has been approved by the Arkansas Economic Development Commission as a construction, expansion, or modernization project which qualifies for the credit under the provisions of this subchapter;

(9) “Regional headquarters” means the center of operations for a specific geographic area; and

(10) “Routine maintenance” means the replacement of existing machinery parts with like parts.

History. Acts 1985, No. 529, § 2; A.S.A. 1947, § 84-1952; Acts 1997, No. 540, § 55;

1999, No. 995, § 2; 2001, No. 737, § 1; 2001, No. 1065, § 2.

Research References

U. Ark. Little Rock L.J.

Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-52-703. Precluded provisions supplemental.

(a) A recipient of benefits under this subchapter is precluded from receiving benefits under the Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq., for the same project.

(b) A recipient of benefits under this subchapter is precluded from receiving benefits under the Manufacturer's Investment Tax Credit Act, § 26-51-2001 et seq., for the same project.

History. Acts 1985, No. 529, § 6; A.S.A. 1947, § 84-1956; Acts 1999, No. 995, § 3; 2001, No. 1661, § 8.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-52-704. Credit granted.

There is granted a credit against the state sales and use tax liability of an eligible business of seven percent (7%) of the amount of the total project cost of any project, subject to the limit set out in § 26-52-705.

History. Acts 1985, No. 529, § 3; A.S.A. 1947, § 84-1953; Acts 1999, No. 995, § 4.

26-52-705. Qualification and determination of credit.

(a) (1) In order to qualify for and receive the credits afforded by this subchapter, any eligible business undertaking a project shall submit a project plan to the Director of the Arkansas Economic Development Commission thirty (30) days prior to the start of construction.

(2) The plan submitted to the Arkansas Economic Development Commission shall contain such information as may be required by the Director of the Arkansas Economic Development Commission to determine eligibility.

(b) (1) Upon determination by the Director of the Arkansas Economic Development Commission that the project qualifies for credit under this subchapter, the Director of the Arkansas Economic Development Commission shall certify to the Director of the Department of Finance and Administration that the project is qualified and transmit with his or her certification the documents upon which the certification was based or copies of the documents.

(2) Upon receipt by the Director of the Department of Finance and Administration of a certification from the Director of the Arkansas Economic Development Commission that an eligible business as defined by § 26-52-702 is entitled

to credit under this subchapter, the Director of the Department of Finance and Administration shall provide forms to the eligible business on which to claim the credit.

(c) (1) At the end of the calendar year in which the application was made to the Director of the Arkansas Economic Development Commission and at the end of each calendar year thereafter until the project is completed, the eligible business shall certify, on the form provided by the Director of the Department of Finance and Administration, the amount of expenditures on the project during the preceding calendar year.

(2) (A) Upon receipt of the form certifying expenditures, the Director of the Department of Finance and Administration shall determine the amount due as a credit for the preceding calendar year and issue a memorandum of credit to the eligible business in the amount of seven percent (7%) of the expenditure.

(B) (i) (a) (1) The credit shall then be applied against the eligible business' state sales or use tax liability in the year following the year of the expenditure.

(2) However, if the credit is not used in the calendar year following the expenditure, it may be carried over to the next succeeding calendar year for a total period of six (6) years following the year in which the credit was first available for use or until the credit is exhausted, whichever occurs first.

(b) For eligible defense projects, if the credit is not used in the calendar year following the expenditure, the credit may be carried over to the next succeeding calendar year for a total of nine (9) years following the year in which the credit was first available for use or until the credit is exhausted, whichever occurs first.

(ii) (a) The credit shall be used by the eligible business as a credit against the regular direct-pay sales or use tax return of the business.

(b) In no event shall the credit used on any regular return be more than fifty percent (50%) of the eligible business' total state sales or use tax liability for the reporting period, except that a company with an eligible defense industry project may claim a credit for one hundred percent (100%) of the sales and use tax liability for the reporting period.

(iii) The Director of the Department of Finance and Administration may require proof of these expenditures.

(iv) (a) The Director of the Department of Finance and Administration may examine those records necessary and specific to the project to determine credit eligibility.

(b) Any credits disallowed will be subject to payment in full.

(d) For all projects approved after July 1, 1997, in order to receive credit for project costs, the project costs must be incurred within five (5) years from the date of certification of the project plan by the Director of the Arkansas Economic Development Commission.

(e) (1) If project costs exceed the initial project cost estimate included in the financial incentive plan, the business shall amend the financial incentive plan to include updated cost figures.

(2) Amendments that exceed fifty percent (50%) of the original financial incentive plan estimate shall be submitted as a new project.

(3) An amendment shall not change the start date of the original project.

History. Acts 1985, No. 529, § 4; A.S.A. 1947, § 84-1954; Acts 1997, No. 540, §§ 56-

58; 1997, No. 807, § 21; 1999, No. 995, § 5; 2001, No. 737, §§ 2, 3.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-52-706. Administration.

(a) A person claiming credit under a provision of this subchapter is a “taxpayer” within the meaning of § 26-18-104 and shall be subject to all applicable provisions of § 26-18-104.

(b) Administration of the provisions of this subchapter shall be under the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(c) The Director of the Arkansas Economic Development Commission may promulgate such rules and regulations as are necessary to carry out the intent and purposes of this subchapter.

History. Acts 1985, No. 529, § 5; A.S.A. 1947, § 84-1955; Acts 1997, No. 540, § 59; 1999, No. 995, § 6.

Subchapter 8

— Custom Manufactured Homes

26-52-801. Definitions.

26-52-802. Sale of manufactured, modular, or mobile homes.

26-52-803. Enforcement.

26-52-804. [Repealed.]

Effective Dates. Acts 2003, No. 365, § 3: Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”
Acts 2009, No. 384, § 15: Mar. 10, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law require amendment to provide consistency with the Streamlined Sales and Use Tax Agreement, that a withdrawal from stock is subject to gross receipts tax under current law, that clarification is needed to ensure that the original legislative intent is fulfilled, and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

26-52-801. Definitions.

As used in this subchapter:

(1) “Acquisition price” means the purchase price of the new manufactured home or modular home to be paid by the purchaser as set forth on the actual invoice or bill of sale, excluding transportation and delivery fees, installation fees, and other items or services that are to be included as part of the final sale of the new manufactured home or

modular home by the retailer before the consideration of a trade-in allowance or down payment paid in cash or otherwise;

(2) “Manufactured home” means a factory-built structure produced in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., and designed to be used as a dwelling unit;

(3) “Mobile home” means a structure built in a factory prior to the enactment of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., and designed to be used as a dwelling unit; and

(4) “Modular home” means a factory-built structure produced in accordance to state or local construction codes and standards and designed to be used as a dwelling unit.

History. Acts 1985, No. 1068, § 1; A.S.A. 1947, § 84-1936.1; Acts 2003, No. 365, § 1; 2005, No. 2254, § 1; 2009, No. 384, § 9.

Amendments. The 2003 amendment substituted “modular home” for “unless the context otherwise requires, ‘custom manufactured homes’ ” in (a); substituted “modular home” for “custom manufactured home” in (b) and (c); and, in (c), inserted “a manufactured home as defined in § 20-25-102(8) or” and substituted “§ 26-52-504(c)” for “Acts 1973, No. 510, § 2.” The 2005 amendment rewrote this section.

The 2009 amendment substituted “Acquisition price” for “Sales price” in (4).

Effective Dates. Acts 2003, No. 365, § 3: Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

26-52-802. Sale of manufactured, modular, or mobile homes.

(a) Whether from an established business or by a licensed retailer, every person selling manufactured homes or modular homes in this state shall obtain a permit and report and remit to the Director of the Department of Finance and Administration as provided in this chapter, together with:

(1) Copies of invoices, sales, tickets, or bills of sale reflecting the dates of all sales of such new manufactured homes or modular homes;

(2) The purchaser's name and address;

(3) The make, year, model, serial number, and acquisition price of each manufactured home or modular home; and

(4) If applicable, the amount of tax collected from the purchaser.

(b) Upon the initial sale of a new manufactured home or modular home, the tax levied by this chapter shall be collected on sixty-two percent (62%) of the acquisition price of the new manufactured home or modular home.

(c) No tax shall be due on the sale of a mobile home or on a subsequent sale of a manufactured home or modular home, including any tax levied by this chapter or any other gross receipts tax levied by the state.

History. Acts 1985, No. 1068, § 2; A.S.A. 1947, § 84-1936.2; Acts 2003, No. 365, § 1; 2005, No. 2254, § 1; 2009, No. 384, § 10.

Amendments. The 2003 amendment substituted “modular” for “custom manufactured.” The 2005 amendment rewrote this section.

The 2009 amendment substituted “acquisition” for “sales” in (a)(3) and (b).

Effective Dates. Acts 2003, No. 365, § 3: Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the

sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

26-52-803. Enforcement.

(a) Any permittee who fraudulently attempts to evade any provision of this section or of this chapter shall be subject to having his or her permit revoked after notice and hearing provided in § 26-52-208.

(b) (1) Upon payment of all applicable registration and title fees, any manufactured home retailer licensed pursuant to § 27-14-601(a)(6) that makes a subsequent purchase of a manufactured home for which the seller does not have a certificate of title may register the manufactured home for the sole purpose of obtaining a certificate of title.

(2) No license plate or decal shall be provided with the registration.

History. Acts 1985, No. 1068, § 3; A.S.A. 1947, § 84-1936.3; Acts 2003, No. 365, § 1; 2005, No. 2254, § 1.

Amendments. The 2003 amendment substituted “modular” for “custom manufactured” and made minor stylistic changes.

The 2005 amendment rewrote this section.

Effective Dates. Acts 2003, No. 365, § 3: Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

26-52-804. [Repealed.]

Publisher's Notes. This section, concerning furnishings not exempt, was repealed by Acts 2005, No. 2254, § 1. The section was derived from Acts 1985, No. 1068, § 5; A.S.A. 1947, § 84-1936.4; Acts 2003, No. 365, § 1.

Subchapter 9 **— Steel Mill Tax Incentives**

26-52-901. Definitions.

26-52-902. Certification required.

26-52-903. Exemption from taxes.

26-52-904 — 26-52-910. [Reserved.]

26-52-911. Definitions.

26-52-912. Certification required — Contents.

26-52-913. Net operating loss deduction — Carry forward.

26-52-914. Exemption of sales of natural gas and electricity.

Effective Dates. Acts 1987, No. 48, § 7: Feb. 16, 1987. Emergency clause provided:

“Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This Act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after its passage and approval.”

Acts 1987, No. 575, § 5: Apr. 2, 1987. Emergency clause provided: “Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry and

encouraging the expansion and further development of existing industry. Offering tax incentives is an effective method of attracting and encouraging the growth of industry in Arkansas. This Act is necessary to define the class of industry to which such economic incentives will be extended. The extension of such incentives will reduce unemployment levels in Arkansas. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 136, § 8: Feb. 13, 1991. Emergency clause provided: “Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry.

Offering tax incentives is an effective method of attracting business to Arkansas. This Act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after its passage and approval.”

Acts 1991, No. 137, § 8: Feb. 13, 1991. Emergency clause provided: “Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry.

Offering tax incentives is an effective method of attracting business to Arkansas. This Act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after its passage and approval.”

26-52-901. Definitions.

As used in this subchapter:

(1) “Invested” includes expenditures made from the proceeds of bonds, including interim notes or other evidence of indebtedness, issued by a municipality, county, or an agency or instrumentality of a municipality, county, or the State of Arkansas, if the obligation to repay the bonds, including interest thereon, is a legal binding obligation, directly or indirectly, of the taxpayer; and

(2) “Qualified manufacturer of steel” means any natural person, company, or corporation engaged in the manufacture, refinement, or processing of steel whenever more than fifty percent (50%) of the electricity or more than fifty percent (50%) of the natural gas consumed in the manufacture, refinement, or processing of steel is used to power an electric arc furnace or furnaces, continuous casting equipment, or rolling mill equipment in connection with the melting, continuous casting, or rolling of steel or in the preheating of steel for processing through a rolling mill or rolling mills, or both.

History. Acts 1987, No. 48, § 1; 1987, No. 575, § 1.

Publisher's Notes. Acts 1987, No. 48, § 1, is also codified as § 26-51-1201.

26-52-902. Certification required.

(a) To claim the benefits of this subchapter, a taxpayer must obtain a certification from the Director of the Arkansas Economic Development Commission certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer:

(1) Operates a steel mill in Arkansas which began production after February 16, 1987; and

(2) Has invested, after February 16, 1987, in excess of one hundred twenty million dollars (\$120,000,000) in the steel mill, which investment expenditure is for one (1) of the following:

(A) Property purchased for use in the construction of a building or buildings or any addition or improvement thereon to house the steel mill;

(B) (i) Machinery and equipment to be located in or in connection with the steel mill.

(ii) Motor vehicles of a type subject to registration shall not be considered as machinery and equipment; or

(C) Project planning costs or construction labor costs, including on-site direct labor and supervision, whether employed by a contractor or the project owner; architectural fees or engineering fees, or both; right-of-way purchases; utility extensions; site preparation; parking lots; disposal or containment systems; water and sewer treatment systems; rail spurs; streets and roads; purchase of mineral rights; land; buildings; building renovation; production, processing, and testing equipment; freight charges; building demolition; material handling equipment; drainage systems; water tanks and reservoirs; storage facilities; equipment rental; contractor's cost plus fees; builders risk insurance; original spare parts; job administrative expenses; office furnishings and equipment; rolling stock; capitalized start-up costs as recognized by generally accepted accounting principles; and other costs related to the construction.

(b) As used in subdivision (a)(2)(C) of this section, "production, processing, and testing equipment" includes machinery and equipment essential for the receiving, storing, processing, and testing of raw materials and the production, storage, testing, and shipping of finished products, including facilities for the production of steam, electricity, chemicals, and other materials that are essential to the manufacturing process, but which are consumed in the manufacturing process and do not become essential components of the finished product.

(c) To claim the benefits of § 26-52-903, a taxpayer must be certified pursuant to subsection (a) of this section or obtain a certification from the Director of the Arkansas Economic Development Commission certifying to the division that the taxpayer meets the definition of "qualified manufacturer of steel" contained in § 26-52-901.

History. Acts 1987, No. 48, § 1; 1987, No. 575, § 1; 1993, No. 403, § 24; 1997, No. 540, §§ 60, 91.

Publisher's Notes. Acts 1987, No. 48, § 1, is also codified as § 26-51-1202.

26-52-903. Exemption from taxes.

Sales of natural gas and electricity to taxpayers qualified under § 26-52-902 for use in connection with the steel mill shall be exempt from:

- (1) The gross receipts tax levied by this chapter;
- (2) The Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.; and
- (3) Any other state or local tax administered under this chapter or the Arkansas

Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 1987, No. 48, § 4; 1987, No. 575, § 2.

Publisher's Notes. Acts 1987, No. 575, § 2, provided, in part, that the benefits of the exemptions granted pursuant to this section shall become effective on and after September 1, 1988.

26-52-904 — 26-52-910. [Reserved.]

26-52-911. Definitions.

As used in this section and §§ 26-52-912 — 26-52-914:

(1) “Invested” includes expenditures made from the proceeds of bonds including interim notes or other evidence of indebtedness issued by a municipality, county, or an agency or instrumentality of a municipality, county, or the State of Arkansas, if the obligation to repay the bonds, including interest thereon, is a legal, binding obligation, directly or indirectly, of the taxpayer;

(2) “Production and processing equipment” includes machinery and equipment essential for the receiving, storing, processing, and testing of raw materials and the production, storage, testing, and shipping of finished products, including facilities for the production of steam, electricity, chemicals, and such other materials that are essential to the manufacturing process, but which are consumed in the manufacturing process and do not become essential components of the finished product; and

(3) A taxpayer is a “qualified manufacturer of steel” if:

(A) The taxpayer is a natural person, company, or corporation engaged in the manufacture, refinement, or processing of steel; and

(B) More than fifty percent (50%) of the electricity or natural gas consumed in the manufacture, refinement, or processing of steel by the taxpayer is used either:

(i) To power an electric arc furnace or furnaces, continuous casting equipment, or rolling mill equipment in connection with melting, continuous casting, or rolling of steel; or

(ii) In the preheating of steel for processing through a rolling mill.

History. Acts 1991, No. 136, § 1; 1991, No. 137, § 1.

Publisher's Notes. Acts 1991, Nos. 136 and 137, § 1, are also codified as § 26-51-1211.

26-52-912. Certification required — Contents.

To claim the benefits of §§ 26-52-911 — 26-52-914, a taxpayer must obtain certification prior to June 30, 1994, from the Director of the Arkansas Economic Development Commission certifying to the Revenue Division of the Department of Finance and Administration that:

(1) The taxpayer is a “qualified manufacturer of steel” as defined in § 26-52-911; or

(2) (A) The taxpayer operates a steel mill in Arkansas which began production after February 13, 1991; and

(B) The taxpayer has invested, after February 13, 1991, in excess of one hundred twenty million dollars (\$120,000,000) in the steel mill, which investment expenditure is for one (1) of the following:

(i) Property purchased for use in the construction of a building or buildings or any addition or improvement thereon to house the steel mill;

(ii) Machinery and equipment to be located in or in connection with the steel mill. Motor vehicles of a type subject to registration shall not be considered as machinery and equipment; or

(iii) Project planning costs; construction labor costs, including on-site direct labor and supervision whether employed by a contractor or the project owner; architectural or engineering fees; right-of-way purchases; utility extensions; site

preparation; parking lots; disposal or containment systems; water and sewer treatment systems; rail spurs; streets and roads; purchase of mineral rights; land; buildings; building renovation; production, processing, and testing equipment; freight charges; building demolition; material handling equipment; drainage systems; water tanks and reservoirs; storage facilities; equipment rental; contractor's cost plus fees; builders risk insurance; original spare parts; job administration expenses; office furnishings and equipment; rolling stock; capitalized start-up costs as recognized by generally accepted accounting principles; and other costs related to the construction.

History. Acts 1991, No. 136, § 2; 1991, No. 137, § 2; 1997, No. 540, § 92.

Publisher's Notes. Acts 1991, Nos. 136 and 137, § 2, are also codified as § 26-51-1212.

26-52-913. Net operating loss deduction — Carry forward.

Taxpayers qualified under § 26-52-912(b) and entitled to a net operating loss deduction as provided in § 26-51-427 may carry forward that deduction to the next-succeeding taxable year following the year of such net operating loss and annually thereafter for a total period of ten (10) years or until such net operating loss has been exhausted, whichever is earlier. The net operating loss deduction must be carried forward in the order named above.

History. Acts 1991, No. 136, § 3; 1991, No. 137, § 3.

Publisher's Notes. Acts 1991, Nos. 136 and 137, § 3, are also codified as § 26-51-1213.

Research References

A.L.R.

Construction and application of state corporate income tax statutes allowing net operation loss deductions. 33 A.L.R.5th 509.

26-52-914. Exemption of sales of natural gas and electricity.

(a) Sales of natural gas and electricity to taxpayers qualified under § 26-52-912(a) or § 26-52-912(b) for use in connection with the steel mill shall be exempt from:

- (1) The Arkansas gross receipts tax levied by this chapter;
- (2) The Arkansas compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.; and
- (3) Any other state or local tax administered under this chapter or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) [Repealed.]

History. Acts 1991, No. 136, § 4; 1991, No. 137, § 4; 2009, No. 655, § 27.

Publisher's Notes. Acts 1991, Nos. 136 and 137, § 4, are also codified as § 26-51-1214.

Amendments. The 2009 amendment deleted (b).

Subchapter 10 — Tourism Gross Receipts Tax

26-52-1001 — 26-52-1006. [Repealed.]

26-52-1001 — 26-52-1006. [Repealed.]

Publisher's Notes. This subchapter, concerning the tourism gross receipts tax, was repealed by Acts 2007, No. 182, §§ 6-11. The subchapter was derived from the following sources:

26-52-1001. Acts 1989, No. 38, § 1.

26-52-1002. Acts 1989, No. 38, § 2; 1995, No. 284, § 2.

26-52-1003. Acts 1989, No. 38, § 3.

26-52-1004. Acts 1989, No. 38, § 4.

26-52-1005. Acts 1989, No. 38, § 5.

26-52-1006. Acts 1989, No. 38, § 6.

For current law, see § 26-63-401 et seq.

Subchapter 11 **— Arkansas Medicaid Gross Receipts Tax Act**

26-52-1101 — 26-52-1109. [Expired.]

26-52-1101 — 26-52-1109. [Expired.]

Publisher's Notes. Acts 1991, No. 889, § 1 provided, in part, that this subchapter, the Arkansas Medicaid Gross Receipts Tax Act of 1991, shall expire on June 30, 1993. The subchapter was derived from Acts 1991, No. 889, § 1.

Subchapter 12 **— Medicaid Provider Excise Tax**

26-52-1201 — 26-52-1209. [Repealed.]

26-52-1201 — 26-52-1209. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1993, No. 794, § 7. The subchapter was derived from the following sources:

26-52-1201. Acts 1991, No. 1004, § 1.

26-52-1202. Acts 1991, No. 1004, § 2.

26-52-1203. Acts 1991, No. 1004, § 3.

26-52-1204. Acts 1991, No. 1004, § 4.

26-52-1205. Acts 1991, No. 1004, § 5.

26-52-1206. Acts 1991, No. 1004, § 6.

26-52-1207. Acts 1991, No. 1004, § 7.

26-52-1208. Acts 1991, No. 1004, § 8.

26-52-1209. Acts 1991, No. 1004, § 9.

Subchapter 13 **— Personal Care Services Excise Tax**

26-52-1301 — 26-52-1308. [Repealed.]

26-52-1301 — 26-52-1308. [Repealed.]

Publisher's Notes. This subchapter, scheduled to expire June 30, 1993, was repealed by Acts 1993, No. 794, § 7. The subchapter was derived from the following sources:

26-52-1301. Acts 1992 (1st Ex. Sess.), No. 74, § 1.

26-52-1302. Acts 1992 (1st Ex. Sess.), No. 74, § 2.
26-52-1303. Acts 1992 (1st Ex. Sess.), No. 74, § 3.
26-52-1304. Acts 1992 (1st Ex. Sess.), No. 74, § 4.
26-52-1305. Acts 1992 (1st Ex. Sess.), No. 74, § 5.
26-52-1306. Acts 1992 (1st Ex. Sess.), No. 74, § 6.
26-52-1307. Acts 1992 (1st Ex. Sess.), No. 74, § 7.
26-52-1308. Acts 1992 (1st Ex. Sess.), No. 74, § 8.

Subchapter 14 **— Home Health and Personal Care Services Tax**

26-52-1401 — 26-52-1406. [Repealed.]

26-52-1401 — 26-52-1406. [Repealed.]

Publisher's Notes. This subchapter, concerning home health and personal care services tax, was repealed by Acts 1995, No. 794, § 4. The subchapter was derived from the following sources:

26-52-1401. Acts 1992 (2nd Ex. Sess.), No. 4, § 1; 1993, No. 794, §§ 1, 2.
26-52-1402. Acts 1992 (2nd Ex. Sess.), No. 4, §§ 2, 5; 1993, No. 794, § 3.
26-52-1403. Acts 1992 (2nd Ex. Sess.), No. 4, § 4.
26-52-1404. Acts 1992 (2nd Ex. Sess.), No. 4, §§ 3, 4.
26-52-1405. Acts 1992 (2nd Ex. Sess.), No. 4, § 7.
26-52-1406. Acts 1993, No. 794, § 4.

Subchapter 15 **— Bingo Games**

26-52-1501 — 26-52-1507. [Repealed.]

26-52-1501 — 26-52-1507. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1999, No. 1152, § 1. The subchapter was derived from the following sources:

26-52-1501. Acts 1993, No. 939, § 1.
26-52-1502. Acts 1993, No. 939, § 2.
26-52-1503. Acts 1993, No. 939, § 3.
26-52-1504. Acts 1993, No. 939, § 4.
26-52-1505. Acts 1993, No. 939, § 5.
26-52-1506. Acts 1993, No. 939, § 6.
26-52-1507. Acts 1993, No. 939, § 7.

Subchapter 16 **— Arkansas Sales Tax Advisory Committee**

26-52-1601 — 26-52-1602. [Expired.]

26-52-1601 — 26-52-1602. [Expired.]

Publisher's Notes. This subchapter expired December 31, 2000, pursuant to Acts 1999, No. 623, § 3, which provided:

“The provisions of this act will expire on December 31, 2000.”

The subchapter was derived from the following sources:

26-52-1601. Acts 1999, No. 623, § 1.

26-52-1602. Acts 1999, No. 623, § 2.

Chapter 53

Compensating Or Use Taxes

Subchapter 1 — Arkansas Compensating Tax Act of 1949

Subchapter 2 — Contractors

Subchapter 3 — Interstate Reciprocal Agreements

Research References

A.L.R.

Sales and use taxes on leased tangible personal property. 2 A.L.R.4th 859.

Transportation, freight, mailing, or handling charges billed separately to purchaser of goods as subject to sales or use taxes. 2 A.L.R.4th 1124.

What constitutes a direct use within meaning of statute exempting from sales and use taxes equipment directly used in production of tangible personal property. 3 A.L.R.4th 1129.

Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement. 8 A.L.R.4th 1068.

Applicability of sales or use taxes to motion pictures and video tapes. 10 A.L.R.4th 1209.

Eyeglasses or other optical accessories as subject to sales or use tax. 14 A.L.R.4th 1370.

Exemption, from sales or use tax, of water, oil, gas, other fuel, or electricity provided for residential purposes. 15 A.L.R.4th 269.

What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption. 25 A.L.R.4th 750.

Provisions allowing use tax credit for tax paid in other state. 31 A.L.R.4th 1206.

Sales, use, or privilege tax on sales of, or revenues from sales of, advertising. 40 A.L.R.4th 1114.

Mining exemption to sales or use tax. 47 A.L.R.4th 1229.

Sales and use taxes on sale or lease of mailing or customer list. 80 A.L.R.4th 1126.

Architectural drawings or illustrations as exempt from sales or use tax. 27 A.L.R.5th 794.

Am. Jur. 68 Am. Jur. 2d, Sales Tax., § 1 et seq.

C.J.S. 85 C.J.S., Tax. § 1231 et seq.

Subchapter 1

— Arkansas Compensating Tax Act of 1949

26-53-101. Title.

26-53-102. Definitions.

26-53-103. Administration of subchapter.

26-53-104. Rules and regulations — Forms.

26-53-105. Sales and Use Tax Section.

26-53-106. Imposition and rate of tax generally — Presumptions.

26-53-107. Additional taxes levied.

26-53-108. Imposition and rate of tax on certain personal property.

26-53-109. Tax on use, storage, or distribution of computer software.

26-53-110. Financial institutions.

26-53-111. Deduction for bad debts.

26-53-112. Exemptions generally.

26-53-113. Exemption for unprocessed crude oil.

26-53-114. Exemption for certain machinery and equipment.

- 26-53-115. Exemption for certain aircraft and railroad cars, parts, and equipment.
- 26-53-116. Exemption for sale and purchase of certain vessels.
- 26-53-117. Exemption for motor fuels used in municipal buses — Penalties for abuse of exemption.
- 26-53-118. Exemption for modular homes.
- 26-53-119. Exemption for sale of products for treating livestock and poultry and other commercial agricultural production.
- 26-53-120. Feedstuffs used for livestock.
- 26-53-121. Registration of vendors — Out-of-state vendors.
- 26-53-122. Agents furnished statements of compliance.
- 26-53-123. Liability for tax.
- 26-53-124. Collection of tax by vendor.
- 26-53-125. Return and payment of tax.
- 26-53-126. Tax on new and used motor vehicles, trailers, or semitrailers — Payment and collection.
- 26-53-127. Refunds to governmental agencies.
- 26-53-128. Tax — A lien upon property.
- 26-53-129. Suits for violations of subchapter — Agent for service.
- 26-53-130. [Repealed.]
- 26-53-131. Credit for tax paid in another state.
- 26-53-132. Refund for construction of child care facility.
- 26-53-133. Exemption for manufacturing forms.
- 26-53-134. Exemption for natural gas used in manufacture of glass.
- 26-53-135. Exemption for sales to Fort Smith Clearinghouse.
- 26-53-136. Exemption for nonprofit food distribution agencies.
- 26-53-137. Exemption for railroad rolling stock manufactured for use in interstate commerce.
- 26-53-138. Exemption for property purchased for use in performance of construction contract.
- 26-53-139. Exemption for railroad parts, cars, and equipment.
- 26-53-140. Tax levied on sales of prepaid telephone calling cards.
- 26-53-141. Durable medical equipment, mobility-enhancing equipment, prosthetic devices, and disposable medical supplies.
- 26-53-142. Fire protection equipment and emergency equipment.
- 26-53-143. Wall and floor tile manufacturers.
- 26-53-144. Certain classes of trucks or trailers.
- 26-53-145. Food and food ingredients.
- 26-53-146. Exemption for qualified museums.
- 26-53-147. Heavy equipment.
- 26-53-148. Natural gas and electricity used by manufacturers.

A.C.R.C. Notes. Acts 2007, No. 185, § 3, provided:

“All existing exemptions from the gross receipts tax levied by the Arkansas Gross Receipts Act or 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or other purposes that are otherwise provided by law shall continue in full force and effect.”

Cross References. Sales and use tax, § 26-74-601 et seq.

Preambles. Acts 1979, No. 449 contained a preamble which read:

"Whereas, the levy of sales and use taxes upon towboats, barges and the repair and construction of the same results in an undue hardship on Arkansas purchasers and Arkansas vendors of towboats and barges; and

"Whereas, adjoining states exempt barges and towboats from sales and use taxes resulting in Arkansas vendors and purchasers having a competitive disadvantage; and

"Whereas, this bill would merely put Arkansas towboat and barge vendors and purchasers on an equal footing with competitors in adjoining states; and

"Whereas, the result of this Act would be to boost the economy in this particular industry with the probable result of increased production and sales and increased tax collections resulting from the economic boost to this industry;

"Now, therefore"

Effective Dates. Acts 1949, No. 487, § 31: Mar. 30, 1949. Emergency clause provided: "Since the enactment of the Arkansas Retail Sales Tax Act, Arkansas has been placed in the peculiar category of discriminating against its home merchants. This Act attempts to rectify the evil by placing domestic merchants upon an equal plane with foreign merchants. It is also recognized that adequate hospital facilities, old age pension payments and welfare assistance to the aged and distressed are essential for the preservation of the public health and welfare; and that adequate school facilities are vital to the preservation of our democratic system of government, and because of such necessities an emergency is declared to exist and this Act being necessary for the immediate preservation of the public health, peace and safety, shall take effect and be in full force and effect from and after its passage and approval."

Acts 1955, No. 55, § 2: Feb. 14, 1955. Emergency clause provided: "It is hereby determined by the General Assembly that the imposition of the Compensating Tax upon the ginnerers of cotton in this State is unfair and burdensome and discourages the expansion of existing cotton ginning plants at this time when the development of such facilities is an economic necessity. Therefore, an emergency is hereby declared to exist and this Act being necessary for the protection of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1955, No. 94, § 8: Feb. 22, 1955. Emergency clause provided: "It has been found and is determined by the General Assembly of Arkansas that the Gross Receipts Tax and the Compensating Tax Act as now levied and collected works undue hardships and competition upon the many livestock and poultry growers of this State, and the passage of this Act will eliminate this situation and thereby work to the welfare of the public at large; therefore, it being necessary for the preservation of the public peace, health and safety of the State, an emergency is hereby declared and this act shall be in full force and effect from and after its approval."

Acts 1957, No. 19, § 6: Feb. 7, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, and the University of Arkansas and the other state-supported institutions of higher learning, the Public School System, the Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment to all of the people of this State; and (4) that only the provisions of this act will provide funds in amounts sufficient to alleviate the aforementioned conditions. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1957, No. 141, § 2: Mar. 4, 1957. Emergency clause provided: "It is hereby determined by the General Assembly that the attempted imposition of the Compensating Tax upon the artificial drying of rice in this State is unfair and burdensome and discourages the expansion of existing commercial drying plants at this time when the development of such facilities is an economic and agricultural necessity. Therefore, an emergency is hereby declared to exist and this act, being necessary for the protection of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1961, No. 43, § 3: Feb. 6, 1961. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of legislative oversight the definition of the term 'person' as contained in the Compensating Tax Act permits exemptions of certain governmental units from the payment of said tax which is not permitted in the Sales Tax Law, and that as a result thereof the State of Arkansas is losing revenues vitally needed for the support of the public schools and other vital services of this State; and that only by the immediate passage of this Act may this situation be corrected. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1961, No. 140, § 3: Feb. 22, 1961. Emergency clause provided: "It is found and declared by the General Assembly that there is need for additional revenue for the adequate operation of the various state agencies and institutions; and to determine in advance that adequate funds will be made available, as only in this Act provided. It is hereby declared necessary for the preservation of public peace, health and safety that this Act shall take effect and be in force immediately. Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1967, No. 113, § 5: Feb. 20, 1967. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that certain exemptions in the sales tax and use tax to encourage capital investment in industrial, utility and manufacturing enterprises will be of great value to the economic and industrial development of the State; that it is important for such purposes and to correct inequities now existing that exemptions in the sales tax be identical to those of the use tax and that enactment of this bill will accomplish these purposes and aims. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its approval."

Acts 1968 (1st Ex. Sess.), No. 5, § 5: Feb. 15, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that the 'manufacturing and processing' exemptions in certain statutes of this State are confusing and difficult to administer and enforce; that revenues are being lost as a result thereof; that such confusion and loss of revenues have created an emergency, which emergency is hereby found and declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, welfare, and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 600, § 6: Apr. 7, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the maintenance and operation of economical mass transportation for the general public is essential to the public welfare, that the owners and/or operators of motor buses on designated streets according to regular schedules under franchise from municipalities in this State are in dire circumstances thereby jeopardizing the efficient and economical mass transportation of the public, and that the immediate passage of this Act is necessary to provide financial relief to the operation of mass transit facilities in municipalities in this State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 68, § 6: Feb. 6, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the levy of the Arkansas Gross Receipts Tax and the Arkansas Compensating Tax upon agricultural fertilizers, agricultural limestone, agricultural chemicals, and upon vaccines, medication, and medicinal preparations used in treating livestock and poultry, places a severe hardship upon the agricultural industry of this State and that this Act should be given effect immediately in order to remedy this inequitable situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 182, §§ 9, 10: Jan. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to the taxation of banks and savings and loan associations is somewhat vague and indefinite, that such institutions should pay the same taxes as other business corporations in the State, and this Act is immediately

necessary to clarify the laws with respect to the taxation of financial institutions and to assure that such institutions pay the same taxes as other business corporations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved Feb. 22, 1973.

Acts 1975, No. 760, § 5: Apr. 7, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that uncertainty exists to the intended meanings of the terms 'manufacturing' and/or 'processing' as the same are used in Section 4 of the Arkansas Gross Receipts Act, as amended, and Section 6 of the Arkansas Compensating Tax Act, as amended, as a result of which the legislative intent is not being carried out and implemented; that the failure to carry out the legislative intent expressed in the sections amended herein is highly detrimental to the public interest of the State and that this inequitable situation should be corrected immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975 (Extended Sess., 1976), No. 1237, § 5: Feb. 16, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that it was not the intent of Act 487 of 1949, as amended, to impose the compensating use tax upon aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive or railroad companies, brought into this State solely and exclusively for (i) the purpose of refurbishing, conversion, or modification or (ii) for storage pending shipment for use outside the State of Arkansas regardless of the length of time any such property is so stored in the State of Arkansas; that recent court decisions have construed said Act 487 of 1949, as amended, to impose and require the collection and payment of compensating use taxes upon such property; and that the immediate passage of this Act is necessary to clarify the legislative intent and to provide that any claim the State of Arkansas may now have outstanding, or which is due the State of Arkansas as a result of the court decisions for the collection of any such compensating use tax upon aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by any aircraft, airmotive or railroad companies, brought into this State (i) solely and exclusively for the purpose of refurbishing, conversion, or modification, or (ii) for storage pending shipment for use outside the State of Arkansas regardless of the length of time any such property is so stored in the State of Arkansas, shall not be enforced, thereby correcting this inequity which was not intended by the General Assembly. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 449, § 3: Mar. 21, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the levy of the Arkansas Sales and Use Taxes on towboats and barges has resulted in an inequitable taxation of Arkansas vendors and purchasers, that surrounding states exempt such items from their sales and use tax, and that the Arkansas vendors and purchasers have thereby been placed in an unfavorable position in the competitive market place, and that this Act is immediately necessary to provide relief from this inequity. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 915, § 6: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that there is some doubt regarding the correct dates for the reporting and payment of the Arkansas gross receipts and compensating use taxes; that there is also some confusion as to whether the Gross Receipts Tax should be computed on the basis of the total combined gross receipts or gross proceeds derived by the taxpayer from all taxable sales during the month or upon the gross receipts or gross proceeds derived from each separate sale, and not upon any figure for gross receipts tax collected that may appear on taxpayer's books of account, and that this Act is designed to clarify this matter by specifically providing that the tax is computed upon the total receipts for the month from all taxable sales and not upon the gross receipts derived from each sale; nor upon any figure for gross receipts tax collected that may appear on taxpayer's books of account; that the

effectiveness of this Act on July 1, 1979, is essential to the efficient collection of revenues for the State's operations and that in the event of an extension of the regular session, delay in effective date of this Act beyond July 1, 1979, could work irreparable harm upon the proper collection of essential revenues for the State's operations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1979."

Acts 1983, No. 791, § 6: Mar. 24, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the taxpayers of the State of Arkansas will be burdened in a manner not intended by this General Assembly; therefore, an emergency is therefore declared to exist and, this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its date of passage and approval."

Acts 1983, No. 829, § 2: Mar. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Supreme Court has held that Act 487 of 1949 does not contain a 'withdrawal for use' provision comparable to the Arkansas Gross Receipts Tax Act and therefore there exists a discriminatory tax advantage to a person who owns tangible personal property outside of this State and subsequently transfers same into this State for consumption or use and that immediate passage of this Act is necessary to correct this inequity. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1983 (1st Ex. Sess.), No. 63, § 3: Nov. 1, 1983. Emergency clause provided: "It is hereby found and determined by the 74th General Assembly that the Arkansas Supreme Court has held that the current method of allocating State financial aid to public elementary and secondary education is unconstitutional and must be revised to meet constitutional standards; that reallocation of existing State financial aid would cause massive disruption of the system of public elementary and secondary education in this State; that the current level of State financial aid to public elementary and secondary education is inadequate to meet the mandate of Article 14 of the Arkansas Constitution that the State maintain a general, suitable and efficient system of free public schools; that experienced faculty members at the institutions of higher education are leaving the State of Arkansas because salary levels in Arkansas are not competitive with salaries in institutions of higher education in other states; that accreditation of certain essential programs operated by various institutions of higher education is in jeopardy because of inadequate financial support; that the present level of funding for essential State services will cause the curtailing of activities of necessary State agencies; that additional State revenues are required to alleviate these conditions. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect November 1, 1983."

Acts 1983 (1st Ex. Sess.), No. 94, § 3: Nov. 9, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that a deduction for bad debts should be allowed under Arkansas' sales tax laws; that such deduction is not authorized by law and therefore the present law is inequitable and fundamentally unfair to that extent; that this Act should go into effect immediately to correct such inequity. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 27, § 4: Feb. 11, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that in-state sellers of property and services are being discriminated against as a result of out-of-state vendors, who solicit sales by advertisements, not being required to collect and pay to the State compensating (use) tax upon such sales; that, as a result of the foregoing, this State is being deprived of much-needed revenue to which it is rightfully entitled; that providers of interstate telecommunication services have not been required to collect and remit gross receipts tax on interstate access and long distance telecommunications services which are hereby declared to be subject to the gross receipts tax. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 772, § 5: Apr. 7, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31 [290 Ark. 100, 717 S.W.2d 488 (1986)], a question has arisen over the validity of Act 1237 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 911, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law manufacturing and processing plants are exempt from paying the use tax on machinery and equipment required by law to be installed to prevent or reduce air or water pollution; that the exemption apparently does not apply to cities or towns; that some cities are under government order to install such machinery and equipment; that cities should be extended the exemption to the same extent manufacturing and processing facilities enjoy the exemption; that until the exemption becomes effective, some cities will suffer extra financial hardships; and that this Act will immediately implement such exemption. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 395, § 6: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the provisions of Arkansas Code of 1987 Annotated § 26-53-101 et seq. do not specifically provide for allowance to be given to persons for similar taxes paid in other states; that the proper and effective administration of the compensating (use) tax will be greatly enhanced by the provisions of a reciprocal tax credit given by the State of Arkansas to purchasers who have previously paid a compensating tax in another state, provided that such other state offers the same tax credit to Arkansas purchasers for tangible personal property brought into the other state; that this act is immediately necessary in order to eliminate the possibility that Arkansas taxpayers will be subject to undue multiple taxation by other states due to the failure of the states' taxing authorities to equate the Arkansas Gross Receipts Tax to sales tax for purposes of allowing a reciprocal sales tax credit; that this act is also necessary to lessen the administrative burdens on taxpayers whose monthly gross receipts tax liability is relatively small in amount. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 817, § 6: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need of additional revenue for the purpose of funding critical education programs and other essential services required by the citizens of the State and the provisions of this act are necessary to raise needed revenue. Therefore, an emergency is declared to exist in this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1989."

Acts 1989 (3rd Ex. Sess.), No. 9, § 5: Nov. 3, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that this state is losing sales and use tax revenues on new and used motor vehicles purchased by Arkansas residents from sellers in other states and that these revenues are essential to fund public education and other necessary services provided by State government and the loss of these funds if causing irreparable harm to this State. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 3, § 14: May 1, 1991. Emergency clause provided: "It is hereby found and determined that the State of Arkansas is lacking adequate funds to provide for the education of its citizens and for other essential services: that increased funds must be raised to adequately provide for those needs; that certain persons are assisting taxpayers in evading or defeating the payment or collection of lawfully imposed state taxes depriving the state of needed revenues and that this act is designed to provide the necessary revenues to the state sufficient to meet these needs. Therefore, an emergency is declared to exist and this act, being necessary for the

immediate preservation of the public peace, health and safety, shall be in full force and effective on and after May 1, 1991.”

Acts 1991, No. 688, § 10: Mar. 21, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that some taxpayers are not properly completing and timely filing tax returns; that these failures create an administrative burden upon the Department of Finance and Administration; and that this act is designed to impose a fifty dollar (\$50) penalty for failure to timely file returns, even if no tax is due, or if returns are not properly completed.

Therefore, an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, Nos. 820 and 987, § 9: Apr. 1, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly of this state that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this state and the state as a whole has been unable to compete with other state's incentive programs for economic development, and, that the incentives afforded by this Act are critical to the development and expansion of job opportunities in the state. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 1001, § 5: emergency failed to pass. Emergency clause provided: “It is hereby found and determined by the General Assembly that under present law certain Arkansas businesses are put at an unfair advantage against out of state businesses due to the ‘forms’ used by the business being subjected to the state sales tax; that substantial employment opportunity is jeopardized in the state unless the relief provided by this act is granted immediately; that this act should go into effect as soon as possible in order to protect the employment opportunities within this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 1144, § 5: Apr. 14, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that non-profit agencies distributing free food-stuffs contribute immeasurably to the general well being of the poor and needy individuals in this state; that these organizations are non-profit organizations and that it is in the best interest of all the citizens of this State that such organizations be granted appropriate incentives to continue their outstanding work; and that this act is necessary to provide such incentive and allow these organizations to continue their work by exempting purchases by such organizations from the Arkansas gross receipts tax and should be given effect immediately. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 268, § 11: Feb. 13, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that current law imposes a 10% penalty on late payment of sales or use tax on motor vehicles and trailers; that current law disallows the isolated sales exemption to a purchase of a motor vehicle or trailer; that each of these provisions are in need of clarification to ensure the original legislative intent is fulfilled; and that Sections 6 and 7 of this act should be effective immediately to prevent possible confusion among the taxpayers of this state. Therefore, an emergency is hereby declared to exist and Sections 6 and 7 of this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect immediately upon its passage and approval.”

Acts 1995, No. 358, § 6: July 1, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that vendors in the ordinary course of business have relied to their detriment by accepting resale certificates from purchasers in good faith, only to later incur tax liability if the property purchased was not resold by the purchaser; that the purchaser in most cases will be in the best position to determine whether the resale exemption is valid but current law does not permit recourse against the purchaser if the property purchased is not in fact resold; and that the practicalities of business require that vendors be permitted to relieve themselves of tax liability upon good faith acceptance of a resale certificate and this act is designed to afford such relief. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995.”

Acts 1995, No. 387, § 7: approved Feb. 20, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the application of any additional Gross Receipts or Compensating (Use) Tax levied by the state or any city or county to tangible personal property purchased for the performance of construction contracts entered into prior to the effective date of the tax increase will substantially increase the cost of performing contracts; that contractors are not able to include the additional tax in their contract price at the time the contract is entered into and, therefore, imposition of the tax to purchases of construction contractors would cause undue hardship. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1995, No. 848, § 7: Mar. 31, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the General Assembly has previously passed Act 1237 of 1975 and Act 983 of 1981 to exempt railroad parts, railroad cars and equipment and the repair and maintenance of such railroad parts, railroad cars and equipment from Arkansas Gross Receipts and Compensating Use Tax; that on January 1, 1987 the Arkansas Department of Finance and Administration issued new regulations which provide that parts, materials and supplies used in such repairs are still subject to tax; that Arkansas law specifically exempts parts and other tangible personal property incorporated into commercial jet aircraft and vessels, barges and towboats from tax; that a substantial number of Arkansans are employed in Arkansas facilities where such repairs are performed; and that these jobs are at risk due to the relocation of such repair facilities to other states which clearly exempt such parts, materials and supplies from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 850, § 8: effective for taxable years beginning Jan. 1, 1995.

Acts 1995, No. 850, § 12: Mar. 31, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need to provide for the health, welfare and education of the State's children by encouraging child care facilities to offer an 'appropriate early childhood program' and this Act is designed to meet that need by providing tax incentives to encourage construction of these facilities. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 951, § 34 provided: "Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time."

Acts 1997, No. 951, § 38: Mar. 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides

the veto.”

Acts 1997, No. 1232, § 5: Jan. 1, 1998.

Acts 1999, No. 1348, § 7: July 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that due to the inability to track and audit calls made with prepaid calling cards, the current system of collecting sales tax based upon the usage of prepaid calling cards creates an administrative burden on the telecommunication companies; that this act will promote uniform tax collection on prepaid calling cards; that this act will more fairly tax telecommunications and prevent the likelihood of taxes being avoided.

Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999.”

Acts 1999, No. 1492, § 8: if contingency met, sections 1, 2, 3, 4 and 6 shall become effective on Jan. 1, 2001, and Section 7 shall become effective on Jan. 1, 2002. Effective date clause provided: “Effective Date. The provisions of Section 5 shall be effective 90 days after adjournment. The provisions of Sections 1, 2, 3, 4, 6 and 7 shall not be effective unless; a) the General Assembly refers a constitutional amendment to be approved during the 2000 general election; b) the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and c) the amendment is approved. If those conditions are met, Sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Claims for refund may be filed in 2001 pursuant to §§ 26-51-601 — 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999.”

Acts 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 11. Dec. 15, 2000. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Amendment 79 to the Arkansas Constitution requires the General Assembly to provide for a property tax credit of not less than \$300 for each homestead; that providing such a property tax credit results in a significant reduction in revenues for funding county services and public schools; that without an alternative source of funding counties and public schools cannot operate effectively; that an increase in the state sales and use tax provides a source of funding for counties and public schools; that this act will accomplish the purposes of Amendment 79 in providing a property tax credit and source of funding. It is necessary that this act become effective immediately in order to facilitate the administration of the property tax credit and to generate sufficient revenues to fully fund the credit. Therefore, an emergency is declared to exist and Sections 1, 2, 3, 4, 5, 6, 8 and 9 of this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2001, No. 922, § 2: effective on and after Jan. 1, 2002.

Acts 2001, No. 1375, § 2: July 1, 2003. Effective date clause provided: “This act shall be effective on and after July 1, 2003.”

Acts 2003, No. 365, § 3: Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

Acts 2003, No. 551, § 3: May 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there are a substantial number of Arkansas truckers who have registered their trucks in the state of Oklahoma; that their Oklahoma registrations expire on March 31; that this act will encourage those truckers to register their vehicles in the State of Arkansas; that unless this act goes into effect as soon as possible, that incentive will not exist for another year; and that the Department of Finance and Administration needs thirty (30) days lead time to implement this act. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on May 1, 2003.”

Acts 2003, No. 664, § 5: Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after

a recess or adjournment for a period longer than ninety (90) days.”

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also [become] effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

Acts 2003 (2nd Ex. Sess.), No. 107, § 12: became law without Governor's signature, Mar. 1, 2004. Emergency clause provided: “It is found and determined by the General Assembly, that the provision of an equal opportunity for an adequate education to all the citizens of the state is imperative; that additional funds are immediately needed to provide an equal opportunity for an adequate education; that this act is designed to provide the additional revenues needed to provide this equal opportunity to all citizens; and that a delay in the effective date of this act will cause irreparable harm upon the provision of essential education opportunities and the proper administration of educational programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of March 1, 2004.”

Acts 2005, No. 1693, § 3: July 1, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the payment of sales and use tax is required on the purchase of new or used heavy equipment; that Arkansas law provides that heavy equipment used in some types of professions or businesses is exempt from tax; that enforcement of the sales and use tax laws on heavy equipment is very difficult for the Department of Finance and Administration; that requiring a decal to be affixed to each piece of heavy equipment as proof that the tax has been paid or as proof that it is legally exempt would assist in the enforcement of the sales and use tax laws; and that this act would accomplish that purpose. Therefore, an emergency is declared to exist and this act being necessary for the preservation of

the public peace, health, and safety shall become effective on July 1, 2005.”

Acts 2007, No. 110, § 9: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of Arkansas are having to pay more in fuel costs due to the rise in oil prices; that the rise in fuel costs has resulted in an increase in the price of food and other goods; and that in order to offset these rising prices the sales and use tax rate on food and food ingredients should be reduced. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007.”

Acts 2007, No. 140, § 5: Oct. 1, 2007. Effective date clause provided: “Sections 1–4 of this act are effective on the first day of this calendar quarter following the effective date of the act.”

Acts 2007, No. 181, § 45: Jan. 1, 2008.

Acts 2007, No. 182, § 32: Jan. 1, 2008.

Acts 2007, No. 185, § 4: Mar. 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly that the current sales and use tax on utilities consumed by manufacturers located within this state creates a competitive disadvantage, that this bill is intended to address that problem by providing a reduced tax rate on utilities consumed by manufacturers located in this state; and that this act is immediately necessary to prevent the loss of manufacturing jobs to other states that provide lower taxes on utilities consumed in manufacturing. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 860, § 7: Jan. 1, 2008.

Acts 2009, No. 384, § 15: Mar. 10, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law require amendment to provide consistency with the Streamlined Sales and Use Tax Agreement, that a withdrawal from stock is subject to gross receipts tax under current law, that clarification is needed to ensure that the original legislative intent is fulfilled, and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 436, § 3: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that unemployment is rising in Arkansas, that the rise in unemployment has resulted in an increase in the number of Arkansans unable to afford basic necessities; and that in order to aid the people of Arkansas, the sales and use tax rate on food and food ingredients should be reduced. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009.”

Acts 2009, No. 691, § 3: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly that manufacturers in this state have suffered losses due to sharp increases in energy costs; that these manufacturers are unable to set the price for the products they produce and are particularly vulnerable to price volatility; that the current sales and use tax on utilities consumed by these manufacturers located within this state creates a competitive disadvantage; that this act is intended to address that problem by providing a reduced tax rate on utilities consumed by manufacturers located in this state; and that this act is necessary to prevent the loss of manufacturing jobs. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health, and safety shall become effective on July 1, 2009.”

Acts 2009, No. 1208, § 3: Apr. 7, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that differences of opinion have developed between the Department of Finance and Administration and Arkansas manufacturers concerning

the meaning of important sections of the manufacturing machinery and equipment sales and use tax exemption, including particularly the exemption for the purchase and installation of machinery and equipment to modernize and improve the efficiency of existing machinery and equipment, expand production or create new jobs that may not require the replacement of machines in their entirety, as well as the sales and use tax exemption for dies and molds used directly in manufacturing; that it is critical to encourage manufacturers to modernize and retool their plants as economically as possible in order to remain competitive and preserve Arkansas jobs; and that clarifications to confirm the intent and purpose of the manufacturing machinery and equipment sales and use tax exemption is appropriate. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Research References

Ark. L. Rev.

Constitutional Law — Taxation — Compelled Collection of the Use Tax by Nonresident Vendors, 6 Ark. L. Rev. 227.

Compensating Use Taxes: Past and Present Constitutional Problems in Imposition and Collection, 18 Ark. L. Rev. 321.

Legislative and Judicial Dynamism in Arkansas: Poisson v. d'Avril, 22 Ark. L. Rev. 724.

U. Ark. Little Rock L.J.

Jans, Survey of Constitutional Law, 3 U. Ark. Little Rock L.J. 184.

Case Notes

Cited: Boral Gypsum, Inc. v. Leathers, 325 Ark. 272, 924 S.W.2d 805 (1996); Acxiom Corp. v. Leathers, 331 Ark. 205, 961 S.W.2d 735 (1998).

26-53-101. Title.

The title of this subchapter shall be cited as the “Arkansas Compensating Tax Act of 1949”.

History. Acts 1949, No. 487, § 1; A.S.A. 1947, § 84-3101.

Case Notes

Cited: American Television Co. v. Hervey, 253 Ark. 1010, 490 S.W.2d 796 (1973); Jefferson Coop. Gin, Inc. v. Milam, 255 Ark. 479, 500 S.W.2d 932 (1973); C & C Mach., Inc. v. Ragland, 278 Ark. 629, 648 S.W.2d 61 (1983); Pledger v. Brunner & Lay, Inc., 308 Ark. 512, 825 S.W.2d 599 (1992).

26-53-102. Definitions.

As used in this subchapter:

(1) “Alcoholic beverage” means a beverage that is suitable for human consumption and contains five-tenths of one percent (0.5%) or more of alcohol by volume;

(2) (A) “Bundled transaction” means a retail sale of two (2) or more products, except real property and services to real property, in which:

(i) The products are otherwise distinct and identifiable; and

(ii) The products are sold for one (1) non-itemized price.

(B) “Bundled transaction” does not include the sale of any product in which the sales price varies or is negotiable based on the selection by the purchaser of the products included in the transaction.

(C) The Department of Finance and Administration shall promulgate

rules to implement this subdivision (2);

(3) “Dietary supplement” means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subdivision (3)(A) and is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(B) Is required to be labeled as a dietary supplement, identifiable by the “Supplement Facts” box found on the label and as required pursuant to 21 C.F.R. § 101.36, as in effect on January 1, 2007;

(4) “Director” means the Director of the Department of Finance and Administration;

(5) (A) “Food” and “food ingredients” mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(B) “Food” and “food ingredients” do not include an alcoholic beverage, tobacco, or a dietary supplement;

(6) “In this state” or “in the state” or “within this state” means within the exterior limits of the State of Arkansas and includes all territory within those limits owned by or ceded to the United States of America;

(7) “Motor vehicle” means a vehicle that is self-propelled and is required to be registered for use on the highway;

(8) “Person” means any individual, partnership, limited liability company, limited liability partnership, corporation, estate, trust, fiduciary, or any other legal entity;

(9) “Prepared food” means:

(A) Food sold in a heated state or heated by the seller;

(B) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(C) (i) Food sold with an eating utensil provided by the seller, including a plate, knife, fork, spoon, glass, cup, napkin, or straw.

(ii) As used in subdivision (9)(C)(i) of this section, “plate” does not include a container or packaging used to transport the food;

(10) (A) “Purchase” means the sale of tangible personal property or taxable services by a vendor to a person for the purpose of storage, use, distribution, or consumption in this state.

(B) (i) “Purchase” also includes any withdrawal of tangible personal property from a stock or reserve maintained outside of the state by any person and subsequently brought into this state and thereafter stored, consumed, distributed, or used

by that person or by any other person.

(ii) In such an event, the tax shall be computed on the value of the tangible personal property at the time it is brought into this state.

(C) No tax shall be computed to the extent that a withdrawal consists of carbonaceous materials such as petroleum coke or carbon anodes that are to be directly used or consumed in the electrolytic reduction process of producing tangible personal property for ultimate sale at retail;

(11) "Purchaser" means a person to whom a sale of tangible personal property is made or to whom a taxable service is furnished;

(12) (A) "Sale" means any transfer, barter, or exchange of the title or ownership of tangible personal property or taxable services or the right to use, store, distribute, or consume the tangible personal property or taxable services for a consideration paid or to be paid in installments or otherwise and includes any transaction whether called leases, rentals, bailments, loans, conditional sales, or otherwise, notwithstanding that the title or possession of the property, or both, is retained for security.

(B) For the purpose of this subchapter, the sale of tangible personal property or taxable services shall be sourced according to §§ 26-52-521, 26-52-522, and 26-52-523;

(13) (A) "Sales price" or "purchase price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) A charge by the seller for any service necessary to complete the sale, other than a delivery or installation charge;

(iv) Delivery charge;

(v) (a) Installation charge.

(b) However, installation charges will not be included in the "sales price" if they are not a specifically taxable service under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or this subchapter and the installation charges have been separately stated on the invoice, billing, or similar document given to the purchaser; or

(vi) Credit for any trade-in.

(B) "Sales price" or "purchase price" shall not include:

(i) A discount, including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(14) "Seller" means a person making a sale, lease, or rental of tangible personal

property or services;

(15) “Storage” means any keeping or retention in this state of tangible personal property or taxable services purchased from a vendor for any purpose except sale or subsequent use solely outside this state;

(16) (A) “Tangible personal property” means personal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses.

(B) “Tangible personal property” includes electricity, water, gas, steam, and prewritten computer software;

(17) “Taxable service” means a service that is taxable under this subchapter or the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.;

(18) “Taxpayer” means any person remitting the tax or who should remit the tax or should have remitted the tax levied by this subchapter;

(19) “Tobacco” means a cigarette, cigar, chewing or pipe tobacco, or any other item that contains tobacco;

(20) (A) “Use”, with respect to tangible personal property, means the exercise of any right or power over tangible personal property incident to the ownership or control of that tangible personal property except that it shall not include the sale of that tangible personal property in the regular course of business.

(B) With respect to a taxable service, “use” means the privilege of using the service, enjoyment of the service, or the first act within this state by which the purchaser takes or assumes dominion or control over the service or the article of tangible personal property upon which the service was performed; and

(21) (A) (i) “Vendor” means every person engaged in making sales of tangible personal property or taxable services by mail order, by advertising, or by agent, by peddling tangible personal property or taxable services, by soliciting, or by taking orders for such sales for storage, use, distribution, or consumption in this state.

(ii) “Vendor” includes all salespersons, solicitors, hawkers, representatives, consignees, peddlers, or canvassers as agents of the dealers, distributors, consignors, supervisors, principals, or employers under whom they operate or from whom they obtain the tangible personal property or taxable services sold by them.

(B) Regardless of whether a person is making sales on his or her own behalf or on behalf of dealers, distributors, consignors, supervisors, principals, or employers, the person must be regarded as a vendor, and the dealers, distributors, consignors, supervisors, principals, or employers must be regarded as vendors for purposes of this subchapter.

History. Acts 1949, No. 487, § 4; 1961, No. 43, §§ 1, 2; 1983, No. 829, § 1; 1985, No. 999, § 1; A.S.A. 1947, §§ 84-3104, 84-3104n; Acts 1995, No. 1160, § 22; 2003, No. 1273, § 12; 2007, No. 181, § 31; 2009, No. 384, §§ 11, 12; 2009, No. 655, § 28.

Amendments. The 2003 amendment alphabetized the subdivisions; added present (7)(B)(i), (9)(B), (10) and 12(B); inserted “fidiucary” and “or any other legal entity” in (3)(A); rewrote present (6)(B); inserted “including cash ... third party” in (7)(A)(ii); inserted “distribution, or taxable services” and “taxable services or” throughout this section; and made stylistic and related changes.

The 2007 amendment added present (1), (2), (3), (9), (14), and (19) and redesignated subdivisions accordingly; and rewrote present (7)(A), (11), and (13).

The 2009 amendment by No. 384 deleted former (12)(A)(vi), redesignated the subsequent

subdivision accordingly, and made related changes; and added present (7).

The 2009 amendment by No. 655 deleted former (7)(B), redesignated the remaining subdivision accordingly, deleted "joint venture" following "limited liability partnership," and made a related change.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008." Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

Case Notes

Person.
Purchase.
Sale.
Sales Price.
Tangible Personal Property.
Use.
Vendor.

Person.

The use tax was not intended to be applied to purchases made by a municipality, since the "persons" to be taxed were defined in the Sales Tax Act to include "corporations," "cities" and "municipalities," whereas in the Use Tax Act passed to complement the sales tax only "corporations" of these terms was set out in the definition of "persons." *Scurlock v. Springdale*, 224 Ark. 408, 273 S.W.2d 551 (1954) (decision prior to 1961 amendment).

Since tax acts are construed in favor of the taxpayer, a court would not imply that the word "corporation" included "municipal corporation" in the definition of "persons" subject to the use tax. *Scurlock v. Springdale*, 224 Ark. 408, 273 S.W.2d 551 (1954) (decision prior to 1961 amendment).

Whereas definition of "person" as found in the Sales Tax Act specifically included this state, any

county, city, municipality, school district, or any other political subdivision of the state, this section did not contain any such language; in failing to so define "person" the General Assembly thereby necessarily intended to exclude the state and its subdivisions from the Use Tax Act.

Commissioner of Revenues v. Arkansas State Hwy. Comm'n, 232 Ark. 255, 337 S.W.2d 665 (1960) (decision prior to 1961 amendment).

Since the definition of "person" in the Use Tax Act did not specifically include the state or its subdivisions, it was not broad enough to apply to the State Highway Commission. Commissioner of Revenues v. Arkansas State Hwy. Comm'n, 232 Ark. 255, 337 S.W.2d 665 (1960) (decision prior to 1961 amendment).

Purchase.

To establish its claim that the repair parts were purchased for "resale," a taxpayer must show that the repair parts were purchased outside this state, that it is regularly engaged in the business of reselling the goods purchased, and that the parts were purchased for resale. Federal Express Corp. v. Skelton, 265 Ark. 187, 578 S.W.2d 1 (1979).

Where chlorine is used in the manufacture of bromine, the chlorine does not become a part of the bromine, but quite the opposite, the chlorine takes something from the bromine, becomes chloride, and is discarded as worthless; thus it is at best consumed in the manufacturing process, not resold to the purchaser as tangible property, and is subject to the use tax. Great Lakes Chem. Corp. v. Wooten, 266 Ark. 511, 587 S.W.2d 220 (1979).

Sale.

Out-of-state corporation that solicits orders for sale in Arkansas through traveling salesmen is liable for use tax on sales though sales are subject to approval of office of corporation located out of state. Thompson v. Rhodes-Jennings Furn. Co., 223 Ark. 705, 268 S.W.2d 376 (1954), cert. denied, Branyan & Peterson, Inc. v. Thompson, 348 U.S. 872, 75 S. Ct. 108, 99 L. Ed. 686 (1954).

Out-of-state corporation that authorized its salesmen to enter into written contracts with residents of Arkansas for sale of merchandise and also required maintenance of salesroom in Arkansas, plus on the spot service and inspection of machinery sold, was liable for use tax. Thompson v. Rhodes-Jennings Furn. Co., 223 Ark. 705, 268 S.W.2d 376 (1954), cert. denied, Branyan & Peterson, Inc. v. Thompson, 348 U.S. 872, 75 S. Ct. 108, 99 L. Ed. 686 (1954).

Where agents of company representing numerous magazine publishers recruited students to sell magazine subscriptions, and the students after making their sales sent the checks and money collected to a clearing house designated by the company, the company made "sales" of the magazine subscriptions within the meaning of subdivision (11) of this section. Ragland v. Quality School Plan, Inc., 279 Ark. 256, 651 S.W.2d 447 (1983).

Sales Price.

If a general contractor purchases a precast concrete component, the tax due is based upon the price of that component; however, if a general contractor purchases the raw materials and produces the component from those raw materials, it is taxed only on the price paid for the raw materials. Pledger v. Featherlite Precast Corp., 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Because services that are part of the sale are not to be excluded in the use tax assessment, the professional skills and labor of an advertising agency are necessarily included in the costs of advertising materials. Pledger v. Baldor Int'l, Inc., 309 Ark. 30, 827 S.W.2d 646 (1992).

Tangible Personal Property.

A magazine subscription is "tangible personal property" within the meaning of subdivision (15) of this section. Ragland v. Quality School Plan, Inc., 279 Ark. 256, 651 S.W.2d 447 (1983).

Precast concrete components, large, specially designed and constructed pieces of concrete, were tangible personal property and not real property at the time they were transported to a jobsite. Pledger v. Featherlite Precast Corp., 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Use.

Under the statutory definition, the right to use property cannot be separated from the property itself. American Television Co. v. Hervey, 253 Ark. 1010, 490 S.W.2d 796 (1973).

Where aircraft belonging to interstate air freight carrier were retained in the state for approximately 50 days to receive extensive modifications, the aircraft were subject to the

compensating tax, even though ultimate use of the aircraft was in the carrier's interstate system. *Skelton v. Federal Express Corp.*, 259 Ark. 127, 531 S.W.2d 941 (1976) (decision prior to 1976 amendment of § 26-53-115).

Vendor.

The definition of a "vendor" in this section is quite inclusive, and a sale cannot be made in Arkansas without someone being the vendor. *Ragland v. Quality School Plan, Inc.*, 279 Ark. 256, 651 S.W.2d 447 (1983).

26-53-103. Administration of subchapter.

- (a) The administration of this subchapter is vested in and shall be exercised by the Director of the Department of Finance and Administration.
- (b) The administration cost of this subchapter shall not exceed three percent (3%) of the actual revenues collected.

History. Acts 1949, No. 487, §§ 3, 28; A.S.A. 1947, §§ 84-3103, 84-3128.

Case Notes

Cited: *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973).

26-53-104. Rules and regulations — Forms.

- (a) The Director of the Department of Finance and Administration shall promulgate rules and regulations and prescribe forms for the proper enforcement of this subchapter.
- (b) (1) The rules, regulations, and forms shall be dated and issued under a systematic method of numbering, and copies shall be made available to any person requesting them.

(2) A complete file of all the rules, regulations, and forms shall be kept in the office of the director.

History. Acts 1949, No. 487, § 3; A.S.A. 1947, § 84-3103.

Case Notes

Cited: *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973).

26-53-105. Sales and Use Tax Section.

The Director of the Department of Finance and Administration shall create within the Revenue Division of the Department of Finance and Administration the Sales and Use Tax Section for the collection, enforcement, and administration of the tax levied by this subchapter.

History. Acts 1949, No. 487, § 2; A.S.A. 1947, § 84-3102.

Case Notes

Cited: *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973).

26-53-106. Imposition and rate of tax generally — Presumptions.

- (a) There is levied and there shall be collected from every person in this state a tax or excise for the privilege of storing, using, distributing, or consuming within this state any article of tangible personal property or taxable service purchased for storage, use, distribution, or consumption in this state at the rate of three percent (3%) of the sales price of the tangible personal property or taxable service except for food and food ingredients that are taxed under § 26-53-145.

(b) This tax will not apply with respect to the storage, use, distribution, or consumption of any article of tangible personal property purchased, produced, or manufactured outside this state until the transportation of the article of tangible personal property has finally come to rest within this state or until the article of tangible personal property has become commingled with the general mass of property of this state.

(c) This tax applies to use, storage, distribution, or consumption of every article of tangible personal property or taxable service except as provided in this subchapter irrespective of whether the article of tangible personal property or similar articles of tangible personal property or the taxable service is manufactured within the State of Arkansas or is available for purchase within the State of Arkansas and irrespective of any other condition.

(d) (1) (A) For the purpose of the proper administration of this subchapter and to prevent evasion of the tax and the duty to collect the tax imposed in this section, it shall be presumed that tangible personal property or taxable services sold by any vendor for delivery in this state or transportation to this state are sold for storage, use, distribution, or consumption in this state unless the vendor selling the tangible personal property or taxable service has taken from the purchaser a resale certificate signed by and bearing the name, address, and sales tax permit number of the purchaser certifying that the property or taxable service was purchased for resale, except that sales made electronically will not require the purchaser's signature.

(B) The use by the purchaser of a resale certificate and any resulting liability for, or exemption from, use tax in a transaction involving a resale certificate shall be governed in all respects by the terms of § 26-52-517.

(2) It is further presumed that tangible personal property or taxable services shipped, mailed, expressed, transported, or brought to this state by the purchaser were purchased from a vendor for storage, use, distribution, or consumption in this state.

History. Acts 1949, No. 487, §§ 5, 10; 1957, No. 19, § 2; 1959, No. 260, § 2; 1975 (Extended Sess., 1976), No. 1237, § 1; A.S.A. 1947, §§ 84-3105, 84-3110; reen. Acts 1987, No. 772, § 1; Acts 1989, No. 817, § 1; 1995, No. 358, § 2; 2003, No. 1273, §§ 13-16; 2007, No. 110, § 5; 2009, No. 655, §§ 29, 30.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 772, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Publisher's Notes. By Acts 1993, No. 1237, § 1, the General Assembly amended § 26-53-106 to add (e); however, the language is already codified in § 26-53-115, and the 1993 amendment made only minor stylistic changes; § 1 provided:

“(e) Provided, however, that the tax levied in this act shall not apply to aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive or railroad companies brought into the state of Arkansas solely and exclusively for (i) refurbishing, conversion or modification within this state and is not used or intended for use in this state, and the presence of such tangible personal property within this state shall not be construed as storage, use, or consumption in this state for the purpose of this act, if such aircraft, aircraft equipment, and railroad parts, cars, and equipment, or tangible personal property is removed from this state within sixty (60) days from the date of the completion of such refurbishing, conversion, or modification, or (ii) storage for use outside or inside the state of Arkansas regardless of the length of time any such property is so stored in the state of Arkansas. If any such property is subsequently initially used in the state of Arkansas, the tax levied by this act shall be and become applicable to the property so used in Arkansas. Provided,

further, that nothing in this subsection is intended to exempt from taxation any materials used or services furnished in the refurbishing, conversion, or modification of such property in this state which is subject to the Arkansas Gross Receipts Tax.”

Amendments. The 2003 amendment inserted “or taxable service” in (a), (c) and twice in (d)(1)(A); in (d)(1)(A), inserted “or taxable services” and added “except that sales made electronically will not require the purchaser’s signature” following “resale”; and inserted “or taxable services” in (d)(2).

The 2007 amendment added “except for food and food ingredients which are taxed under § 26-53-145” at the end of (a).

The 2009 amendment inserted “tangible personal” following “sales price of the” and “or taxable service” in (a); inserted “or the taxable service” in (c); and made minor stylistic changes.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Research References

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Annual Survey of Caselaw, Tax Law, 25 U. Ark. Little Rock L. Rev. 1036.

Case Notes

Constitutionality.
Applicability.
Catalogue Sales.
Not Subject to Tax.
Sales Price.
Subject to Tax.

Constitutionality.

Use tax is not a tax on property; hence it does not violate Ark. Const., Art. 16, § 5, requiring all property taxes to be equal and uniform. *Morley v. E.E. Barber Constr. Co.*, 220 Ark. 485, 248 S.W.2d 689 (1952).

Subdivision (d)(2) of this section recognizes constitutional limitation of a state's imposition of a tax on goods in interstate transit; if goods have not "come to rest" within state, they are still in stream of interstate commerce, and tax may not be levied. *Martin v. Riverside Furniture Corp.*, 292 Ark. 399, 730 S.W.2d 483 (1987).

Materials did "finally come to rest" in Arkansas within the meaning of this section and were not exempted from use tax. *Martin v. Riverside Furniture Corp.*, 292 Ark. 399, 730 S.W.2d 483 (1987).

Where the Revenue Division imposed both the sales and use taxes upon the price of the concrete components regardless of whether they were precast within or without the state, there was equal treatment for similarly situated in-state and out-of-state taxpayers in the imposition of the taxes, and as a result, there was no violation of the commerce clause. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Applicability.

This section operates retrospectively to include within its operation only those delinquent taxpayers who have failed and refused to pay the tax, those who have paid the tax are excluded from the operation of the law simply because they paid the tax; thus, the exclusion of those persons who were attempting to comply with the law at the time the tax matured, in effect, penalizes them because of their compliance. *Federal Express Corp. v. Skelton*, 265 Ark. 187, 578 S.W.2d 1 (1979).

Under subsection (b) of this section, there was no intention for consumption of a product to be the equivalent of its coming to rest; rather, the statute contemplated that property had to first come to rest before it was consumed in order for it to be taxable. *Mississippi River Transmission Corp. v. Weiss*, 347 Ark. 543, 65 S.W.3d 867 (2002).

Catalogue Sales.

Where no agency relationship existed between out-of-state mail order school book company and Arkansas teachers, the company's sales of books in Arkansas were not subject to a vendor's use tax. *Pledger v. Troll Book Clubs, Inc.*, 316 Ark. 195, 871 S.W.2d 389 (1994).

Not Subject to Tax.

Importation by corporation of paneling manufactured in a plant owned by the corporation outside the state and the use thereof in remodeling the offices of the corporation located in Arkansas was not subject to use tax. *Georgia Pac. Corp. v. Larey*, 242 Ark. 428, 413 S.W.2d 868 (1967).

This subchapter did not apply to a manufacturer who purchased compressor fuel where the transfer of ownership as well as the right to use the compressor fuel occurred in Oklahoma. *Boral Gypsum, Inc. v. Leathers*, 325 Ark. 272, 924 S.W.2d 805 (1996).

This subchapter does not support taxing sheetrock manufacturer for purchase of out-of-state diverted natural gas, known as "compressor fuel," transported by pipeline to manufacturer. *Boral Gypsum, Inc. v. Leathers*, 325 Ark. 272, 924 S.W.2d 805 (1996).

Sales Price.

Where person contracted to install reinforcing steel bars at missile sites within the state and manufactured the bars in an out-of-state plant, the use tax provided under this section should have been on the finished bars and not the raw materials, as the term "sales price" used in this section is used to provide a method of determining the basis on which the three percent would apply and does not mean there must be an ordinary sale before the tax is payable. *Republic Steel Corp. v. McCastlain*, 240 Ark. 979, 403 S.W.2d 90 (1966).

The Revenue Division properly calculated the sales and use tax due on the sale of precast concrete components based upon the sale price charged the general contractor. The precast concrete components were large, specially designed and constructed pieces of concrete, and were tangible personal property. They were not real property at the time they were transported to the jobsite. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Subject to Tax.

Rentals and leases are unquestionably covered under this section, and rented tapes and films that finally come to rest for the purpose for which they are sent are subject to tax. *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973).

Painted bulletins, posters, facings, hardware, and paint, purchased out of state and used in

connection with the taxpayer's billboard advertising service, were not exempt from the use tax. *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995).

Cited: *Ragland v. General Tire & Rubber Co.*, 297 Ark. 394, 763 S.W.2d 70 (1989); *Pledger v. Easco Hand Tools, Inc.*, 304 Ark. 47, 800 S.W.2d 690 (1990); *Pledger v. Brunner & Lay, Inc.*, 308 Ark. 512, 825 S.W.2d 599 (1992); *Pledger v. Baldor Int'l, Inc.*, 309 Ark. 30, 827 S.W.2d 646 (1992).

26-53-107. Additional taxes levied.

(a) (1) In addition to the excise tax levied upon the privilege of storing, using, distributing, or consuming tangible personal property and taxable services within this state by this subchapter there is levied an excise tax of one percent (1%) upon all tangible personal property and taxable services subject to the tax levied in this subchapter except for food and food ingredients that are taxed under § 26-53-145.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of state compensating taxes.

(b) (1) In addition to the excise tax levied upon the privilege of storing, using, distributing, or consuming tangible personal property and taxable services within the state by this subchapter, there is levied an excise tax of one-half of one percent (0.5%) upon all tangible personal property and taxable services subject to the tax levied in this subchapter except for food and food ingredients that are taxed under § 26-53-145.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of Arkansas compensating taxes.

(c) (1) There is levied an additional excise tax of one-half of one percent (0.5%) upon all tangible personal property and taxable services subject to the tax levied by this subchapter except for food and food ingredients that are taxed under § 26-53-145.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this subchapter for the collection, reporting, and payment of Arkansas compensating taxes.

(d) (1) There is levied an additional excise tax of seven-eighths of one percent (0.875%) upon all tangible personal property and taxable services subject to the tax levied by this subchapter except for food and food ingredients that are taxed under § 26-53-145.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this subchapter for the collection, reporting, and payment of Arkansas compensating taxes.

History. Acts 1983 (1st Ex. Sess.), No. 63, § 2; A.S.A. 1947, § 84-3105.4; Acts 1989, No. 817, § 2; 1991, No. 3, § 3; 1999, No. 1492, § 4; Acts 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 9; 2003, No. 1273, § 17; 2003 (2nd Ex. Sess.), No. 107, §§ 3, 4; 2007, No. 110, § 6.

A.C.R.C. Notes. The amendment of this section by Acts 1999, No. 1492, § 4, added subsection (c) to the section, but made the effectiveness of the addition of that subsection contingent upon the occurrence of the following: (a) That the General Assembly refers a constitutional amendment to be approved during the 2000 general election; (b) That the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and (c) That the constitutional amendment is approved.

Subsection (c) of this section became effective as a result of House Joint Resolution 1015 of

1999 the General Assembly referred to a vote of the electors at the 2000 general election a constitutional amendment that provided for a limit on the increase in the assessed value of real property as a result of a county-wide reappraisal, and the constitutional amendment was approved. This constitutional amendment is now Arkansas Constitution Amendment 79.

As enacted by Acts 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 9, subdivision (c)(1) began:

“Beginning January 1, 2001,”.

As enacted by Acts 2003 (2nd Ex. Sess.), No. 107, § 4, subdivision (d)(1) began:

“Beginning March 1, 2004,”.

Amendments. The 2003 amendment inserted “and taxable services” following “personal property” and “of 1949” following Arkansas Compensating Tax Act” in (a) and (b); inserted “and taxable services” following “personal property” in (c); and made a minor stylistic change.

The 2003 (2nd Ex. Sess.) amendment added (d).

The 2007 amendment added “except for food and food ingredients which are taxed under § 26-53-145” at the end of (a)(1), (b)(1), (c)(1) and (d)(1).

Effective Dates. Acts 1999, No. 1492, § 8: provided: “The provisions of Section 5 shall be effective 90 days after adjournment. The provisions of Sections 1, 2, 3, 4, 6 and 7 shall not be effective unless; a) the General Assembly refers a constitutional amendment to be approved during the 2000 general election; b) the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and c) the amendment is approved. If those conditions are met, Sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Claims for refund may be filed in 2001 pursuant to §§ 26-51-601 - 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999.”

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Research References

U. Ark. Little Rock L.J.

Legislative Survey, Bonds, 8 U. Ark. Little Rock L.J. 551.

Case Notes

Cited: S.H. & J. Drilling Corp. v. Qualls, 268 Ark. 71, 593 S.W.2d 178 (1980); Ragland v. K-Mart

Corp., 274 Ark. 297, 624 S.W.2d 430 (1981); Pledger v. Brunner & Lay, Inc., 308 Ark. 512, 825 S.W.2d 599 (1992).

26-53-108. Imposition and rate of tax on certain personal property.

(a) For the following public carriers, a state compensating tax of three percent (3%) of the gross purchase price is levied on the tangible personal property of:

(1) Motor carriers, consisting of tractors, trailers, semitrailers, trucks, buses, and other rolling stock, including replacement tires, used directly in the transportation of persons or property in intrastate or interstate common carrier transportation;

(2) Railroads, except fuel consumed in the operation of railroad rolling stock;

(3) Pipelines, consisting of transmission lines and pumping or pressure control equipment used directly in or connected to the primary pipeline facility engaged in intrastate or interstate common carrier transportation of property; and

(4) Airlines, consisting of airplanes and navigation instruments used directly in or becoming a part of flight aircraft engaged in transportation of persons or property in regular scheduled intrastate or interstate common carrier transportation.

(b) For public telephone and telegraph companies, a state compensating tax of three percent (3%) of the gross purchase price is levied on tangible personal property consisting of exchange equipment, lines, boards, and all accessory devices used directly in and connected to the primary facility engaged in transmission of messages.

(c) For the following public utilities, a state compensating tax of three percent (3%) of the gross purchase price is levied on the tangible personal property of:

(1) Gas companies, consisting of transmission and distribution pipelines and pumping or pressure control equipment used in connection with transmission and distribution pipelines that are used directly in the primary pipeline facility for the purpose of transporting and delivering natural gas;

(2) Water companies, consisting of transmission and distribution lines, pumping machinery and controls used in connection with transmission and distribution lines, and cleaning or treating equipment of a primary water distribution system; and

(3) Public electric power companies, consisting of all machinery and equipment, including reactor cores, related accessory devices used in the generation and production of electric power and energy, and transmission facilities consisting of the lines, including poles, towers, and other supporting structures, transmitting electric power and energy with substations located on and attached to the lines.

History. Acts 1971, No. 222, §§ 1, 2; A.S.A. 1947, §§ 84-3105.1, 84-3105.2; Acts 2009, No. 655, § 31.

Publisher's Notes. Acts 1971, No. 222, § 2, provided that, on and after July 1, 1972, through June 30, 1973, the rate of taxation provided for in § 26-53-108 was to be increased to one and one-half percent; that, on and after July 1, 1973, through June 30, 1974, the rate of tax provided for in § 26-53-108 was to be increased to two percent; and that, on and after July 1, 1974 and thereafter, the rate of tax provided for in § 26-53-108 was to be increased to three percent.

Amendments. The 2009 amendment rewrote the section.

Case Notes

Cited: American Television Co. v. Hervey, 253 Ark. 1010, 490 S.W.2d 796 (1973); Heath v. Research-Cottrell, Inc., 258 Ark. 813, 529 S.W.2d 336 (1975).

26-53-109. Tax on use, storage, or distribution of computer software.

(a) The excise tax levied by this subchapter and by any act supplemental to this subchapter is levied on the privilege of storing, using, distributing, or consuming within this state any of the following:

(1) (A) Computer software, including prewritten computer software, which shall be treated as a use, storage, distribution, or consumption of tangible personal property for purposes of tax.

(B) As used in this section:

(i) “Computer” means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(ii) (a) “Computer software” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(b) “Computer software” does not include software that is delivered electronically or by load and leave;

(iii) “Delivered electronically” means delivered to the purchaser by means other than tangible storage media;

(iv) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(v) “Load and leave” means delivery to the purchaser by use of a tangible storage media in which the tangible storage media is not physically transferred to the purchaser; and

(vi) “Prewritten computer software” means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser; and

(2) Service of repairing or maintaining computer equipment or hardware in any form.

(b) [Repealed.]

History. Acts 1983 (1st Ex. Sess.), No. 88, §§ 2, 3; A.S.A. 1947, §§ 84-3105.3, 84-3105.3n; Acts 1989, No. 817, § 3; 2007, No. 181, § 32; 2009, No. 384, § 13; 2009, No. 655, § 32.

Amendments. The 2007 amendment added (a)(1)(B) and (a)(2), redesignated part of the existing provisions of (a) as (a)(1)(A), rewrote present (a)(1)(A), and made related and stylistic changes.

The 2009 amendment by No. 384 inserted “not” in (a)(1)(B)(vi).

The 2009 amendment by No. 655 deleted (b).

Effective Dates. Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

Research References

A.L.R.

Computer software or printout transactions as subject to state sales or use tax. 36 A.L.R.5th 133.

Am. Jur. 71 Am. Jur. 2d State Tax. § 264.5.

26-53-110. Financial institutions.

Sales of tangible personal property and services to financial institutions shall be subject to the state compensating tax levied in this subchapter, the same as such sales to other business corporations.

History. Acts 1973, No. 182, § 6; A.S.A. 1947, § 84-1937.

Publisher's Notes. For definitions applicable to, and legislative intent concerning, this section see §§ 26-26-1502 and 26-50-101.

Effective Dates. Acts 1973, No. 182, § 9, provided that this act shall be in effect on and after January 1, 1973, and shall apply to tax years after said date.

26-53-111. Deduction for bad debts.

A bad debt deduction from a taxable sale under this subchapter is allowed and shall be taken in the same manner as provided in § 26-52-309.

History. Acts 1983 (1st Ex. Sess.), No. 94, § 1; A.S.A. 1947, § 84-1950; Acts 2003, No. 1273, §§ 18-21; 2007, No. 181, § 33.

Amendments. The 2003 amendment redesignated former (a) as present (a)(1) and (a)(2); in present (a)(1), inserted "of 1949" and substituted "on the return ... income tax purposes" for "for any report"; redesignated former (b)(1) as present (b)(1)(A) and added (b)(1)(B); in (e), substituted "return filed for the period in which the collection is made" for "next return due after the collection"; and added (f).

The 2007 amendment rewrote the section.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

26-53-112. Exemptions generally.

There are specifically exempted from the taxes levied in this subchapter:

(1) Property or services, the storage, use, distribution, or consumption of which this state is prohibited from taxing under the United States Constitution or laws or the

Arkansas Constitution or laws; and

(2) Sales of tangible personal property or services on which the tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., is levied and any tangible personal property or services specifically exempted from taxation by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and legislation enacted subsequent to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

History. Acts 1949, No. 487, § 6; 1971, No. 222, § 3; A.S.A. 1947, § 84-3106; Acts 2003, No. 1273, § 22.

Amendments. The 2003 amendment inserted “or services” and “distribution” in (1); and twice inserted “or services” in (2).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Research References

A.L.R.

Parts and supplies used in repair as subject to sales and use taxes. 113 A.L.R.5th 313.

Case Notes

Constitutionality.

Construction.

Appeals.

Burden of Proof.

Gross Receipts Act.

Items Exempted.

Items Not Exempted.

Constitutionality.

This section is not unconstitutional on the ground that General Assembly in granting exemptions acted in an arbitrary manner. *Teague v. Scurlock*, 223 Ark. 271, 265 S.W.2d 528 (1954).

Construction.

Tax exemption provisions must be strictly construed. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Any tax exemption provision must be strictly construed against the exemption, and to doubt is to deny the exemption. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980); *Qualls v. Georgia-Pacific Corp.*, 269 Ark. 426, 602 S.W.2d 646 (1980).

Appeals.

On appeal, the Supreme Court reviews tax exemption cases de novo and does not reverse a finding of fact unless it is clearly against the preponderance of the evidence. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Burden of Proof.

Since taxation is the rule and exemption the exception, the burden is on taxpayers to clearly show they are entitled to exemption from the use tax. *Cheney v. Georgia-Pacific Paper Corp.*, 237 Ark. 161, 371 S.W.2d 843 (1963).

There is a presumption in favor of the taxing power of the state, and a claimant has the burden to clearly establish any right to an exemption. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Taxpayer has the burden of clearly establishing an exemption beyond a reasonable doubt. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Gross Receipts Act.

The exception from the use tax found in this section exempts only tangible personal property specifically exempted by the Arkansas Gross Receipts Act, § 26-52-101 et seq.; the items to be exempted are specifically described and identified in that chapter. *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995).

The exemption for the "gross proceeds derived from sales" does not mean an exemption for tangible personal property simply because it is used in the conduct of the business. *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995).

Items Exempted.

Disposable paper cups brought by carbonated beverage company for use in marketing soft drinks were exempt from use tax as a purchase for resale. *Hervey v. Southern Wooden Box, Inc.*, 253 Ark. 290, 486 S.W.2d 65 (1972).

Evidence of no intent to preserve title or claim to cardboard containers and that initial purchase was intended to be for later sale entitled taxpayer to exemption. *Arkansas Beverage Co. v. Heath*, 257 Ark. 991, 521 S.W.2d 835 (1975).

Where a bottled water seller sold only to distributors, not directly to consumers, and its contracts with the distributors provided that it would sell bottles to the distributors at cost, the transactions fell within the sales tax exemption of sales for resale, which is carried forward into the use tax law. *Ragland v. Mountain Valley Spring Co.*, 287 Ark. 4, 696 S.W.2d 710 (1985).

Items Not Exempted.

Where most wooden cases were returned to soft drink seller, the cases were for the seller's own consumption or use, not a sale for resale, and cases were not exempt from use tax. *Hervey v. Southern Wooden Box, Inc.*, 253 Ark. 290, 486 S.W.2d 65 (1972).

Evidence that purchase of bottles was not intended and that there was no sale or resale did not entitle beverage manufacturer to exemption from use tax. *Arkansas Beverage Co. v. Heath*, 257 Ark. 991, 521 S.W.2d 835 (1975).

Where chlorine is used in manufacture of bromine, the chlorine does not become a part of the bromine, but quite the opposite, the chlorine takes something from the bromine, becomes chloride, and is discarded as worthless; thus it is at best consumed in the manufacturing process, not resold to the purchaser as tangible property, and is subject to use tax. *Great Lakes Chem. Corp. v. Wooten*, 266 Ark. 511, 587 S.W.2d 220 (1979).

Preprinted advertising supplements are not a component part of the newspapers in which they appear and are not exempt from use tax as "newspapers" as that term is used in § 26-52-401 and incorporated in subdivision (2) of this section. *Ragland v. K-Mart Corp.*, 274 Ark. 297, 624 S.W.2d 430 (1981).

Cited: American Television Co. v. Hervey, 253 Ark. 1010, 490 S.W.2d 796 (1973); Heath v. Midco Equip. Co., 256 Ark. 14, 505 S.W.2d 739 (1974); Ragland v. General Tire & Rubber Co., 297 Ark. 394, 763 S.W.2d 70 (1989).

26-53-113. Exemption for unprocessed crude oil.

Unprocessed crude oil is specifically exempted from the taxes levied in this subchapter.

History. Acts 1949, No. 487, § 6; 1968 (1st Ex. Sess.), No. 5, § 2; 1971, No. 222, § 3; A.S.A. 1947, § 84-3106.

Case Notes

Constitutionality.

Construction.

Appeals.

Burden of Proof.

Constitutionality.

This section is not unconstitutional on the ground that General Assembly in granting exemptions acted in an arbitrary manner. Teague v. Scurlock, 223 Ark. 271, 265 S.W.2d 528 (1954).

Construction.

Tax exemption provisions must be strictly construed. C. J. C. Corp. v. Cheney, 239 Ark. 541, 390 S.W.2d 437 (1965).

Any tax exemption provision must be strictly construed against the exemption, and to doubt is to deny the exemption. S.H. & J. Drilling Corp. v. Qualls, 268 Ark. 71, 593 S.W.2d 178 (1980); Qualls v. Georgia-Pacific Corp., 269 Ark. 426, 602 S.W.2d 646 (1980).

Appeals.

On appeal, the Supreme Court reviews tax exemption cases de novo and does not reverse a finding of fact unless it is clearly against the preponderance of the evidence. S.H. & J. Drilling Corp. v. Qualls, 268 Ark. 71, 593 S.W.2d 178 (1980).

Burden of Proof.

Since taxation is the rule and exemption the exception, the burden is on taxpayers to clearly show they are entitled to exemption from the use tax. Cheney v. Georgia-Pacific Paper Corp., 237 Ark. 161, 371 S.W.2d 843 (1963).

There is a presumption in favor of the taxing power of the state, and a claimant has the burden to clearly establish any right to an exemption. C. J. C. Corp. v. Cheney, 239 Ark. 541, 390 S.W.2d 437 (1965).

Taxpayer has the burden of clearly establishing an exemption beyond a reasonable doubt. S.H. & J. Drilling Corp. v. Qualls, 268 Ark. 71, 593 S.W.2d 178 (1980).

Cited: American Television Co. v. Hervey, 253 Ark. 1010, 490 S.W.2d 796 (1973); Heath v. Midco Equip. Co., 256 Ark. 14, 505 S.W.2d 739 (1974).

26-53-114. Exemption for certain machinery and equipment.

(a) There is specifically exempted from the taxes levied in this subchapter:

(1) (A) Only to the extent that the machinery and equipment is purchased and used for the purposes set forth in this subdivision (a)(1), machinery and equipment used directly in the producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas, including facilities and plants for manufacturing feed, processing of poultry and eggs and livestock and the hatching of poultry.

(B) The machinery and equipment will be exempt under this section if it is purchased and used to create new manufacturing or processing plants or facilities within this state or to expand existing manufacturing or processing plants or facilities

within this state;

(2) (A) Machinery purchased to replace existing machinery in its entirety and used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in this state will be exempt under this section.

(B) (i) As used in subdivision (a)(2)(A) of this section, “machinery purchased to replace existing machinery” means that substantially all of the machinery and equipment required to perform an essential function is physically replaced with new machinery.

(ii) As used in subdivision (a)(2)(B)(i) of this section, “substantially” is intended to exclude routine repairs and maintenance and partial replacements that do not improve efficiency or extend the useful life of the entire machine, but it is not intended to mean that foundations and minor components which can be economically adapted, rebuilt, or refurbished must be completely replaced when replacement would be more expensive or impracticable than adapting, rebuilding, or refurbishing the old foundation and minor components; and

(3) Machinery and equipment required by state or federal law or regulations to be installed and utilized by manufacturing or processing plants or facilities or cities or towns in this state to prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the plants or facility or city or town.

(b) As used in this section, “manufacturing” or “processing” refer to and include those operations commonly understood within their ordinary meaning and shall also include:

(1) Mining;

(2) Quarrying;

(3) Refining;

(4) Extracting oil and gas;

(5) Cotton ginning;

(6) Drying of rice, soybeans, and other grains;

(7) Manufacturing of feed;

(8) Processing of poultry and eggs and the hatching of poultry;

(9) Printing of all kinds, types, and characters, including the services of overprinting and photographic processing incidental to printing;

(10) Processing of scrap metal into grades and bales for further processing into steel and other metals;

(11) Rebuilding or remanufacturing of used parts and retreading of tires for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors if the rebuilt or remanufactured parts or retreaded tires are not sold directly to the consumer but are sold for resale; and

(12) Producing of protective coatings which increase the quality and durability of a finished product.

(c) (1) It is the intent of this section to exempt only such machinery and equipment as shall be used directly in the actual manufacturing or processing operation at any time from the initial stage when actual manufacturing or processing begins through the completion of the finished article of commerce and the packaging of the finished end product.

(2) As used in this section, “directly” is used to limit the exemption to only the

machinery and equipment used in actual production during processing, fabricating, or assembling raw materials or semifinished materials into the form in which such personal property is to be sold in the commercial market.

(3) For purposes of this subsection, the following definitions, specific inclusions, and specific exclusions shall apply and represent the intent of the General Assembly as to its interpretation of the term “used directly”:

(A) (i) Machinery and equipment used in actual production include machinery and equipment that meet all other applicable requirements and which cause a recognizable and measurable mechanical, chemical, electrical, or electronic action to take place as a necessary and integral part of manufacturing, the absence of which would cause the manufacturing operation to cease.

(ii) “Directly” does not mean that the machinery and equipment must come into direct physical contact with any of the materials that become necessary and integral parts of the finished product.

(iii) Machinery and equipment which handle raw, semifinished, or finished materials or property before the manufacturing process begins are not used directly in the manufacturing process.

(iv) Machinery and equipment which are necessary for purposes of storing the finished product are not used directly in the manufacturing process.

(v) Machinery and equipment used to transport or handle product while manufacturing is taking place are used directly;

(B) Further, machinery and equipment used directly in the manufacturing process includes without limitation the following:

(i) Molds, frames, cavities, and forms that determine the physical characteristics of the product or its packaging materials at any stage of the manufacturing process;

(ii) Dies, tools, and devices attached to or part of a unit of machinery that determine the physical characteristics of the product or its packaging material at any stage of the manufacturing process;

(iii) Testing equipment to measure the quality of the product at any stage of the manufacturing process;

(iv) Computers and related peripheral equipment that directly control or measure the manufacturing process; and

(v) Machinery and equipment that produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process but which are consumed during the course of the manufacturing process and do not become necessary and integral parts of the finished product;

(C) Machinery and equipment “used directly” in the manufacturing process shall not include the following:

(i) Hand tools;

(ii) Machinery, equipment, and tools used in maintaining and repairing any type of machinery and equipment;

(iii) Transportation equipment, including conveyors, used solely before or after the manufacturing process has been started or completed;

(iv) Office machines and equipment including computers and related peripheral equipment not directly used in controlling or measuring the

manufacturing process;

(v) Buildings;

(vi) Machinery and equipment used in administrative, accounting, sales, or other such activities of the business;

(vii) All furniture;

(viii) All other machinery and equipment not used directly in manufacturing or processing operations as defined in this section; and

(ix) Machinery and equipment used by a manufacturer to produce or repair replacement dies, molds, repair parts or replacement parts, used or consumed in the manufacturer's own manufacturing process.

(d) The Director of the Department of Finance and Administration may promulgate rules and regulations for the orderly and efficient administration of this section.

History. Acts 1949, No. 487, § 6; 1955, No. 55, § 1; 1957, No. 141, § 1; 1959, No. 35, § 1; 1959, No. 462, § 1; 1961, No. 140, § 1; 1967, No. 113, § 2; 1968 (1st Ex. Sess.), No. 5, § 2; 1971, No. 222, § 3; 1975, No. 760, § 2; 1983, No. 791, § 2; 1983, No. 870, § 2; 1985, No. 492, § 2; 1985, No. 841, § 2; A.S.A. 1947, § 84-3106; Acts 1987, No. 911, § 1; 1993, No. 1250, § 2; 1997, No. 1233, § 2; 1999, No. 854, § 3.; 2009, No. 1208, § 2.

Publisher's Notes. Acts 1967, No. 113, § 3, provided that all laws and parts of laws in conflict with this act are repealed, provided, however, that the exemptions now granted by subsections (A), (B), (C), (E), (F), and (G) of Acts 1949, No. 487, as amended by Section 1 of Acts 1955, No. 55, § 1, as amended by Acts 1957, No. 141, § 1, as amended by Acts 1959, No. 35, § 1, as amended by Acts 1961, No. 140, § 1, shall not be construed so as to be narrowed in scope by this amendment of subsection (d) of that act as provided in section 2 of this act, and provided further, the amendment of subsection (r) of Acts 1941, No. 386, § 4, shall not be construed so as to narrow the scope of the specific exemptions set out under that act.

Acts 1968 (1st Ex. Sess.), No. 5, provided, in part that the exemptions now granted by subsections (A), (B), (C), (E), (F), and (G) of Acts 1949, No. 487, § 6, as amended by Acts 1955, No. 55, § 1, as amended by Acts 1957, No. 141, § 1, as amended by Acts 1959, No. 35, § 1, as amended by Acts 1961, No. 140, § 1, shall not be construed so as to be narrowed in scope by this amendment of subsection (D) of that act as provided in section 2 of this act.

Amendments. The 2009 amendment, in (c)(3)(B)(i), substituted "frames, cavities, and forms" for "and dies" and deleted "finished" preceding "product," inserted (c)(3)(B)(ii) and redesignated the subsequent subdivisions accordingly, inserted "at any stage of the manufacturing process" in (c)(3)(B)(i) and (c)(3)(B)(iii), and made related and minor stylistic changes.

Effective Dates. Acts 1983, No. 791, § 3, provided that the provisions of this act shall apply for all gross receipts tax returns and compensating tax returns for the periods beginning on or after the effective date of this act.

Acts 1983, No. 870, §§ 3, 4, provided that it is the intent of this act to provide the enumerated exemptions as incentives to encourage the location of new manufacturing plants in Arkansas, the expansion of existing manufacturing plants in Arkansas, and the modernization of existing manufacturing plants in Arkansas through the replacement of old, inefficient, or technologically obsolete machinery and equipment, and that the provisions of this act shall apply for all gross receipts tax returns and compensating tax returns for the periods beginning on or after January 1, 1985.

Research References

A.L.R.

Parts and supplies used in repair as subject to sales and use taxes. 113 A.L.R.5th 313.

Am. Jur. 71 Am. Jur. 2d State Tax. § 335.5.

U. Ark. Little Rock L.J.

Fifteenth Annual Survey of Arkansas Law, 15 U. Ark. Little Rock L.J. 427.

Case Notes

Constitutionality.
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Constitutionality.

This section is not unconstitutional on the ground that General Assembly in granting exemptions acted in an arbitrary manner. *Teague v. Scurlock*, 223 Ark. 271, 265 S.W.2d 528 (1954).

In General.

Exemptions afforded taxpayer by this section were not repealed by § 26-53-201 et seq., relating to contractors. *Larey v. Wolfe*, 242 Ark. 715, 416 S.W.2d 266 (1967); *Heath v. Research-Cottrell, Inc.*, 258 Ark. 813, 529 S.W.2d 336 (1975).

Construction.

Tax exemption provisions must be strictly construed. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Any tax exemption provision must be strictly construed against the exemption, and to doubt is to deny the exemption. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980); *Qualls v. Georgia-Pacific Corp.*, 269 Ark. 426, 602 S.W.2d 646 (1980); *Pledger v. Baldor Int'l, Inc.*, 309 Ark. 30, 827 S.W.2d 646 (1992).

Purpose.

The purpose of the 1968 amendment is perfectly clear — the original act, by exempting all tangible personal property used by manufacturers, could arguably have exempted office furniture, typewriters, automobiles, and various other personal property not used directly in the manufacturing process; the amendment limited the exemption to machinery and equipment used directly in manufacturing, but it still has to be used “at manufacturing or processing facilities.” *Gaddy v. Hummelstein Iron & Metal, Inc.*, 266 Ark. 1, 585 S.W.2d 1 (1979).

By enacting this section the legislature did not change the prior law but merely intended to clarify it. *Pledger v. Baldor Int'l, Inc.*, 309 Ark. 30, 827 S.W.2d 646 (1992).

Appeals.

On appeal, the Supreme Court reviews tax exemption cases de novo and does not reverse a finding of fact unless it is clearly against the preponderance of the evidence. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Articles of Commerce.

Tax exemption is properly denied where finished products are not “articles of commerce” as required under the exemption provisions of subdivision (a)(1)(A) of this section. *C & C Mach., Inc. v. Ragland*, 278 Ark. 629, 648 S.W.2d 61 (1983).

Burden of Proof.

Since taxation is the rule and exemption the exception, the burden is on taxpayers to clearly show they are entitled to exemption from the use tax. *Cheney v. Georgia-Pacific Paper Corp.*, 237 Ark. 161, 371 S.W.2d 843 (1963).

There is a presumption in favor of the taxing power of the state, and a claimant has the burden to clearly establish any right to an exemption. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Taxpayer has the burden of clearly establishing an exemption beyond a reasonable doubt. *S.H. &*

J. Drilling Corp. v. Qualls, 268 Ark. 71, 593 S.W.2d 178 (1980).

Creation or Expansion.

Company engaged in construction and repair work on state highways under contracts with state was not exempt from tax on ground that material used in highway was material used in "creation of facilities." Morley v. E.E. Barber Constr. Co., 220 Ark. 485, 248 S.W.2d 689 (1952).

Spare parts were held not to be machinery purchased "to expand existing manufacturing facilities" within meaning of subdivision (a)(1)(B) of this section. Qualls v. Georgia-Pacific Corp., 269 Ark. 426, 602 S.W.2d 646 (1980).

Manufacturing or Processing.

Dam used in part to manufacture electricity is a manufacturing facility. Morley v. Brown & Root, Inc., 219 Ark. 82, 239 S.W.2d 1012 (1951).

Personal tangible property purchased by contractors engaged in construction of dam used in part for manufacturing of electricity was exempt from use tax to the extent that property went into construction of dam. Morley v. Brown & Root, Inc., 219 Ark. 82, 239 S.W.2d 1012 (1951).

Company engaged in construction and repair of roads held not a manufacturer. Morley v. E.E. Barber Constr. Co., 220 Ark. 485, 248 S.W.2d 689 (1952).

General Assembly did not have any intent to exempt poultry feed from tax by virtue of enactment of this section. Teague v. Scurlock, 223 Ark. 271, 265 S.W.2d 528 (1954) (decided prior to enactment of §§ 26-52-404 and 26-53-120).

One engaged in ginning cotton held not engaged in the business of manufacturing or processing. Scurlock v. Henderson, 223 Ark. 727, 268 S.W.2d 619 (1954), superseded by statute as stated in, Ragland v. Arkansas Valley Coal Servs., Inc., 275 Ark. 108, 627 S.W.2d 559 (1982) (decision prior to 1955 amendment).

"Manufacturing" and "processing" are not considered as two distinct operations, "processing" having reference to some stage of manufacture. Pellerin Laundry Mach. Sales Co. v. Cheney, 237 Ark. 59, 371 S.W.2d 524 (1963).

Laundry and dry cleaning machinery and equipment are not manufacturing or processing equipment and machinery. Pellerin Laundry Mach. Sales Co. v. Cheney, 237 Ark. 59, 371 S.W.2d 524 (1963).

Out-of-state purchases of incubators for use in commercial hatchery held not for use in processing within meaning of this section. Peterson Produce Co. v. Cheney, 237 Ark. 600, 374 S.W.2d 809 (1964).

In determining what will constitute a manufacturer or processor within the exemption provided by this section Supreme Court will follow the common usage or popular meaning of words. C. J. C. Corp. v. Cheney, 239 Ark. 541, 390 S.W.2d 437 (1965).

Foreign corporation supplying ready-mix concrete to contractor was not exempt as a "manufacturer or processor." C. J. C. Corp. v. Cheney, 239 Ark. 541, 390 S.W.2d 437 (1965).

Fabrication of drainage culverts from abandoned railroad tank cars constituted a manufacturing process within meaning of subdivision (a)(1)(A) of this section. Arkansas Ry. Equip. Co. v. Heath, 257 Ark. 651, 519 S.W.2d 45 (1975).

Evidence held sufficient to show company was in business of producing and selling bottled carbonated soft drinks, entitling it to exemption as manufacturer. Arkansas Beverage Co. v. Heath, 257 Ark. 991, 521 S.W.2d 835 (1975).

One processing and packaging slaughtered poultry for sale and cooked poultry for transportation and marketing held not a manufacturer. Heath v. Westark Poultry Processing Corp., 259 Ark. 141, 531 S.W.2d 953 (1976).

Manufacturing and processing are not two distinct operations and a taxpayer, in order to be entitled to the exemption, must first qualify as a manufacturer. Gaddy v. Hummelstein Iron & Metal, Inc., 266 Ark. 1, 585 S.W.2d 1 (1979).

A dealer in scrap metal is not a manufacturer of scrap metal, because that is what it begins with and what it ends with; it changes the form of scrap metal, but it does not make a new product. Gaddy v. Hummelstein Iron & Metal, Inc., 266 Ark. 1, 585 S.W.2d 1 (1979).

Coal company's crushing process held not to constitute "manufacturing" because process did not change essential identity of the coal. Ragland v. Arkansas Valley Coal Servs., Inc., 275 Ark. 108, 627 S.W.2d 559 (1982).

Automated equipment, or "minilabs," purchased and used by businesses which process film, do

not fall within the manufacturing exemption from use tax because the equipment is not used to produce "articles of commerce." *Pledger v. Noritsu America Corp.*, 320 Ark. 371, 896 S.W.2d 595 (1995).

Packaging materials purchased out-of-state by a taxpayer in connection with its business of hazardous waste disposal did not qualify as machinery and equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in the state as the taxpayer paid cement kilns and power plants to take packaged waste and burn it and those entities never paid the taxpayer for packaged fuel during the audit period. *Rineco Chem. Indus., Inc. v. Weiss*, 344 Ark. 118, 40 S.W.3d 257 (2001).

Pollution Control.

Provisions in subdivision (a)(3) of this section exempting antipollution equipment from the tax applies to any industry including utilities. *Heath v. Research-Cottrell, Inc.*, 258 Ark. 813, 529 S.W.2d 336 (1975).

Exemption granted by subdivision (a)(3) of this section applies to contractors as well as to manufacturers or processors. *Heath v. Research-Cottrell, Inc.*, 258 Ark. 813, 529 S.W.2d 336 (1975).

Subdivision (a)(3) of this section applies to the design, furnishing, and installation of natural draft cooling tower to prevent water pollution. *Heath v. Research-Cottrell, Inc.*, 258 Ark. 813, 529 S.W.2d 336 (1975).

Recorder to monitor pollutants was not exempt from use tax as machinery or equipment used directly in manufacturing process. *Southern Steel & Wire Co. v. Wooten*, 276 Ark. 37, 631 S.W.2d 835 (1982).

Replacement of Existing Machinery.

Substitution of new metal post on moving arm of glass-cutting machine was not replacement of machinery in its entirety. *Fourco Glass Co. v. Heath*, 261 Ark. 192, 547 S.W.2d 121 (1977).

Construction of new glass furnace built on foundation of old furnace was not replacement in its entirety. *Fourco Glass Co. v. Heath*, 261 Ark. 192, 547 S.W.2d 121 (1977).

Substitution of new parts for components held not to constitute replacement of "machinery in its entirety" as would come within subdivision (a)(2) of this section. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Where company used original parts from an old boiler in reconstructing a new one, machinery was not "replaced in its entirety" under subdivision (a)(2) of this section. *Qualls v. Georgia-Pacific Corp.*, 269 Ark. 426, 602 S.W.2d 646 (1980).

Where items were physically combined with other existing components in order to construct a machine that had a single purpose and function, replacing those items did not constitute replacement of machinery in its entirety. *Southern Steel & Wire Co. v. Wooten*, 276 Ark. 37, 631 S.W.2d 835 (1982).

Testing Equipment.

The exemption for testing equipment includes equipment used to test components of a finished product. *Pledger v. Baldor Int'l, Inc.*, 309 Ark. 30, 827 S.W.2d 646 (1992).

Used Directly.

Use of commercial poultry feed to fatten fowls for market held not exempt from tax under this section, as feed not deemed an integral part of the finished product. *Teague v. Scurlock*, 223 Ark. 271, 265 S.W.2d 528 (1954) (decided prior to enactment of §§ 26-52-404 and 26-53-120).

Turbine generators are primary facilities used directly in processing and manufacturing. *Cheney v. Georgia-Pacific Paper Corp.*, 237 Ark. 161, 371 S.W.2d 843 (1963).

Miscellaneous items held not to be exempt as manufacturing machinery or supplies used directly in making wood pulp or paper. *Cheney v. Georgia-Pacific Paper Corp.*, 237 Ark. 161, 371 S.W.2d 843 (1963).

Oil and gas drilling rigs held to be used directly in mining, processing, and production of natural resources. *Larey v. Wolfe*, 242 Ark. 715, 416 S.W.2d 266 (1967).

Egg and poultry processing equipment replacements, hatchery equipment, feeder lids, trays, pads, and cases for baby chicks, held not an integral part of the end product and not exempt from use tax. *Hervey v. Tyson's Foods, Inc.*, 252 Ark. 703, 480 S.W.2d 592 (1972).

Traces of chemical substances, use of which was merely incidental, were not exempt from use

tax. *Hervey v. International Paper Co.*, 252 Ark. 913, 483 S.W.2d 199 (1972).

Use of locomotive cranes and magnet held to be “directly” used in manufacturing process within meaning of subdivision (a)(1) of this section and were not removed from exemption as “transportation equipment” within meaning of subsection (c) of this section. *Arkansas Ry. Equip. Co. v. Heath*, 257 Ark. 651, 519 S.W.2d 45 (1975).

Sufficient evidence was found that bottling machines were being used directly in the producing, assembling, processing, and packaging of finished product. *Arkansas Beverage Co. v. Heath*, 257 Ark. 991, 521 S.W.2d 835 (1975).

Ultraviolet detection system used to monitor equipment held not exempt from use tax under subsection, not used directly in manufacturing process. *Southern Steel & Wire Co. v. Wooten*, 276 Ark. 37, 631 S.W.2d 835 (1982).

The purchase of a large crane was a tax exempt transaction, because the crane was directly used in the manufacture of lumber and of wood chips, the latter being eventually sold to paper mills. *Ragland v. Deltic Farm & Timber Co.*, 288 Ark. 604, 708 S.W.2d 90 (1986).

The purchase of a computer aided design/computer-aided manufacturing system by a hand tool manufacturer was a tax exempt transaction, because the system performed an essential function directly in the manufacture of tools in that the system’s function, designing and manufacturing, directly pertained to dies, and the dies shaped the wrenches and hand tools which were “articles of commerce.” *Pledger v. Easco Hand Tools, Inc.*, 304 Ark. 47, 800 S.W.2d 690 (1990).

Die block materials which constituted the molds and dies which in turn determined the physical characteristics of the finished product were exempt. Simply because the material is purchased in raw form and shaped by the taxpayer instead of being purchased in finished form should not, alone, cause it to be taxable. *Pledger v. Easco Hand Tools, Inc.*, 304 Ark. 47, 800 S.W.2d 690 (1990).

The term “used directly in manufacturing” does not require the equipment to directly come into contact with the finished product before qualifying for use tax exemption. *Pledger v. Baldor Int’l, Inc.*, 309 Ark. 30, 827 S.W.2d 646 (1992).

Cited: *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973); *Heath v. Midco Equip. Co.*, 256 Ark. 14, 505 S.W.2d 739 (1974).

26-53-115. Exemption for certain aircraft and railroad cars, parts, and equipment.

(a) The tax levied in this subchapter shall not apply to aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive, or railroad companies brought into the State of Arkansas solely and exclusively for:

(1) Refurbishing, conversion, or modification within this state and which is not used or intended for use in this state, and the presence of such tangible personal property within this state shall not be construed as storage, use, or consumption in this state for the purpose of this subchapter if the aircraft, aircraft equipment, and railroad parts, cars, and equipment, or tangible personal property is removed from this state within sixty (60) days from the date of the completion of the refurbishing, conversion, or modification; or

(2) Storage for use outside or inside the State of Arkansas regardless of the length of time any such property is so stored in the State of Arkansas.

(b) If any such property is subsequently initially used in the State of Arkansas, the tax levied by this subchapter shall be and become applicable to the property so used in Arkansas.

(c) The General Assembly determines that it was not the intent of this subchapter to impose the compensating tax upon aircraft, aircraft equipment, and railroad parts, cars, and equipment or to any tangible personal property owned or leased by aircraft, airmotive, or railroad companies as provided in § 26-53-106 and as classified by this

section.

History. Acts 1949, No. 487, § 5; 1957, No. 19, § 2; 1959, No. 260, § 2; 1975 (Extended Sess., 1976), No. 1237, §§ 1, 2; A.S.A. 1947, §§ 84-3105, 84-3105n; reen. Acts 1987, No. 772, § 1; 1995, No. 848, § 3; 2009, No. 655, § 33.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 772, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Publisher's Notes. By Acts 1993, No. 1237, § 1, the General Assembly amended § 26-53-106 to add (e); however, the language is already codified in § 26-53-115, and the 1993 amendment made only minor stylistic changes; § 1 provided:

“(e) Provided, however, that the tax levied in this act shall not apply to aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive or railroad companies brought into the state of Arkansas solely and exclusively for (i) refurbishing, conversion or modification within this state and is not used or intended for use in this state, and the presence of such tangible personal property within this state shall not be construed as storage, use, or consumption in this state for the purpose of this act, if such aircraft, aircraft equipment, and railroad parts, cars, and equipment, or tangible personal property is removed from this state within sixty (60) days from the date of the completion of such refurbishing, conversion, or modification, or (ii) storage for use outside or inside the state of Arkansas regardless of the length of time any such property is so stored in the state of Arkansas. If any such property is subsequently initially used in the state of Arkansas, the tax levied by this act shall be and become applicable to the property so used in Arkansas. Provided, further, that nothing in this subsection is intended to exempt from taxation any materials used or services furnished in the refurbishing, conversion, or modification of such property in this state which is subject to the Arkansas Gross Receipts Tax.”

Amendments. The 2009 amendment deleted (c)(2), (c)(3), and (d), and redesignated the remaining text of (c).

Case Notes

Constitutionality.

Initial Use.

Refurbishing, Conversion, or Modification.

Constitutionality.

Acts 1975 (Extended Sess. 1976), No. 1237, §§ 2, 5, were a clear attempt by the 1975 General Assembly to interpret a law enacted by the 1949 General Assembly after the Supreme Court has interpreted and applied that law; this action violates the separation of powers principle. *Federal Express Corp. v. Skelton*, 265 Ark. 187, 578 S.W.2d 1 (1979).

Initial Use.

The Compensating Tax Act is not intended to reach as far as to apply simply to the first use of new railroad boxcars designed for usage throughout an interstate system. *Burlington N. R. Co. v. Ragland*, 280 Ark. 182, 655 S.W.2d 437 (1983).

Refurbishing, Conversion, or Modification.

Where aircraft belonging to interstate air freight carrier were retained in the state for approximately 50 days to receive extensive modifications, the aircraft were subject to the compensating tax, even though ultimate use of the aircraft was in the carrier's interstate system. *Skelton v. Federal Express Corp.*, 259 Ark. 127, 531 S.W.2d 941 (1976) (decision prior to 1976 amendment).

26-53-116. Exemption for sale and purchase of certain vessels.

The gross receipts and gross proceeds derived from the sale and purchase of vessels, barges, and towboats of at least a fifty-ton load displacement and parts and labor used in

the repair and construction of them are exempt from the state compensating tax levied by this subchapter.

History. Acts 1979, No. 449, § 1; A.S.A. 1947, § 84-1904.8.

Research References

A.L.R.

Parts and supplies used in repair as subject to sales and use taxes. 113 A.L.R.5th 313.

26-53-117. Exemption for motor fuels used in municipal buses — Penalties for abuse of exemption.

(a) The gross receipts or gross proceeds derived from the sale of motor fuel to the owner or operator of a motor bus operated on designated streets according to regular schedule under municipal franchise which is used for municipal transportation purposes shall be exempt from the tax levied in this subchapter.

(b) However, it shall be unlawful for the owner or operator of a motor bus operating under municipal franchise as provided in this section to use any or permit the use of any motor fuel upon which the compensating tax has not been paid in any motor vehicle other than a motor bus operated on designated streets according to regular schedules under municipal franchise.

(c) (1) Any owner or operator of a motor bus permitting motor fuel to be used in violation of this section shall be guilty of a violation and upon conviction shall be fined in an amount of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).

(2) In addition to the fine in subdivision (c)(1) of this section, the owner or operator shall be liable to the State of Arkansas for a penalty of triple the amount of compensating tax due the State of Arkansas on any motor fuel upon which the compensating taxes have not been paid and which was used in violation of the provisions of this section.

History. Acts 1971, No. 600, § 3; A.S.A. 1947, § 75-1148.9; Acts 2005, No. 1994, § 174.

Amendments. The 2005 amendment substituted “violation” for “misdemeanor” in (c)(1).

26-53-118. Exemption for modular homes.

The storage, use, or consumption of a modular home constructed from materials on which the Arkansas gross receipts tax or state compensating tax has once been paid shall be exempt from the state compensating tax.

History. Acts 1985, No. 1068; § 4; A.S.A. 1947, § 84-3106.1; Acts 2003, No. 365, § 2.

Amendments. The 2003 amendment substituted “modular” for “custom manufactured” in the catchline and in the section.

Cross References. Gross receipts tax, § 26-52-101 et seq.

Effective Dates. Acts 2003, No. 365, § 3: Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

26-53-119. Exemption for sale of products for treating livestock and poultry and other commercial agricultural production.

The gross receipts or gross proceeds derived from sales of the following are exempt from the state compensating tax as levied by this subchapter:

- (1) Agricultural fertilizer;
- (2) Agricultural limestone; and
- (3) Agricultural chemicals, including, but not limited to:
 - (A) Agricultural pesticides and herbicides used in commercial production of agricultural products;
 - (B) Vaccines, medications, and medicinal preparations used in treating livestock and poultry being grown for commercial purposes; and
 - (C) Chemicals, nutrients, and other ingredients used in the commercial production of yeast.

History. Acts 1973, No. 68, § 1; 1985, No. 1013, § 1; A.S.A. 1947, § 84-1905.2; Acts 1993, No. 98, § 2; 1993, No. 151, § 2; 1995, No. 1296, § 87.

26-53-120. Feedstuffs used for livestock.

(a) All feedstuffs used in the commercial production of livestock or poultry in this state are exempt from the state compensating tax as levied by this subchapter.

(b) As used in this section, “feedstuffs” means:

- (1) Processed or unprocessed grains;
- (2) Mixed or unmixed grains;
- (3) Whole or ground hay;
- (4) Whole or ground straw;
- (5) Hulls, whether or not mixed with other materials; and
- (6) All food supplements, whether or not nutritional or medicinal, including hormones, antibiotics, vitamins, minerals, and medications ingested by poultry or livestock.

History. Acts 1955, No. 94, § 1; 1985, No. 1013, § 3; A.S.A. 1947, § 84-1924.

Publisher's Notes. Acts 1955, No. 94, § 1, as amended, is also codified as 26-52-404.

Case Notes

Evidence.

Evidence.

Poultry distributor who fails to carry burden of showing that “water feed additives” are “feedstuffs” is not entitled to tax exemption. *Hervey v. Tyson's Foods, Inc.*, 252 Ark. 703, 480 S.W.2d 592 (1972).

26-53-121. Registration of vendors — Out-of-state vendors.

Every vendor selling tangible personal property or taxable services for storage, use, distribution, or consumption in this state shall:

- (1) Register with the Director of the Department of Finance and Administration;
- (2) Provide the location of any and all distribution or sales houses or offices of other places of business in this state; and
- (3) Provide such other information as the director may require.

History. Acts 1949, No. 487, § 7; A.S.A. 1947, § 84-3107; Acts 1987 No. 27, § 1; 1993, No. 617, § 3; 2003, No. 1273, § 23; 2007, No. 181, § 34.

Amendments. The 2003 amendment inserted “or taxable services” and “distribution.” The 2007 amendment deleted former (2) and redesignated the remaining subdivisions accordingly.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.” Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

Case Notes

Catalogue Sales.

Catalogue Sales.

Where no agency relationship existed between out-of-state mail order school book company and Arkansas teachers, the company's sales of books in Arkansas were not subject to a vendor's use tax. *Pledger v. Troll Book Clubs, Inc.*, 316 Ark. 195, 871 S.W.2d 389 (1994).

26-53-122. Agents furnished statements of compliance.

Every vendor selling tangible personal property or taxable services for storage, use, distribution, or consumption in this state shall furnish all agents with a statement to the effect that the agent's principal has been and is complying with the provisions of this subchapter.

History. Acts 1949, No. 487, § 7; A.S.A. 1947, § 84-3107; Acts 2003, No. 1273, § 24.

Amendments. The 2003 amendment inserted “or taxable services” and “distribution” and made a gender neutral change.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax

Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-53-123. Liability for tax.

(a) Every person storing, using, distributing, or consuming in this state tangible personal property or taxable services purchased from a vendor shall be liable for the tax imposed by this subchapter, and the liability shall not be extinguished until the tax has been paid to this state.

(b) However, a receipt from a vendor authorized by the Director of the Department of Finance and Administration under such rules and regulations as he or she may prescribe to collect the tax imposed given to the purchaser in accordance with the provisions of §§ 26-53-121 and 26-53-122 shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt may refer.

History. Acts 1949, No. 487, § 5; 1957, No. 19, § 2; 1959, No. 260, § 2; A.S.A. 1947, § 84-3105; Acts 2003, No. 1273, § 25.

Amendments. The 2003 amendment added the present subsection designations; inserted "distributing" and "or taxable services" in present (a); and inserted "or she" in present (b).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined

Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-53-124. Collection of tax by vendor.

(a) (1) (A) Every vendor making a sale of tangible personal property or taxable services directly or indirectly for the purpose of storage, use, distribution, or consumption in this state shall collect the tax from the purchaser and give a receipt for the tangible personal property or taxable services.

(B) Subdivision (a)(1)(A) of this section includes all out-of-state vendors who deliver merchandise and taxable services into Arkansas in their own conveyance when such merchandise or services will be stored, used, distributed, or consumed within this state.

(C) The sale of tangible personal property or taxable services will be sourced according to §§ 26-52-521—26-52-523.

(2) The required amount of the tax collected by the vendor from the purchaser shall be displayed separately upon the check, sales slip, bill, receipt, or other evidence of sale.

(3) The processing of orders electronically, by fax, telephone, the Internet, or other electronic ordering process, or the processing of orders by non-electronic means, by mail order, fax, telephone, or otherwise, does not relieve a vendor of responsibility for collection of the tax from the purchaser if both the following conditions exist:

(A) The vendor holds a substantial ownership interest, directly or through a subsidiary, in a retailer maintaining sales locations in Arkansas or is owned in whole or in substantial part by such a retailer or by a parent or subsidiary of the retailer; and

(B) The vendor sells the same or a substantially similar line of products as the Arkansas retailer under the same or a substantially similar business name, or the facilities or employees of the Arkansas retailer are used to advertise or promote sales by the vendor to Arkansas purchasers.

(4) As used in this section, "substantial ownership interest" in an entity means that degree of ownership of equity interests in an entity that is not less than that degree of ownership specified by 26 U.S.C. § 267, as in effect on January 1, 2001, with respect to a person other than a director or officer.

(b) Nothing in this section shall be construed to repeal any exemption from the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or this subchapter.

History. Acts 1949, No. 487, § 8; 1957, No. 19, §§ 3, 4; A.S.A. 1947, §§ 84-3108, 84-

3108n; Acts 1997, No. 951, § 31; 2001, No. 922, § 1; 2003, No. 1273, § 26.

Amendments. The 2003 amendment redesignated former (a)(1) as present (a)(1)(A) and (a)(1)(B); in present (a)(1)(A), inserted “or taxable services”; in (a)(1)(B), inserted “and taxable services” and “or services”; and added (a)(1)(C).

Effective Dates. Acts 2001, No. 922, § 2, provided “The provisions of this act shall be effective on and after January 1, 2002.”

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-53-125. Return and payment of tax.

(a) (1) (A) The tax imposed by this subchapter shall be due and payable to the Director of the Department of Finance and Administration monthly on or before the twentieth day of each month except as provided in this subchapter.

(B) When a taxpayer has become liable to file a report with the director, the taxpayer must continue to file a report, even though no tax is due, until the taxpayer notifies the director in writing that the taxpayer is no longer liable for those reports.

(2) Every vendor selling tangible personal property or taxable services for storage, use, distribution, or consumption in this state shall file with the director on or before the twentieth day of each month a sales and use tax return for the preceding monthly period in such form as may be prescribed by the director, showing:

(A) The total tax levied by this subchapter due on all tangible personal

property or taxable services sold by the vendor during the preceding monthly period, the storage, use, distribution, or consumption of which is subject to the tax levied by this subchapter; and

(B) Such other information as the director may deem necessary for the proper administration of this subchapter.

(3) The return shall be accompanied by remittance of the amount of the tax required by this subchapter to be collected by the vendor during the period covered by the return.

(4) (A) A return shall be signed by the vendor or the vendor's duly authorized agent but need not be verified by oath.

(B) A return filed electronically does not need to be signed.

(b) (1) Every person purchasing tangible personal property or taxable services of which the storage, use, distribution, or consumption is subject to the tax levied by this subchapter and who has not paid the tax due with respect to the tangible personal property or taxable services to a vendor registered in accordance with the provisions of §§ 26-53-121 and 26-53-122 shall file a return with the director on or before the twentieth day of each month for the preceding monthly period in such a form as may be prescribed by the director showing:

(A) The tax levied by this subchapter due on the tangible personal property or taxable services purchased during the preceding monthly period; and

(B) Such other information as the director may deem necessary for the proper administration of this subchapter.

(2) The return shall be accompanied by a remittance of the amount of the tax required by this subchapter to be paid by the person purchasing the tangible personal property or taxable services during the period covered by the return.

(3) (A) A return shall be signed by the person liable for the tax or the person's authorized agent but need not be verified by oath.

(B) A return filed electronically does not need to be signed.

(c) A vendor that does not have a legal requirement to register under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or this subchapter and is not using a certified service provider or a certified automated system as defined under the Uniform Sales and Use Tax Administration Act, § 26-20-101 et seq., shall submit sales and use tax returns as follows:

(1) Upon registration, the director shall provide the vendor the required Arkansas returns;

(2) The vendor shall file a return any time within one (1) year of the month of initial registration, and future returns may be required on an annual basis in succeeding years; and

(3) In addition to the returns required in subdivision (c)(2) of this section, the vendor may be required to submit returns in the month following any month in which the vendor has accumulated state and local tax funds in the total amount of one thousand dollars (\$1,000) or more.

(d) (1) When the average amount of tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed one hundred dollars (\$100) per month, the director may notify the taxpayer that a quarterly report and remittance in lieu of a monthly report may be made on or before July 20, October 20,

January 20, and April 20 of each year for the preceding three-month period.

(2) When the average amount of tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed twenty-five dollars (\$25.00) per month, the director may notify the taxpayer that a yearly report and remittance in lieu of a monthly report may be made on or before January 20 of each year for the preceding twelve-month period.

(e) Any report or remittance required under this section of which the due date falls on a Saturday, Sunday, or legal holiday shall be postmarked or transmitted on the next succeeding business day that is not a Saturday, Sunday, or legal holiday.

History. Acts 1949, No. 487, § 9; 1979, No. 915, § 2; A.S.A. 1947, § 84-3109; Acts 1991, No. 688, § 3; 2003, No. 664, §§ 3, 4; 2003, No. 1273, §§ 27-30; 2007, No. 181, § 35.

Amendments. The 2003 amendment by No. 664 redesignated former (a)(1) as (a)(1)(A) and (a)(1)(B); inserted "except as provided in this subchapter" in (a)(1)(A); and added present (d). The 2003 amendment by No. 1273, in (a)(2), twice inserted "or taxable services" and "distribution"; redesignated former (a)(4) as present (a)(4)(A) and inserted "or her"; added (a)(4)(B); in (b)(1), inserted "or services," "distribution" and "or taxable services"; inserted "or taxable services" in (b)(2); redesignated former (b)(3) as present (b)(3)(A) and inserted "or her"; added (b)(3)(B); and added present (c) and (e) and redesignated former (c) as present (d). The 2007 amendment substituted "a sales and use tax return" for "a return" in (a)(2); substituted "total tax levied by this subchapter due on" for "total combined sales price of" in (a)(2)(A) and for similar language in (b)(1)(A); and made stylistic changes.

Effective Dates. Acts 2003, No. 664, § 5: Aug. 1, 2003. Effective date clause provided: "This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days." Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date

provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”
Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

Case Notes

Cited: American Television Co. v. Hervey, 253 Ark. 1010, 490 S.W.2d 796 (1973); Federal Express Corp. v. Skelton, 265 Ark. 187, 578 S.W.2d 1 (1979).

26-53-126. Tax on new and used motor vehicles, trailers, or semitrailers — Payment and collection.

(a) (1) Upon being registered in this state, a new or used motor vehicle, trailer, or semitrailer required to be licensed in this state is subject to the tax levied in this subchapter and all other use taxes levied by the state regardless of whether the motor vehicle, trailer, or semitrailer was purchased from a dealer or an individual.

(2) (A) On or before the time for registration as prescribed by § 27-14-903(a), the person making application to register the motor vehicle, trailer, or semitrailer shall pay the taxes to the Director of the Department of Finance and Administration instead of the taxes being collected by the dealer or individual seller.

(B) The director shall collect the taxes before issuing a license for the motor vehicle, trailer, or semitrailer.

(3) The exemption in § 26-52-401(17) for isolated sales does not apply to the sale of a motor vehicle, trailer, or semitrailer.

(4) If the person making application to register the motor vehicle, trailer, or semitrailer fails to pay the taxes when due:

(A) There is assessed a penalty equal to ten percent (10%) of the amount of taxes due; and

(B) Before the director issues a license for the motor vehicle, trailer, or semitrailer, the person making application to register the motor vehicle, trailer, or semitrailer shall pay to the director the penalty under subdivision (a)(4)(A) of this section and the taxes due.

(b) (1) When a used motor vehicle, trailer, or semitrailer is taken in trade as a credit or part payment on the sale of a new or used vehicle, trailer, or semitrailer, the tax levied in this subchapter and all other use taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer sold and the credit for the used vehicle, trailer, or semitrailer taken in trade.

(2) However, if the total consideration for the sale of the new or used motor vehicle, trailer, or semitrailer is less than two thousand five hundred dollars (\$2,500), no tax shall be due.

(3) (A) When a used motor vehicle, trailer, or semitrailer is sold by a consumer, rather than traded in as a credit or part payment on the sale of a new or used motor vehicle, trailer, or semitrailer, and the consumer subsequently purchases a new or used vehicle, trailer, or semitrailer of greater value within forty-five (45) days of the sale, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle,

trailer, or semitrailer purchased subsequently and the amount received from the sale of the used vehicle, trailer, or semitrailer sold in lieu of a trade-in.

(B) (i) Upon registration of the new or used motor vehicle, consumers claiming the deduction provided by subdivision (b)(3)(A) of this section shall provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle.

(ii) A copy of the bill of sale shall be deposited with the revenue office at the time of registration of the new or used motor vehicle.

(iii) The deduction provided by this subdivision (b)(3) shall not be allowed unless the taxpayer claiming the deduction provides a copy of a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle.

(C) If the taxpayer claiming the deduction provided in this subdivision (b)(3) fails to provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle, tax shall be due on the total consideration paid for the new or used vehicle, trailer, or semitrailer without any deduction for the value of the item sold.

(c) The tax imposed by this subchapter shall not apply to a motor vehicle, trailer, or semitrailer to be registered by a bona fide nonresident of this state.

(d) Nothing in this section shall be construed to repeal any exemption from this subchapter.

(e) (1) Upon payment of all applicable registration and title fees, any motor vehicle dealer licensed pursuant to § 27-14-601(a)(6) who has purchased a used motor vehicle may register the vehicle for the sole purpose of obtaining a certificate of title to the vehicle without payment of use tax.

(2) No license plate shall be provided with such registration, and the used vehicle titled by a dealer under this subsection may not be operated on the public highways unless there is displayed on the used vehicle a dealer's license plate issued under the provisions of § 27-14-601(a)(6)(B)(ii).

(f) (1) (A) For purposes of this section, the total consideration for a used motor vehicle shall be presumed to be the greater of the actual sales price as provided on a bill of sale, invoice or financing agreement, or the average loan value of the vehicle as listed in the most current edition of a publication which is generally accepted by the industry as providing an accurate valuation of used vehicles.

(B) If the published loan value exceeds the invoiced price, then the taxpayer must establish to the director's satisfaction that the price reflected on the invoice or other document is true and correct.

(C) If the director determines that the invoiced price is not the actual selling price of the vehicle, then the total consideration will be deemed to be the published loan value.

(2) (A) For purposes of this section, the total consideration for a new or used trailer or semitrailer shall be the actual sales price as provided on a bill of sale, invoice, or financing agreement.

(B) The director may require additional information to conclusively establish the true selling price of the new or used trailer or semitrailer.

History. Acts 1949, No. 487, § 5; 1957, No. 19, § 4; 1959, No. 260, §§ 2, 3; A.S.A.

1947, §§ 84-3105, 84-3105n., 84-3108n; Acts 1991, No. 3, § 7; 1995, No. 268, § 7; 1995, No. 437, § 3; 1997, No. 1232, §§ 3, 4; 2001, No. 1047, § 2; 2009, No. 655, §§ 34, 35.

A.C.R.C. Notes. Section 26-52-514 provides that the Director of the Department of Finance and Administration is authorized to adopt an alternative method for determining the total consideration for the sale of new or used motor vehicles, trailers, or semitrailers under this section. See § 26-52-514 concerning such alternative method.

Amendments. The 2009 amendment rewrote (a); and in (f)(2)(B), substituted “new or used trailer or semitrailer” for “trailer.”

Cross References. Damaged vehicle exemption from sales or use tax, § 27-14-2306.

Effective Dates. Acts 1997, No. 1232, § 5 provided that the provisions of this act shall become effective on January 1, 1998.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

Case Notes

Construction.

Legislative Intent.

Construction.

Defendant's conduct in failing to pay use taxes on a motor home fell within § 26-18-202; defendant was not accused of having violated a provision of the vehicle registration laws, and the taxes required under this section are not exempt from the tax evasion laws. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

Legislative Intent.

The amendment of this section by Acts 1995, No. 268 was not an attempt by the legislature to retroactively change subsection (a) of this section or § 26-52-510(a). *Pledger v. Mid-State Constr. & Materials, Inc.*, 325 Ark. 388, 925 S.W.2d 412 (1996).

26-53-127. Refunds to governmental agencies.

A governmental agency may apply to the Director of the Department of Finance and Administration for refund of the amount of the tax levied and paid upon sales to it for food and food ingredients used for free distribution to the poor and needy or to public penal and eleemosynary institutions, as provided by law.

History. Acts 1949, No. 487, § 6; 1971, No. 222, § 3; A.S.A. 1947, § 84-3106; Acts 2007, No. 181, § 36.

Amendments. The 2007 amendment substituted “food and food ingredients” for “foodstuffs.”

Effective Dates. Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

Case Notes

Constitutionality.

In General.

Construction.

Appeals.

Burden of Proof.

Constitutionality.

This section is not unconstitutional on the ground that General Assembly in granting exemptions acted in an arbitrary manner. *Teague v. Scurlock*, 223 Ark. 271, 265 S.W.2d 528 (1954).

In General.

A governmental agency may apply in certain instances for a refund, but an agency cannot apply for a refund if it has not previously paid the tax. *Commissioner of Revenues v. Arkansas State Hwy. Comm'n*, 232 Ark. 255, 337 S.W.2d 665 (1960).

Construction.

Tax exemption provisions must be strictly construed. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Any tax exemption provision must be strictly construed against the exemption, and to doubt is to deny the exemption. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980); *Qualls v. Georgia-Pacific Corp.*, 269 Ark. 426, 602 S.W.2d 646 (1980).

Appeals.

On appeal, the Supreme Court reviews tax exemption cases de novo and does not reverse a finding of fact unless it is clearly against the preponderance of the evidence. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Burden of Proof.

Since taxation is the rule and exemption the exception, the burden is on taxpayers to clearly show they are entitled to exemption from the use tax. *Cheney v. Georgia-Pacific Paper Corp.*, 237 Ark. 161, 371 S.W.2d 843 (1963).

There is a presumption in favor of the taxing power of the state, and a claimant has the burden to clearly establish any right to an exemption. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Taxpayer has the burden of clearly establishing an exemption beyond a reasonable doubt. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Cited: *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973); *Heath v. Midco Equip. Co.*, 256 Ark. 14, 505 S.W.2d 739 (1974).

26-53-128. Tax — A lien upon property.

The tax or excise levied by this subchapter shall constitute a lien upon the property of the purchaser of tangible personal property coming within the provisions of this subchapter.

History. Acts 1949, No. 487, § 5; 1957, No. 19, § 2; 1959, No. 260, § 2; A.S.A. 1947, § 84-3105.

26-53-129. Suits for violations of subchapter — Agent for service.

(a) In all suits brought in any of the courts of this state by the Director of the Department of Finance and Administration against any vendor for any violation of this subchapter, the suits shall be brought thereon in any courts of this state having jurisdiction of the subject matter.

(b) (1) Every vendor shall designate with the director an agent for service within this state for the purpose of enforcing this subchapter.

(2) If a vendor has not designated or shall fail to designate with the director an agent for service within this state, then the Secretary of State shall be deemed the agent for service, or any agent or employee of the vendor within this state shall be deemed agent for service.

History. Acts 1949, No. 487, § 11; A.S.A. 1947, § 84-3111.

26-53-130. [Repealed.]

Publisher's Notes. This section, concerning exemption for aircraft and railroad equipment in state for refurbishing, etc., was repealed by Acts 2009, No. 655, § 36. The section was derived from Acts 1987, No. 772, § 2.

26-53-131. Credit for tax paid in another state.

(a) (1) (A) (i) The provisions of this subchapter shall not apply to any tangible personal property or taxable services used, consumed, distributed, or stored in this state upon which a like tax equal to or greater than the tax imposed by this subchapter has been paid in another state.

(ii) Proof of payment of such a tax shall be made according to the rules and regulations promulgated by the Director of the Department of Finance and Administration.

(B) If the amount of tax paid in another state is less than the amount of Arkansas compensating tax imposed on the property or services by this subchapter, then the taxpayer shall pay to the director an amount of Arkansas compensating tax sufficient to make the combined amount of tax paid in the other state and this state equal to the total amount of Arkansas compensating tax that would be due if no tax on the property or services had been paid to any other state.

(2) No credit shall be given under this section for taxes paid on such property or services in another state if that state does not grant credit for taxes paid on similar tangible personal property or services in this state.

(b) The provisions of this section shall be cumulative to the provisions of this subchapter and shall not be construed as repealing or modifying any of the provisions of this subchapter.

(c) (1) No credit shall be allowed for sales or use taxes paid to another state with respect to the purchase of motor vehicles, trailers, or semitrailers which are first registered by the purchaser in Arkansas.

(2) [Repealed.]

History. Acts 1989, No. 395, § 3; 1989 (3rd Ex. Sess.), No. 9, § 2; 2003, No. 1273, § 31; 2009, No. 655, § 37.

Amendments. The 2003 amendment redesignated former (a)(1) as (a)(1)(A) and (a)(1)(B); inserted "or taxable services" in present (a)(1)(A); and inserted "or services" in (a)(1)(b) and twice in (a)(2).

The 2009 amendment deleted (c)(2).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use

Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-53-132. Refund for construction of child care facility.

(a) A business which operates, or contracts for the operation of, a child care facility for the primary purpose of providing child care services to its employees may obtain a refund of the compensating use tax paid on the purchase of construction materials and furnishings used in the initial construction and equipping of the child care facility after the facility is licensed pursuant to § 20-78-201 et seq.

(b) (1) As used in this section, "child care facility" means a child care facility licensed under § 20-78-201 et seq. To qualify as a child care facility, the child care shall provide an appropriate early childhood program as defined in § 6-45-103.

(2) A child care facility may be operated for the use of one (1) or more employers.

History. Acts 1993, No. 820, § 2; 1993, No. 987, § 2; 1995, No. 850, § 4; 2009, No. 655, § 38.

Amendments. The 2009 amendment inserted "As used in this section" in (b)(1), and made related and minor stylistic changes.

Cross References. Certification by the Department of Education, § 6-45-109.

26-53-133. Exemption for manufacturing forms.

Forms constructed of plaster, cardboard, fiberglass, natural fibers, synthetic fibers, or composites thereof which determine the physical characteristics of an item of tangible personal property and which are destroyed or consumed during the manufacture of the item for which the destroyed or consumed form was built are hereby exempt from the taxes levied in this subchapter.

History. Acts 1993, No. 1001, § 1.

Publisher's Notes. Acts 1993, No. 1001, § 1, is also codified as § 26-52-422.

26-53-134. Exemption for natural gas used in manufacture of glass.

The gross receipts or gross proceeds derived from sales of natural gas used as fuel in the process of manufacturing glass is hereafter exempt from:

(1) The Arkansas gross receipts tax levied by §§ 26-52-301 and 26-52-302;

(2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107;

and

(3) All city and county sales and use taxes.

History. Acts 1993, No. 1140, § 1; 2007, No. 182, § 24.

Publisher's Notes. Acts 1993, No. 1140, § 1, is also codified as §§ 26-52-423, 26-74-102, and

26-75-101.

Amendments. The 2007 amendment substituted “§§ 26-52-301 and 26-52-302” for “§§ 26-52-301, 26-52-302, and 26-52-1002.”

Effective Dates. Acts 2007, No. 182, § 32; Jan. 1, 2008.

26-53-135. Exemption for sales to Fort Smith Clearinghouse.

The gross receipts or gross proceeds derived from sales to the Community Service Clearinghouse, Inc., of Fort Smith are hereafter exempt from:

(1) The Arkansas gross receipts tax levied by §§ 26-52-301, 26-52-302, and 26-63-402;

(2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107; and

(3) All city and county sales and use taxes.

History. Acts 1993, No. 913, § 1; 2007, No. 182, § 25.

Publisher's Notes. Acts 1993, No. 913, § 1, is also codified as §§ 26-52-424, 26-74-103, and 26-75-102.

Amendments. The 2007 amendment substituted “26-63-402” for “26-52-1002.”

Effective Dates. Acts 2007, No. 182, § 32; Jan. 1, 2008.

26-53-136. Exemption for nonprofit food distribution agencies.

The gross receipts or gross proceeds derived from the sale of food and food ingredients to nonprofit agencies organized under the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., for free distribution to the poor and needy shall be exempt from the Arkansas gross receipts tax levied by this subchapter.

History. Acts 1993, No. 1144, § 1; 2007, No. 181, § 37.

Publisher's Notes. Acts 1993, No. 1144, § 1, is also codified as § 26-52-421.

Amendments. The 2007 amendment substituted “food and food ingredients” for “foodstuffs.”

Effective Dates. Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

26-53-137. Exemption for railroad rolling stock manufactured for use in interstate commerce.

Railroad rolling stock manufactured for use in transporting persons or property in interstate commerce is exempt from the taxes levied in this subchapter.

History. Acts 1994 (2nd Ex. Sess.), No. 25, § 2.

26-53-138. Exemption for property purchased for use in performance of construction contract.

(a) A contractor that purchases tangible personal property which becomes a recognizable part of a completed structure or improvement to real property and which is purchased for use or consumption in the performance of construction contracts shall be entitled to a rebate on any additional gross receipts tax or compensating use tax levied by the state or any city or county if:

(1) The construction contract for which the tangible personal property was purchased is entered into prior to the effective date of the levy of the additional state, city,

or county gross receipts tax or compensating use tax; and

(2) The contractor paid the additional gross receipts or compensating use tax to the seller.

(b) As used in this section, “construction contract” means a contract to construct, manage, or supervise the construction, erection, or substantial modification of a building or other improvement or structure affixed to real property. “Construction contract” shall not mean a contract to produce tangible personal property.

(c) The rebate provided by this section shall apply to tangible personal property purchased within five (5) years from the effective date of the levy of the additional state, city, or county gross receipts tax or compensating use tax.

(d) The rebate provided by this section shall not apply to cost-plus contracts which allow the contractor to pass any additional tax on to the principal as a part of the contractor's costs.

(e) Interest shall not accrue or be paid on an amount subject to a claim for rebate pursuant to this section.

(f) The Director of the Department of Finance and Administration shall promulgate rules and prescribe forms for claiming a rebate as provided by this section.

History. Acts 1995, No. 387, §§ 1-3; 2007, No. 181, § 38.

Publisher's Notes. Acts 1995, No. 387, §§ 1-3 are also codified as § 26-52-427.

Amendments. The 2007 amendment, in (a), substituted “A contractor that purchases tangible personal property” for “Tangible personal property,” added (a)(2) and redesignated part of the provisions of (a) as (a)(1), and substituted “entitled to a rebate on” for “exempt from,” inserted “tangible personal” in (a)(1); substituted “rebate” for “exemption” in (b); substituted “rebate provided by this section” for “exemption” in (d); added (e) and (f); and made related and stylistic changes.

Effective Dates. Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

26-53-139. Exemption for railroad parts, cars, and equipment.

There is specifically exempted from any tax imposed by this subchapter including, but not limited to, §§ 26-53-106 — 26-53-108, parts and other tangible personal property incorporated into or which ultimately become a part of railroad parts, railroad cars, and equipment brought into the State of Arkansas solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within this state.

History. Acts 1995, No. 848, § 2.

Publisher's Notes. This section was formerly codified as § 26-52-116.

26-53-140. Tax levied on sales of prepaid telephone calling cards.

Purchases of prepaid telephone calling cards or prepaid authorization numbers and the recharge of prepaid telephone calling cards or prepaid authorization numbers as set out in § 26-52-314 shall be subject to this subchapter and any act supplemental to this subchapter.

History. Acts 1999, No. 1348, § 3.

26-53-141. Durable medical equipment, mobility-enhancing equipment, prosthetic devices, and disposable medical supplies.

(a) (1) Gross receipts or gross proceeds derived from the rental, sale, or repair of durable medical equipment prescribed by a physician, mobility-enhancing equipment prescribed by a physician, a prosthetic device prescribed by a physician, and disposable medical supplies prescribed by a physician shall be exempt from all state and local sales and use taxes.

(2) This exemption shall apply only to durable medical equipment, mobility-enhancing equipment, a prosthetic device, and disposable medical supplies sold to a specific patient pursuant to a prescription written before the sale.

(b) As used in this section:

(1) “Disposable medical supplies” includes without limitation the following:

(A) Ostomy, urostomy, and colostomy supplies;

(B) Enemas, suppositories, and laxatives used in routine bowel care; and

(C) Disposable undergarments and linen savers;

(2) (A) “Durable medical equipment” means equipment, including repair and replacement parts for the equipment, that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury;

(iv) Is not worn in or on the body; and

(v) Is for home use.

(B) “Repair and replacement parts” includes all components or attachments used in conjunction with the durable medical equipment.

(C) “Durable medical equipment” does not include mobility-enhancing equipment;

(3) (A) “Mobility-enhancing equipment” means equipment, including repair and replacement parts for the equipment, that:

(i) Is primarily and customarily used to provide or increase the ability to move from one (1) place to another and which is appropriate for use either in a home or a motor vehicle;

(ii) Is not generally used by a person with normal mobility; and

(iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(B) “Mobility-enhancing equipment” does not include durable medical equipment;

(4) “Physician” means a person licensed under § 17-95-401 et seq.;

(5) “Prescription” means an order, formula, or recipe issued in any form and transmitted by an oral, written, electronic, or other means of transmission by a duly licensed physician or practitioner authorized to issue prescriptions under Arkansas law; and

(6) (A) “Prosthetic device” means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body.

(B) “Prosthetic device” does not include corrective eyeglasses, contact

lenses, and dental prostheses.

(c) (1) Notwithstanding subdivision (a)(2) of this section, a patient may claim the exemption under this section for a wheelchair lift or automobile hand controls prescribed for the patient after the sale if:

(A) The wheelchair lift or automobile hand controls are purchased in conjunction with the purchase of a motor vehicle;

(B) The gross receipts or gross proceeds derived from the sale of the wheelchair lift or automobile hand controls are separately stated on the invoice or bill of sale for the purchase of the motor vehicle; and

(C) The patient has a prescription for the wheelchair lift or automobile hand controls at the time the motor vehicle is registered.

(2) A patient purchasing a wheelchair lift or automobile hand controls directly from a vendor of adaptive medical equipment for subsequent installation shall possess a prescription for the wheelchair lift or automobile hand controls prior to the sale in compliance with subdivision (a)(2) of this section.

History. Acts 1991, No. 414, § 1; 2003, No. 1273, § 2; 2003, No. 1473, § 64; 2007, No. 140, §§ 3, 4; 2007, No. 181, § 45; 2007, No. 860, § 6; 2009, No. 384, § 14.

A.C.R.C. Notes. This section was formerly codified as § 26-3-307. Former § 26-3-307 was recodified by Acts 2003, No. 1473, § 64, as present §§ 26-52-433 and 26-53-141.

Amendments. The 2003 amendment by No. 1273 rewrote the section.

The 2007 amendment by No. 140, § 3 added (d). Section 4 added (c).

The 2007 amendment by No. 181 inserted "prosthetic devices" in the section heading; inserted "a prosthetic device prescribed by a physician" in (a)(1), rewrote (a)(2), and deleted former (a)(3); rewrote (b); and made related and stylistic changes.

The 2007 amendment by No. 860 deleted former (b)(1)(B) and redesignated the remaining subsections accordingly; added (b)(2)(A)(v); and made related changes.

The 2009 amendment inserted (b)(2)(B) and redesignated the subsequent subdivision accordingly.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses

additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2007, No. 140, § 5: Oct. 1, 2007. Effective date clause provided: “Effective date. Sections 1–4 of this act are effective on the first day of the calendar quarter following the effective date of this act.”

Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

Acts 2007, No. 860 § 7, provided: “Sections 1–6 of this act will become effective on January 1, 2008.”

Research References

A.L.R.

Sales and use tax exemption for medical supplies. 30 A.L.R.5th 494.

26-53-142. Fire protection equipment and emergency equipment.

(a) The gross receipts or gross proceeds derived from a purchase of or repair to fire protection equipment and emergency equipment to be owned by and exclusively used by a volunteer fire department are exempt from the taxes levied under:

- (1) The Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.;
- (2) This subchapter; and
- (3) All other state, local, and county sales and use taxes.

(b) The gross receipts or gross proceeds derived from a purchase of supplies and materials to be used in the construction and maintenance of volunteer fire departments, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith are exempt from the taxes levied under:

- (1) The Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.;
- (2) This subchapter; and
- (3) All other state, local, and county sales and use taxes.

History. Acts 1995, No. 1010, § 1; 1997, No. 441, § 1; 2003, No. 1473, § 65.

A.C.R.C. Notes. This section was formerly codified as § 26-3-309. Former § 26-3-309 was recodified by Acts 2003, No. 1473, § 65, as present §§ 26-52-434 and 26-53-142.

26-53-143. Wall and floor tile manufacturers.

(a) The gross receipts or gross proceeds derived from sales of electricity and natural gas used in the process of manufacturing wall and floor tile by manufacturers of tile classified in Standard Industrial Classification 3253 are exempt from:

- (1) The Arkansas gross receipts tax levied by §§ 26-52-301 and 26-52-302;
- (2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107;

and

- (3) All city and county sales and use taxes.

(b) A manufacturer of wall or floor tile classified in Standard Industrial Classification 3253 must have begun construction of a manufacturing facility in the state prior to January 1, 2003, in order to claim this exemption.

History. Acts 2001, No. 1375, § 1; 2003, No. 1473, § 66; 2007, No. 182, § 26.

A.C.R.C. Notes. This section was formerly codified as § 26-3-310. Former § 26-3-310 was

recodified by Acts 2003, No. 1473, § 66, as present §§ 26-52-435 and 26-53-143.

Amendments. The 2007 amendment substituted “§§ 26-52-301 and 26-52-302” for “§§ 26-52-301, 26-52-302, and 26-52-1002.”

Effective Dates. Acts 2001, No. 1375, § 2: July 1, 2003.
Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-53-144. Certain classes of trucks or trailers.

(a) As used in this section:

(1) “Person” means a natural person who resided in this state at the time of purchasing a truck tractor or semitrailer in another state;

(2) “Semitrailer” means every vehicle with or without motive power, including a pole trailer, drawn by a truck tractor and designed for carrying property; and

(3) “Truck tractor” means a motor vehicle:

(A) Designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn; and

(B) Registered as a Class Five, Class Six, Class Seven, or Class Eight truck as defined by § 27-14-601(a)(3).

(b) Except as provided in subsection (d) of this section, the gross receipts or gross proceeds in excess of nine thousand one hundred fifty dollars (\$9,150) derived from the sale of a new or used truck tractor in another state for use in this state are exempt from the Arkansas compensating use tax levied by this subchapter.

(c) Except as provided in subsection (d) of this section, the gross receipts or gross proceeds in excess of one thousand dollars (\$1,000) derived from the sale of a new or used semitrailer in another state for use in this state are exempt from the Arkansas compensating use tax levied by this subchapter.

(d) The exemption in this section does not apply to compensating use taxes levied by any Arkansas city, town, or county.

History. Acts 2003, No. 551, § 2.

26-53-145. Food and food ingredients.

(a) (1) The Director of the Department of Finance and Administration shall determine the following conditions:

(A) That federal law authorizes the state to collect sales and use tax from some or all of the sellers that have no physical presence in the State of Arkansas and that make sales of taxable goods and services to Arkansas purchasers;

(B) That initiating the collection of sales and use tax from these sellers would increase the net available general revenues needed to fund state agencies, services, and programs; and

(C) (i) That during a six-month consecutive period, the amount of net available general revenues attributable to the collection of sales and use tax from sellers that have no physical presence in the State of Arkansas is equal to or greater than one hundred fifty percent (150%) of sales and use tax collected under subsection (c) of this section and § 26-52-317 on food and food ingredients.

(ii) The director shall make the determination under subdivision (a)(1)(C)(i) of this section on a monthly basis following the determination that the conditions under subdivision (a)(1)(A) of this section have been met.

(2) When the director finds that all of the conditions in subdivision (a)(1) of this section have been met, then the compensating use taxes levied under subsection (c) of this section shall be levied at the rate of zero percent (0%) on the sale of food and food ingredients beginning on the first day of the second calendar month following the determination of the director.

(b) As used in this section:

(1) "Food" and "food ingredients" mean the same as defined in § 26-53-102 except that "food" and "food ingredients" do not include prepared food; and

(2) "Prepared food" means the same as defined in § 26-53-102 except that "prepared food" does not include food that is only cut, repackaged, or pasteurized by the seller or eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer to prevent food-borne illnesses as recommended by the Food and Drug Administration in its 2005 Food Code, § 3-401.11, as it existed on January 1, 2007.

(c) (1) Beginning July 1, 2009, in lieu of the compensating use taxes levied on food and food ingredients under §§ 26-53-106 and 26-53-107, there is levied a tax on the privilege of storing, using, distributing, or consuming food and food ingredients at the rate of one and seven-eighths percent (1.875%) to be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited into the Educational Adequacy Fund.

(2) The use tax levied under subdivision (c)(1) of this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas compensating use taxes.

(d) The following shall continue to apply to the sales price of food and food ingredients:

(1) The compensating use tax levied under Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county use taxes.

(e) The Department of Finance and Administration shall promulgate rules to implement the provisions of this section.

History. Acts 2005, No. 647, § 2; 2007, No. 110, § 2; 2009, No. 436, § 2; 2009, No. 655, § 39.

Amendments. The 2007 amendment substituted "subsection (c) of this section and § 26-52-317" for "§§ 26-52-301, 26-52-302(a), (b), and (d), 26-53-106, and 26-53-107(a), (b), and (d)" in (a)(1)(C)(i); substituted "subsection (c) of this section" for "§§ 26-53-106 and 26-53-107(a), (b), and (d)" in (a)(2); added (b) and (c); redesignated former (b) as present (d); deleted former (b)(1); redesignated former (b)(2) and (b)(3) as present (d)(1) and (d)(2); and redesignated former (c) as present (e).

The 2009 amendment by No. 436, in (c)(1), substituted "July 1, 2009" for "July 1, 2007" and "one and seven-eighths percent (1.875%)" for "two and seven-eighths percent (2.875%)."

The 2009 amendment by No. 655 deleted (b)(1), (b)(2), (b)(3), and (b)(5), which defined

“alcoholic beverage,” “dietary supplement,” “food and food ingredients,” and “tobacco,” respectively, inserted (b)(1), and redesignated the remaining subdivisions accordingly; rewrote (b)(2); and made related changes.

26-53-146. Exemption for qualified museums.

(a) As used in this section:

(1) “Exemption certificate” means an exemption certificate issued by the Director of the Department of Finance and Administration under subdivision (d)(1) of this section;

(2) “Nonprofit organization” means any organization described in 26 U.S.C. § 501(c)(3), as in effect on January 1, 2005;

(3) “Qualified museum” means any nonprofit organization that acquires a collection of artwork for purposes of establishing and operating a qualified museum facility, regardless of whether the nonprofit organization may engage in any other charitable activities if the:

(A) Fair market value of the artwork collection of the nonprofit organization for public viewing and exhibition at the qualified museum facility exceeds one hundred million dollars (\$100,000,000) prior to January 1, 2013; and

(B) The director has issued an exemption certificate to the nonprofit organization; and

(4) “Qualified museum facility” means a facility, including the structures, buildings, and any ancillary or related structures or buildings and real property associated with the facility, including auditoriums, parking areas, and educational facilities that house a collection of artwork or other exhibits for public viewing and exhibition if the:

(A) Principal location and primary operations of the facility will be within the State of Arkansas;

(B) Museum portion of the facility opens to the public after January 1, 2005, and prior to January 1, 2013; and

(C) Aggregate total costs of the construction and acquisition of the facility exceed thirty million dollars (\$30,000,000) prior to January 1, 2013.

(b) (1) The storage, use, distribution, or consumption of any tangible personal property by a qualified museum is exempt from this subchapter.

(2) The exemption provided in subdivision (b)(1) of this section shall also apply to the storage, use, distribution, or consumption of materials by a qualified museum or its contractor or agent used in the construction, repair, expansion, or operation of the qualified museum facility.

(c) A nonprofit organization requesting recognition as a qualified museum shall file with the director on forms prescribed by the director a written statement under oath:

(1) (A) Describing the facts upon which the nonprofit organization claims the exemption under this section.

(B) This statement shall be filed prior to first claiming the exemption under this section and shall include facts indicating that the nonprofit organization has a good faith plan and intent to satisfy the conditions under subdivision (c)(2) of this section; and

(2) On or before June 30, 2013, stating that the following conditions have been met:

(A) The nonprofit organization has established and operated prior to January 1, 2013, a facility that houses a collection of artwork or other exhibits for public

viewing and exhibition;

(B) The principal location and primary operations of the facility are within the State of Arkansas;

(C) The museum portion of the facility first opened to the public after January 1, 2005, and prior to January 1, 2013;

(D) The aggregate total costs of construction and acquisition of the facility, including the structures, buildings, ancillary or related structures or buildings, real property used in connection with the facility, auditoriums, parking areas, and educational facilities exceeded thirty million dollars (\$30,000,000) prior to January 1, 2013; and

(E) Prior to January 1, 2013, the nonprofit organization acquired a collection of artwork with a fair market value in excess of one hundred million dollars (\$100,000,000) for public viewing and exhibition at the qualified museum facility.

(d) (1) After filing the statement required under subdivision (c)(1) of this section, if the director finds that the nonprofit organization has a good faith plan and intent to satisfy the conditions of subdivision (c)(2) of this section prior to January 1, 2013, the director shall issue an exemption certificate to the nonprofit organization within sixty (60) days after the filing of the statement.

(2) The director may revoke the exemption certificate at any time after it is issued if the director determines that the nonprofit organization is unable to satisfy the conditions under subdivision (c)(2) of this section prior to January 1, 2013.

(3) After filing the statement required under subdivision (c)(2) of this section, if the director determines that the nonprofit organization has not met the conditions under subdivision (c)(2) of this section, the director shall revoke the exemption certificate of the nonprofit organization.

(4) If the nonprofit organization fails to file the statement described in subdivision (c)(2) of this section on or prior to June 30, 2013, the director shall revoke the exemption certificate.

(5) Revocation by the director of an exemption certificate shall be retroactive to the date of its issuance subject to subsection (e) of this section.

(e) (1) If the director revokes the exemption certificate, any tax deficiency, related interest, and applicable penalties due under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., this subchapter, or the Arkansas Tax Procedure Act, § 26-18-101 et seq., may be assessed against the nonprofit organization but may not be assessed against a third party that has relied in good faith on the exemption certificate prior to its revocation.

(2) If the director revokes the exemption certificate, any tax deficiency, related interest, and applicable penalties assessed against the nonprofit organization shall also include any tax deficiency, related interest, and applicable penalties assessed on purchases made by the nonprofit organization's contractors and agents for the benefit of the nonprofit organization in reliance on the exemption certificate.

(3) (A) Any assessment by the director under subdivision (e)(1) or subdivision (e)(2) of this section shall be made in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(B) However, the time period for the director to make the assessment is extended to whichever of the following occurs first:

(i) Three (3) years from the date the nonprofit organization files the statement under subdivision (c)(2) of this section; or

(ii) July 1, 2016.

(4) The nonprofit organization may contest any assessment or other determination by the director in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 2005, No. 1865, § 2.

26-53-147. Heavy equipment.

(a) Every person purchasing heavy equipment as defined in § 26-52-318 for storage or use within this state from a dealer located outside of this state, and who does not pay tax to the out-of-state dealer, is liable for the use tax imposed by this chapter.

(b) The purchaser shall pay the use tax to the Director of the Department of Finance and Administration.

(c) If the purchaser pays the use tax to an out-of-state dealer, the purchaser shall present proof to the director that the Arkansas use tax has been paid.

History. Acts 2005, No. 1693, § 2; 2009, No. 682, § 2.

Amendments. The 2009 amendment deleted “and receive a decal under § 26-52-318 to affix to each piece of heavy equipment purchased” in (b); deleted “and receive a decal from the director to affix to each piece of heavy equipment purchased” in (c); and made minor stylistic and punctuation changes.

Effective Dates. Acts 2009, No. 682, § 3, provided: “Sections 1 and 2 of this act are effective on the first day of the calendar quarter following the effective date of this act.”

26-53-148. Natural gas and electricity used by manufacturers.

(a) (1) Beginning July 1, 2007, in lieu of the tax levied in §§ 26-53-106 and 26-53-107(a)-(d), there is levied an excise tax on the sales price of natural gas and electricity purchased by a manufacturer for use directly in the actual manufacturing process at the rate of four and three-eighths percent (4.375%).

(2) Beginning July 1, 2008, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of three and seven-eighths percent (3.875%).

(3) (A) Beginning July 1, 2009, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of three and one-eighth percent (3.125%).

(B) (i) The Director of the Department of Finance and Administration shall monitor the amount of tax savings received by all taxpayers as a result of the reduction in the tax rate from that levied in §§ 26-53-106 and 26-53-107 to that levied in subdivision (a)(3)(A) of this section.

(ii) When the director determines that the amount of tax savings resulting from the determination described in subdivision (a)(3)(B)(i) of this section plus any gross receipts tax savings described in § 26-52-319(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a fiscal year, the director shall not process any further refund claims through a refund process during the fiscal year for taxpayers seeking to claim the reduced tax rate provided by this section. The amount of twenty-seven million dollars (\$27,000,000) is intended to cover the accumulated but unclaimed reduction of sales and use tax on natural gas and electricity as provided by Acts 2007, No. 185, as well as the additional reduction provided by Acts 2009, No. 695.

(iii) If the director determines that discontinuing refund payments as provided in subdivision (a)(3)(B)(ii) of this section is insufficient to prevent the amount of tax savings from exceeding twenty-seven million dollars (\$27,000,000) during a fiscal year, the director may decline to accept any amended return filed by a taxpayer to claim an overpayment resulting from the reduced tax rate provided by this section for a period other than the period for which a tax return is currently due.

(C) (i) Refund requests and amended returns filed with the director to claim the overpayment resulting from the reduced rate in subdivision (a)(3)(A) of this section will be processed in the order they are received by the director. A taxpayer that does not receive a refund after the refund and amended return process has ceased under subdivision (a)(3)(B) of this section shall be given priority to receive a refund during the subsequent fiscal year. The unpaid refunds from the prior fiscal year shall be processed before any refund claims filed in the current fiscal year to claim the benefit of this section.

(ii) The statute of limitations for refunds and amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to allow the payment of a refund under the process provided in subdivision (a)(3)(C)(i) of this section.

(4) The taxes levied in subsection (a) of this section shall be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the tax, interest, penalties, and costs received by the director shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Educational Adequacy Fund.

(5) (A) The excise tax levied in this section applies only to natural gas and electricity purchased for use directly in the actual manufacturing process.

(B) Natural gas and electricity purchased for any other purpose shall be subject to the full compensating use tax levied under §§ 26-53-106 and 26-53-107(a)-(d).

(6) The excise tax levied in this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas compensating use taxes.

(b) As used in this section, “manufacturer” means a manufacturer classified within sectors 31 through 33 of the North American Industry Classification System, as in effect on January 1, 2007.

(c) Natural gas and electricity subject to the reduced tax rate levied in this section shall be separately metered from natural gas and electricity used for any other purpose by the manufacturer or otherwise established in accordance with the rules issued under subsection (e) of this section.

(d) Prior to purchasing any natural gas or electricity at the reduced excise tax rate levied in this section, the director may require any seller of natural gas or electricity to obtain a certificate from the consumer, in the form prescribed by the director, certifying that the manufacturer is eligible to purchase natural gas and electricity at the reduced excise tax rate.

(e) The director shall have and be invested with full power and authority to promulgate rules for the proper administration of this section.

(f) The purchase of natural gas and electricity by a manufacturer shall continue to be subject to:

(1) The excise tax levied under the Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county compensating use taxes.

History. Acts 2007, No. 185, § 2; 2009, No. 691, § 2; 2009, No. 695, § 2.

A.C.R.C. Notes. Acts 2007, No. 185, § 3, provided:

"All existing exemptions from the gross receipts tax levied by the Arkansas Gross Receipts Act or 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or other purposes that are otherwise provided by law shall continue in full force and effect."

Acts 2009, No. 691, and Acts 2009, No. 695, are identical acts that amended subsection (a) of this section. Acts 2009, No. 695, was used to codify subsection (a) of this section pursuant to § 1-2-207(a).

Amendments. The 2009 amendment by identical acts Nos. 691 and 695 inserted (a)(3) and redesignated the subsequent subdivisions accordingly.

Subchapter 2 **— Contractors**

26-53-201. Definition.

26-53-202. Subchapter cumulative.

26-53-203. Tangible personal property procured from without state for use by contractors.

26-53-204 — 26-53-206. [Repealed.]

Effective Dates. Acts 1965, No. 125, § 8: Feb. 25, 1965. Emergency clause provided: "Whereas, contractors are deemed to be consumer under the provisions of Act 487 of 1949 (As Amended) but some confusion as to this interpretation has existed, causing a hinderance to the proper administration of the Compensating Tax Law of this State, and it has been found that increased population and increased cost of living have placed heavy demands on funds available for the operation of government, and it is necessary to supplement said funds so that the proper functions of government may be performed. Therefore, in order to provide supplemental funds for the operation of government, and this Act being necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 253, § 2: Mar. 10, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the provisions of Act 125 of 1965 do not adequately provide for allowance to be given contractors coming within the purview of such Act, for similar taxes paid in other states, that the proper and effective administration of such Act will be greatly enhanced by the provision of a reciprocal tax credit allowance given by the State of Arkansas to those out-of-state contractors who have previously paid a compensating tax in another state, provided such other state offers the same tax credit allowance to Arkansas contractors for machinery, equipment and other personal property brought into their state to fulfill a contract, that such a provision will eliminate an inequity existing in the present law and will provide for better acceptance of our citizens' upon their going into other states to perform contracts, that this Act is immediately necessary in order to correct the situation so as to begin the enforcement of Act 125 of 1965 in a proper, effective and equitable manner. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public

peace, health and welfare, shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 951, § 34: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Acts 1997, No. 951, § 38: Mar. 31, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto.”

26-53-201. Definition.

As used in this subchapter, “contractors” mean consumers of all tangible personal property used or consumed in the performance of a contract in this state and of all tangible personal property stored for use or upon which the contractor may exercise any right or power in this state.

History. Acts 1965, No. 125, § 1; A.S.A. 1947, § 84-3129.

Case Notes

Cited: Heath v. Research-Cottrell, Inc., 258 Ark. 813, 529 S.W.2d 336 (1975); Pledger v. Featherlite Precast Corp., 308 Ark. 124, 823 S.W.2d 852 (1992).

26-53-202. Subchapter cumulative.

The provisions of this subchapter shall be cumulative to the provisions of the Arkansas Compensating Tax Act, § 26-53-101 et seq.

History. Acts 1965, No. 125, § 6; A.S.A. 1947, § 84-3134.

Case Notes

In General.

In General.

This subchapter did not repeal § 26-53-114. Larey v. Wolfe, 242 Ark. 715, 416 S.W.2d 266 (1967).

26-53-203. Tangible personal property procured from without state for use by contractors.

(a) (1) All tangible personal property which is procured from without this state for use, storage, distribution, or consumption including machinery, equipment, repair or replacement parts, materials, and supplies used, stored, distributed, or consumed by a contractor in the performance of a contract in this state shall be subject to the

compensating tax of four and five-tenths percent (4.5%) of the purchase price as provided by the Arkansas Compensating Tax Act, § 26-53-101 et seq., or four and five-tenths percent (4.5%) of its market or book value, whichever is greater, if the property has been subjected to prior use before coming to rest for use, storage, distribution, or consumption within this state. The four and five-tenths percent (4.5%) compensating tax shall be in addition to any other compensating taxes levied by the State of Arkansas.

(2) The tax shall be due and payable regardless of whether or not any right, title, or interest in the tangible personal property becomes vested in the contractor.

(b) In the case of leases or rentals of tangible personal property by a contractor for use, storage, distribution, or consumption in this state, the contractor shall report and remit the compensating tax on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental, which lease rentals shall be in accordance with written contracts between lessor and lessee furnished to the Director of the Department of Finance and Administration.

(c) (1) The provisions of this subchapter shall not apply in respect to the use, consumption, distribution, or storage of tangible personal property as defined in this subchapter for use or consumption in this state upon which a like tax equal to or greater than the amount imposed by this subchapter has been paid in another state, the proof of payment of the tax to be according to rules and regulations made by the director.

(2) If the amount of tax paid in another state is not at least equal to or greater than the amount of tax imposed by the Arkansas Compensating Tax Act, § 26-53-101 et seq., then the contractor shall pay to the director an amount sufficient to make the tax paid in the other state and this state equal to the total amount of tax due under Arkansas law.

(3) No credit shall be given under this section for taxes paid on the property in another state if that state does not grant credit for taxes paid on similar tangible personal property in this state.

History. Acts 1965, No. 125, § 2; 1967, No. 253, § 1; A.S.A. 1947, § 84-3130; Acts 1997, No. 951, §§ 28-30.

Case Notes

Constitutionality.

Actions.

Credits.

Constitutionality.

Where the Revenue Division imposed both the sales and use taxes upon the price of the concrete components regardless of whether they were precast within or without the state, there was equal treatment for similarly situated in-state and out-of-state taxpayers in the imposition of the taxes and, as a result, there was no violation of the commerce clause. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Actions.

Action against nonresident contractor to recover use taxes and penalties for the use of a helicopter in the performance of a contract in this state was dismissed because it was not alleged that the helicopter was procured for use in this state. *Hervey v. Construction Helicopters, Inc.*, 252 Ark. 728, 480 S.W.2d 577 (1972).

Credits.

The payment of a use tax to the state of Oklahoma (a reciprocal state) prior to the time that the property was legally subjected to the tax by the storage, use, or consumption of the property in

Oklahoma was a voluntary payment and not the payment of a “tax” for which a credit will be allowed by the reciprocal credit provision of this section. *Allied Steel Co. v. Larey*, 246 Ark. 1009, 440 S.W.2d 567 (1969).

Cited: *Heath v. Research-Cottrell, Inc.*, 258 Ark. 813, 529 S.W.2d 336 (1975).

26-53-204 — 26-53-206. [Repealed.]

Publisher's Notes. These sections, concerning withholding by general contractors from subcontractors, withholding by political subdivisions from contractors, and nonresident contractors, were repealed by Acts 1991, No. 783, § 12. They were derived from:

26-53-204. Acts 1965, No. 125, § 3; A.S.A. 1947, § 84-3131.

26-53-205. Acts 1965, No. 125, § 4; A.S.A. 1947, § 84-3132.

26-53-206. Acts 1965, No. 125, § 5; A.S.A. 1947, § 84-3133.

Subchapter 3 — Interstate Reciprocal Agreements

26-53-301. Authorization to enter.

26-53-302. Arrangements for collection and payment.

26-53-303. Waiver of collection and enforcement of taxes.

Effective Dates. Acts 1970 (1st Ex. Sess.), No. 10, § 6: Mar. 13, 1970. Emergency clause provided: “The General Assembly finds that the State of Arkansas is in immediate need of additional funds for general revenue purposes and that considerable revenue can be gained in collecting compensating tax on sales of tangible personal property by retailers of other states to Arkansas residents. Therefore, an emergency is declared to exist, and this Act, being necessary for the preservation of the public health, peace and safety, shall be effective from and after its passage and approval.”

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date

provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

26-53-301. Authorization to enter.

(a) When in the judgment of the Director of the Department of Finance and Administration it is necessary in order to secure the collection of any tax, penalties, or interest due or to become due under this subchapter, the director may negotiate agreements with the tax departments of other states in respect to the collecting, reporting, payment, and enforcement of tax on sales of tangible personal property or taxable services to residents of Arkansas by a retailer maintaining a place of business in the other state.

(b) In consideration of such an agreement, the director may make similar agreements for the collecting, reporting, payment, and enforcement of tax as imposed by the other states on sales of tangible personal property or taxable services to residents of other states by retailers maintaining places of business in Arkansas.

History. Acts 1970 (1st Ex. Sess.), No. 10, § 1; A.S.A. 1947, § 84-3135; Acts 2003, No. 1273, § 32.

Amendments. The 2003 amendment inserted “or taxable services” in (a) and (b).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

26-53-302. Arrangements for collection and payment.

The Director of the Department of Finance and Administration, in negotiating an agreement with the tax department of another state, may as part of the agreement provide

for reciprocal arrangements whereby the parties collecting the tax in the other state may deduct at the time of making returns to the director such percentage of the amount due and accounted for, which may be retained by the parties reporting as an offset against costs of collecting and reporting as is allowed by such other states to parties in this state collecting the tax for the other state. No such deduction shall be allowed, however, if the amount due is delinquent at the time of the tax payment.

History. Acts 1970 (1st Ex. Sess.), No. 10, § 2; A.S.A. 1947, § 84-3136.

26-53-303. Waiver of collection and enforcement of taxes.

(a) The Director of the Department of Finance and Administration, in negotiating agreements, is authorized by way of compromise to waive the collection and enforcement of taxes on sales to residents of Arkansas made in another state and delivered into Arkansas when such sales were made prior to the effective date of any agreement negotiated.

(b) However, the director in any case shall not be authorized to waive payment and enforcement of the tax in another state unless the tax department of the other state waives collection, payment, and enforcement of their tax in this state in the same manner as the tax payment is waived by this state.

History. Acts 1970 (1st Ex. Sess.), No. 10, § 3; A.S.A. 1947, § 84-3137.

Chapter 54 Corporate Franchise Taxes

26-54-101. Title.

26-54-102. Definitions.

26-54-103. Effect upon prior rights, etc.

26-54-104. Annual franchise tax.

26-54-105. Franchise tax reports.

26-54-106. [Repealed.]

26-54-107. Computation of tax — Penalty — Relief.

26-54-108. Taxes and penalties as lien.

26-54-109. Lists of corporations to be prepared.

26-54-110. Dissolution or withdrawal by corporations.

26-54-111. Charter forfeiture for failure to pay tax — Procedure.

26-54-112. Reinstatement of corporations.

26-54-113. Disposition of funds.

26-54-114. Nonpayment of franchise taxes.

Publisher's Notes. Acts 1987, No. 1030, § 6, provided:

“Recognizing that Act 19 of 1987 transfers from the Revenue Commissioner to the Secretary of State the duty of collecting corporate franchise taxes, the Revenue Commissioner is hereby authorized to transfer to the Secretary of State such records and documents as are required by the Secretary of State for the implementation of Act 19 of 1987. Any such documents and records that are confidential under present law shall retain their confidentiality upon transfer to the Secretary of State.”

Effective Dates. Acts 1979, No. 889, § 16: Jan. 1, 1980.

Acts 1983, No. 863, § 4: Mar. 28, 1983. Emergency clause provided: “It is hereby found and determined by the Seventy-Fourth General Assembly of the State of Arkansas that it is essential

to the citizens' well-being of this State that public transportation systems be supported by obtaining the maximum Federal funds available to Arkansas; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 19, § 9: Jan. 1, 1988.

Acts 1989, No. 502, § 4: Mar. 13, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that many corporations are formed by attorneys on behalf of clients in order to expedite the establishment of such corporations, that the present § 26-54-105(h)(2) would work a hardship on such expeditious filing, and that the incorporator or the incorporator's agent signing such report would help expedite such filings, and that this act is immediately necessary to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, Nos. 1046 and 1140, § 6: Jan. 1, 1992.

Acts 1995, No. 772, § 5: Mar. 24, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that the process for collecting franchise tax from dissolved corporations should be revised in order to prevent unnecessary delay in collecting franchise taxes; that this act will require those dissolved corporations to remit taxes upon dissolution thereby preventing such revenue losses. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 479, § 16: Mar. 13, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the limited liability company statute and other acts relating to pass through entities and related laws need amending in order to better reflect the intent and operation of those laws as originally drafted and to be consistent with current trends. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

“Notwithstanding the foregoing, SECTION 10 of this act (§ 4-32-802(c)) shall only apply to limited liability companies in existence on the effective date of this act in the event an election is made with the Secretary of State to have this provision apply; otherwise, the original § 4-32-802(c) shall apply to limited liability companies existing on the effective date of this act.”

Acts 1999, No. 673, § 2: Mar. 17, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that a delay in the effective date of this Act would be after the tax due date and would work irreparable harm upon the proper administration of essential governmental programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1037, § 5: Apr. 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that a delay in the effective date of this Act would be after the tax due date and would work irreparable harm upon the proper administration of essential governmental programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2001, No. 1549, § 2: Apr. 12, 2001. Emergency clause provided: “It is found and determined by the General Assembly that this act is essential to the proper operation of the Secretary of State. Therefore, an emergency is declared to exist and this act being immediately necessary for

the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003 (2nd Ex. Sess.), No. 94, § 2, provided: “The increased rate of franchise tax provided in Section 1 of this act shall be effective for calendar years beginning January 1, 2004. Taxes due for calendar years prior to 2004 shall remain due and payable at the rates in existence prior to the effective date of this act.”

Acts 2003 (2nd Ex. Sess.), No. 94, § 4: July 1, 2004. The amendment was effective by its own terms on July 1, 2004.

Acts 2003 (2nd Ex. Sess.), No. 94, § 6: Mar. 1, 2004. Emergency clause provided: “It is found and determined by the General Assembly, that the provision of an equal opportunity for an adequate education to all the citizens of the state is imperative; that additional funds are immediately needed to provide an equal opportunity for an adequate education; that this act is designed to provide the additional revenues needed to provide this equal opportunity to all citizens; and that a delay in the effective date of this act will cause irreparable harm upon the provision of essential education opportunities and the proper administration of educational programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after the date of March 1, 2004.”

Acts 2007, No. 865, § 3: Apr. 3, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act concerns the disclosure of certain information in corporate franchise tax reports; that the release of this information to the public at large is harmful to the report’s filer; and that this act should become effective as soon as possible to prevent this harm. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Research References

Am. Jur. 71 Am. Jur. 2d, State Tax., § 254 et seq.

C.J.S. 84 C.J.S., Tax., § 134.

U. Ark. Little Rock L.J.

Brewer, An Overview of the 1987 Arkansas Business Corporation Act, 10 U. Ark. Little Rock L.J. 431.

Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

26-54-101. Title.

This chapter shall be known and may be cited as the “Arkansas Corporate Franchise Tax Act of 1979”.

History. Acts 1979, No. 889, § 1; A.S.A. 1947, § 84-1833.

26-54-102. Definitions.

(a) As used in this chapter, “corporation” means any corporation, domestic and foreign, active and inactive, which is organized in or qualified under the laws of the State of Arkansas and includes, but is not limited to, any person or group of persons, any association, joint-stock company, business trust, or other organizations with or without charter constituting a separate legal entity of relationship with the purpose of obtaining some corporate privilege or franchise which is not allowed to them as individuals and which is exercising, or attempting to exercise, corporate-type acts, whether or not existing by virtue of a particular statute.

(b) However, “corporation” does not include:

- (1) Nonprofit corporations;
- (2) Corporations which are organizations exempt from the federal income tax; or
- (3) Organizations formed under or governed by the Uniform Partnership Act (1996), § 4-46-101 et seq., or the Uniform Limited Partnership Act (2001), § 4-47-101 et seq.

History. Acts 1979, No. 889, § 2; A.S.A. 1947, § 84-1834; Acts 1987, No. 19, § 1; 2009, No. 655, § 40.

Publisher's Notes. The Uniform Limited Partnership Act, § 4-44-101 et seq., referred to in this section was repealed by Acts 1991, No. 1175, § 28. For present law, see the Uniform Limited Partnership Act, § 4-47-101 et seq.

Substantially all of the Uniform Partnership Act, § 4-42-101 et seq., referred to in this section was repealed by Acts 1999, No. 1518, § 1204, and Acts 2007, No. 15, §§ 8 and 9. Section 4-42-707 concerning use of fictitious names and § 4-42-708 concerning fees have not been repealed. For present law, see the Uniform Partnership Act (1996), § 4-46-101 et seq.

Amendments. The 2009 amendment rewrote (b)(3).

Research References

U. Ark. Little Rock L.J.

Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

26-54-103. Effect upon prior rights, etc.

This chapter does not affect rights or duties that matured, liabilities or penalties that were incurred, or proceedings begun before January 1, 1980.

History. Acts 1979, No. 889, § 14; A.S.A. 1947, § 84-1844n.

Case Notes

Nonprofit Entities.

Nonprofit Entities.

Nonprofit agricultural cooperative was immune from corporate franchise tax law although § 2-2-123 revoked cooperative's exemptions from some other state taxes, as tax statute must be made expressly applicable to entity, and mere removal of some tax exemptions did not allow levying of franchise tax on nonprofit cooperative. *Jefferson Coop. Gin, Inc. v. Milam*, 255 Ark. 479, 500 S.W.2d 932 (1973) (decision under prior law).

26-54-104. Annual franchise tax.

Unless exempted under § 26-54-105, every corporation shall file an annual franchise tax report and pay an annual franchise tax as follows:

(1) (A) Each life, fire, accident, surety, liability, steam boiler, tornado, health, or other kind of insurance company of whatever nature, having an outstanding capital stock of less than five hundred thousand dollars (\$500,000) shall pay three hundred dollars (\$300).

(B) Each such company having an outstanding capital stock of five hundred thousand dollars (\$500,000) or more shall pay four hundred dollars (\$400);

(2) (A) Each legal reserve mutual insurance corporation having assets of less than one hundred million dollars (\$100,000,000) shall pay three hundred dollars (\$300).

(B) Each such corporation having assets of one hundred million dollars (\$100,000,000) or more shall pay four hundred dollars (\$400);

(3) Each mutual assessment insurance corporation shall pay three hundred dollars (\$300);

(4) (A) Each mortgage loan corporation shall pay an amount equivalent to three-tenths of one percent (0.3%) of that proportion of the par value of its outstanding capital stock that its aggregate outstanding loans made in Arkansas bears to the total aggregate outstanding loans made in all states.

(B) No corporation shall pay an annual tax of less than three hundred dollars (\$300);

(5) Each corporation, other than those in subdivisions (2)-(4) of this section, without authorized capital stock shall pay three hundred dollars (\$300);

(6) (A) Each corporation, other than those in subdivisions (1)-(5) of this section, shall pay an amount equivalent to three-tenths of one percent (0.3%) of that proportion of the par value of its outstanding capital stock that the value of its real and personal property in Arkansas bears to the total value of the real and personal property of the corporation.

(B) No corporation shall pay an annual tax of less than one hundred fifty dollars (\$150);

(7) Each corporation actually and actively in the process of liquidation and which does not rent or lease its property but which retains its corporate charter or authority for the sole purpose of winding up its affairs shall pay an annual tax as provided in subdivision (6) of this section or an amount equivalent to three-tenths of one percent (0.3%) of the value of its real and tangible personal property in Arkansas, whichever is smaller, but in no instance shall the tax be less than one hundred fifty dollars (\$150); and

(8) An organization formed pursuant to the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., shall pay the minimum franchise tax.

History. Acts 1979, No. 889, § 3; 1983, No. 863, § 1; A.S.A. 1947, § 84-1835; Acts 1987 (1st Ex. Sess.), No. 29, § 1; 1993, No. 1285, §§ 3, 4; 1997, No. 479, § 9; 1997, No. 1104, § 3; 2003 (2nd Ex. Sess.), No. 94, § 1.

Amendments. The 2003 (2nd Ex. Sess.) amendment deleted former (b) and made related changes; in (1) and (2), substituted “three hundred dollars (\$300)” for “one hundred dollars (\$100)” and “four hundred dollars (\$400)” for “two hundred dollars (\$200)”; substituted “three hundred dollars (\$300)” for “one hundred dollars (\$100)” in (3), (4), and (5); in (4) and (6), in the first sentence, substituted “three-tenths of one percent (0.3%)” for “twenty-seven one-hundredths of one percent (0.27%)”; deleted “nor more than one million seventy-five thousand dollars (\$1,075,000)” following “(300)” in (4); substituted “one hundred fifty dollars (\$150)” for “fifty dollars (\$50.00) nor more than one million seventy-five thousand dollars (\$1,075,000)” in (6) and (7); and substituted “three-tenths of one percent (0.3%)” for “twenty-seven one-hundredths of one percent (0.27%)” in (7).

Effective Dates. Acts 1987 (1st Ex. Sess.), No. 29, § 3, provided that the increased rates provided in this act shall be effective for annual tax reports due on and after January 1, 1988. Acts 2003 (2nd Ex. Sess.), No. 94, § 2, provided:

“The increased rate of franchise tax provided in Section 1 of this act shall be effective for calendar years beginning January 1, 2004. Taxes due for calendar years prior to 2004 shall remain due and payable at the rates in existence prior to the effective date of this act.”

Research References

U. Ark. Little Rock L.J.

Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

Case Notes

In General.
Purpose.
Applicability.
Doing Business.
Failure to Comply.
Valuation.

In General.

Tax on franchise of corporations is valid, as it is a tax on the privilege or right granted by the state to a corporation to do business in the state and is not an asset of the corporation whose value can be ascertained for the purpose of taxation as property. *Saint Louis S.W. Ry. v. State ex rel. Norwood*, 106 Ark. 321, 152 S.W. 110 (1913), *aff'd*, 235 U.S. 350, 35 S. Ct. 99, 59 L. Ed. 265 (1914) (decision under prior law).

Purpose.

Intention of former statute was to impose franchise tax on all "live" corporations, whether actively engaged in business or not. *Arkansas Anthracite Coal Co. v. State*, 149 Ark. 28, 231 S.W. 184 (1921) (decision under prior law).

Applicability.

Former statute applied to all active corporations; that is, those corporations which were functioning, and not those corporations which were dormant. *Arkansas Anthracite Coal Co. v. State*, 149 Ark. 28, 231 S.W. 184 (1921) (decision under prior law).

Domestic corporations owning coal lands that they have leased to others were liable for tax, though they transacted no other active business in the state. *Arkansas Anthracite Coal Co. v. State*, 149 Ark. 28, 231 S.W. 184 (1921) (decision under prior law).

A domestic corporation whose business consisted merely in soliciting and receiving applications for membership, issuing policies to members, and collecting assessments for the purpose of paying the policies, in addition to paying the salaries of its officers, was not doing business for profit and not subject to tax. *State ex rel. Attorney Gen. v. Bankers & Planters Mut. Ins. Ass'n*, 152 Ark. 182, 238 S.W. 17 (1922) (decision under prior law).

Doing Business.

A foreign corporation authorized to do business in the state could be required to pay franchise tax, though the corporation was not actually doing business in the state. *State ex rel. Applegate v. Chicago Land & Timber Co.*, 173 Ark. 234, 292 S.W. 98 (1927) (decision under prior law).

Corporation paying tax is authorized to do business during the entire year for which payment is made. *Arkansas Power & Light Co. v. State*, 175 Ark. 495, 299 S.W. 1028 (1927) (decision under prior law).

Domestic corporations doing business both within and outside the state held not required to pay tax to the state of Arkansas on income derived from sources outside of Arkansas. *Cheney v. Stephens, Inc.*, 231 Ark. 541, 330 S.W.2d 949 (1960) (decision under prior law).

Failure to Comply.

Although corporation had failed to file a report and pay the franchise tax, it could bring an action on its own account, so long as the Attorney General had not proceeded to annul its charter. *Jones v. Bank of Commerce*, 131 Ark. 362, 199 S.W. 103 (1917) (decision under prior law).

The only effect of a certificate of the Governor declaring a foreign corporation to have forfeited its right to do business in the state by failure to pay its franchise tax was to withdraw from the foreign corporation authority to transact business in this state, but not to prevent its being sued in this state. *Mushrush v. Downing*, 181 Ark. 85, 24 S.W.2d 972 (1930) (decision under prior law).

Valuation.

Since Acts 1911, No. 112, § 6, limited the tax on foreign corporations to that portion of its capital represented by its property and business in this state, former statute prescribing the value of no par value stock for tax purposes did not impose tax on property of foreign corporation outside of state. *State ex rel. Att'y Gen. v. Margay Oil Corp.*, 167 Ark. 614, 269 S.W. 63 (1925); *Margay Oil Corp. v. Applegate*, 169 Ark. 96, 272 S.W. 845 (1925), *aff'd*, 273 U.S. 666, 47 S. Ct. 458, 71 L. Ed. 830 (1927) (decisions under prior law).

It is immaterial whether the property of a corporation is of the value of its capital stock. *State ex rel. Applegate v. Chicago Land & Timber Co.*, 173 Ark. 234, 292 S.W. 98 (1927) (decision under

prior law).

State was without authority to charge a corporation franchise tax on its capital stock as represented by property owned and business transacted in the state, but only had authority to charge on the capital stock as represented by property owned and used in business transacted in the state. *Koonce v. Pierce Petroleum Corp.*, 176 Ark. 187, 3 S.W.2d 9 (1928) (decision under prior law).

26-54-105. Franchise tax reports.

(a) (1) The Secretary of State shall furnish report forms to each corporation subject to the provisions of this chapter by mailing them to the corporation's current agent for service or other person identified by the corporation.

(2) When filing the franchise tax report, a corporation may state who is to receive a franchise tax form the following year if that person is different from the agent for service on file for the corporation at that time.

(b) Any corporation that fails to receive the report forms by March 20 of the reporting year shall make written request for them to the Secretary of State on or before March 31.

(c) (1) Each corporation subject to the requirements of this chapter shall file a franchise tax report with the Secretary of State which shows its condition and status as of the close of business on December 31 of the preceding calendar year and other information required by the Secretary of State.

(2) (A) The franchise tax as computed on the report shall be remitted with the franchise tax report on or before June 1 of the reporting year for franchise tax due for calendar year 2003 and years prior to 2003.

(B) The franchise tax as computed on the report shall be remitted with the franchise tax report on or before May 1 of the reporting year for franchise tax due for calendar year 2004 and subsequent years.

(d) (1) Every corporation that dissolves shall be required to pay at the time of dissolution the franchise tax for the prior calendar year and pay at the time of dissolution the minimum franchise tax for the year in which dissolved or withdrawn.

(2) Any newly formed corporation shall not be required to file a franchise tax report until the calendar year immediately following the calendar year of incorporation.

(e) (1) When the par value of the shares of a corporation is required to be stated in any franchise tax report and the shares of the corporation are without par value, the number of shares shall be stated.

(2) For the purpose of computing the franchise tax prescribed by this chapter, such shares of no par value shall be considered to be of the par value of twenty-five dollars (\$25.00) per share.

(f) Each corporation which pays its tax computed by the full assessment of capital stock or property shall not be required to report the value of its real and personal property within or without this state.

(g) (1) Every franchise tax report shall contain the following statement:

“I declare, under the penalties of perjury, that the foregoing statements are true to the best of my knowledge and belief.”

(2) The statement shall be signed by the president, vice president, secretary, treasurer, or controller of the corporation or other authorized person.

(h) (1) All information contained in a franchise tax report shall be confidential and not available for public inspection, except for the following:

- (A) The name and address of the corporation;
- (B) The name of the corporation's president, vice president, secretary, treasurer, and controller;
- (C) The total authorized capital stock with par value;
- (D) The total issued and outstanding capital stock with par value; and
- (E) The state of incorporation.

(2) In the case of a franchise tax report filed by an organization formed under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., the names of members, except those designated in the organizations' franchise tax report as a manager, president, vice president, secretary, treasurer, or controller of the organization, shall be confidential and not available for public inspection unless the organization has no registered agent for service of process.

History. Acts 1979, No. 889, § 4; A.S.A. 1947, § 84-1836; Acts 1987, No. 19, § 2; 1989, No. 502, § 1; 1991, No. 1046, § 1; 1991, No. 1140, § 1; 1995, No. 772, § 1; 1999, No. 1056, § 1; 1999, No. 1598, § 2; 2003 (2nd Ex. Sess.), No. 94, § 3; 2005, No. 883, § 1; 2007, No. 865, § 2.

Amendments. The 2003 (2nd Ex. Sess.) amendment substituted “of the preceding calendar year” for “last preceding” in (c)(1); added (c)(2)(B); and added “for franchise tax due for calendar year 2003 and years prior to 2003” to the end of (c)(2)(A).

The 2005 amendment, in (g)(2), substituted “The statement” for “This statement” and added “or other authorized person” and made a related change.

The 2007 amendment redesignated former (h) as present (h)(1) and redesignated the remaining subsections accordingly; and added (h)(2).

Research References

U. Ark. Little Rock L.J.

Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

Case Notes

Constitutionality.

Constitutionality.

Statutory valuation of no-par corporate stock at \$25.00 per share for franchise tax purposes did not violate constitutional guarantee of due process of law. *Gulf Oil Corp. v. Heath*, 255 Ark. 604, 501 S.W.2d 787 (1973) (decision under prior law).

26-54-106. [Repealed.]

Publisher's Notes. This section, concerning failure to furnish information, was repealed by Acts 1999, No. 673, § 1. The section was derived from Acts 1979, No. 889, § 5; A.S.A. 1947, § 84-1837; Acts 1991, No. 1046, § 2; 1991, No. 1140, § 2; 1993, No. 1178, § 1.

26-54-107. Computation of tax — Penalty — Relief.

(a) The Secretary of State from the information reported and from any other information received by him or her bearing upon the subject shall compute the amount of tax of each corporation at the rate or rates provided by this chapter.

(b) (1) (A) If the taxpayer fails to comply with the filing and remittance requirements prescribed in § 26-54-105(c) by June 1, the Secretary of State shall assess the corporation a penalty of twenty-five dollars (\$25.00) plus interest on the tax and penalty from the date due until paid at the rate of ten percent (10%) per annum.

(B) However, the franchise tax, penalty, and interest for any tax year shall not exceed two (2) times the corporation's tax owed.

(2) On or before November 1 of each year, the Secretary of State shall mail notice to the corporation at its last known address stating that the corporation is subject to forfeiture of its corporate charter under § 26-54-111 for the failure to pay corporate franchise tax.

(c) (1) A corporation may seek relief from any proposed assessment of taxes pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) This method shall be the exclusive method for seeking relief.

History. Acts 1979, No. 889, § 6; A.S.A. 1947, § 84-1838; Acts 1987, No. 19, § 3; 1991, No. 1046, § 3; 1991, No. 1140, § 3; 1999, No. 1037, § 1.

Case Notes

Amended Articles.

Amended Articles.

Former statute providing for computation of franchise tax and for a penalty for failure to pay such tax did not require that amended articles of foreign corporations be filed with the secretary of state before their validity was recognized for the computation of the tax and, accordingly, a foreign corporation that validly amended its articles to increase the par value of its stock was entitled to recognition of the amended articles. *Franklin Elec. Co. v. Heath*, 261 Ark. 269, 547 S.W.2d 755 (1977).

26-54-108. Taxes and penalties as lien.

The taxes and penalties required to be paid by this chapter shall be a first lien on all property of the corporation, whether or not the property is employed by the corporation in the prosecution of its business or is in the hands of an assignee, receiver, or trustee.

History. Acts 1979, No. 889, § 7; A.S.A. 1947, § 84-1839.

26-54-109. Lists of corporations to be prepared.

(a) (1) The Bank Commissioner, Insurance Commissioner, and any other officer or agency of the state authorized to issue corporate permits or authorities to do business in this state shall prepare and maintain a correct list of all corporations organizing or qualifying through their respective offices or agencies.

(2) Each official or agency shall file with the Secretary of State a monthly report showing:

(A) The name and address of each new corporation organized or qualified;

(B) The authorized and outstanding capital stock;

(C) The name changes, mergers, charter forfeitures, dissolutions, or withdrawals; and

(D) All other information concerning the corporation required by the Secretary of State.

(b) Upon request of the Secretary of State, each official or agency shall prepare and certify to the Secretary of State a complete list of the names and addresses of all corporations which have organized or qualified through their respective office or agency and which are subject to the provisions of this chapter.

(c) Officials or agencies of the state, county, or municipalities authorized to issue permits shall notify each corporation receiving a permit of the requirements to register the corporation with the Secretary of State prior to conducting business in Arkansas.

(d) Any corporation filing instruments providing for the organization of any common law or statutory trust or similar organization with any county clerk, or other clerk of the various counties of this state, shall file them in duplicate. The clerk receiving the documents for filing or recordation shall file mark them and forward the file-marked duplicate to the Secretary of State.

(e) The Director of the Department of Finance and Administration shall provide the Secretary of State a list of corporations doing business in this state and filing tax reports with the Department of Finance and Administration. However, the director shall not include any information deemed confidential by any other law.

History. Acts 1979, No. 889, § 8; A.S.A. 1947, § 84-1840; Acts 1987, No. 19, § 4.

Research References

U. Ark. Little Rock L.J.

Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

26-54-110. Dissolution or withdrawal by corporations.

Applications for dissolution or withdrawal by a corporation, association, or organization cannot be accepted by the authority which initially authorized or granted an authority to the corporation to do business in Arkansas until receipt of a statement verified by the Secretary of State that the franchise tax due has been paid.

History. Acts 1979, No. 889, § 9; A.S.A. 1947, § 84-1841; Acts 1987, No. 19, § 5.

Research References

U. Ark. Little Rock L.J.

Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

Case Notes

Forfeiture of Charter.

Forfeit of Charter.

Section 4-27-1420, this section and § 26-54-112 presuppose that a corporation whose charter has been forfeited has not yet been dissolved, and since a corporation with a forfeited charter has not been dissolved, the corporation continues to exist for limited purposes. *Gibson v. Dennis* (In re Russell), 123 B.R. 48 (Bankr. W.D. Ark. 1990).

26-54-111. Charter forfeiture for failure to pay tax — Procedure.

(a) On or before January 1 of each year, the Secretary of State shall issue a proclamation proclaiming as forfeited the corporate charters or authorities, as the case may be, of all corporations, both domestic and foreign which, according to the Secretary of State's records, are delinquent in the payment of the annual franchise tax for any prior year.

(b) A copy of the proclamation, or applicable portion thereof, shall be furnished to each other official or agency of the state which is authorized to issue corporation charters or authorities. Upon their receipt of the proclamation, the several officials shall at once correct their respective records in accordance with the proclamation.

History. Acts 1979, No. 889, § 10; 1983, No. 828, § 1; A.S.A. 1947, § 84-1842; Acts 1987, No. 19, § 6; 1991, No. 1046, § 4; 1991, No. 1140, § 4.

Research References

U. Ark. Little Rock L.J.

Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

Case Notes

In General.

Officers and Directors.

In General.

It is within the power of the state legislature to declare that a corporation delinquent in payment of franchise taxes shall ipso facto cease to exist. *Gibson v. Dennis* (In re Russell), 123 B.R. 48 (Bankr. W.D. Ark. 1990).

Officers and Directors.

Officers and directors of a corporation who actively participate in its operation during the time when the corporate charter is revoked for failure to pay corporate franchise taxes are individually liable for debts incurred during the period of revocation. *Larzelere v. Reed*, 35 Ark. App. 174, 816 S.W.2d 614 (1991).

Cited: *Mullenax v. Edwards Sheet Metal Works, Inc.*, 279 Ark. 247, 650 S.W.2d 582 (1983).

26-54-112. Reinstatement of corporations.

(a) (1) (A) (i) Any corporation whose charter or permit authority to do business in the state has been declared forfeited by proclamation of the Governor or the Secretary of State may be reinstated to all its rights, powers, and property.

(ii) Reinstatement shall be retroactive to the time that the corporation's authority to do business in the state was declared forfeited.

(B) The reinstatement shall be made after the filing of all delinquent franchise tax reports satisfactory to the Secretary of State and the payment of all taxes and penalties due for each year of delinquency.

(2) However, no reinstatement shall be allowed after seven (7) years from the date the charter or permit authority to do business in the state was declared forfeited by proclamation of the Governor or the Secretary of State.

(b) If the Secretary of State issued the original corporate charter, permit, or authority, the Secretary of State shall reinstate the corporation upon payment by the corporation of all amounts due, as provided in subsection (a) of this section.

(c) (1) If the original corporate charter, permit, or authority was issued by an official other than the Secretary of State, the official shall reinstate the corporation upon the corporation's filing with the official the receipt of the Secretary of State showing payment of all amounts due, as provided in subsection (a) of this section.

(2) Thereafter, the corporation shall stand in all respects as though its name had never been declared forfeited.

History. Acts 1979, No 889, § 11; A.S.A. 1947, § 84-1843; Acts 1987, No. 19, § 7; 1991, No. 1046, § 5; 1991, No. 1140, § 5; 1999, No. 522, § 1.

Research References

Ark. L. Notes.

Flaccus, A Grab Bag of Recent Arkansas Cases, 1999 Ark. L. Notes 25.

U. Ark. Little Rock L.J.

Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

Case Notes

In General.
Corporate Status.

In General.

Sections 4-27-1420, 26-54-110 and this section presuppose that a corporation whose charter has been forfeited has not yet been dissolved, and since a corporation with a forfeited charter has not been dissolved, the corporation continues to exist for limited purposes. *Gibson v. Dennis* (In re Russell), 123 B.R. 48 (Bankr. W.D. Ark. 1990).

Corporate Status.

Where company's charter was revoked on February 1, 1959, for nonpayment of taxes and the charter was restored upon payment of all delinquent taxes on December 19, 1960, payment of taxes did not restore company to its corporate status at time it first became delinquent, but only restored it to that status as of December 19, 1960, the time of payment of the taxes. *Moore v. Rommel*, 233 Ark. 989, 350 S.W.2d 190 (1961) (decision under prior law).

The reinstatement of the appellant's corporate status did not retroactively restore the corporation as of the date of its revocation. *Tribco Mfg. Co. v. People's Bank of Imboden*, 67 Ark. App. 268, 998 S.W.2d 756 (1999).

Following the revocation of its corporate charter, a corporation loses its capacity to sue and any lawsuit filed during this status must be dismissed, and the subsequent reinstatement of the corporate status does not retroactively restore or otherwise vest the corporation with a continuous existence. *Terry v. Rice* (In re Cheqnet Sys.), 246 B.R. 873 (Bankr. E.D. Ark. 2000).

Trial court did not err in denying appellant's motion to dismiss for lack of standing on the ground that appellee's Louisiana corporate charter had been revoked at the time it filed its original complaint against appellant for unlawfully detaining property where under both Arkansas and Louisiana law, reinstatement of a corporate charter was retroactive to the date of its revocation. *Omni Holding & Dev. Corp. v. C.A.G. Invs., Inc.*, 370 Ark. 220, 258 S.W.3d 374 (2007).

Pursuant to this section, the restoration of a corporation's corporate status vests it with continuous existence as though the revocation of its charter never occurred. *Omni Holding & Dev. Corp. v. C.A.G. Invs., Inc.*, 370 Ark. 220, 258 S.W.3d 374 (2007).

Cited: *Carter v. Four Seasons Funding Corp.*, 351 Ark. 637, 97 S.W.3d 387 (2003).

26-54-113. Disposition of funds.

(a) All taxes and penalties collected under the provisions of this chapter each month shall be deposited into the State Treasury to the credit of the Revenue Holding Fund Account of the State Apportionment Fund.

(b) (1) On or before the fifth day of the following month, the Treasurer of State shall allocate and transfer the taxes and penalties collected to the General Revenue Fund Account of the State Apportionment Fund until a total of eight million dollars (\$8,000,000) has been transferred during a fiscal year.

(2) After the transfers required by subdivision (b)(1) of this section have been made, the taxes and penalties collected under this chapter during the remainder of the fiscal year shall be special revenues, and the Treasurer of State shall transfer the taxes and penalties collected to the Educational Adequacy Fund after making the deductions required by § 19-5-203(b)(2).

History. Acts 1979, No. 889, § 12; A.S.A. 1947, § 84-1844; Acts 2003 (2nd Ex. Sess.), No. 94, § 4.

Amendments. The 2003 (2nd Ex. Sess.) amendment, in (a), inserted "each month," deleted "general revenues and shall be" preceding "deposited," and inserted "Revenue Holding Fund Account of the"; added (b)(2); and rewrote (b)(1).

Effective Dates. Acts 2003 (2nd Ex. Sess.), No. 94, § 4: amendment effective by its own terms

on July 1, 2004.

26-54-114. Nonpayment of franchise taxes.

(a) No corporation or limited liability company shall be allowed to file any forms or documentation related to that corporation or limited liability company if the corporation or limited liability company owes past-due franchise taxes to the Secretary of State.

(b) No person shall be allowed to file any initial forms or documentation with the Secretary of State to create any legal entity in the State of Arkansas or to obtain authority to do business in the State of Arkansas if that person is substantially connected to any corporation or limited liability company that owes past-due franchise taxes to the Secretary of State.

(c) As used in this section:

(1) “Past-due franchise taxes” means only those taxes owed three (3) years prior to the year in which the current filing is presented;

(2) “Past officer or director” means a person who was associated with the corporation or limited liability company during the time that its charter was revoked for nonpayment of franchise taxes; and

(3) “Substantially connected” means a present officer or director or a past officer or director of a corporation.

History. Acts 2001, No. 1549, § 1.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

Chapter 55 Motor Fuels Taxes

Subchapter 1 — General Provisions

Subchapter 2 — Motor Fuel Tax Law

Subchapter 3 — Refunds — Motor Fuels Used for Agricultural Purposes

Subchapter 4 — Refunds — Motor Fuels Used in Motor Buses

Subchapter 5 — Interstate Motor Fuels Dealers

Subchapter 6 — Shipments of Motor Fuels

Subchapter 7 — Fuel Imported in Supply Tanks

Subchapter 8 — Unlicensed Out-of-State Trucks

Subchapter 9 — Vehicle Tank Inspections

Subchapter 10 — Additional Taxes and Fees

Subchapter 11 — International Fuel Tax Agreement

Subchapter 12 — Additional Taxes on Motor Fuel, Distillate Special Fuels, and Liquefied Gas Special Fuels

Subchapter 13 — Refunds — Motor Fuels Used by Fire Departments

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 616 et seq.

Subchapter 1

— General Provisions

26-55-101. Exemption for United States Government vehicles — Refunds.

26-55-102. City motor bus system operating across state lines.

Effective Dates. Acts 1929, No. 65, § 75: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that the defective condition of the public roads is a standing menace to the traveling public; that the repairs of the present public roads, and the construction of the roads contemplated by this Act, are necessary for the safety of the traveling public, so that the immediate operation of the Act is essential for the protection of the public safety, and an emergency is therefore declared; and this Act shall take effect and be in force from and after its passage."

Acts 1935, No. 185, § 2: Mar. 26, 1935. Emergency clause provided: "It is hereby ascertained, that motor bus systems are now operating in adjoining cities and towns without adequate provision under existing laws for the collection of the motor vehicle fuel tax or for such cities and towns being reimbursed for the use of and damage to their streets, and that such fact constitutes an emergency, and it is ordered that this act take effect upon its approval."

Acts 1993, No. 1029, § 11: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that current laws do not require explicit monthly reports from terminals or pipeline companies regarding their activities relative to gasoline and diesel transactions and as a consequence the State may be experiencing a loss of fuel tax revenues since certain of such transactions may result in the evasion of such taxes; that such tax revenues are greatly needed by the State for highway, road, and street purposes; and that only by the effectiveness of the amendments contained in this act as expeditiously as possible may the aforementioned problems be solved. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1993."

26-55-101. Exemption for United States Government vehicles — Refunds.

(a) Motor vehicles belonging to the United States Government and used in its business exclusively shall not be required to pay any motor vehicle fuel tax.

(b) When motor vehicle fuel upon which the tax has been paid is sold to any agent or employee of the United States Government for use in a motor vehicle belonging to the United States Government, and is used in its business exclusively, the wholesaler or dealer may not charge the consumer with the amount of the tax but may claim the refund of the tax under such regulations as the Director of the Department of Finance and Administration may prescribe.

History. Acts 1929, No. 65, § 35; Pope's Dig., § 6635; A.S.A. 1947, § 75-248.

26-55-102. City motor bus system operating across state lines.

(a) The fee to be paid to this state for the registration and licensing of any motor bus used by a system of motor buses operating in lieu of a street car system in adjoining cities or incorporated towns which are separated by a state line shall not exceed the fee provided by law in the adjoining state for such bus when:

(1) More than one-half ($\frac{1}{2}$) of the mileage of the routes regularly run by the motor bus system is outside this state;

(2) More than one-half ($\frac{1}{2}$) of the gross revenues of such a system is derived from its operation outside this state and from the carrying of passengers from outside this state into this state;

(3) Such system is operated in this state under a franchise contract with the

Arkansas city or town;

(4) The motor buses are not operated under any conditions whatever on any of the roads or highways in this state outside the corporate limits of such city or town; and

(5) The motor bus system shall pay to this state a motor vehicle fuel tax at the applicable rate as fixed by the law of this state upon at least one-half (½) of the motor vehicle fuel used in the operation of the system as a whole.

(b) At any time the adjoining city or town in Arkansas by ordinances may levy a privilege tax on the buses sufficient to reimburse the city or town for the use of its streets.

History. Acts 1935, No. 185, § 1; Pope's Dig., § 6881; A.S.A. 1947, § 75-1132; Acts 2009, No. 655, § 41.

A.C.R.C. Notes. Crawford and Moses' Digest, § 7444, referred to in subsection (b) of this section, concerned a motor vehicle privilege tax in cities and towns. The section was subsequently compiled at Ark. Stat. Ann. § 19-3506. Ark. Stat. Ann. § 19-3506 and later repealed by Acts 1957, No. 182, § 8.

Amendments. The 2009 amendment rewrote (b).

Subchapter 2

— Motor Fuel Tax Law

26-55-201. Title.

26-55-202. Definitions.

26-55-203. Effect of reference to subchapter.

26-55-204. Rules and regulations.

26-55-205. Levy of tax.

26-55-206. Purpose of tax — Allocation.

26-55-207. Exemptions.

26-55-208. Sale of motor fuel exempt from sales or gross receipts tax.

26-55-209. Local taxes prohibited.

26-55-210. Border tax rate areas generally.

26-55-211. Border tax rate applicable within corporate boundaries.

26-55-212. Border tax rate areas — Use of auxiliary fuel tanks.

26-55-213. Distributor's license — Requirement — Penalty for noncompliance.

26-55-214. Distributor's license — Application and bond.

26-55-215. Distributor's license — Issuance of certificate.

26-55-216. Distributor's license — Nonassignable.

26-55-217. Distributor's license — Display required.

26-55-218. Distributor's license — Expiration.

26-55-219. Distributor's license — Refusal.

26-55-220. Municipal licenses for distributors.

26-55-221. Licenses — Persons other than distributors.

26-55-222. Bonds — Requirement — Amounts — Waiver.

26-55-223. Bonds — Deposit or pledge of government obligations as alternative.

26-55-224. Bonds — Additional bonds — Conditions for requirement.

26-55-225. Bonds — New bonds — Conditions for requirement.

26-55-226. Bonds — Release or discharge of surety.

26-55-227. [Repealed.]

26-55-228. [Repealed.]

- 26-55-229. Tax reports.
- 26-55-230. Computation and payment of tax.
- 26-55-231. Failure to report or pay tax — Revocation or cancellation of license.
- 26-55-232. Failure to report or pay taxes promptly — Penalties.
- 26-55-233. Failure to file report — Assessment and collection of tax.
- 26-55-234. Statements and reports from persons not distributors.
- 26-55-235. Reports from carriers transporting motor fuel.
- 26-55-236. Failure to file reports, statements, or returns — Falsification — Penalties.
- 26-55-237. Retention of records by distributors and dealers — Penalty for noncompliance.
- 26-55-238. Inspection of records, books, etc. — Examination of witnesses.
- 26-55-239. Forms for reports or records.
- 26-55-240. Discontinuance or transfer of business.
- 26-55-241. Unpaid tax — Lien on property — Enforcement.
- 26-55-242. Sale of distributor's property — Certificate of lien.
- 26-55-243. Delinquent tax payments — Collection procedure.
- 26-55-244. Refunds on excess gallonage reported.
- 26-55-245. Refunds — Taxes erroneously or illegally collected — Lost fuel.
- 26-55-246. Posting price of fuel plus tax.
- 26-55-247. Confiscation and sale of equipment of persons transporting motor fuel unlawfully.
- 26-55-248. Sale of fuels purchased from other than duly licensed distributor — Penalties.
- 26-55-249. Public inspection of records.
- 26-55-250. Exchange of information among states.

Effective Dates. Acts 1941, No. 383, § 32: July 1, 1941.

Acts 1943, No. 250, § 2: approved Mar. 18, 1943. Emergency clause provided: "Whereas gasoline and other petroleum products classified as motor fuel, and especially aviation gasoline, are vitally essential in the present war emergency, and the rapid sale and movement of such products in commerce will be impeded if the distributors thereof are not promptly licensed and qualified as such under our State tax collection procedure and the regulations promulgated under our gasoline tax statutes, it is hereby declared that an emergency exists and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage."

Acts 1943, No. 251, § 2: approved Mar. 18, 1943. Emergency clause provided: "Whereas gasoline and other petroleum products classified as motor fuel, and especially aviation gasoline, are vitally essential in the present war emergency, and the rapid sale and movement of such products in commerce will be impeded if the distributors thereof are not promptly licensed and qualified as such under our State tax collection procedure and the regulations promulgated under our gasoline tax statutes, it is hereby declared that an emergency exists and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage."

Acts 1943, No. 252, § 2: approved Mar. 18, 1943. Emergency clause provided: "It is found to be a fact that by amending Act 383 of 1941, as herein set out, the amount of motor fuel taxes collected will be greatly increased, and such taxes being essential to the payment of the State's highway obligations, and the payment of same being necessary to the peace, health, safety and welfare of the State and its citizens, an emergency is declared to exist by reason thereof and this act shall take effect and be in force immediately upon its enactment."

Acts 1943, No. 253, § 3: approved Mar. 18, 1943. Emergency clause provided: "It is found to be a fact that by amending Act 383 of 1941, as herein set out, the amount of motor fuel taxes collected

will be greatly increased, and such taxes being essential to the payment of the State's highway obligations, and the payment of same being necessary to the peace, health, safety and welfare of the State and its citizens, an emergency is declared to exist by reason thereof and this act shall take effect and be in force immediately upon its enactment."

Acts 1943, No. 255, § 2: approved Mar. 18, 1943. Emergency clause provided: "Whereas gasoline and other petroleum products classified as motor fuel, and especially aviation gasoline, are vitally essential in the present war emergency, and the rapid sale and movement of such products in commerce will be impeded if the distributors thereof are not promptly licensed and qualified as such under our State tax collection procedure and the regulations promulgated under our gasoline tax statutes, it is hereby declared that an emergency exists and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage."

Acts 1945, No. 166, § 2: approved Mar. 2, 1945. Emergency clause provided: "Whereas gasoline and other petroleum products classified as motor fuel, and especially aviation gasoline, are vitally essential in the present war emergency, and the rapid sale and movement of such products in commerce will be impeded if the distributors thereof are not promptly licensed and qualified as such under our State tax collection procedure and the regulations promulgated under our gasoline tax statutes, it is hereby declared that an emergency exists and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage."

Acts 1947, No. 415, § 3: Mar. 28, 1947. Emergency clause provided: "Whereas, it is ascertained that the exportation of motor fuel is necessary for the preservation of public peace, health, safety and welfare of the people of this state and that present laws do not provide therefor. Therefore, an emergency is hereby declared to exist and this law shall be in full force and effect from and after its passage and approval."

Acts 1949, No. 352, § 2: approved Mar. 21, 1949. Emergency clause provided: "This Act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1953, No. 143, § 3: Feb. 25, 1953. Emergency clause provided: "It has been found and is declared by the General Assembly that large numbers of oil companies and operators of filling stations selling gasoline in states adjoining the Arkansas borders and that they have leased many tracts of land in Arkansas for a distance of 300 feet from the Arkansas state boundary lines and that such practice is causing the loss of revenue to this state and that the adoption of this Act will prohibit said practice and increase the revenue of this State. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its passage and approval."

Acts 1957, No. 312, § 4: approved Mar. 27, 1957. Emergency clause provided: "It has been found and declared by the General Assembly that in some instances bridges have been abandoned, redesigned, relocated or otherwise changed so as to eliminate from border zones areas previously within such zones beyond the required distance from new bridges or bridges as redesigned, relocated or otherwise changed, thereby destroying long existing rights of the owners or lessees of such areas and the diminution of such areas is also causing the loss of substantial revenues to this State due to the inability of filling station operators within said zones to compete favorably with filling station operators in states adjoining the Arkansas borders, and the adoption of this Act will prohibit the loss of such revenues and will actually increase the revenue of this State. Therefore, an emergency is declared to exist and this Act being necessary for the public peace, health and safety shall take effect and be in force from the date of its passage."

Acts 1957, No. 393, § 5: Mar. 27, 1957. Emergency clause provided: "It has been found and declared by the General Assembly that the bond heretofore required to be posted by distributors of motor fuel to assure the payment of state taxes upon such fuel have in many instances been sufficient to insure the State of Arkansas against the loss of revenues, that the penalties heretofore prescribed by law for failure of distributors to pay the taxes upon motor fuel within the prescribed time were excessive and therefore almost unenforceable, and that this Act will provide for an increase in the bond and a decrease in the penalties provided for failure to pay the tax on or before the due date and will thereby render the motor fuel tax laws of this State more enforceable. Therefore an emergency is hereby declared to exist and this Act being necessary for

the immediate preservation of the public peace, health, safety and welfare shall be in full force and effect from and after its passage and approval.”

Acts 1959, No. 273, § 2: Mar. 25, 1959. Emergency clause provided: “It is hereby found and determined by the General Assembly that severe weather conditions have caused serious damage to the public highways of this State; that adequate funds are not available and will not be available under the existing laws of this State to provide for adequate maintenance and reconstruction of such highways to make the same safe and suitable for the public use; and that only by the immediate passage of this Act may additional funds be provided whereby such situation may be corrected. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1965 (1st Ex. Sess.), No 41, § 16: June 10, 1965. Emergency clause provided: “It has been found and it is hereby declared by the General Assembly that many of the highways, roads and streets in the State are in a dangerous condition and in need of reconstruction and that there is an immediate need for the construction of new highways, roads and streets, in order to alleviate existing hazards detrimental to the public health, safety and welfare; that the State and the various counties and municipalities do not have funds sufficient in amount to undertake and complete the necessary construction and reconstruction work, which should be commenced and completed as soon as practicable; that only by this act can the necessary construction and reconstruction work be promptly commenced and completed; and for said reasons it is hereby declared necessary for the preservation of the public peace, health and safety that this act become effective without delay. It is, therefore, declared that an emergency exists and this act shall take effect and be in force from and after the date of its passage and approval.”

Acts 1965 (1st Ex. Sess.), No. 43, §§ 3, 5: July 1, 1965. Emergency clause provided: “It is hereby found and declared that by providing for an adequate bond of distributors that there will be an increase in collection of highway user taxes, and that by providing that the Motor Fuel Tax be paid by the first receiver, there will be a substantial increase in the collection of highway user taxes. Therefore, an emergency is hereby found and declared to exist, and the Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.” Approved June 10, 1965.

Acts 1967, No. 45, § 2: Feb. 7, 1967. Emergency clause provided: “It is hereby found and determined by the General Assembly that a great inequity exists under the present law relative to the border tax rate on motor fuel in certain cities of this State, in that service stations that were within the limits of a city or town on or before June 1, 1965, are entitled to charge and remit the border tax rate, while other nearby competing stations which are in an area made a part of the city or town since June 1, 1965, are required to collect and pay a higher rate of tax on motor fuel sold, and that this Act is immediately necessary to correct this situation and to provide a healthy competitive market in such cities and towns. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval.”

Acts 1967, No. 198, §§ 3, 5: July 1, 1967. Emergency clause provided: “It is hereby found and determined by the General Assembly that the existing law relative to the liability of licensed distributors for motor fuel taxes on motor fuel is difficult to interpret and therefore creates confusion and uncertainty as to the tax liability of licensed distributors in this State, and that this Act is immediately necessary to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval.” Approved Mar. 6, 1967.

Acts 1971, No. 295, § 4: Mar. 15, 1971. Emergency clause provided: “It is hereby found and determined by the General Assembly that under the present law relating to the bond required to be deposited by licensed motor fuel distributors there is no specific limitation on the amount of the bond which the Commissioner of Revenues may require such distributor to post; that said law makes no distinction between licensed motor fuel distributors that are organized under the laws of the State of Arkansas and wholly owned by Arkansas residents, and non-resident distributors; that the bond required by the Commissioner of Revenues in the case of some resident distributors is extremely high and places an unreasonable burden on the distributor; that the

purpose for requiring the deposit of a bond is to assure that the distributor will remit to the State all motor fuel taxes due the state; that since resident motor fuel distributors have property within the State which may be attached by the State for taxes in case the distributor fails to remit all taxes due, the bond required to be posted by resident distributors need not be in an amount equal to the total taxes to be remitted to the State by the distributor but that a maximum bond of fifty thousand dollars (\$50,000.00) is adequate to protect the State in the collection of motor fuel taxes; and that this Act is immediately necessary to prescribe a maximum bond for resident motor fuel distributors. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 445, § 26: July 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that immediate steps must be taken to provide additional State funds, and to allocate federal revenue sharing funds, for the construction of State highways which are essential to the public health, safety, and welfare and that the immediate passage of this Act is necessary in order that fiscal officials of the State may make plans to prepare for the collection of additional highway revenues effective from and after July 1, 1973. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1973."

Acts 1973, No. 507, § 3: Mar. 29, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that a great inequity exists under the present law relative to the border tax rate on motor fuel in certain cities of this State in that service stations that were within the limits of a city or town on or before June 1, 1967, are entitled to charge and remit the border tax rate, while other nearby competing stations which are in an area made a part of the city or town since June 1, 1967, are required to collect and pay a higher rate of tax on motor fuel sold, and that this Act is immediately necessary to correct this situation and to provide proper competitive markets in such cities or towns. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 437, § 8: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing highway user revenue sources do not provide for the adequate maintenance, repair, construction and reconstruction of state highways, county roads and city streets; that the motor vehicular traffic on the public highways and streets of this State makes it immediately necessary that additional funds be provided in order to finance adequate highway, road and street maintenance and construction programs; that the continued economic expansion and growth of this State will be jeopardized if an adequate system of public roads and streets is not provided; and that only by the immediate passage of this Act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July first of 1979."

Acts 1979, No. 686, § 4: Apr. 2, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that the present evaporation and collection allowance rate for motor fuel distributors is insufficient to cover the cost of collection, and that the passage of this Act is necessary to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 802, §§ 3, 5: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that this Act is necessary to control the payments of motor fuel tax. Therefore, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after July 1, 1979."

Acts 1983, No. 830, § 5: Mar. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the orderly administration of the motor fuel tax laws is essential for the effective collection of these taxes; that some uncertainty exists regarding the sale of fuels to the United States and, that this Act is necessary to clarify this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate

preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1985, No. 112, § 2: May 30, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that there is urgent need for additional funds to provide for construction, repair and maintenance of state highways; that the exemption of gasohol from motor fuel taxes and special motor fuel taxes may in the future result in a substantial amount of highway revenues since such laws provide for a total exemption from all motor fuel and special motor fuel taxes for motor fuels which contain only ten percent anhydrous ethanol and this exemption could well lead to more widespread use of this fuel; that it is the purpose of this Act to repeal such exemptions and to assure that persons using such fuels pay their fair share of the cost of constructing and maintaining highways in the state and that this Act should be given effect immediately to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 30, 1985.”

Acts 1987, No. 763, § 8: July 1, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for essential needs of the citizens of this State and the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1987.”

Acts 1989, No. 168, § 5: July 1, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that this act is necessary to secure the indebtedness to the state for motor fuel taxes; that this act should go into effect on July 1, 1989, in order to provide sufficient time to give notice to all persons involved; and that unless this emergency clause is adopted, the act may not go into effect on July 1, 1989. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1989.”

Acts 1991, No. 688, § 10: Mar. 21, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that some taxpayers are not properly completing and timely filing tax returns; that these failures create an administrative burden upon the Department of Finance and Administration; and that this act is designed to impose a fifty dollar (\$50) penalty for failure to timely file returns, even if no tax is due, or if returns are not properly completed.

Therefore, an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 1029, § 11: July 1, 1993. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly that current laws do not require explicit monthly reports from terminals or pipeline companies regarding their activities relative to gasoline and diesel transactions and as a consequence the State may be experiencing a loss of fuel tax revenues since certain of such transactions may result in the evasion of such taxes; that such tax revenues are greatly needed by the State for highway, road, and street purposes; and that only by the effectiveness of the amendments contained in this act as expeditiously as possible may the aforementioned problems be solved. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1993.”

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2001, No. 1035, § 2: July 1, 2001. Emergency clause provided: “It is hereby found and determined by the Eighty-third General Assembly that motor fuels are taxed in order to repair, maintain, and construct the roads in Arkansas. It is also found that automobiles used solely for racing do not use the roads in Arkansas; and therefore, those persons paying taxes on leaded

gasoline or methanol for racing automobiles are being unfairly taxed. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001.”

Acts 2001, No. 1498, § 2: Apr. 12, 2001. Emergency clause provided: “It is found and determined by the General Assembly that border territory included within the limits of a border city, incorporated town, or planned community after February 1, 1973 are unjustly being denied the border tax rate on motor fuels. This leads to confusion within a border city, incorporated town, or planned community as to which entities are subject to the border tax rate on motor fuels. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Case Notes

Cited: Snyder v. Martin, 305 Ark. 128, 806 S.W.2d 358 (1991).

26-55-201. Title.

This subchapter and any amendments thereof and supplements thereto shall be known and may be cited as the “Motor Fuel Tax Law”, and as so constituted is hereinafter referred to as “this subchapter”.

History. Acts 1941, No. 383, § 1; A.S.A. 1947, § 75-1101.

Case Notes

Cited: Ragland v. Yeargan, 288 Ark. 81, 702 S.W.2d 23 (1986).

26-55-202. Definitions.

As used in this subchapter:

(1) “Bill of lading” means any serially numbered document which shall clearly indicate the following:

- (A) The seller's distributor license number;
- (B) The origin of the transport trip;
- (C) The approximate destination or destinations of the transport trip;
- (D) The type or types of motor fuel being transported and quantity or quantities of motor fuel to be delivered to each destination;
- (E) The person or persons responsible for the payment of the motor fuel tax; and

(F) Such other information or forms as the Director of the Department of Finance and Administration by regulation may adopt or require to implement the intent of this subchapter;

(2) “Dealer” means any person except a distributor engaged in the business of selling motor fuel in the State of Arkansas;

(3) “Distributor” means any person, including the State of Arkansas and any political subdivision of the state, but not including the United States or any of its instrumentalities except to the extent permitted by the United States Constitution or laws, that is customarily in the wholesale business offering for resale or delivery of motor fuel to dealers, consumers, or others in tanks of two hundred gallons (200 gals.) or more which are not connected to a motor vehicle and that is:

- (A) Making the first sale in the State of Arkansas of any motor fuel,

imported into the state from any other state, territory, or foreign country, after it shall have been received within this state within the meaning of this subchapter;

(B) Consuming or using in the State of Arkansas any motor fuel so imported and shall have purchased it before it shall have been received by any other person in this state, within the meaning of this subchapter; or

(C) Producing, refining, preparing, distilling, manufacturing, blending, or compounding motor fuel in this state;

(4) “Duly licensed distributor” means any distributor holding an unrevoked license issued by the director;

(5) “Exporting” means taking motor fuel out of this state;

(6) “Importing” means bringing motor fuel into this state;

(7) (A) “Motor fuel” means all products commonly or commercially known or sold as gasoline regardless of their classification or uses.

(B) “Motor fuel” includes casinghead, absorption, and natural gasoline and condensate when used without blending as a motor fuel or sold for use in motors directly or sold to those who blend for their own use.

(C) However, “motor fuel” does not include:

(i) Casinghead, absorption, and natural gasoline and condensate when sold to be blended or compounded with other less volatile liquids in the manufacture of commercial gasoline for motor fuel;

(ii) Leaded gasoline with an octane rating one hundred ten (110) or higher used solely for off-highway testing;

(iii) Oil that is:

(a) Derived solely from plants or animals or any mixture of plants or animals;

(b) Free from any petroleum products; and

(c) Not chemically altered by distillation, transesterification, or other similar chemical process; or

(iv) Oil that is:

(a) Normally sold for cooking purposes and purchased from retail outlets; or

(b) Used cooking oil recycled and gathered from restaurants and commercial food processors;

(8) “Motor vehicle” means all vehicles, engines, machines, or mechanical contrivances which are propelled by internal combustion engines or motors and used for travel on public roads and highways;

(9) “Person” includes any individual, company, partnership, limited liability company, joint venture, joint agreement, mutual or other association, corporation, estate, trust, business trust, receiver or trustee appointed by any state, federal, or other court, syndicate, this state, any county, city, municipality, school district, or any other political subdivision of this state or group or combination acting as a unit, in the plural or singular number;

(10) (A) “Pipeline importer” means a distributor who imports motor fuel by common carrier pipeline, barge, or rail.

(B) A distributor who imports motor fuel exclusively by motor vehicle tank truck is not a pipeline importer;

(11) "Public highways" means every way or place of whatever nature, generally open to the use of the public as a matter of right, for the purposes of vehicular travel, and notwithstanding that it may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair;

(12) "Purchase" includes any acquisition of ownership;

(13) "Received" means:

(A) Motor fuel produced, refined, prepared, distilled, manufactured, blended, or compounded at any refinery at any place in the State of Arkansas by any person shall be deemed to be received by such person when the motor fuel shall have been loaded at such refinery or other place into tank cars, ships, or barges, or when the motor fuel shall have been placed in any tank at or by such refinery from which any withdrawals are made direct into tank trucks, tank wagons, pipelines, or other types of transportation equipment, containers, or facilities other than tank cars, ships, or barges, or from which any sales or deliveries not involving transportation are made directly;

(B) Motor fuel imported into the State of Arkansas from any other state, territory, or foreign country by vessel and delivered in that vessel to any person, at a marine terminal in the State of Arkansas for storage, or so imported by pipeline and delivered to any person by such pipeline or a connecting pipeline at a pipeline terminal or pipeline tank farm in the State of Arkansas for storage, shall be deemed to have been received by such person when the motor fuel shall have been loaded into tank cars, ships, or barges at such marine or pipeline terminal or tank farm for any purpose, or when the motor fuel shall have been placed in any tank of less than one hundred thousand gallons (100,000 gals.) capacity thereat, or elsewhere by such person, or when the motor fuel shall have been placed in any tank thereat, or elsewhere by such person, from which any withdrawals are made direct into tank trucks, tank wagons, pipelines or other types of transportation equipment, containers, or facilities other than tank cars, ships, or barges or from which tank any sales or deliveries not involving transportation are made directly, but not before;

(C) Motor fuel purchased in a tank car which shall be unloaded in the State of Arkansas shall be deemed to be received at the time when and place where the tank car is unloaded, but not before;

(D) (i) Motor fuel imported by any person into this state from any other state, territory, or foreign country, other than by vessel for storage at marine terminals as set forth in this section, or by pipeline for storage at pipeline terminals or pipeline tank farms as hereinbefore set forth, or by tank car, shall be deemed to be received, in the case of motor fuel imported from a foreign country, at the time when and the place where the motor fuel shall be withdrawn from the original container in which the motor fuel was imported, but not before, and shall be deemed to be received in the case of motor fuel imported from another state or territory of the United States at the time when and the place where the interstate transportation of the motor fuel shall have been completed within this state, but not before.

(ii) However, nothing in this subdivision (13) shall be construed to allow the transportation of gasoline by any person without first having secured the proper and necessary permit for such transportation from the director; and

(E) Motor fuel purchased by one (1) licensed distributor from another licensed distributor shall be deemed to be received by the distributor purchasing the

motor fuel at the time title to such motor fuel passes;

(14) "Sale" includes any exchange, gift, or other disposition; and

(15) "Terminal" means every person in the business of withdrawing or removing motor fuel from any pipeline outlet in this state and then storing the motor fuel in any type of storage container.

History. Acts 1941, No. 383, § 2; 1943, No. 254, § 1; 1957, No. 352, § 1; 1967, No. 198, § 1; 1977, No. 346, § 3; A.S.A. 1947, § 75-1102; Acts 1987, No. 763, § 2; 1993, No. 1029, § 1; 1995, No. 1160, § 26; 2001, No. 1035, § 1; 2007, No. 690, § 1.

Publisher's Notes. Acts 1987, No. 763, § 1, provided that terms used in the act have the same meaning as in Acts 1941, No. 383 (§ 26-55-201 et seq.).

Acts 1987, No. 763, § 6, provided that nothing in the act shall change or modify the tax rates levied on "motor fuel" pursuant to any of the laws of this state, including, but not limited to, Acts 1941, No. 383, § 4 (§§ 26-55-205 and 26-55-207), Acts 1973, No. 445, § 1 (§§ 26-55-205 and 26-56-201), and Acts 1985, No. 456, § 1 (§§ 26-55-1002 and 26-56-502).

Acts 1993, No. 1029, § 7, provided:

"The Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

Amendments. The 2007 amendment added (7)(C)(iii) and (7)(C)(iv) and made a related change.

Case Notes

Cited: Camden v. Harris, 109 F. Supp. 311 (W.D. Ark. 1953).

26-55-203. Effect of reference to subchapter.

(a) Whenever in this subchapter reference is made to a section of this subchapter, the reference shall extend to and include any amendment of or supplement to the section so referred to or any section hereafter enacted in lieu thereof.

(b) Unless otherwise provided, whenever a reference to this subchapter or to any section is made in any amendment or supplement to this subchapter or to any section hereafter enacted, such reference shall be deemed to refer to this subchapter or such section as the same shall then stand or as thereafter amended.

History. Acts 1941, No. 383, § 1; A.S.A. 1947, § 75-1101.

Case Notes

Cited: Ragland v. Yeargan, 288 Ark. 81, 702 S.W.2d 23 (1986).

26-55-204. Rules and regulations.

The Director of the Department of Finance and Administration shall prescribe and publish such rules and regulations as may be necessary for the enforcement of this subchapter.

History. Acts 1941, No. 383, § 29; A.S.A. 1947, § 75-1131.

26-55-205. Levy of tax.

(a) There is levied a privilege or excise tax of eight and one-half cents (8½¢) on each gallon of motor fuel as defined in this subchapter, sold or used in this state, or purchased for sale or use in this state, to be computed in the manner hereinafter set forth.

(b) In addition to the tax levied in subsection (a) of this section, there is levied an excise

tax of one cent (1¢) on each gallon of motor fuel as defined in this subchapter, sold or used in this state, or purchased for sale or use in this state, to be computed in the manner hereinafter set forth.

History. Acts 1941, No. 383, § 4; 1943, No. 253, § 1; 1953, No. 112, § 12; 1965 (1st Ex. Sess.), No. 41, § 1; 1967, No. 198, § 2; 1973, No. 445, § 1; 1979, No. 437, § 1; A.S.A. 1947, §§ 75-1106, 75-1269; Acts 1989, No. 821, § 10.

Cross References. Additional taxes and fees, § 26-55-1001 et seq.
Additional taxes on motor fuel, distillate special fuels, and liquified gas special fuels , § 26-55-1201 et seq.

Case Notes

In General.
Applicability.

In General.

Acts 1921, No. 606 was not invalid as being arbitrary, unreasonable, or discriminatory in its application in that it did not affect vehicles propelled by steam, electricity, or gasoline purchased out of the state. *Standard Oil Co. v. Brodie*, 153 Ark. 114, 239 S.W. 753 (1922) (decision under prior law).

Applicability.

Acts 1934 (Ex. Sess.), No. 11, § 22, levying a tax on gasoline applied to all gasoline sold or used within the state, whether used on highways or not, except that motor fuel manufactured, produced, or compounded in, or imported into, the state and subsequently sold for exportation was not taxable. *Sparling v. Refunding Bd.*, 189 Ark. 189, 71 S.W.2d 182 (1934) (decision under prior law).

Cited: *Whiteley v. Wilcox Oil Co.*, 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-206. Purpose of tax — Allocation.

(a) The tax imposed by this subchapter is levied for the purpose of providing revenue to be used by the State of Arkansas to defray, in whole or in part, the cost of constructing, widening, reconstructing, maintaining, resurfacing, and repairing the public highways, and retiring highway indebtedness of this state.

(b) (1) The funds collected by this subchapter shall be allocated and distributed only in the manner now established by existing laws relating to motor fuel taxes.

(2) One cent (1¢) of the tax levied on each gallon of motor fuel under this subchapter shall be remitted to the Treasurer of State separate and apart from other motor fuel and distillate special fuel taxes, and the gross amount thereof, without making any deduction therefrom for credit to the Constitutional Officers Fund and the State Central Services Fund, shall be distributed as provided by the Arkansas Highway Revenue Distribution Law, §§ 27-70-201 — 27-70-203, 27-70-206, and 27-70-207.

History. Acts 1941, No. 383, § 3; 1979, No. 437, § 3; A.S.A. 1947, §§ 75-1105, 75-1241.1.

Cross References. Disposition of gross receipts tax on gasohol, § 27-70-208.

Case Notes

In General.
Construction.

In General.

A legislative declaration that a gasoline tax is a privilege or excise tax is not conclusive where its constitutionality is attacked, as its character must be determined by its incidents. *Sparling v. Refunding Bd.*, 189 Ark. 189, 71 S.W.2d 182 (1934) (decision under prior law). The tax provided for by Acts 1934 (Ex. Sess.), No. 11 was a privilege and not a property tax. *Sparling v. Refunding Bd.*, 189 Ark. 189, 71 S.W.2d 182 (1934) (decision under prior law). The gasoline tax had its origin not as a sales tax upon the commodity but as a tax upon the privilege and use of the highways. *McCarroll v. Mitchell*, 198 Ark. 435, 129 S.W.2d 611 (1939) (decision under prior law).

Construction.

This section did not conflict with former statute providing that no person shall drive into the state any motor vehicle operated for hire without first having paid a tax on all motor fuel over 20 gallons, used or to be used, in operating the vehicle while in the state. *McLeod v. Santa Fe Trail Transp. Co.*, 205 Ark. 225, 168 S.W.2d 413 (1943).

26-55-207. Exemptions.

The tax imposed by § 26-55-205 shall not be collected upon or with respect to the following transactions:

(1) The sale of motor fuel by a pipeline importer who has first received such motor fuel into this state via common carrier pipeline, barge, or rail to a duly licensed distributor in this state;

(2) The sale of motor fuel by a duly licensed distributor for export from the State of Arkansas, and shipped by common carrier f.o.b. destination, to any other state or territory or to any foreign country, or the export of motor fuel by a duly licensed distributor from the State of Arkansas to any other state or territory or to any foreign country, if satisfactory proof of actual exportation of all the motor fuel is furnished at the time and in the manner prescribed by the Director of the Department of Finance and Administration;

(3) The sale of motor fuel to the United States Government;

(4) The sale of motor fuel for use in propelling airplanes, provided that satisfactory proof is furnished in the manner prescribed by the director that the motor fuel is to be used in the propelling of airplanes.

History. Acts 1941, No. 383, § 4; 1943, No. 253, § 1; 1947, No. 415, § 1; 1953, No. 112, § 12; 1959, No. 273, § 1; 1965 (1st Ex. Sess.), No. 41, § 1; 1965 (1st Ex. Sess.), No. 43, § 2; 1967, No. 198, § 2; 1979, No. 437, § 1; 1983, No. 830, § 1; 1985, No. 112, § 1; A.S.A. 1947, § 75-1106; Acts 1987, No. 763, § 3.

Publisher's Notes. As to meaning of terms in, and effect of, Acts 1987, No. 763, see Publisher's Notes, § 26-55-202.

Case Notes

State Agencies.

State Agencies.

State highway department was not exempt from payment of gasoline tax purchased for use in the repair, maintenance, and construction of highways and bridges in the state highway system. *McCarroll v. Mitchell*, 198 Ark. 435, 129 S.W.2d 611 (1939) (decision under prior law).

Cited: *Whiteley v. Wilcox Oil Co.*, 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-208. Sale of motor fuel exempt from sales or gross receipts tax.

No person selling motor fuel shall be liable to the State of Arkansas for any tax with

respect to the sale thereof under the provisions of any sales or gross receipts tax acts of the State of Arkansas.

History. Acts 1941, No. 383, § 28; A.S.A. 1947, § 75-1130.

Cross References. Gasoline tax exempt from gross receipts tax, § 26-52-401.

26-55-209. Local taxes prohibited.

No city, village, town, county, township, or other subdivision or municipal corporation of this state shall levy or collect any excise tax upon or measured by the sale, receipt, or distribution of motor fuel.

History. Acts 1941, No. 383, § 28; A.S.A. 1947, § 75-1130.

26-55-210. Border tax rate areas generally.

(a) (1) The tax on motor fuel sold in cities, incorporated towns, or planned communities which border on a state line or sold within eight hundred feet (800') of the state line or sold within eight hundred feet (800') of the maximum shore line of a navigable lake, the opposite shore line of which is beyond the Arkansas state line or sold within eight hundred feet (800') of the Arkansas terminal of a bridge spanning a river where the state line is in the center of the main channel of the river, when such sales of motor fuel are made therein and delivered into the storage tanks of retail dealers or when such sales are made therein to consumers and delivered into the storage tanks of such consumers or directly into the standard fuel tank of a motor vehicle, shall be at the same rate as the tax levied on motor fuel sold in other areas of the state, but in no event shall the rate of tax on motor fuel sold in such border areas be more than one cent (1¢) per gallon above the rate of tax levied in the adjoining state.

(2) Further, no existing city or incorporated town, the corporate limits of which did not on August 1, 1941, or planned community, the limits of which did not on May 18, 1965, extend to within two (2) miles of the state line, shall take advantage of such border rate.

(3) Additionally, no tax is imposed upon or in respect to the transactions exempt from taxation under § 26-55-207.

(4) The tax on motor fuel sold from any establishment adjacent to a federal interstate highway and within one (1) mile of a state line shall be at the rate of tax levied in the adjoining state but not exceed the rate levied in this subchapter.

(b) Whenever any bridge spanning a river where the state line is in the center of the main channel of the river as defined and subject to the provisions of subsection (a) of this section shall have been or shall be abandoned, redesigned, relocated, or otherwise changed so that areas previously within eight hundred feet (800') of the Arkansas terminal of a bridge spanning a river where the state line is in the center of the main channel of the river shall no longer be in whole or in part within eight hundred feet (800') of the Arkansas terminal of such bridge, then the tax on motor fuel sold within eight hundred feet (800') of the Arkansas terminal of that bridge prior to its abandonment, redesign, relocation, or other change shall continue to be fixed on the same basis as if no such abandonment, redesign, relocation, or other change of the Arkansas terminal of the bridge had been made or taken place.

(c) Any distributor or dealer of motor fuel who shall sell and deliver any motor fuel

within any border rate tax area, except as provided in subsection (a) of this section, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or be imprisoned in the county jail for not to exceed thirty (30) days, or be both so fined and imprisoned.

(d) This section shall apply to abandonments, redesign, relocation, and other changes of bridges made both before and after the passage of this section.

History. Acts 1941, No. 383, § 5; 1943, No. 252, § 1; 1953, No. 143, § 1; 1957, No. 312, §§ 1, 2; 1967, No. 406, § 1; 1967, No. 512, § 1; 1977, No. 378, § 1; 1979, No. 437, § 4; A.S.A. 1947, §§ 75-1107, 75-1107n, 75-1107.2; Acts 1997, No. 727, § 1.

Publisher's Notes. In reference to the term "passage of this section," Acts 1941, No. 383 was signed by the Governor on March 26, 1941, and became effective on July 1, 1941.

Cross References. Rate of tax in city or town within one mile of city adjoining state line, § 26-25-104.

RESEARCH REFERENCES

Ark. L. Rev.

Recent Development: Arkansas Constitutional Law - "Border City Exemption," 58 Ark. L. Rev. 1005.

Case Notes

Constitutionality.

Construction.

Incorporated Towns.

Constitutionality.

Acts 1931, No. 63 was not unconstitutional as granting special privileges or immunities nor as abridging the privileges or immunities of citizens of the United States. *Bollinger v. Watson*, 187 Ark. 1044, 63 S.W.2d 642 (1933) (decision under prior law).

This section was held not void on ground it conflicted with § 26-55-230, which contains the only provisions for computation and collection of the tax and there is no provision in the law whereby it may be determined how much fuel has been sold and delivered into the tanks of auto owners' vehicles and how much was sold otherwise, since, under § 26-55-204, rules and regulations may be prescribed requiring dealers to report how much gasoline was sold by them under conditions not permissible at the preferential rate. *Hardin v. Croom*, 203 Ark. 519, 157 S.W.2d 520 (1942).

Construction.

When all of this section is read together, it appears clear that the legislative intent was to allow border dealers a preferential rate only in the circumstances stated. *Hardin v. Croom*, 203 Ark. 519, 157 S.W.2d 520 (1942).

Incorporated Towns.

Gasoline dealers in a town bordering on the state line and incorporated since the passage of act were held not entitled to exemption provided by Acts 1935, No. 147. *Wiseman v. Omaha*, 192 Ark. 718, 94 S.W.2d 116 (1936) (decision under prior law).

In suit to enjoin collection of motor vehicle fuel tax sold within town at a rate in excess of that provided by the laws of bordering state, exclusion of testimony that town, which was incorporated, included a strip of land a quarter of a mile wide and four miles long, that its land was agricultural, timber land, and bluff land and seven-eighths thereof was uninhabited except for isolated farm houses was error, since, under those facts, order of incorporation of the town would be void ab initio and subject to collateral attack. *McCarroll v. Arnold*, 199 Ark. 1125, 137 S.W.2d 921 (1940) (decision under prior law).

In suit to restrain collection of state taxes on sales of gasoline within corporate limits of border town, evidence justified trial court's holding that agricultural and timber lands included in the corporate limits were not needed for urban purposes nor intended to be used for urban purposes and that incorporation was void. *Arnold v. McCarroll*, 200 Ark. 1094, 143 S.W.2d 35 (1940) (decision under prior law).

Where single purpose actuating those who enlarged the territorial area of border town by embracing a narrow strip extending to within state boundary was to provide, by technical means, a method by which gasoline dealers might account for the equivalent of lower tax charged in adjoining state, citizen of state, after Attorney General had ruled in favor of state's view that only lesser rate should be charged, was entitled to bring suit against the state and to enjoin it from collecting only the lesser tax as charged in the adjoining state. *Park v. Hardin*, 203 Ark. 1135, 160 S.W.2d 501 (1942).

26-55-211. Border tax rate applicable within corporate boundaries.

(a) Whenever any territory included within the boundaries of any city, incorporated town, or planned community in this state is included within the border tax rate on motor fuel, as provided for in § 26-55-210, or by any other law of this state governing the border area tax rate on motor fuel, the same rate of tax on motor fuel that applies in the border tax area of the city, incorporated town, or planned community shall also apply to all sales of motor fuel within the boundaries of the city, incorporated town, or planned community.

(b) Except in a city bordering a state line that is the main channel of the Mississippi River, the provisions of this section shall apply only to that territory included within the limits of such city, incorporated town, or planned community on July 1, 2001, and shall not apply to territory added to or annexed to the city, incorporated town, or planned community after July 1, 2001.

History. Acts 1953, No. 246, § 1; 1965 (1st Ex. Sess.), No. 41, § 8; 1967, No. 45, § 1; 1973, No. 507, § 1; 1977, No. 378, § 2; A.S.A. 1947, § 75-1107.1; Acts 1997, No. 727, § 2; 2001, No. 1498, § 1.

RESEARCH REFERENCES

Ark. L. Rev.

Recent Development: Arkansas Constitutional Law - "Border City Exemption," 58 Ark. L. Rev. 1005.

Case Notes

Constitutionality.

Constitutionality.

The classification in Acts 1997, No. 727, § 2, that limited the application of this section only to border cities along the Mississippi River, a small portion of the state, was not rationally related to the purpose of the legislation, which was to assist certain cities compete with other cities; further, Acts 1997, No. 727, § 2, is clearly local and special legislation enacted in violation of Ark. Const. Amend. 14. *Weiss v. Geisbauer*, 363 Ark. 508, 215 S.W.3d 628 (2005).

26-55-212. Border tax rate areas — Use of auxiliary fuel tanks.

(a) Any consumer of motor fuel who has purchased motor fuel within a border rate area and has obtained delivery of the motor fuel into a storage tank shall not thereafter deliver any such motor fuel into an auxiliary tank attached to any motor vehicle and shall only use such motor fuel in propelling a motor vehicle as has been delivered directly from a storage tank into the standard fuel tank of a motor vehicle.

(b) As used in this section, "standard fuel tank" means the fuel tank attached to the motor vehicle by the original manufacturer of the motor vehicle, except that it shall exclude any auxiliary fuel tank of a motor vehicle even if attached to a motor vehicle by the original manufacturer thereof.

(c) Any consumer who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or be imprisoned in the county jail for not to exceed thirty (30) days, or be both so fined and imprisoned.

History. Acts 1941, No. 383, § 5; 1943, No. 252, § 1; A.S.A. 1947, § 75-1107.

Case Notes

Constitutionality.
Construction.

Constitutionality.

This section was held not void on ground that it was in restraint of trade for the reason the act imposed no limitation upon the amount of fuel which any purchaser might buy but only upon the amount which might be bought at a single purchase at a reduced rate. *Hardin v. Croom*, 203 Ark. 519, 157 S.W.2d 520 (1942).

Provision of this section requiring gasoline to be delivered into standard tank was held not violative of the Constitution in granting certain citizens rights denied to others in that owners of vehicles having larger tanks may buy more motor fuel than owners of smaller tanks. *Hardin v. Croom*, 203 Ark. 519, 157 S.W.2d 520 (1942).

Construction.

When all of this section is read together, it appears clear that the legislative intent was to allow border dealers a preferential rate only in the circumstances stated. *Hardin v. Croom*, 203 Ark. 519, 157 S.W.2d 520 (1942).

26-55-213. Distributor's license — Requirement — Penalty for noncompliance.

(a) It shall be unlawful for any distributor to receive, use, sell, or distribute any motor fuel or to engage in business within this state unless the distributor is the holder of an uncanceled license issued by the Director of the Department of Finance and Administration to engage in such business or, if such distributor is an agent, commission or otherwise, of a distributor as defined in this subchapter, unless the agent is the holder of a certified duplicate copy of an uncanceled license issued by the director to the agent's principal.

(b) (1) Upon conviction, a person who engages in business in the State of Arkansas as a distributor without being the holder of an uncanceled license to engage in the business is guilty of an unclassified misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) or imprisonment for a term of not less than thirty (30) days and not more than one (1) year, or both fine and imprisonment.

(2) Each day or any part thereof during which any person shall engage in business as a distributor without being the holder of an uncanceled license shall constitute a separate offense within the meaning of this section.

History. Acts 1941, No. 383, §§ 7, 25; 1943, No. 250, § 1; 1945, No. 166, § 1; A.S.A. 1947, §§ 75-1109, 75-1127; Acts 2009, No. 655, § 42.

Amendments. The 2009 amendment, in (b)(1), inserted "is guilty of an unclassified misdemeanor and," deleted "in the county jail" following "or imprisonment," and made related and minor stylistic changes.

26-55-214. Distributor's license — Application and bond.

(a) To procure a distributor's license, every distributor shall file with the Director of the Department of Finance and Administration an application upon oath and in a form prescribed by the director, setting forth:

(1) The name under which the distributor will transact business within the State of Arkansas;

(2) The location, with street address, of its principal office or place of business within this state and all of its separate places of business within this state; and

(3) The name and complete residence address of the owner or the names and addresses of the partners, if such distributor is a partnership, or the names and addresses of the principal officer, if such distributor is a corporation or association.

(b) (1) Concurrent with the filing of an application for a distributor's license, every distributor shall file with the director a bond of the character stipulated and in the amount provided for in § 26-55-222.

(2) No license shall be issued upon any application unless accompanied by such bond, nor, if the applicant is a foreign corporation, unless it is at such time properly qualified under the laws of the State of Arkansas to do business therein.

(c) The director shall keep and file all applications and bonds with an alphabetical index together with a record of all licensed distributors.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; 1965 (1st Ex. Sess.), No. 41, § 5; A.S.A. 1947, § 75-1109; Acts 2009, No. 655, §§ 43–45.

A.C.R.C. Notes. Section 26-55-228 referred to in subdivision (b)(1) of this section was repealed by Acts 1995, No. 777, § 1.

Amendments. The 2009 amendment substituted “a distributor's” for “such” in the introductory language of (a); in (b)(1), inserted “distributor's” and deleted “and 26-55-228 [repealed]” following “§ 26-55-222”; and made related and minor stylistic changes.

26-55-215. Distributor's license — Issuance of certificate.

The application in proper form having been accepted for filing, the bond having been accepted and approved, and the other conditions and requirements of §§ 26-55-213 and 26-55-214 having been complied with, the Director of the Department of Finance and Administration shall issue to the distributor a license certificate to transact business as a distributor in the State of Arkansas.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; 1965 (1st Ex. Sess.), No. 41, § 6; A.S.A. 1947, § 75-1109.

26-55-216. Distributor's license — Nonassignable.

The license certificate issued by the Director of the Department of Finance and Administration shall not be assignable and shall be valid only for the distributor in whose name it was issued.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; A.S.A. 1947, § 75-1109.

26-55-217. Distributor's license — Display required.

(a) The license certificate issued by the Director of the Department of Finance and Administration shall be displayed conspicuously in the principal place of business of the

distributor in the State of Arkansas.

(b) A certified duplicate copy of the license certificate shall be displayed conspicuously at each separate place of business of the distributor in the State of Arkansas. By appropriate language, the copy shall refer to and identify the agent of such distributor in charge of the separate place of business of the distributor.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; A.S.A. 1947, § 75-1109.

26-55-218. Distributor's license — Expiration.

A distributor's license remains in effect until cancelled as provided in this subchapter.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; 1965 (1st Ex. Sess.), No. 41, § 6; A.S.A. 1947, § 75-1109; Acts 2009, No. 655, § 46.

Amendments. The 2009 amendment rewrote the section.

26-55-219. Distributor's license — Refusal.

(a) In the event that any application for a license to transact business as a distributor in the State of Arkansas shall be filed by any person whose license shall at any time have been cancelled for cause by the Director of the Department of Finance and Administration, or in case the director shall be of the opinion that the application is not filed in good faith or in the event that the application is filed by some person as a subterfuge for the real person in interest whose license or registration shall theretofore have been cancelled for cause by the director, or for any other valid reason, then and in any of said events the director, after a hearing of which the applicant shall have been given five (5) days' notice in writing and at which the applicant shall have the right to appear in person or by counsel and present testimony, shall have and is given the right and authority to refuse to issue to such person a license certificate to transact business as a distributor in the State of Arkansas.

(b) Any distributor who is aggrieved by the action of the director in refusing to issue the license applied for, within thirty (30) days from the time of such refusal, may appeal to the circuit court of the county of such distributor's residence where the distributor shall be entitled to a hearing de novo. An appeal shall lie from such circuit court to the Supreme Court as in other cases now provided by law.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; A.S.A. 1947, § 75-1109.

26-55-220. Municipal licenses for distributors.

Nothing in §§ 26-55-213 — 26-55-219 shall be construed so as to prevent the collection of any privilege or occupation taxes by any municipality of this state for engaging within the limits of such municipality in the business of distributor or the business of selling, dealing in, or storing petroleum products.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; 1965 (1st Ex. Sess.), No. 41, § 5; A.S.A. 1947, § 75-1109.

26-55-221. Licenses — Persons other than distributors.

Persons, other than distributors, purchasing or otherwise acquiring motor fuel in tank car, tank truck, or cargo lots for sale, distribution, or use within the State of Arkansas, in the discretion of the Director of the Department of Finance and Administration shall also be licensed as set forth in §§ 26-55-213 — 26-55-220 upon compliance with the provisions of §§ 26-55-213 — 26-55-220 and thereupon shall be deemed to be the distributor for all purposes of this subchapter with respect to any such motor fuel received while the license remains unrevoked.

History. Acts 1941, No. 383, § 8; A.S.A. 1947, § 75-1110.

26-55-222. Bonds — Requirement — Amounts — Waiver.

(a) (1) Every distributor shall file with the Director of the Department of Finance and Administration a surety bond of not less than one and one-half (1½) times or one hundred fifty percent (150%) of the prior six (6) months average motor fuel tax due, based upon the gallonage of motor fuel to be sold or distributed as shown by the application for a permit if the applicant has not heretofore been engaged in the business of a distributor as herein defined, or as shown by sales for the previous year if the applicant theretofore has been engaged in such business in this state.

(2) However, no bond shall be filed for less than one thousand dollars (\$1,000).

(3) If the director deems it necessary to protect the state in the collection of gasoline taxes, the director may require any distributor to post a bond in an amount up to three (3) times or three hundred percent (300%) of the prior six (6) months average motor fuel tax due.

(b) (1) Provided further, the director or the director's authorized agent is authorized to waive the posting of bond by any licensed motor fuel distributor that is organized and operating under the laws of Arkansas and that is wholly owned by residents of this state and who has been licensed for a period of at least three (3) years and who has not been delinquent in remitting motor fuel taxes during the three-year period immediately preceding application by the distributor for waiver of bond.

(2) If any motor fuel distributor whose bond has been waived by the director or the director's agent as authorized in this subsection subsequently becomes delinquent in remitting motor fuel taxes to the director, the director or the director's agent may require that such distributor post a bond in the amount required in this section, and such distributor shall not be eligible to petition for a waiver of bond for a period of three (3) years thereafter.

History. Acts 1941, No. 383, § 9; 1957, No. 393, § 1; 1965 (1st Ex. Sess.), No. 43, § 1; 1967, No. 311, § 1; 1971, No. 295, § 1; 1979, No. 644, § 1; 1981, No. 276, § 1; A.S.A. 1947, § 75-1111; Acts 1989, No. 168, § 1.

Case Notes

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-223. Bonds — Deposit or pledge of government obligations as alternative.

In lieu of furnishing a bond executed by a surety company, as hereinbefore provided, any distributor may furnish the distributor's bond or bonds not so executed, if the distributor concurrently therewith deposits and pledges with the Director of the Department of Finance and Administration direct obligations of the United States or obligations of any

agency of the United States fully guaranteed by it or bonds of the State of Arkansas of equal full amount to the amount of the bond required by § 26-55-222, as collateral security for the payment of such bonds.

History. Acts 1941, No. 383, § 9; 1957, No. 393, § 2; A.S.A. 1947, § 75-1111.

Case Notes

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-224. Bonds — Additional bonds — Conditions for requirement.

(a) In the event that upon a hearing, of which the distributor shall be given five (5) days' notice in writing, the Director of the Department of Finance and Administration shall decide that the amount of the existing bond is insufficient to ensure payment to the State of Arkansas of the amount of the tax and any penalties and interest for which the distributor is or may at any time become liable, then the distributor upon the written demand of the director shall immediately file an additional bond in the same manner and form with a surety company thereon approved by the director in any amount determined by the director to be necessary to secure at all times the payment by such distributor to the State of Arkansas of all taxes, penalties, and interest due under the provisions of this subchapter.

(b) If the distributor fails to do so, the director shall immediately cancel the license certificate of the distributor.

History. Acts 1941, No. 383, § 9; A.S.A. 1947, § 75-1111.

Case Notes

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-225. Bonds — New bonds — Conditions for requirement.

(a) In the event that liability upon the bond thus filed by the distributor with the Director of the Department of Finance and Administration shall be discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if in the opinion of the director any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the director may require the distributor to file a new bond with a satisfactory surety in the same form and amount, failing which the director shall immediately cancel the license certificate of said distributor.

(b) If the new bond is furnished by the distributor as above provided, the director shall cancel and surrender the bond of the distributor for which the new bond shall be substituted.

History. Acts 1941, No. 383, § 9; A.S.A. 1947, § 75-1111.

Case Notes

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-226. Bonds — Release or discharge of surety.

(a) (1) Any surety on any bond furnished by a distributor as provided in §§ 26-55-222 — 26-55-225 shall be released and discharged from any and all liability to the State of Arkansas accruing on the bond after the expiration of sixty (60) days from the date upon which the surety shall have lodged with the Director of the Department of Finance and

Administration written request to be released and discharged.

(2) However, the request shall not operate to relieve, release, or discharge the surety from any liability already accrued, or which shall accrue, before the expiration of the sixty-day period.

(b) (1) The director shall promptly on receipt of notice of such request notify the distributor who furnished the bond, and unless the distributor on or before the expiration of such sixty-day period files with the director a new bond with a surety company satisfactory to the director in the amount and form provided in § 26-55-222, the director shall immediately cancel the license of the distributor.

(2) If the new bond is furnished by the distributor as provided above, the director shall cancel and surrender the bond of the distributor for which the new bond shall be substituted.

History. Acts 1941, No. 383, § 9; A.S.A. 1947, § 75-1111.

Case Notes

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-227. [Repealed.]

Publisher's Notes. This section, concerning the waiver of bonds, was repealed by Acts 1989, No. 168, § 2. The section was derived from Acts 1941, No. 383, § 9; 1979, No. 644, § 1; 1981, No. 276, § 1; A.S.A. 1947, § 75-1111.

26-55-228. [Repealed.]

Publisher's Notes. This section, concerning the unlawful sale of motor fuel to an unbonded dealer, was repealed by Acts 1995, No. 777, § 1. The section was derived from Acts 1941, No. 383, § 9; 1957, No. 393, § 2; A.S.A. 1947, § 75-1111.

26-55-229. Tax reports.

(a) For the purpose of determining the amount of the tax imposed by this subchapter, the Director of the Department of Finance and Administration may require such supporting documents as the director may deem necessary to assure accurate reporting.

(b) (1) The reports shall be filed on forms prescribed by the director and shall be filed with the director on or before the twenty-fifth day of each calendar month following the reporting month in question.

(2) Once a distributor has become liable to file a monthly report with the director, the distributor must continue to file a monthly report, even though no tax is due, until such time as the distributor notifies the director in writing that the distributor is no longer liable for monthly reports.

(c) These reports shall include the following:

(1) An itemized statement of the number of gallons of all motor fuel received during the next-preceding calendar month by the distributor, which has been produced, refined, prepared, distilled, manufactured, or compounded by the distributor in the State of Arkansas;

(2) An itemized statement of the number of gallons of all motor fuel received by the distributor in the State of Arkansas from any source whatsoever during the next-

preceding calendar month as shown by the shipper's bills of lading thereof, other than motor fuel falling within the provisions of subdivision (1) of this subsection, together with a statement showing:

- (A) The date of receipt of each shipment of motor fuel;
- (B) The name of the person from whom purchased or received;
- (C) The point of origin and the point of destination of each shipment;
- (D) The quantity of each of the purchases or shipment;
- (E) The name of the carrier;
- (F) The number of each tank car or tank truck;
- (G) The number of gallons contained in each tank car or tank truck; and
- (H) The owner of the boat, ship, barge, or vessel, if shipped by water;

(3) An itemized statement of the number of gallons of motor fuel deducted in accordance with the provisions of § 26-55-230(a)(1)(C) or § 26-55-230(a)(1)(D) in making any previous monthly report with respect to which motor fuel so deducted the tax payable under the terms of this subchapter have not theretofore been paid;

(4) An itemized statement of the number of gallons of motor fuel sold by the distributor during the preceding calendar month and exempted from the tax by § 26-55-207(1)-(4), separately itemizing the amount of motor fuel sold and claimed to be exempt under each of the subdivisions (1)-(4) of § 26-55-207; and the statement shall furnish such information relating to such sales as shall be required by the director and reasonably necessary to the enforcement by the director of the provisions of this subchapter;

(5) An itemized statement of the number of gallons of motor fuel sold by the distributor within a border rate area and at the border rate tax, as is permitted by §§ 26-55-210 and 26-55-212, together with such information relating to such sales as shall be required by the director and reasonably necessary to the enforcement by the director of the provisions of this subchapter;

(6) An itemized statement of the number of gallons of motor fuel which, during the next-preceding month, was received, within the meaning of § 26-55-202(13)(A) or § 26-55-202(13)(B), by being placed in a tank, but which had not been withdrawn therefrom at the close of the next preceding calendar month;

(7) An itemized statement of the number of gallons of motor fuel received during the next-preceding calendar month and deductible under § 26-55-230(a)(1)(D); and

(8) An itemized statement of the number of gallons of motor fuel received by the distributor during the next-preceding calendar month which were purchased by the distributor, tax-paid, and supported by copies of the seller's tax-paid invoices.

History. Acts 1941, No. 383, § 10; 1943, No. 253, § 2; 1979, No. 802, § 1; A.S.A. 1947, § 75-1112; Acts 1987, No. 763, § 4; 1991, No. 688, § 1; 2009, No. 655, § 47.

Publisher's Notes. As to meaning of terms in, and effect of, Acts 1987, No. 763, see Publisher's Notes, § 26-55-202.

Amendments. The 2009 amendment inserted "and" at the end of (c)(7), and made a minor stylistic change.

26-55-230. Computation and payment of tax.

(a) At the time of filing of each monthly report with the Director of the Department of Finance and Administration, each distributor shall pay to the director the full amount of the motor fuel tax for the next-preceding calendar month, which shall be computed as

follows:

(1) From the sum of the total number of gallons of motor fuel received, reduced by the total number of gallons received upon which the tax has been paid as evidenced by the itemized statement filed pursuant to § 26-55-229(c)(8) by the distributor within the State of Arkansas during the next-preceding calendar month, plus the total number of gallons of motor fuel deducted on any previous monthly report of the distributor under the provisions of subdivisions (a)(1)(C) and (D) of this section with respect to which the tax payable under this subchapter remains unpaid, shall be made the following deductions:

(A) The total number of gallons of motor fuel received by the distributor within the State of Arkansas and sold or otherwise disposed of during the next-preceding calendar month as set forth in § 26-55-207;

(B) The total number of gallons of motor fuel received by the distributor within the State of Arkansas and sold or otherwise disposed of during the next-preceding calendar month as set forth in § 26-55-210;

(C) The total number of gallons of motor fuel which, during any previous calendar month, was received, within the meaning of § 26-55-202(13)(A) or § 26-55-202(13)(B), by being placed in a tank but had not been withdrawn therefrom at the close of the next-preceding calendar month;

(D) The total number of gallons of motor fuel received during any previous calendar month, within the meaning of § 26-55-202(13)(A), by being placed in a tank, which was thereafter delivered by the person receiving it to a common carrier pipeline for shipment or delivery to a point in Arkansas, but had not been, at the close of the next-preceding calendar month, delivered by the pipeline at its destination, even though because of being mingled in the common carrier pipeline system with other motor fuel, the motor fuel to be delivered to the point of destination is not the identical motor fuel delivered by the shipper to the common carrier pipeline;

(E) (i) That number of gallons of motor fuel lost due to fire, flood, storm, theft, or other cause beyond the distributor's control, other than through evaporation.

(ii) The deduction for the loss may be included in the report filed for the month in which the loss occurred or in any subsequent report filed within a period of one (1) year; and

(F) (i) That number of gallons of motor fuel which shall be equal to three percent (3%) of the first one million gallons (1,000,000 gals.), and no allowance for the remaining gallons of the total number of gallons of motor fuel received by the distributor during the next-preceding calendar month, less the total number of gallons deducted under subdivisions (a)(1)(A)-(E) of this section.

(ii) It is determined by the General Assembly that three percent (3%) of the first one million gallons (1,000,000 gals.) and no allowance for the remaining gallons so received is the actual and average amount of loss resulting from evaporation, shrinkage, and the losses resulting from unknown causes irrespective of the amount thereof, and the cost of collection;

(2) The number of gallons remaining after the deductions set forth in subdivision (a)(1) of this section have been made shall be multiplied by the rate of tax under § 26-55-205; and

(3) The remaining number of gallons computed on a volumetric basis shall be

multiplied by the rate provided by law in the adjoining state, such rate not to exceed the rate provided by § 26-55-205, and the resulting figure, together with the figure obtained in subdivision (a)(2) of this section, shall be the total amount of motor fuel tax due for the next-preceding calendar month.

(b) In reporting and computing this tax, distributors shall adjust all volume measurements of motor fuel to a temperature of sixty degrees Fahrenheit (60° F).

(c) The director by regulation shall provide for the payment and collection of the motor fuel tax when it is due but which under the terms of this subchapter is not required to be remitted by a distributor.

History. Acts 1941, No. 383, § 10; 1943, No. 253, § 2; 1949, No. 352, § 1; 1965 (1st Ex. Sess.), No. 41, § 2; 1979, No. 686, § 1; A.S.A. 1947, § 75-1112; Acts 1987, No. 763, § 5; 1989, No. 821, § 10; 2009, No. 655, §§ 48, 49.

Publisher's Notes. As to meaning of terms in, and effect of, Acts 1987, No. 763, see Publisher's Notes, § 26-55-202.

Amendments. The 2009 amendment inserted "and" at the end of (a)(1)(E)(ii) and (a)(2); substituted "set forth in subdivision (a)(1) of this section" for "hereinabove set forth" in (a)(2); and made a minor stylistic change.

Case Notes

In General.
Collections.
Credits.
Deductions.

In General.

The term "expenditures," contained in Ark. Const., Art. 19, § 12 does not include the shrinkage allowance permitted to motor fuel distributors. *Snyder v. Martin*, 305 Ark. 128, 806 S.W.2d 358 (1991).

Collections.

Filling station operator not licensed as distributor was not entitled to recover from distributor retainage allowed such distributor on taxes collected on motor fuel shipped to filling station on theory that distributor was unjustly enriched. *Whiteley v. Wilcox Oil Co.*, 225 Ark. 293, 280 S.W.2d 903 (1955).

Credits.

That certain gasoline was destroyed, or lost by fire, after tax was paid, did not entitle manufacturer or dealer to credit upon new shipments for amount of tax paid upon destroyed gasoline. *Barnsdall Ref. Corp. v. Ford*, 194 Ark. 658, 109 S.W.2d 151 (1937) (decision under prior law).

Deductions.

Acts 1929, No. 146 did not authorize the reduction or exemption of one percent from tank truck shipments. *Barnsdall Ref. Corp. v. Ford*, 194 Ark. 658, 109 S.W.2d 151 (1937) (decision under prior law).

A wholesale dealer in gasoline received in this state by barge was not entitled to deduction from gallonage tax for evaporation loss on gasoline actually delivered to it in this state. *Terminal Oil Co. v. McCarroll*, 201 Ark. 830, 147 S.W.2d 352 (1941), overruled in part, *Foote's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323, 21 A.L.R.4th 565 (1980) (decision under prior law).

The deduction permitted by statute for "shrinkage allowance" is not an appropriation of public money within the framework of Ark. Const., Art. 19, § 12. It is merely a deduction, nothing more. *Snyder v. Martin*, 305 Ark. 128, 806 S.W.2d 358 (1991).

26-55-231. Failure to report or pay tax — Revocation or cancellation of license.

(a) (1) If a distributor at any time files a false monthly report of the data or information required by this subchapter or fails, refuses, or neglects to file the monthly report required by this subchapter, or to pay the full amount of the tax as required by this subchapter, the Director of the Department of Finance and Administration may give notice to the distributor of an intention to revoke the license of the distributor.

(2) The distributor shall be entitled to a period of five (5) days after receipt of the notice from the director, within which to apply for a hearing before the director on the question of having the distributor's license revoked. The director shall grant a hearing at such time and place as the director may designate of which the distributor shall have five (5) days' advance notice in writing.

(3) After the hearing, at which time the distributor shall be entitled to present evidence and argument of counsel, the director shall decide whether the distributor's license shall be revoked.

(4) (A) Upon the issuance of an order revoking the license, the distributor shall be entitled to an appeal to the circuit court in the county where the distributor may do business where the question shall be tried de novo.

(B) An appeal shall lie from the circuit court of that county as in other cases provided by law.

(5) If the distributor fails to apply for a hearing within the time set out in subdivision (a)(2) of this section, the director may forthwith cancel the license of the distributor and notify the distributor of the cancellation by registered mail to the last known address of the distributor appearing on the files of the director. The director shall also notify the surety company on the distributor's bond in like manner.

(b) (1) Upon receipt of a written request from any distributor licensed under this subchapter to cancel the license issued to the distributor, the director shall have the power to cancel the license effective sixty (60) days from the date of the receipt of the written request.

(2) However, no such license shall be cancelled upon the request of any distributor unless and until the distributor prior to the date of the cancellation shall have paid to the State of Arkansas all excise taxes payable under the laws of the State of Arkansas, together with any and all penalties, interest, and fines accruing under any of the provisions of this subchapter, and unless and until the distributor shall have surrendered to the director the license certificate theretofore issued to the distributor.

(c) If upon investigation the director ascertains and finds that any person to whom a license has been issued under this subchapter is no longer engaged in the receipt, use, or sale of motor fuel as a distributor and has not been so engaged for a period of sixty (60) days, the director shall have the power to cancel the license by giving the person thirty (30) days' notice of the cancellation mailed to the last known address of the person, in which event the license certificate theretofore issued to the person shall be surrendered to the director.

(d) In the event that the license of any distributor shall be cancelled by the director as provided in this section and in the further event that the distributor shall have paid to the State of Arkansas all excise taxes due and payable by it under this subchapter, together with any and all penalties accruing under any of the provisions of this subchapter, then the director shall cancel and surrender the bond filed by the distributor.

History. Acts 1941, No. 383, § 11; A.S.A. 1947, § 75-1113.

Case Notes

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-232. Failure to report or pay taxes promptly — Penalties.

(a) When any distributor fails to file its monthly report with the Director of the Department of Finance and Administration on or before the time fixed in this subchapter for the filing thereof or when the distributor fails to submit the data outlined in §§ 26-55-229 and 26-55-230 in the monthly report, or when the distributor fails to pay to the director the amount of excise taxes due to the State of Arkansas when the excise taxes are payable, the distributor shall forfeit two percent (2%) of the amount due if the taxes are not remitted or paid within ten (10) days after the due date, and an additional eight percent (8%) shall be forfeited if the taxes are not remitted or paid on or before the thirtieth day after the taxes become due.

(b) (1) If the tax and penalty are not paid within sixty (60) days after the tax and penalty become due, then the license of the distributor shall be suspended.

(2) Thereafter the tax and penalty shall bear interest at the rate of one percent (1%) per month until paid.

(3) At the end of the sixty (60) days, the director shall notify the bonding company of the delinquency and declare the bond forfeited and shall certify the delinquent account to the Office of Revenue Legal Counsel of the Revenue Division of the Department of Finance and Administration for collection.

(c) However, when failure to pay the tax or file the sworn reports required by this subchapter within the time prescribed by law or when errors or omissions in the reports or payments are the result of mistake or arise from circumstances beyond the control of the licensed distributor and the delinquency or inaccuracy was unavoidable and devoid of intent to evade the tax, the director in his or her discretion may waive the additional eight percent (8%) penalty and the interest prescribed in this section.

(d) Deposit in the United States mails, with postage prepaid of the report or remittance in payment of the taxes, in sufficient time to reach the director in the ordinary course of the mails on or before the twenty-fifth day of the month, shall be deemed compliance with this section, even though the report or remittance in fact shall not reach the director until after the twenty-fifth day of the month.

History. Acts 1941, No. 383, § 12; 1943, No. 255, § 1; 1957, No. 393, § 3; A.S.A. 1947, § 75-1114.

26-55-233. Failure to file report — Assessment and collection of tax.

(a) Whenever any distributor neglects or refuses to make and file any report for any calendar month as required by this subchapter or files an incorrect or fraudulent report, then the Director of the Department of Finance and Administration shall:

(1) Determine upon such information as may be available to the director the number of gallons of motor fuel with respect to which the distributor has incurred liability under the motor fuel tax laws of the State of Arkansas for any particular month; and

(2) Fix the amount of taxes and penalties payable to the director by the distributor under this subchapter accordingly.

(b) (1) In any action or proceeding for the collection of the motor fuel tax or any penalties or interest imposed in connection therewith, an assessment by the director of the amount of tax due or interest or penalties due to the state shall constitute prima facie evidence of the claim of the state and the burden of proof shall be upon the distributor to show that the assessment was incorrect and contrary to law.

(2) However, no assessment shall be made for any month after the expiration of three (3) years from the date set for the filing of the monthly return, except that, in case of a false or fraudulent report with intent to evade tax or of failure to file a report, assessment may be made at any time.

History. Acts 1941, No. 383, § 13; 1967, No. 197, § 1; A.S.A. 1947, § 75-1115.

26-55-234. Statements and reports from persons not distributors.

(a) Every person or terminal purchasing or otherwise acquiring motor fuel by pipeline, tank car, tank truck, or cargo lot and selling, using, or otherwise disposing of the motor fuel for delivery in Arkansas not required by a provision of this subchapter to be licensed as a distributor in motor fuel shall file a statement setting forth the:

(1) Name under which the person or terminal is transacting business within the State of Arkansas and the location with the street number address of that person's or terminal's principal office or place of business within the state; and

(2) Name and address of the owner, names and addresses of the partners if the person or terminal is a partnership, or names and addresses of the principal officers if the person or terminal is a corporation or association.

(b) (1) On or before the twenty-fifth day of each calendar month on forms prescribed by the Director of the Department of Finance and Administration, the person shall report to the director all purchases or other acquisitions and sales or other disposition of motor fuel during the next preceding calendar month giving a record of each tank car, tank truck, or cargo lot delivered to a point within the state and of all motor fuel otherwise delivered to the person.

(2) The report shall set forth:

(A) From whom each tank car or cargo lot was purchased or otherwise acquired;

(B) The point of shipment;

(C) To whom sold or shipped;

(D) The point of delivery;

(E) The date of shipment;

(F) The name of the carrier;

(G) The initials and number of the tank car;

(H) The number of gallons contained in the tank car if shipped by rail;

(I) The name and owner of the boat, barge, or vessel, and the number of gallons contained in the boat, barge, or vessel if shipped by water; and

(J) Any other additional information the director may require relative to the motor fuel.

(c) On or before the twenty-fifth day of each calendar month on forms prescribed by the director, the terminal shall report to the director all purchases or other acquisitions and sales or other disposition of motor fuel during the next preceding calendar month, which report shall include the following:

- (1) Beginning inventories in gallons of motor fuel in storage;
 - (2) Ending inventories in gallons of motor fuel in storage;
 - (3) Withdrawals of motor fuel in gallons from the pipeline outlet resulting in additions of motor fuel to storage, including the name of the distributor licensed as an importer who requested the placement of the motor fuel into storage; and
 - (4) Removals of motor fuel from storage, specifically including:
 - (A) Bill of lading numbers which represent physical movements of the motor fuel;
 - (B) The date of each removal;
 - (C) The quantity in gallons of motor fuel so removed;
 - (D) The person who had the motor fuel available for that particular removal; and
 - (E) The person possessing a license from the director who requested the removal of the motor fuel from that storage.
- (d) When any person or terminal purchasing or otherwise acquiring motor fuel by pipeline, in a tank car, tank truck, or cargo lot and selling or otherwise disposing of the motor fuel for delivery in Arkansas and not required by a provision of this subchapter to register as a distributor in motor fuel, fails to submit the person's or terminal's monthly report to the director by the twenty-fifth day of each calendar month or when the person or terminal fails to submit in the monthly report the data required by this subchapter, the person or terminal shall be guilty of a violation and shall be fined an amount not greater than one hundred dollars (\$100) for the first offense and shall be fined an amount not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each subsequent offense.

History. Acts 1941, No. 383, § 14; A.S.A. 1947, § 75-1116; Acts 1993, No. 1029, § 2; 2005, No. 1994, § 175; 2007, No. 827, § 225.

Publisher's Notes. Acts 1993, No. 1029, § 7, provided:

"The Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (d). The 2007 amendment rewrote (a).

26-55-235. Reports from carriers transporting motor fuel.

- (a) Every railroad company, and every street, suburban, or interurban railroad company, every pipeline company, every water transportation company, and every common carrier transporting motor fuel, kerosene, or other hydrocarbon products, either in interstate or in intrastate commerce, to points within Arkansas, and every person transporting motor fuel or kerosene by whatever manner to a point within the state from any point outside of the state shall report under oath to the Director of the Department of Finance and Administration, on forms prescribed by the director, all deliveries of motor fuel, kerosene, or other hydrocarbon products, so made to points within Arkansas.
- (b) The reports shall cover monthly periods and shall be submitted within twenty-five (25) days after the close of the month covered by the report and shall show:
 - (1) The name and address of the person to whom the deliveries of motor fuel

have in fact been made;

(2) The name and address of the originally named consignee if motor fuel has been delivered to any other than the originally named consignee;

(3) The point of origin, the point of delivery, the date of delivery, and the number and initials of each tank car and the number of gallons contained therein if shipped by rail;

(4) The name of the boat, barge, or vessel and the number of gallons contained therein if shipped by water;

(5) The license number of each tank truck, the number of gallons contained therein, and the bill of lading number, if transported by motor truck;

(6) The point of origin, the name and address of the person or terminal to whom the delivery was made, the date of the delivery, and the quantity of motor fuel delivered, if shipped by pipeline company; and

(7) The manner and quantities, if delivered by other means, in which the delivery is made.

(c) The reports shall also show such additional information relative to shipments of motor fuel as the director may require.

History. Acts 1941, No. 383, § 15; A.S.A. 1947, § 75-1117; Acts 1993, No. 1029, § 3.

Publisher's Notes. Acts 1993, No. 1029, § 7, provided:

"The Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

26-55-236. Failure to file reports, statements, or returns — Falsification — Penalties.

Upon conviction, a person who refuses or neglects to make any statement, report, or return required by this subchapter or who knowingly makes, aids, or assists another person in making a false statement in a return or report required by this subchapter to the Director of the Department of Finance and Administration is guilty of an unclassified misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) or imprisonment for a term of not less than thirty (30) days and not more than one (1) year, or both fine and imprisonment.

History. Acts 1941, No. 383, § 25; A.S.A. 1947, § 75-1127; Acts 2009, No. 655, § 50.

Amendments. The 2009 amendment inserted "is guilty of an unclassified misdemeanor and," deleted "in the county jail" following "or imprisonment," and made related and minor stylistic changes.

26-55-237. Retention of records by distributors and dealers — Penalty for noncompliance.

(a) Each distributor shall maintain and keep for a period of two (2) years records of motor fuel received, used, sold, or delivered, within this state by the distributor, together with invoices, bills of lading, and other pertinent records and papers as may be required by the Director of the Department of Finance and Administration for the reasonable administration of this subchapter.

(b) It shall be the duty of every dealer receiving motor fuel in this state to maintain and keep for a period of two (2) years a record of motor fuel received and the purchase price, together with delivery tickets, invoices, and bills of lading, and such other records as the director shall require.

(c) Records ordinarily kept outside the State of Arkansas by any distributor in the usual course of business shall be produced within the State of Arkansas upon proper demand of the director.

(d) Upon conviction, a person knowingly violating this section is guilty of an unclassified misdemeanor and shall be sentenced to pay a fine of one thousand dollars (\$1,000) and costs of prosecution or to undergo imprisonment for not more than one (1) year, or both.

History. Acts 1941, No. 383, § 16; A.S.A. 1947, § 75-1118; Acts 2009, No. 655, § 51.

Amendments. The 2009 amendment, in (d), substituted “knowingly” for “willfully,” inserted “an unclassified,” and made related and minor stylistic changes.

26-55-238. Inspection of records, books, etc. — Examination of witnesses.

(a) The Director of the Department of Finance and Administration shall have the power to require any person, firm, corporation, or association of persons engaged in the handling, sale, or distribution of gasoline or motor vehicle fuel, either as a distributor or as a retailer, to furnish any information other than the statements mentioned in § 26-55-237 by the director, deemed to be necessary for the purpose of enforcing the collection of the tax. For this purpose the director shall have authority to examine the books, records, papers, and files and storage tanks and any other equipment of such persons, firms, corporations, or associations of persons.

(b) (1) To this end, the director shall have the power and authority to administer oaths and examine witnesses.

(2) (A) If any witness fails or refuses to appear at the request of the director and give evidence under oath or refuses access to books, records, papers, and files and storage and any other equipment, the director shall certify the facts and the names of the witnesses failing and refusing to appear, refusing to give evidence, or refusing access to the books, papers, records, files, and storage tanks to the judge of the circuit court of this state having jurisdiction over the witness or witnesses.

(B) Thereupon, the judge shall direct that a summons issue out of the court directed to the witnesses commanding their appearance in the court on a day to be fixed and to be continued as occasion may require, and there give evidence, if within the knowledge of the witnesses, and produce and open for inspection the books, papers, records, and files as may be required for the purpose of ascertaining any facts necessary for the enforcement of the collection of the tax provided for in this subchapter.

(C) Upon the failure of the witnesses to appear in obedience to the summons, to give evidence and produce and open for inspection the books, records, papers, and files, and permit access to the storage tanks without satisfactory excuse, the witness shall be deemed guilty of contempt of court and shall be punished in the manner provided for that offense.

History. Acts 1941, No. 383, § 17; A.S.A. 1947, § 75-1119.

26-55-239. Forms for reports or records.

The Director of the Department of Finance and Administration shall have the authority to prescribe all forms upon which reports shall be made to the director or forms of records to be used by distributors.

History. Acts 1941, No. 383, § 17; A.S.A. 1947, § 75-1119.

26-55-240. Discontinuance or transfer of business.

(a) (1) Whenever a distributor ceases to engage in business as a distributor within the State of Arkansas by reason of the discontinuance, sale, or transfer of the business of the distributor, it shall be the duty of the distributor to notify the Director of the Department of Finance and Administration in writing at least ten (10) days prior to the time the discontinuance, sale, or transfer takes effect.

(2) The notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee.

(b) (1) All taxes, penalties, and interest under this subchapter, not yet due and payable under the provisions of this subchapter, together with any and all interest accruing or penalties imposed under this subchapter, notwithstanding any provisions thereof, shall become due and payable concurrently with the discontinuance, sale, or transfer.

(2) It shall be the duty of any such distributor concurrently with the discontinuance, sale, or transfer to make a report and pay all such taxes, interest, and penalties, and to surrender to the director the license certificate theretofore issued to the distributor by the director.

(c) Unless the notice provided for in subsection (a) of this section shall have been given to the director as provided in subsection (a) of this section, the purchaser or transferee shall be liable to the State of Arkansas for the amount of all taxes, penalties, and interest under this subchapter accrued against any such distributor selling or transferring the distributor's business, on the date of the sale or transfer but only to the extent of the value of the property and business acquired from the distributor.

(d) Upon conviction, a person violating this section is guilty of an unclassified misdemeanor and shall be sentenced to pay a fine of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300) and costs of the prosecution or imprisonment for not more than one (1) year, or both.

History. Acts 1941, No. 383, § 19; A.S.A. 1947, § 75-1121; Acts 2009, No. 655, § 52.

Amendments. The 2009 amendment, in (d), inserted "Upon conviction" and "an unclassified"; and made related and minor stylistic changes.

26-55-241. Unpaid tax — Lien on property — Enforcement.

(a) If any person liable for the tax imposed by the provisions of this subchapter neglects or refuses to pay the tax, the amount of the tax, including any interest, penalty, or addition to the tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by the person whether the property is employed by the person in the prosecution of business or is in the hands of an assignee, trustee, or receiver for the benefit of creditors from the date the taxes are due and payable as provided in this subchapter.

(b) (1) The lien may be enforced by the Director of the Department of Finance and Administration by filing a certificate of indebtedness as provided for in § 26-55-243 or by any other legal means.

(2) The action of the director in attempting to collect the delinquent taxes by issuing the certificate of indebtedness shall not be construed to be an election of remedies.

History. Acts 1941, No. 383, § 18; A.S.A. 1947, § 75-1120.

Case Notes

Statutes of Limitation.

Statutes of Limitation.

Where state obtained judgment on certificate of indebtedness for gasoline taxes, but did not procure a writ or execution to collect or preserve its judgment, the right of the state to claim a lien was barred after three years, since such lien was not excepted from the three-year limitation provided for liens of judgments. *Lion Oil & Refining Co. v. Rex Oil Co.*, 195 Ark. 1021, 115 S.W.2d 556 (1938) (decision under prior law).

26-55-242. Sale of distributor's property — Certificate of lien.

(a) Neither the sheriff of any county where the property affected is situated nor any receiver, assignee, or other officer shall sell the property or franchise of any person who is a distributor without first filing with the Director of the Department of Finance and Administration a statement containing:

(1) The name of the plaintiff or party at whose instance or upon whose account the sale is made;

(2) The name of the person whose property or franchise is to be sold;

(3) The time and place of sale;

(4) The nature of the property; and

(5) The location of the property.

(b) It shall be the duty of the director, after receiving notice as provided in subsection (a) of this section, to furnish to the sheriff, receiver, assignee, or other officer having charge of the sale, certified copies of all motor fuel tax, penalties, and interest on file as liens against the person and, in the event that there are no such liens, a certificate showing that fact. The certified copies of the certificate shall be publicly read by that officer at and immediately before the sale of the property or franchise of the person.

(c) It shall be the duty of the director to furnish to any person applying therefor a certificate showing the amount of all liens for motor fuel tax, penalties, and interest that may be in the files of the director against any person under the provisions of this subchapter.

History. Acts 1941, No. 383, § 18; A.S.A. 1947, § 75-1120.

26-55-243. Delinquent tax payments — Collection procedure.

(a) If any distributor of motor fuel shall become delinquent in the payment of any tax prescribed by law on motor fuel, it shall be the duty of the Director of the Department of Finance and Administration when the tax is determined, either by the report of the distributor or by such investigations as the director may have made, to assess the tax so determined against the delinquent taxpayer, together with a penalty of twenty percent

(20%) on the amount of the tax, and to certify the amount of the tax and penalty to the Treasurer of State.

(b) (1) The director also at the same time shall certify the amount of the tax and penalty to the clerk of the circuit court of the county where the tax or any part thereof accrued.

(2) It shall be the duty of the clerk to file the certificate of record and to enter the same in the circuit court for judgment and decrees under the procedure prescribed for filing transcripts of judgments by § 16-19-1011.

(c) Execution shall thereupon be issuable forthwith by the clerk of the circuit court directed to the sheriff, who shall make a levy on any property, assets, and effects of the distributor against whom the tax is assessed.

History. Acts 1941, No. 383, § 20; A.S.A. 1947, § 75-1122.

26-55-244. Refunds on excess gallonage reported.

(a) (1) Whenever it shall appear upon the filing of the monthly report by any distributor that the distributor during the period covered by such report has sold or otherwise disposed of or used during such period, an amount of motor fuel as set forth in §§ 26-55-205, 26-55-207, 26-55-210, and 26-55-212, in excess of the amount of motor fuel received by the distributor within the State of Arkansas during the period, the distributor shall be entitled thereupon to a refund upon the excess gallonage at the rate per gallon provided in § 26-55-205 if the distributor claiming the refund has paid a tax at the rate provided in § 26-55-205 on each gallon of motor fuel in storage or in the possession of the distributor at the beginning of such reporting period.

(2) However, the Director of the Department of Finance and Administration may deduct from the refund a sum equivalent to the one percent (1%) evaporation loss claimed by the distributor in reports made prior to the reporting period.

(b) In the event any distributor shall be in default in the payment of the distributor's motor fuel tax or any penalties or interest thereunder, the refunds provided for in this section shall be reduced by the amount of the default.

(c) Whenever the director determines that any distributor is entitled to a refund under any of the provisions of this section, the director shall certify the amount of the refund and authorize and permit the distributor to deduct the same amount from the distributor's next motor fuel tax payment to the State of Arkansas.

History. Acts 1941, No. 383, § 22; 1965 (1st Ex. Sess.), No. 41, § 3; A.S.A. 1947, § 75-1124.

26-55-245. Refunds — Taxes erroneously or illegally collected — Lost fuel.

(a) In the event it appears to the Director of the Department of Finance and Administration that any taxes or penalties imposed by this subchapter have been erroneously or illegally collected from any distributor, the director shall certify the amount thereof and authorize and permit the distributor to make an equivalent deduction from the distributor's next motor fuel tax payment to the State of Arkansas.

(b) In the event any distributor sustains a loss of motor fuel due to fire, flood, storm, theft, or other causes beyond the distributor's control other than through evaporation, which product has been received as defined by § 26-55-202(13), the director shall authorize and permit the distributor to deduct the quantity so lost from the quantity subject to tax on the motor fuel tax report filed for the month in which the loss occurred

or any subsequent report filed within a period of one (1) year. However, the same loss may be allowed only one (1) time.

(c) (1) Before the director shall certify or authorize any distributor to make any deduction or take any credit on its reports on account of any tax having been erroneously or illegally collected or on account of any loss as provided in subsections (a) and (b) of this section, satisfactory evidence, upon such forms and in such a manner as shall be prescribed by the Revenue Division of the Department of Finance and Administration, shall be submitted to the supervisor of the Motor Fuel Tax Section of the Department of Finance and Administration, who shall determine from the evidence if any deduction or credit is to be allowed.

(2) Thereupon the supervisor of the section shall transmit to the director his or her certificate of approval, and the director may in his or her discretion allow the deduction or credit in the amount the director thinks proper or may reject the deduction or credit altogether.

(3) [Repealed.]

(4) The rejection or confirmation of the deduction or credit shall be final, and upon the confirmation by the director, the deduction or credit shall then be allowed in due course by the supervisor of the section.

History. Acts 1941, No. 383, § 23; 1943, No. 251, § 1; A.S.A. 1947, § 75-1125; Acts 2009, No. 655, § 53.

Amendments. The 2009 amendment deleted (c)(3).

26-55-246. Posting price of fuel plus tax.

Distributors and all other persons selling motor fuel may add the amount of the tax to the price of the motor fuel sold by them and shall state the rate of the tax separately from the price of the motor fuel on all price display signs, in letters or figures of the same size and color, sales or delivery slips, bills, and statements which advertise or indicate the price of motor fuel.

History. Acts 1941, No. 383, § 27; A.S.A. 1947, § 75-1129.

26-55-247. Confiscation and sale of equipment of persons transporting motor fuel unlawfully.

(a) Any person who knowingly transports or causes to be transported any motor fuel in any manner in violation of the provisions of this subchapter in addition to other penalties and punishment provided for in this subchapter shall be subject to the immediate confiscation of the tank truck or vehicle and the contents therein which are thus unlawfully transported, by the Director of the Department of Finance and Administration or the director's agents.

(b) Unless the operator or owner of such tank truck or vehicle can prove to the satisfaction of the director at a hearing for that purpose within ten (10) days that such motor fuel was being transported, transferred, or delivered in accordance with this subchapter or any other act affecting the transportation of motor fuel, and in accordance with any regulations issued pursuant to this subchapter or any other act, the tank truck or vehicle and the contents therein shall be sold by the director at auction without any recourse or liability on the director or any of the director's agents or the State of

Arkansas.

History. Acts 1941, No. 383, § 21; A.S.A. 1947, § 75-1123.

26-55-248. Sale of fuels purchased from other than duly licensed distributor — Penalties.

A person who sells motor fuel purchased by him or her from any person other than a duly licensed distributor upon which the tax imposed by this subchapter has not been paid, upon conviction is guilty of an unclassified misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) or imprisonment for a term of not less than thirty (30) days and not more than one (1) year, or both fine and imprisonment.

History. Acts 1941, No. 383, § 25; A.S.A. 1947, § 75-1127; Acts 2009, No. 655, § 54.

Amendments. The 2009 amendment inserted “is guilty of an unclassified misdemeanor and,” deleted “in the county jail” following “or imprisonment,” and made related and minor stylistic changes.

26-55-249. Public inspection of records.

The records of the Director of the Department of Finance and Administration pertaining to motor fuel taxes shall at all reasonable times be open to the inspection of the public with the approval of the director.

History. Acts 1941, No. 383, § 24; A.S.A. 1947, § 75-1126.

Case Notes

Implied Repeal.

Implied Repeal.

This section is impliedly repealed by § 26-18-303. *Snyder v. Martin*, 305 Ark. 128, 806 S.W.2d 358 (1991).

26-55-250. Exchange of information among states.

The Director of the Department of Finance and Administration upon request duly received from the officials to whom are intrusted the enforcement of the motor fuel tax laws of any other state shall forward to such officials any information which the director may have in his or her possession relative to the manufacture, receipt, sale, use, transportation, or shipment by any person of motor fuel.

History. Acts 1941, No. 383, § 26; A.S.A. 1947, § 75-1128.

Subchapter 3

— Refunds — Motor Fuels Used for Agricultural Purposes

26-55-301 — 26-55-321. [Repealed.]

26-55-301 — 26-55-321. [Repealed.]

Publisher's Notes. This subchapter, concerning a tax refund when motor fuel used for agricultural purposes, was repealed by Acts 1995, No. 777, § 9. The subchapter was derived

from the following sources:

- 26-55-301. Acts 1949, No. 406, § 1; 1967, No. 181, § 1; 1969, No. 136, § 1; A.S.A. 1947, § 75-1133.
- 26-55-302. Acts 1949, No. 406, § 16; A.S.A. 1947, § 75-1148.
- 26-55-303. Acts 1949, No. 406, § 13; A.S.A. 1947, § 75-1145.
- 26-55-304. Acts 1949, No. 406, § 2; 1963, No. 114, § 1; A.S.A. 1947, § 75-1134.
- 26-55-305. Acts 1949, No. 406, §§ 4, 5, 10; 1967, No. 182, § 1; A.S.A. 1947, §§ 75-1136, 75-1137, 75-1142.
- 26-55-306. Acts 1949, No. 406, §§ 10, 12; A.S.A. 1947, §§ 75-1142, 75-1144.
- 26-55-307. Acts 1949, No. 406, §§ 5, 6; 1971, No. 165, § 1; A.S.A. 1947, §§ 75-1137, 75-1138.
- 26-55-308. Acts 1949, No. 406, §§ 2, 7; 1963, No. 114, § 1; A.S.A. 1947, §§ 75-1134, 75-1139.
- 26-55-309. Acts 1949, No. 406, § 13; A.S.A. 1947, § 75-1145.
- 26-55-310. Acts 1949, No. 406, § 2; 1963, No. 114, § 1; A.S.A. 1947, § 75-1134.
- 26-55-311. Acts 1949, No. 406, § 7; A.S.A. 1947, § 75-1139.
- 26-55-312. Acts 1949, No. 406, § 3; 1967, No. 183, § 1; A.S.A. 1947, § 75-1135.
- 26-55-313. Acts 1949, No. 406, § 9; A.S.A. 1947, § 75-1141.
- 26-55-314. Acts 1949, No. 406, § 10; A.S.A. 1947, § 75-1142.
- 26-55-315. Acts 1949, No. 406, § 8; A.S.A. 1947, § 75-1140.
- 26-55-316. Acts 1949, No. 406, § 11; A.S.A. 1947, § 75-1143.
- 26-55-317. Acts 1949, No. 406, §§ 14, 15; A.S.A. 1947, §§ 75-1146, 75-1147.
- 26-55-318. Acts 1949, No. 406, §§ 14, 15; A.S.A. 1947, §§ 75-1146, 75-1147.
- 26-55-319. Acts 1949, No. 406, § 15; A.S.A. 1947, § 75-1147.
- 26-55-320. Acts 1949, No. 406, § 10; A.S.A. 1947, § 75-1142.
- 26-55-321. Acts 1949, No. 406, § 10; A.S.A. 1947, § 75-1142.

Subchapter 4

— Refunds — Motor Fuels Used in Motor Buses

- 26-55-401. Applicability of existing motor fuel refund laws.
- 26-55-402. Effect of subchapter on state highway bonds.
- 26-55-403. Director's powers.
- 26-55-404. Entitlement to refund.
- 26-55-405. Refund permits.
- 26-55-406. Applications for refund.
- 26-55-407. Refund paid from Gasoline Tax Refund Fund.
- 26-55-408. Dealers' and sellers' records and reports.

Effective Dates. Acts 1963, No. 269, § 9: Mar. 18, 1963. Emergency clause provided: "It is hereby found that economical mass transportation for the general public is essential to the public welfare; that the owners and/or operators of motor buses on designated streets according to regular schedules under franchises from municipalities in this state, are in dire circumstances, thereby jeopardizing the efficient and economical mass transportation of the public; and that an emergency therefore is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 600, § 6: Apr. 7, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the maintenance and operation of economical mass transportation for the general public is essential to the public welfare, that the owners and/or operators of motor buses on designated streets according to regular schedules under franchise from municipalities in this State are in dire circumstances thereby jeopardizing the efficient and economical mass transportation of the public, and that the immediate passage of this Act is necessary to provide financial relief to the operation of mass transit facilities in municipalities in this State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect

from and after its passage and approval.”

26-55-401. Applicability of existing motor fuel refund laws.

All provisions of § 26-55-301 et seq. [repealed], with respect to records of refunds, erroneous or fraudulent claims, bond requirements, revocation of permits, inspection of dealers' records, and all other provisions thereof, so far as they are adaptable, shall be equally applicable to motor fuel tax refunds pursuant to this subchapter.

History. Acts 1963, No. 269, § 6; A.S.A. 1947, § 75-1148.6.

Publisher's Notes. Section 26-55-301 et seq., referred to in this section, was repealed by Acts 1995, No. 777, § 9.

26-55-402. Effect of subchapter on state highway bonds.

Nothing in this subchapter shall be construed as an impairment of the obligation existing between the State of Arkansas and the holders of Arkansas state highway bonds whether the bonds have already been issued or may hereafter be issued.

History. Acts 1963, No. 269, § 8; A.S.A. 1947, § 75-1148.8.

26-55-403. Director's powers.

The Director of the Department of Finance and Administration shall have the authority to make, amend, and enforce regulations, to subpoena witnesses and documents, to administer oaths, and to do and perform all other acts the director shall deem necessary to carry out the purpose and intent of this subchapter.

History. Acts 1963, No. 269, § 7; A.S.A. 1947, § 75-1148.7.

26-55-404. Entitlement to refund.

The owners or operators of motor buses operated on designated streets according to regular schedules, under municipal franchise, who for the purpose of operating the buses shall use motor fuel on which the tax, as imposed by the Motor Fuel Tax Law, § 26-55-201 et seq., has been paid or hereafter shall be paid, shall be entitled to a refund of the full amount of the motor fuel tax, subject to the provisions of this subchapter.

History. Acts 1963, No. 269, § 1; 1971, No. 600, § 1; A.S.A. 1947, § 75-1148.1.

26-55-405. Refund permits.

(a) No person, firm, or corporation shall secure a refund of tax under this subchapter unless that person is the holder of an unrevoked permit issued by the Director of the Department of Finance and Administration before the purchase of the motor fuel.

(b) The permit shall be numbered and issued annually and shall entitle the holder to make application for refund under this subchapter.

(c) Applications for the permits shall be filed with the director on forms prescribed by the director and shall contain the same information, so far as applicable, as is required in § 26-55-305 [repealed], and such other information as the director may require.

History. Acts 1963, No. 269, § 4; A.S.A. 1947, § 75-1148.4.

A.C.R.C. Notes. Section 26-55-305 referred to in this section was repealed by Acts 1995, No. 777, § 9.

26-55-406. Applications for refund.

Applications for refund pursuant to this subchapter shall be sworn to and shall be made to the Director of the Department of Finance and Administration and shall be in the same form and contain the same information, so far as applicable, as is required in § 26-55-301 et seq. [repealed], and in addition, shall contain such other information as may be required by the director.

History. Acts 1963, No. 269, § 2; A.S.A. 1947, § 75-1148.2.

A.C.R.C. Notes. Section 26-55-301 et seq., referred to in this section, was repealed by Acts 1995, No. 777, § 9.

26-55-407. Refund paid from Gasoline Tax Refund Fund.

All valid claims for refund of motor fuel taxes under the provisions of this subchapter shall be paid from the Gasoline Tax Refund Fund and shall be subject to the same conditions and limitations as provided in § 26-55-301 et seq. [repealed], with respect to agricultural motor fuel tax refunds, except that all such motor fuels covered by the provisions of this subchapter shall be subject to the full refund of the motor fuel taxes paid thereon.

History. Acts 1963, No. 269, § 3; 1971, No. 600, § 2; A.S.A. 1947, § 75-1148.3.

A.C.R.C. Notes. Section 26-55-301 et seq., referred to in this section, was repealed by Acts 1995, No. 777, § 9.

26-55-408. Dealers' and sellers' records and reports.

Dealers and sellers of motor fuel shall keep the same records and shall prepare the same invoices and make the same reports to the Director of the Department of Finance and Administration with respect to motor fuel sold to permit holders under this subchapter as is required by § 26-55-301 et seq. [repealed], with respect to agricultural motor fuel sales.

History. Acts 1963, No. 269, § 5; A.S.A. 1947, § 75-1148.5.

A.C.R.C. Notes. Section 26-55-301 et seq., referred to in this section, was repealed by Acts 1995, No. 777, § 9.

Subchapter 5 **— Interstate Motor Fuels Dealers**

26-55-501 — 26-55-511. [Repealed.]

26-55-501 — 26-55-511. [Repealed.]

Publisher's Notes. This subchapter, concerning interstate motor fuels dealers, was repealed by Acts 1995, No. 777, § 2. The subchapter was derived from the following sources:

26-55-501. Acts 1968 (1st Ex. Sess.), No. 36, § 1; A.S.A. 1947, § 75-1180.

26-55-502. Acts 1968 (1st Ex. Sess.), No. 36, § 1; A.S.A. 1947, § 75-1180.

26-55-503. Acts 1968 (1st Ex. Sess.), No. 36, § 2; A.S.A. 1947, § 75-1181.

26-55-504. Acts 1968 (1st Ex. Sess.), No. 36, § 4; A.S.A. 1947, § 75-1183.

26-55-505. Acts 1968 (1st Ex. Sess.), No. 36, § 3; A.S.A. 1947, § 75-1182.

26-55-506. Acts 1968 (1st Ex. Sess.), No. 36, § 4; A.S.A. 1947, § 75-1183.

26-55-507. Acts 1968 (1st Ex. Sess.), No. 36, § 4; A.S.A. 1947, § 75-1183.
26-55-508. Acts 1968 (1st Ex. Sess.), No. 36, § 4; A.S.A. 1947, § 75-1183.
26-55-509. Acts 1968 (1st Ex. Sess.), No. 36, § 2; A.S.A. 1947, § 75-1181.
26-55-510. Acts 1968 (1st Ex. Sess.), No. 36, § 5; A.S.A. 1947, § 75-1184.
26-55-511. Acts 1968 (1st Ex. Sess.), No. 36, § 7; A.S.A. 1947, § 75-1185.

Subchapter 6 **— Shipments of Motor Fuels**

26-55-601. Definitions.
26-55-602. Applicability.
26-55-603. Penalties — Impoundment of vehicles.
26-55-604. Rules and regulations — Audit assistance.
26-55-605. Import/export load permit required — Exception.
26-55-606. Bill of lading required — Penalty.
26-55-607. Documentation to be retained in vehicle — Exception.
26-55-608. Authority to stop, investigate, and impound vehicles.
26-55-609. Responsibility for taxes — Provisions cumulative.
26-55-610. Licensing and bonding requirements — Penalties.

Publisher's Notes. Acts 1977, No. 224, as amended, concerning shipments of motor fuels, was included in the 1987 codification of the Arkansas Code as subchapter 6 of this chapter. However, the codification of Acts 1977, No. 224, as amended, never became effective because Acts 1977, No. 224, as amended, was repealed by Acts 1987, No. 977, § 12, before the effective date of the 1987 codification.

Cross References. Special motor fuels taxes, § 26-56-101 et seq.

Effective Dates. Acts 1987, No. 977, § 13: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly that abuses of the 'Motor Fuel Tax Law,' as amended, and 'Special Motor Fuels Tax Law,' as amended, exist which result in substantial loss of revenues to the State; and that this Act is immediately necessary to strengthen the enforcement provisions governing the transportation of fuels. Therefore, an emergency is hereby declared to exist and that this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987." Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-55-601. Definitions.

As used in this subchapter:

- (1) "Director" means the Director of State Highways and Transportation;
- (2) "Fuels" means motor fuel, distillate special fuels, and liquefied gas special fuels, as defined in the Motor Fuel Tax Law, § 26-55-201 et seq., and the Special Motor Fuels Tax Law, § 26-56-101 et seq., and includes gasoline, diesel fuel, and liquefied petroleum gas fuels used to propel an automotive vehicle;
- (3) "Person" includes any operator, individual, owner, company, partnership, limited liability company, joint venture, joint agreement, association, whether mutual or otherwise, corporation, estate, trust, business trust, receiver, trustee, leasing company,

common carrier, private carrier, or transporter; and

(4) “River ports” means those ports where fuels transported by barge are unloaded.

History. Acts 1987, No. 977, § 1; 1995, No. 1160, § 27.

26-55-602. Applicability.

The provisions of this subchapter shall not be applicable to any licensed distributor or supplier of fuels within this state who does not import or export fuels.

History. Acts 1987, No. 977, § 11.

26-55-603. Penalties — Impoundment of vehicles.

(a) Upon conviction, a person transporting fuels into the State of Arkansas without the appropriate bill of lading and import/export load permit or interstate shipment record as required by this subchapter is guilty of a violation and shall be fined not more than two thousand five hundred dollars (\$2,500), of which one-half (1/2) shall be deposited with the Treasurer of State as special highway revenues to be disbursed in the same manner and to be used for the same purposes set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

(b) Upon conviction, a person is guilty of a violation and subject to the penalty in subsection (a) of this section if the person:

(1) Makes or assists another person to make a false or fraudulent statement in any report required by this subchapter, the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq.;

(2) Fails to include any information demanded by this subchapter, the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq.; or

(3) Fails to produce upon request of proper authority any information required in this subchapter, the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq.

(c) Any motor vehicle, including the cargo thereof, found to have been in violation of any of the provisions of this section shall be impounded by the Director of State Highways and Transportation pending disposition under this subchapter.

History. Acts 1987, No. 977, § 8; 2009, No. 655, § 55.

Amendments. The 2009 amendment inserted “Upon conviction” in (a) and (b); substituted “violation” for “misdemeanor” in (a); subdivided (b), inserted “is guilty of a violation and subject to the penalty in subsection (a) of this section” in the introductory language, deleted “shall be guilty of a misdemeanor and subject to the penalties as provided in this section” at the end of (b)(3), and made related and minor stylistic changes.

26-55-604. Rules and regulations — Audit assistance.

The Director of State Highways and Transportation shall prescribe and promulgate rules and regulations necessary for the proper enforcement of this subchapter with the advice of the Legislative Council, and in any audits conducted by the Arkansas State Highway and Transportation Department relating to the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq., or this subchapter or other

pertinent laws, may call upon the Director of the Department of Finance and Administration for assistance.

History. Acts 1987, No. 977, § 10.

26-55-605. Import/export load permit required — Exception.

(a) No person shall import or export fuels into or out of this state, other than by pipeline or rail, for sale or use within this state without:

(1) Being a supplier or distributor, licensed by the Director of the Department of Finance and Administration under the laws of the State of Arkansas, as those terms are defined in the Motor Fuel Tax Law, § 26-55-201 et seq., and the Special Motor Fuels Tax Law, § 26-56-101 et seq.; and

(2) Acquiring an import/export load permit issued by the Director of State Highways and Transportation or his or her designee for each load.

(b) (1) No common carrier pipeline company shall import or export fuels by pipeline without filing a copy of all reports, required by other laws of this state, with the Director of State Highways and Transportation.

(2) Railroad companies are exempt from the provisions of this subchapter except in those cases where the railroad company is importing fuels for other than off-road usage or for sale to licensed suppliers or distributors.

(c) (1) The Director of State Highways and Transportation or his or her designee shall issue import/export load permits at no charge and on those forms provided by the Director of State Highways and Transportation and in the manner provided by the Director of State Highways and Transportation.

(2) The Director of State Highways and Transportation shall provide a toll-free telephone number for both interstate and intrastate usage for those seeking the permits.

(3) (A) The Director of State Highways and Transportation shall prescribe and publish such rules and regulations as may be necessary for the enforcement of this subchapter.

(B) The regulations shall provide that a licensed supplier or distributor upon demand may obtain a supply of prenumbered permits for use as required under this subchapter so long as the supplier or distributor has not been found in violation of this subchapter. However, each permit used must be accompanied by the relevant bill of lading when filed with the Director of State Highways and Transportation.

(d) The Director of State Highways and Transportation shall have the authority to station one (1) or more representatives at each port of entry or pipeline terminal to assist in the enforcement of this subchapter.

(e) The import/export load permit shall be on a form issued by the Director of State Highways and Transportation.

History. Acts 1987, No. 977, §§ 2, 3.

26-55-606. Bill of lading required — Penalty.

(a) All shipments or movements of fuels, except by pipeline or rail, for sale or use without, or when imported for sale or use within, the state shall be accompanied by a bill of lading which shall show the following:

(1) The seller's or the purchaser's supplier or distributor license number;

(2) The origin of the transport trip;

(3) The approximate destination or destinations of the transport trip;
(4) The type or types of fuels being transported and quantity or quantities of fuels to be delivered to each destination;
(5) The person or persons responsible for the payment of the fuels tax; and
(6) Such other information or forms as the Director of State Highways and Transportation by regulation may adopt or require to implement the intent of this subchapter.

(b) (1) Any transporter of fuels by any means, except by pipeline or rail, shall be required to produce a copy of the bill of lading containing the information required by this section and a copy of the permit, if required by § 26-55-605, for inspection by any enforcement officer within the State of Arkansas.

(2) Any failure to have the bill of lading and a copy of the permit in the vehicle, or to produce it as prescribed, shall be an offense punishable as set forth in § 26-55-603.

(c) The bill of lading required by this section may be on the transporter's own form, but shall contain the information set out above.

History. Acts 1987, No. 977, § 3.

26-55-607. Documentation to be retained in vehicle — Exception.

(a) (1) All transporters of fuels shall be responsible for retaining and safeguarding in their possession a clear and legible copy of all documentation required by this subchapter covering the cargo being transported.

(2) If transportation is by motor vehicle, the responsibility for the retention and safeguarding shall commence at the time the driver of the vehicle enters the boundaries of the State of Arkansas or assumes responsibility for the transport of the cargo which shall continue unabated until that point at which the driver of the vehicle's responsibility for the transport of the cargo is terminated.

(3) In all cases of highway transport by motor vehicle, the copy of the bill of lading and import/export load permit shall be retained in the cab of the vehicle during the period of the operator's responsibility.

(b) Fuels transported in interstate commerce through Arkansas, the origin of which is outside of Arkansas and destination of which is outside of Arkansas, shall be exempt from the import/export load permit requirements of § 26-55-605.

History. Acts 1987, No. 977, § 4.

26-55-608. Authority to stop, investigate, and impound vehicles.

(a) In order to enforce the provisions of this subchapter, any officer of the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department shall have the authority to stop any vehicle appearing to be handling or transporting fuels for the purpose of examining the documents required by this subchapter or to ensure the operator's compliance with its provisions.

(b) If after the examination or investigation it is determined that the transporter should have secured an import/export load permit as required by this subchapter, but has failed to secure that permit, the enforcement officer shall immediately cause the offending vehicle and its operator to be removed to the nearest Arkansas State Highway and Transportation Department property, port of entry, or any designated location where the Director of the Department of Finance and Administration's representative shall

immediately assess the tax on that load together with the penalty provided in § 26-55-609 against the person found to be responsible for the payment of the tax.

(c) Notice upon the person shall be effectuated by delivering written notice of the assessment to the operator of the vehicle at that time.

(d) The Director of State Highways and Transportation or his or her representative shall be authorized to impound any vehicle and refuse authority to travel on Arkansas highways to any vehicle which, previous to the entry into this state, has not complied with all requirements of this subchapter.

(e) Further, travel shall not be authorized until the criminal fines or bonds have been posted and the taxes and penalties paid in full.

History. Acts 1987, No. 977, §§ 5, 6.

26-55-609. Responsibility for taxes — Provisions cumulative.

(a) Any person who shall violate any provision of this subchapter shall be immediately responsible for the taxes, as imposed by this state, on the fuels involved in the violation plus twenty percent (20%) as a penalty.

(b) All fines and penalties imposed pursuant to this subchapter shall be in addition to any and all penalties imposed pursuant to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1987, No. 977, § 7.

26-55-610. Licensing and bonding requirements — Penalties.

(a) (1) Each domestic refiner, importer, exporter, supplier, or distributor taking possession of fuels within the State of Arkansas for delivery without the state shall be licensed and bonded by the Motor Fuel Tax Section of the Department of Finance and Administration.

(2) Failure to obtain a license as required by the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq., or other pertinent law, shall constitute a violation of that law and any such person shall be subject to the penalties set forth in § 26-55-603.

(b) (1) Each domestic refiner, importer, exporter, supplier, or distributor taking possession of fuels within this state shall include the license number of each licensed distributor or special fuels supplier on each cargo manifest, bill of lading, delivery ticket, or other document.

(2) The failure to so include the license number shall constitute a violation of this subchapter and shall be punishable in accordance with the provisions of § 26-55-603.

(c) Persons taking delivery at river ports, as defined in § 26-55-601, shall have the responsibility of complying with all the provisions of this subchapter and are subject to the applicable penalties.

(d) Domestic refiners, importers, exporters, suppliers, or distributors of fuels and other accounts acquiring fuels from without the state for delivery within the state shall be licensed pursuant to the laws of this state and subject to all provisions contained in this subchapter and are subject to the applicable penalties and fines set out by § 26-55-603.

History. Acts 1987, No. 977, § 9.

Subchapter 7

— Fuel Imported in Supply Tanks

- 26-55-701. Purpose of tax.
- 26-55-702. Liability for tax.
- 26-55-703. Exemptions.
- 26-55-704. Allocation and distribution of tax.
- 26-55-705. License required — Application.
- 26-55-706. Bond of applicant.
- 26-55-707. License — Issuance — Terms and conditions.
- 26-55-708. Registration of licensee's motor vehicles.
- 26-55-709. Interstate carrier certificates or permits.
- 26-55-710. Quarterly mileage reports — Tax computation.
- 26-55-711. Bonded and unbonded interstate motor fuel users — Penalty for insufficient purchase.
- 26-55-712. Bonded and unbonded interstate users — Knowing failure to pay tax or penalty.
- 26-55-713. Claims for refunds by nonbonded users.
- 26-55-714. Interstate users — Tax refund procedure.
- 26-55-715. [Repealed.]
- 26-55-716. Failure or refusal to pay tax — Penalties, interest, and costs.
- 26-55-717. Unlicensed users — Failure to pay tax — Burden of proof.
- 26-55-718. Failure to file report or pay tax, filing fraudulent reports, etc. — Penalties.
- 26-55-719. Records — Preservation — Inspection.

Cross References. Interstate users, tax refunds, credit, or assessment, § 26-56-214.

Effective Dates. Acts 1953, No. 112, § 13: July 1, 1953.

Acts 1957, No. 213, § 5: Mar. 12, 1957. Emergency clause provided: "An emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, it shall be effective and in full force from and after the passage and approval of this Act."

Acts 1967, No. 356, § 7: Mar. 15, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State levying a tax upon gasoline and prescribing the procedure for collecting the same are confusing and difficult of enforcement and that this Act is immediately necessary to clarify the laws levying the gasoline tax in order that said tax may be more effectively and efficiently enforced. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1967, No. 376, §§ 6, 9: July 1, 1967. Emergency clause provided: "It has been found and declared by the General Assembly that confusion and disagreement exists as to the Administrative Procedure pertaining to Motor Fuel Tax Laws of this State which causes unnecessary expense in such administration, and this Act is necessary to correct and clarify such procedure, and it is necessary to eliminate unnecessary expenditures in the administration of the Motor Fuel Tax Laws of this State. Therefore an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its approval." Approved Mar. 15, 1967.

Acts 1968 (1st Ex. Sess.), No. 64, § 3: Feb. 27, 1968. Emergency clause provided: "It has been found and determined by the General Assembly that current legislation permits revenues from Motor Fuel Tax Forms to be dedicated for the benefit of the collecting agency and this procedure is contrary to the generally accepted principals [principles] of funding State agencies from the Constitutional and Fiscal Agencies Fund Account; therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety,

shall take effect and be in full force from and after its passage and approval.”

Acts 1977, No. 51, § 5: July 1, 1977. Emergency clause provided: “It is hereby found and determined by the Seventy-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1977 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1977 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977.”

Acts 1977, No. 354, § 5: July 1, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State of Arkansas is in need of additional funds for the construction and maintenance of the State Highway System, the county roads, and municipal streets of this State; that the present laws governing the rate of tax to be computed upon the use of highways in this State with respect to the class of motor carriers covered by the provisions of this Act, do not adequately apportion to each class of user a mileage factor reasonably approximating the actual miles per gallon of fuel used in this State, and that by the enactment of this Act the State of Arkansas will obtain its fair and reasonable share of taxes due from said classes of motor carriers at the existing rates of tax, and will also gain the benefits of penalty for failure of motor carriers to comply with the motor fuel and distillate motor fuel tax laws in reporting and paying taxes upon which Arkansas motor fuel or distillate special fuel taxes have not been collected, and that the immediate passage of this Act is necessary to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1977.”

Acts 1979, No. 434, § 5: effective upon issuance of 1980 markings.

Acts 1987, No. 803, § 14: July 1, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that this Act makes various changes in the motor fuel tax law and the special motor fuel tax law; that such changes should go into effect at the beginning of the next fiscal year; and that unless this emergency clause is adopted, this Act may not go into effect until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1987.”

Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval.”

Acts 1991, No. 928, § 6: Mar. 29, 1991. Emergency clause provided: “It is hereby found and determined by the 78th General Assembly that the imposition of a fee for the issuance of bonded interstate fuel user decals is inappropriate and that it is in the best interests of the highway-users of this state that such fee no longer be collected. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect on and after its passage and approval.”

Acts 1995, No. 777, § 13: July 1, 1995. Emergency clause provided: “It is found and determined by the Eightieth General Assembly of the State of Arkansas that current laws allowing for a refund of tax paid on gasoline used for agricultural purposes is an inefficient and impractical method of providing tax relief to farmers; that current laws collecting motor fuel tax on liquefied petroleum gas based upon a flat fee is inequitable and imposes an undue burden on some taxpayers in this State; that current licensing and bonding requirements on motor fuel and distillate special fuel dealers are unnecessary and contrary to federal law; that this bill is designed to correct each of

these deficiencies in current law and this Act should be effective on July 1, 1995. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect on and after July 1, 1995.”

26-55-701. Purpose of tax.

The tax imposed by this subchapter is levied for the purpose of providing revenue to be used by the State of Arkansas to defray the expenses of the administration of this subchapter and for the purpose of construction, reconstruction, maintenance, and repair of roads, highways, and bridges, and for the payment of obligations incurred for these purposes.

History. Acts 1953, No. 112, § 1; A.S.A. 1947, § 75-1149.

26-55-702. Liability for tax.

Any person, firm, or corporation that operates on the highways of this state a motor carrier, bus, truck, transport, or other motor vehicle, having a gross loaded weight of twenty-six thousand one pounds (26,001 lbs.) or more and having motor fuel commonly or commercially sold and used as gasoline as defined in § 26-55-202 in its fuel tank or tanks upon which the Arkansas motor fuel tax has not been paid is liable for a tax at the rate per gallon under § 26-55-205 on all such gasoline used or consumed in the State of Arkansas, subject to § 26-55-710.

History. Acts 1953, No. 112, § 2; 1965 (1st Ex. Sess.), No. 41, § 4; 1967, No. 356, § 1; A.S.A. 1947, § 75-1150; Acts 1993, No. 618, § 8; 2009, No. 655, § 56.

Publisher's Notes. Section 26-55-715 referred to in this section was repealed by Acts 1987, No. 803, § 10.

Amendments. The 2009 amendment substituted “subject to § 26-55-710” for “subject to the provisions of §§ 26-55-710 and 26-55-715 [repealed],” and made minor stylistic changes.

Case Notes

Construction.
Classification.

Construction.

Acts 1941, No. 383, § 6; 1943, No. 188, § 1, were not in conflict with § 26-55-205, which levies a tax on all motor fuel sold or used in the state or purchased for sale or use in the state. *McLeod v. Santa Fe Trail Transp. Co.*, 205 Ark. 225, 168 S.W.2d 413 (1943) (decision under prior law).

Classification.

Classification of motor carriers, motor buses, and other motor vehicles operated for hire as opposed to all other motor vehicles was not an arbitrary classification. *McLeod v. Santa Fe Trail Transp. Co.*, 205 Ark. 225, 168 S.W.2d 413 (1943) (decision under prior law).

In alternate or optional methods of determining calculation of tax allowed to operators of motor carriers, motor buses, and other motor vehicles operated for hire, provided they operate on a regular schedule, provision as to operation on regular schedule, as opposed to not operating on a regular schedule, was a fair classification. *McLeod v. Santa Fe Trail Transp. Co.*, 205 Ark. 225, 168 S.W.2d 413 (1943) (decision under prior law).

26-55-703. Exemptions.

The tax levied by this subchapter shall not apply to gasoline imported into this state in the fuel supply tanks, including any additional containers, of motor vehicles being used

solely for noncommercial purposes if the aggregate capacity of the fuel supply tanks, including any additional containers, does not exceed thirty gallons (30 gals.).

History. Acts 1953, No. 112, § 2; 1965 (1st Ex. Sess.), No. 41, § 4; 1967, No. 356, § 1; A.S.A. 1947, § 75-1150.

Case Notes

Applicability.

Applicability.

Twenty-gallon exemption applied only when the motor fuel was actually measured at the port of entry and actually measured at the port of exit, and it did not apply when the alternate or optional method of determining the tax was used by the operator. *McLeod v. Santa Fe Trail Transp. Co.*, 205 Ark. 225, 168 S.W.2d 413 (1943) (decision under prior law).

26-55-704. Allocation and distribution of tax.

The funds collected under this subchapter shall be allocated and distributed only in the manner established by the laws relating to motor fuel taxes.

History. Acts 1953, No. 112, § 1; A.S.A. 1947, § 75-1149.

26-55-705. License required — Application.

(a) Before any person, firm, or corporation subject to § 26-55-702 imports for use on the highways of this state gasoline in the fuel supply tanks of any motor vehicle, or in any other container, with a gross loaded weight of twenty-six thousand one pounds (26,001 lbs.) or more, such person shall file application for and obtain a license from the Director of the Department of Finance and Administration.

(b) The application required by this section shall be verified by affidavit and filed on a form prescribed and furnished by the director, stating the name, address, kind of business of the applicant, the applicant's principal place of business, and such other relevant information as the director may require.

(c) The applications must also contain, as a condition to the issuance of the license, an agreement by the applicant to comply with the requirements of the subchapter and the lawful rules and regulations of the director.

History. Acts 1953, No. 112, § 3; A.S.A. 1947, § 75-1151; Acts 1993, No. 618, § 9.

26-55-706. Bond of applicant.

(a) Before any license application shall be approved by the Director of the Department of Finance and Administration, the applicant shall file a bond, with surety satisfactory to the director, payable to the State of Arkansas and conditioned upon the applicant's compliance with the provisions of this subchapter and the rules and regulations of the director.

(b) (1) The bond shall be in the sum of not less than five hundred dollars (\$500) and not more than twenty thousand dollars (\$20,000), the amount to be fixed in each case by the director.

(2) However, the amount of any bond may be increased or decreased within the foregoing limits by the director at any time.

(c) No bond shall be cancelled by the surety thereon until the expiration of sixty (60) days after receipt of notice of the cancellation by the director, and the cancellation shall

have no retroactive effect.

History. Acts 1953, No. 112, § 4; A.S.A. 1947, § 75-1152.

26-55-707. License — Issuance — Terms and conditions.

(a) Upon approval of the application and bond, the Director of the Department of Finance and Administration shall issue to the applicant a nontransferable fuel user's license bearing a distinctive number, to remain in full force until surrendered, suspended, or cancelled in the manner provided in this subchapter.

(b) Each license shall be valid only for the operation of motor vehicles on the highways of this state by the person to whom it is issued, including motor vehicles transporting persons or property in furtherance of the business of the licensee under a lease, a contract, or any other arrangement, whether permanent or temporary in nature.

History. Acts 1953, No. 112, § 5; A.S.A. 1947, § 75-1153.

26-55-708. Registration of licensee's motor vehicles.

(a) (1) Before any motor vehicle with a gross loaded weight of twenty-six thousand one pounds (26,001 lbs.) or more is operated on the public highways of this state, the operation of which is subject to the tax levied by this subchapter, the Director of the Department of Finance and Administration shall issue to each permitted gasoline, diesel, and liquefied petroleum gas user a distinctive marking to be prominently displayed on the passenger door of each vehicle traveling the public highways within this state.

(2) This marking shall be a nontransferable marking which shall be renewed on an annual basis.

(b) Applications for gasoline, diesel, and liquefied petroleum gas users' permits must be on a form prescribed and furnished by the director, to include such relevant information as deemed necessary by the director, for the proper administration of this subchapter.

(c) The director shall maintain a record of the quantity of markings issued each permitted user.

History. Acts 1953, No. 112, § 6; 1979, No. 434, § 1; A.S.A. 1947, § 75-1154; Acts 1991, No. 928, § 1; 1993, No. 618, § 10.

Case Notes

Cited: Smith v. American Trucking Ass'n, 300 Ark. 594, 781 S.W.2d 3 (1989).

26-55-709. Interstate carrier certificates or permits.

When the Arkansas State Highway and Transportation Department receives an application for an interstate carrier certificate or permit, with the appropriate fees for such certificate or permit, and also receives an application for a fuel user permit from that same applicant, the Arkansas State Highway and Transportation Department shall deliver the application for a fuel user permit to the Motor Fuel Tax Section of the Department of Finance and Administration for issuance of the fuel user permit.

History. Acts 1979, No. 434, § 2; A.S.A. 1947, § 75-1154.1; Acts 1991, No. 928, § 2.

26-55-710. Quarterly mileage reports — Tax computation.

(a) (1) Every person, firm, or corporation licensed under this subchapter on or before the last day of the month following the end of each calendar quarter shall file with the

Director of the Department of Finance and Administration, on forms prescribed by the director, a report showing the quantities of gasoline purchased and used in this state during the preceding calendar quarter, together with payment of the tax due thereon.

(2) The number of gallons of motor fuel upon which the tax has been paid by an interstate user shall be determined from the form obtained by the interstate user from a licensed dealer or licensed bulk distributor within the state. This form must contain the information required by § 26-56-209.

(b) If it shall be determined by the quarterly reports filed with the director that the interstate user has used more gallons of gasoline in this state than the gasoline tax due thereon has been paid, the interstate user shall remit to the director an excise tax of eighteen and one-half cents ($18\frac{1}{2}\text{¢}$) per gallon on the gasoline.

(c) Interstate users may not take credit on reports at a tax rate in excess of that actually paid.

(d) (1) For the purpose of determining whether a licensed interstate user owes tax or is entitled to a credit or refund, the licensed interstate user shall determine the average miles per gallon of fuel used. The average miles per gallon shall be determined by dividing the total miles traveled in all jurisdictions by the total gallons of fuel used in all jurisdictions.

(2) The licensed interstate user shall then determine the total amount of fuel used within the State of Arkansas by dividing the total number of miles traveled within the State of Arkansas by the average miles per gallon.

(3) The taxpayer's tax liability shall be calculated by multiplying the number of gallons of fuel used within the State of Arkansas by eighteen and one-half cents ($18\frac{1}{2}\text{¢}$) per gallon. A taxpayer shall be entitled to credits against his or her tax liability for tax-paid fuel purchased within the State of Arkansas.

(e) For any licensed interstate user who fails to maintain adequate mileage or fuel records as required by § 26-55-719 for the purpose of determining the amount the interstate user owes the State of Arkansas for tax on motor fuel used in this state as provided in this section, the number of gallons of motor fuel used in this state shall be determined by an assessment based on the following mileage factors per gallon of motor fuel as compared to the appropriate class of vehicle set out in subsection (f) of this section.

(f) (1) For the purposes of this section:

(A) All automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles;

(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class B vehicles;

(C) All other vehicles, except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class C vehicles; and

(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

(2) The mileage factor per gallon of motor fuel for:

(A) Class A vehicles shall be twelve (12) miles;

(B) Class B vehicles shall be eight (8) miles;

(C) Class C vehicles shall be five (5) miles; and

(D) Class D vehicles shall be six (6) miles.

(3) These mileage factors shall be utilized in conjunction with the Arkansas mileage as determined through an audit and based upon the best records available regardless of source.

(g) (1) For the purposes of determining the amount any unlicensed or unbonded user owes the State of Arkansas for tax on motor fuel used in this state, only the above mileage factors per gallon of motor fuel for the applicable vehicle shall be utilized.

(2) If a quarterly report of an interstate user results in a net credit, the interstate user may elect to have the credit carried forward and applied against the motor fuel tax due for the succeeding eight (8) quarters or until the credit is completely used, whichever occurs first. In the alternative, a taxpayer who is entitled to a net credit on his or her quarterly fuel use tax report may elect to have the amount of credit refunded to him or her.

(3) An interstate user who had a total tax liability for motor fuel taxes during the previous calendar year of less than one hundred dollars (\$100) upon application to the director may obtain permission to report the interstate user's motor fuel tax liability on an annual basis. The annual report shall be due on or before the last day of the month following the end of each fiscal year.

(h) The director shall prescribe the appropriate forms necessary for the administration of this subchapter. The director may make appropriate rules and regulations necessary to ensure the accurate reporting of mileage traveled and gallons used and purchased by the licensed interstate users.

History. Acts 1953, No. 112, § 7; 1957, No. 213, § 3; 1967, No. 356, § 2; 1968 (1st Ex. Sess.), No. 36, § 6; 1977, No. 354, § 1; 1979, No. 764, § 1; A.S.A. 1947, §§ 75-1155, 75-1187; Acts 1987, No. 803, § 1; 1991, No. 364, § 2; 1991, No. 382, § 2; 1995, No. 777, § 3.

A.C.R.C. Notes. Acts 1991, No. 364, § 5 as amended by identical Acts 1991, Nos. 1040 and 1239, §§ 5 and 6, and Acts 1991, No. 382, § 5, as amended by Acts 1991, Nos. 1040 and 1239, §§ 7 and 8, provided:

“(a) All of the additional taxes, fees, penalties and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited in the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

“(A) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

“(B) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

“Seventy percent (70%) of the amount thereof to a special account in the State Highway and Transportation Department Fund to be designated the ‘1991 Highway Construction and Maintenance Account’.

“(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding, however, § 27-70-206;

“(c) Provided that, in keeping with the spirit of section 105 of Public Law 97-424 and the Arkansas State Highway Commission's goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the

Arkansas State Highway Commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this section for the purposes of achieving those goals.”

26-55-711. Bonded and unbonded interstate motor fuel users — Penalty for insufficient purchase.

Any motor fuel user who is a bonded or unbonded interstate motor fuel user as defined in § 26-55-710 who, upon arriving at a point of exit from this state, has failed to purchase sufficient gallons of motor fuel in this state and pay the tax as required by law as provided in this subchapter, calculated at the rate of four miles per gallon (4 MPG) for each mile traveled in this state, shall:

(1) If an unbonded motor fuel user, pay a penalty of four cents (4¢) per gallon on each gallon of fuel which he or she failed to buy in this state, in addition to paying the tax on the fuel at the point of exit from this state upon which the tax has not been paid; and

(2) If a bonded motor fuel user, pay a penalty of four cents (4¢) per gallon of the total number of gallons of fuel which he or she failed to buy in this state during each report period, in addition to paying the tax upon the fuel upon which tax has not been paid.

History. Acts 1977, No. 354, § 2; A.S.A. 1947, § 75-1187.1.

Publisher's Notes. Acts 1977, No. 354, § 4, provided in part that the act would be supplemental to the Motor Fuel Tax Law, § 26-55-201 et seq.

26-55-712. Bonded and unbonded interstate users — Knowing failure to pay tax or penalty.

Upon conviction, a bonded or unbonded motor fuel user who knowingly fails to pay the Arkansas gallonage tax due the State of Arkansas on motor fuel used on the highways of this state as required in § 26-55-710 with respect to motor fuel taxes on Class C vehicles, or knowingly fails to pay the penalty on the motor fuel on which the Arkansas motor fuel tax has not been paid as required in § 26-55-711 is guilty of a Class A misdemeanor.

History. Acts 1977, No. 354, § 3; A.S.A. 1947, § 75-1187.2; Acts 2009, No. 655, § 57.

Publisher's Notes. Acts 1977, No. 354, § 4, provided in part that the act would be supplemental to the Motor Fuel Tax Law, § 26-55-201 et seq.

Amendments. The 2009 amendment deleted “and intentionally” following “knowingly” in two places, deleted “shall be punished in the manner provided by law” at the end, and made minor stylistic changes.

26-55-713. Claims for refunds by nonbonded users.

(a) Claims for refunds of motor fuel taxes by nonbonded users of motor fuel or claims for credits for motor fuel taxes shall not be valid unless properly presented upon motor fuel tax forms as promulgated by and as required by the Director of the Department of Finance and Administration.

(b) (1) The director may assess and charge a fee upon all forms furnished by the Revenue Division of the Department of Finance and Administration when those forms pertain to the motor fuel tax laws of this state.

(2) The fees shall be based on the cost of the forms and moneys expended for

postage, processing, and handling of the forms.

(3) The fees derived from motor fuel tax forms shall be deposited into the State Treasury as special revenues, there to be distributed monthly by the Treasurer of State to the Constitutional Officer's Fund and the State Central Services Fund.

(c) The director shall not furnish forms for cash refunds or credits for motor fuel taxes to nonbonded users of motor fuel unless and until the General Assembly provides by law for the issuance of credits and cash refunds to nonbonded users of motor fuel who qualify for such credits or cash refunds or motor fuel taxes.

(d) Motor fuel users may not claim a credit for motor fuel taxes beyond the date of the next successive report after the period in which the credit arose.

History. Acts 1967, No. 376, §§ 1-5; 1968 (1st Ex. Sess.), No. 64, § 1; A.S.A. 1947, §§ 75-1175 — 75-1179.

26-55-714. Interstate users — Tax refund procedure.

(a) (1) The Director of the Department of Finance and Administration shall quarterly determine the amount estimated to be necessary to pay refunds to interstate users of motor fuels who are entitled to refunds with respect to a portion of the motor fuel taxes paid in this state as authorized in § 26-55-710, and upon certification by the director, the Treasurer of State shall transfer from the gross amount of motor fuel taxes collected each month the amount so certified and shall credit it to the Interstate Motor Fuel Tax Refund Fund, which is established on the books of the State Treasury, from which the Department of Finance and Administration shall make refunds as provided by law.

(2) The transfers from the gross motor fuel taxes collected each month shall be after deducting allowances for bad checks or claims but before making any other distribution thereof as provided by law.

(b) All warrants drawn against the fund which are not presented for payment within one (1) year of issuance shall be void.

(c) Neither the director nor any member or employee of the department shall be held personally liable for making any refund by reason of a fraudulent claim being filed as a basis for that refund.

(d) The director is authorized to promulgate rules and regulations and to prescribe the necessary forms required for the administration of claims for tax refunds from interstate users of motor fuels in this state as authorized by law, which rules and regulations shall be in conformance with the following requirements:

(1) The director shall first determine with respect to each refund claim filed that the bond of the interstate user is adequate to compensate the State of Arkansas for any losses with respect to the recovery of any refunds illegally claimed by the interstate user, and the director may require the increase of the bond if the director determines it to be inadequate before approving any claim for refund;

(2) Each interstate user of motor fuels claiming refunds shall maintain adequate records to substantiate each claim for refund, and the director may reject any claim for refund if the director determines the applicant has not maintained adequate records or has not conformed to the rules and regulations of the department in filing the claim;

(3) Each claim for refund shall be upon the request of the interstate user, which shall be verified by the interstate user as to its accuracy and validity; and

(4) (A) Each quarterly report filed by a licensed interstate user of motor fuels

with the department, shall reflect thereon the amount of motor fuels purchased for use in Arkansas during the quarter, the number of gallons of motor fuels upon which taxes are due the State of Arkansas for the quarter, and the excess gallonage upon which the interstate user is entitled to refunds.

(B) At the end of each calendar quarter, the licensed interstate user may make application for refund with respect to the number of gallons of motor fuels upon which the motor fuels taxes have been paid during the calendar quarter for which the interstate user is entitled to refund.

History. Acts 1977, No. 51, §§ 2, 3; 1983, No. 830, § 3; A.S.A. 1947, §§ 75-1155.1, 75-1155.2; Acts 1987, No. 803, §§ 2-4; 2009, No. 655, § 58.

Publisher's Notes. Acts 1977, No. 51, §§ 2, 3, as amended, are also codified as § 26-56-215.

Amendments. The 2009 amendment inserted "and" at the end of (d)(3), and made a minor stylistic change.

26-55-715. [Repealed.]

Publisher's Notes. This section, concerning unlicensed importers, was repealed by Acts 1987, No. 803, § 10. The section was derived from Acts 1953, No. 112, § 9, as added by Acts 1967, No. 356, § 3; A.S.A. 1947, § 75-1157.

26-55-716. Failure or refusal to pay tax — Penalties, interest, and costs.

Any person who neglects or refuses to pay the tax levied by this subchapter at the time and as provided for in this subchapter shall become liable for the amount of the tax, together with a penalty of twenty percent (20%) thereof or a minimum of five dollars (\$5.00), whichever is greater, plus interest at the rate of six percent (6%) per annum from the date when due until paid. If the tax, penalty, and interest are collected by proceedings in court, an additional penalty of twenty percent (20%) of the tax shall also be imposed and collected as attorney's fees.

History. Acts 1953, No. 112, § 10; 1957, No. 213, § 4; A.S.A. 1947, § 75-1158.

26-55-717. Unlicensed users — Failure to pay tax — Burden of proof.

(a) If a person who has not obtained a fuel user's license from this state, and who is nevertheless determined a fuel user, leaves the State of Arkansas by a state highway or other road not equipped with a permanent port of entry or exit and has not paid the motor fuel tax or has not purchased tax-paid motor fuel from a licensed dealer in an amount equal to the number of gallons used upon the highways of the State of Arkansas, he or she shall be liable for the payment of the tax due, together with the penalties as set out in § 26-55-716.

(b) If an unlicensed fuel user is within one (1) mile of the state line on the way out of the state and does not have in his or her possession a form issued by a licensed dealer showing the number of gallons purchased equal to the amount used in traveling upon the highways of the State of Arkansas, it shall be prima facie evidence of his or her failure to comply with the requirements of this subchapter, and he or she shall be liable for the payment of the tax due, plus the fine as set out in § 26-55-718.

(c) In the event an unlicensed fuel user enters the State of Arkansas via a state highway not equipped with a permanent port of entry, and the driver of the vehicle does not

receive an entry form, then the burden of proof of the point of entry and time of entry for the purpose of determining the miles traveled and the tax due shall be upon the driver or owner of the vehicle.

History. Acts 1953, No. 112, § 10; 1957, No. 213, § 4; 1967, No. 356, § 4; A.S.A. 1947, § 75-1158.

26-55-718. Failure to file report or pay tax, filing fraudulent reports, etc. — Penalties.

(a) Upon conviction, a person who uses gasoline in this state and fails to pay the tax levied by this subchapter or any person who makes a false or fraudulent report under this subchapter or who otherwise violates this subchapter is guilty of an unclassified misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment for not more than one (1) year, or by both fine and imprisonment.

(b) Each separate day of violation is a separate offense.

History. Acts 1953, No. 112, § 10; 1957, No. 213, § 4; A.S.A. 1947, § 75-1158; Acts 2009, No. 655, § 59.

Amendments. The 2009 amendment rewrote the section.

26-55-719. Records — Preservation — Inspection.

(a) Each person, firm, or corporation subject to this subchapter must maintain and keep for a period of three (3) years records of mileage traveled by vehicles operated in this state, together with inventories, withdrawals, purchases supported by invoices, and all relevant records and papers that may be required by the Director of the Department of Finance and Administration.

(b) The director or his or her authorized representative shall be entitled to inspect these records at any time.

History. Acts 1953, No. 112, § 8; A.S.A. 1947, § 75-1156.

**Subchapter 8
— Unlicensed Out-of-State Trucks**

26-55-801. Purpose.

26-55-802. Failure to comply.

26-55-803. Entry slips required — Computation of tax.

26-55-804. Payment of tax.

Effective Dates. Acts 1987, No. 803, § 14: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that this Act makes various changes in the motor fuel tax law and the special motor fuel tax law; that such changes should go into effect at the beginning of the next fiscal year; and that unless this emergency clause is adopted, this Act may not go into effect until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1987."

26-55-801. Purpose.

The purpose of this subchapter is to afford service station operators throughout the State of Arkansas an equal opportunity in the sale of motor fuel and special motor fuel to out-of-state truckers and to provide a means for payment of the fuel tax.

History. Acts 1965, No. 573, § 4; A.S.A. 1947, § 75-1174.

26-55-802. Failure to comply.

It shall be prima facie evidence of failure to comply with and intent to evade the provisions of this subchapter when any person or operator of an unlicensed motor fuel user or special motor fuel user out-of-state truck who has not complied with this subchapter is traveling upon a state highway within fifty (50) miles of the state line in the direction of exit of the State of Arkansas. The person or operator shall be liable for the penalty and interest set out in § 26-55-716.

History. Acts 1965, No. 573, § 2; A.S.A. 1947, § 75-1173.

26-55-803. Entry slips required — Computation of tax.

(a) All licensed motor fuel user and distillate special fuel user out-of-state trucks with a gross loaded weight of twenty-six thousand one pounds (26,001 lbs.) or more entering the State of Arkansas at the point of entry shall secure a copy of an entry slip from the Director of the Department of Finance and Administration or his or her authorized agent or employee.

(b) The entry slip shall be signed by the director or his or her authorized agent or employee, and the entry slip shall also be signed by the driver of the vehicle.

(c) The entry slip shall contain the following information:

- (1) Name and address of the owner or the operator of the vehicle;
- (2) State of registration;
- (3) License number;
- (4) Speedometer reading;
- (5) Destination and point of leaving state; and
- (6) Description of vehicle.

(d) The entry slip shall remain in the vehicle for the remainder of the trip over the highways of this state and shall be produced for the inspection of the director or his or her authorized employee or representative, at any point within the state and shall also be produced at the port of exit to the director or his or her authorized agent or employee, for determination of any fuel taxes due the state.

(e) (1) For the purpose of determining the amount the interstate user owes the State of Arkansas for tax on motor fuel or distillate special fuel used in this state as provided in this section, the number of gallons of motor fuel or distillate special fuel used in this state shall be determined by an assessment based on the following mileage factors per gallon of motor fuel or distillate special fuel as compared to the appropriate class of vehicle set out in subdivision (e)(2) of this section.

(2) For the purposes of this section:

(A) All automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles;

(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class B vehicles;

(C) All other vehicles except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class C vehicles; and

(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

(3) The mileage factor per gallon of motor fuel or distillate special fuel for:

(A) Class A vehicles shall be twelve (12) miles;

(B) Class B vehicles shall be eight (8) miles;

(C) Class C vehicles shall be five (5) miles; and

(D) Class D vehicles shall be six (6) miles.

(f) The motor fuel tax and distillate special fuel tax levied by this state shall be paid upon all such fuel used to propel out-of-state trucks upon the highways of this state.

History. Acts 1965, No. 573, § 1; A.S.A. 1947, § 75-1172; Acts 1987, No. 803, § 9; 1993, No. 618, § 11.

26-55-804. Payment of tax.

The tax shall be paid by the owner or operator of the truck or vehicle in either of the following ways, at the option of the owner or operator:

(1) (A) By the purchase of a sufficient amount or quantity of fuel from a retail dealer within the State of Arkansas to propel the vehicle the number of miles which the vehicle travels upon the highways of this state.

(B) At the time of the purchase of the fuel, the owner or operator of such vehicle shall obtain from the dealer from whom purchased an invoice or sales ticket, or forms approved by the Director of the Department of Finance and Administration, which shall contain the name and address of the seller of the fuel, the name and address of the purchaser, the date of purchase, the amount or quantity and kind of fuel purchased, and the invoice or sales ticket shall remain in the vehicle for the remainder of the trip over the highways of this state.

(C) The invoice or sales ticket shall be preserved and retained by the owner or operator for not less than three (3) years and shall be produced for the inspection and examination of the director or his or her authorized agent or employee at any reasonable time and place, either inside or outside this state, upon proper demand for the invoice or sales ticket; or

(2) (A) By the payment of the amount of tax which would be due upon a sufficient quantity of fuel to propel the vehicle over the highways of this state to the director or to his or her agent, representative, or employee.

(B) At the time of payment of the tax, the director or his or her employee or representative shall issue to the person paying the tax a receipt showing the amount of tax paid, the name and address of the owner or operator of the vehicle, a description of the vehicle, including the license number and state of registration, the point at which the vehicle entered upon the highways of this state, the destination and the place where the vehicle is to leave the highways of this state, and any other information which the director may require, which receipt shall be signed by the director or his or her agent or representative.

(C) The receipt shall remain in the vehicle for the remainder of the trip

over the highways of this state and thereafter shall be preserved and retained by the owner or operator for a period of not less than three (3) years, and shall be produced for the inspection of the director or his or her authorized agent or representative, at any reasonable time and place either within or without this state upon proper demand.

History. Acts 1965, No. 573, § 1; A.S.A. 1947, § 75-1172; Acts 2009, No. 655, § 60.

Amendments. The 2009 amendment substituted “for the invoice or sales ticket” for “therefor” in (1)(C), and made minor stylistic and punctuation changes.

Subchapter 9 **— Vehicle Tank Inspections**

26-55-901. Definitions.

26-55-902. Penalties.

26-55-903. Rules and regulations.

26-55-904. Measurement of vehicle tanks.

26-55-905. Testing stations.

26-55-906. Time and place of inspection.

26-55-907. Testing and sealing.

26-55-908. Marking tank.

26-55-909. Reinspection, retesting, and remeasurement.

26-55-910. Unlawful to use vehicle tanks unless tested and sealed.

26-55-911. Sealing of inlets and outlets.

26-55-912. Display of marks indicating proper gauging — Exemption from subchapter.

Effective Dates. Acts 1955, No. 50, § 16: July 1, 1955.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

26-55-901. Definitions.

As used in this subchapter:

(1) (A) “Compartment” means the entire tank when it is not subdivided.

(B) Otherwise, “compartment” means any one (1) of those subdivisions of a tank designed to hold petroleum products, unless otherwise provided by the Director of the Department of Finance and Administration by regulations adopted pursuant to § 26-55-903.

(C) “Compartment” includes piping leading from the compartment to the manifold but shall not include the manifold;

(2) “Director” means the Director of the State Plant Board or any employee of the State Plant Board authorized by the director to carry out the provisions of this subchapter;

(3) “Person” means individuals, partnerships, limited liability companies,

corporations, companies, societies, and associations;

(4) (A) "Petroleum product" means any liquid hydrocarbon product extracted or refined from crude petroleum, crude oil distillate, or natural gas.

(B) "Petroleum product" includes all products customarily known as gasoline or motor fuel by whatever name such liquid may be known or sold, including naphthas, tractor fuels, residual oils, and asphalts.

(C) "Petroleum product" does not include liquefied petroleum gases; and

(5) "Vehicle tank" means an assembly used for the delivery of petroleum products, comprising a tank which may or may not be subdivided into two (2) or more compartments and which is mounted upon a vehicle, together with its accessory piping, valves, meters, etc.

History. Acts 1955, No. 50, § 1; A.S.A. 1947, § 75-1159; Acts 1995, No. 1160, § 28.

26-55-902. Penalties.

(a) (1) Any person who violates the provisions of this subchapter or the rules or regulations issued under this subchapter shall be guilty of a misdemeanor and for a:

(A) First conviction shall be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than ten (10) days; and

(B) Second such conviction within one (1) year thereafter such person shall be punished by fine of not more than two hundred dollars (\$200) or by imprisonment for not more than twenty (20) days, or by both such fine and imprisonment.

(2) Upon a third or subsequent conviction within one (1) year after the first conviction, the person shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or by both a fine and imprisonment.

(b) Each separate loading of a vehicle tank or compartment thereof in violation of this subchapter shall be deemed a separate offense.

History. Acts 1955, No. 50, § 13; A.S.A. 1947, § 75-1171.

26-55-903. Rules and regulations.

(a) The Director of the State Plant Board shall have the power to adopt and, from time to time, to change by addition, amendment, or repeal reasonable rules and regulations consistent with law, for the enforcement of the provisions of this subchapter.

(b) The rules and regulations to the extent practicable shall be consistent with pertinent nationally recognized standards, methods, and tolerances.

(c) The regulations shall be applicable only to the extent that they are not in conflict with regulations or orders issued by an agency of the United States and shall be drawn with due consideration for the desirability of uniformity of the laws of the several states and the United States.

(d) (1) The rules promulgated under this subchapter and any addition to or amendment or repeal of the rules shall be adopted, changed, amended, or repealed only after full public hearing, which shall be adjourned from time to time as necessary to permit all interested or affected parties to be heard.

(2) At least thirty (30) days' prior written notice of the commencement of the hearing shall be published two (2) times in one (1) newspaper of general circulation that has been designated for that purpose by the director.

(3) The notice shall state the time, place, and purpose of the hearing and shall either set forth in full the rule to be considered or shall state where and how the full text may be obtained.

(4) A copy of the notice shall be sent at the same time to every person who has registered with the director a request to be so notified, together with the name and address to which the notice should be sent.

(5) Any rule or amendment or repeal of a rule shall be effective sixty (60) days after copies have been filed according to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1955, No. 50, §§ 3, 4; A.S.A. 1947, §§ 75-1161, 75-1162; Acts 2009, No. 655, § 61.

A.C.R.C. Notes. Acts 1953, No. 183, referred to in subdivision (d)(5) of this section, concerned regulations issued by state agencies. Acts 1953, No. 183, was repealed by Acts 1967, No. 434, § 16. For current law regarding rules and regulations issued by state agencies, see the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

Amendments. The 2009 amendment, in (d), deleted “or regulations” following “rules” in three places; in (d)(5), deleted “certified” preceding “copies” and substituted “according to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.” for “as required by Acts 1953, No. 183 [repealed]”; and made minor stylistic and punctuation changes.

26-55-904. Measurement of vehicle tanks.

(a) The Director of the State Plant Board shall gauge and determine the capacity of vehicle tanks used in the sale or delivery of petroleum products in this state and inspect and test, to ascertain if they are correct, the capacity indicators of the compartments of those vehicle tanks.

(b) The director is authorized to use the services of a recognized calibrating agency in determining the correctness of measurements whenever a difference of opinion exists between the owner or operator of a tank and the director as to the correctness of the gauging, and that determination shall be final.

History. Acts 1955, No. 50, § 2; A.S.A. 1947, § 75-1160.

26-55-905. Testing stations.

The Director of the State Plant Board shall establish at locations to be determined by the director a sufficient number of checking stations either fixed or mobile to carry out the purposes of this subchapter. However, the number of stations so established shall not exceed five (5) for the state.

History. Acts 1955, No. 50, § 5; A.S.A. 1947, § 75-1163.

26-55-906. Time and place of inspection.

(a) Every person owning or operating any vehicle tank shall present it to the checking station when notified to do so by the Director of the State Plant Board upon ten (10) days' notice to the person by the director. However, the director shall not require any such vehicle tank to be presented for testing at a checking station which is more than one hundred seventy-five (175) miles distant from the point which is the customary base of operations of that vehicle tank.

(b) The director shall not call in any vehicle tank for recalibrating sooner than eighteen

(18) months after the date of last calibration unless the director has evidence or reason to believe that a change in the capacity of the vehicle tank has occurred since the date on which it was last calibrated.

History. Acts 1955, No. 50, § 6; A.S.A. 1947, § 75-1164.

26-55-907. Testing and sealing.

(a) Every compartment of a vehicle tank shall be equipped with permanently attached indicators of the capacity of the compartment.

(b) After each compartment has been gauged or calibrated, if it is approved, the Director of the State Plant Board shall place a seal on each indicator.

(c) It shall be the duty of the owner or operator of the vehicle tank to report to the director immediately the breaking of any such seal on such an indicator which was placed there by the director.

History. Acts 1955, No. 50, § 8; A.S.A. 1947, § 75-1166.

26-55-908. Marking tank.

After testing and sealing by the Director of the State Plant Board, the owner or operator of a vehicle tank shall have stenciled or painted conspicuously on each compartment of the tank the calibrated capacity of the tank and, in addition, shall have stenciled or painted on the tank, or the vehicle to which it is attached, the total calibrated capacity of all compartments of the tank.

History. Acts 1955, No. 50, § 8; A.S.A. 1947, § 75-1166.

26-55-909. Reinspection, retesting, and remeasurement.

If any vehicle tank after having been tested shall become damaged or is repaired or modified in any way which might affect the accuracy of measurement of its deliveries, it shall not again be used for the delivery of petroleum products until it is officially reinspected, if deemed necessary, retested, and remeasured.

History. Acts 1955, No. 50, § 8; A.S.A. 1947, § 75-1166.

26-55-910. Unlawful to use vehicle tanks unless tested and sealed.

It shall be unlawful for any person to use any vehicle tank or compartment thereof for the transportation of the quantity of petroleum products sold or delivered in this state unless the vehicle tank has been tested and sealed as provided in this subchapter and otherwise complies with the provisions of this subchapter. However, no person shall be considered a violator of this subchapter unless and until he or she has received the notice required by § 26-55-906 and until after the time fixed by the notice for the testing of the vehicle tank.

History. Acts 1955, No. 50, § 9; A.S.A. 1947, § 75-1167.

26-55-911. Sealing of inlets and outlets.

In making deliveries of petroleum products, all such tank wagons, tank trucks, and all inlets and outlets to such equipment shall be sealed as may be directed by the Director of the State Plant Board, and no such petroleum products shall be delivered unless sealed as provided in this subchapter. However, the provisions of this section shall apply only to transport trucks bringing petroleum products into the State of Arkansas and to common

and contract carriers transporting petroleum products either into or within the State of Arkansas.

History. Acts 1955, No. 50, § 10; A.S.A. 1947, § 75-1168.

26-55-912. Display of marks indicating proper gauging — Exemption from subchapter.

(a) Any vehicles, tanks, and equipment which display symbols or identification marks indicating that the equipment has been properly gauged under the laws of another state will be exempt from the requirements of this subchapter to the same extent that vehicles of this state are exempt in the state which gauged the vehicles, tanks, and equipment in the first instance.

(b) However, this section shall not be applicable if the Director of the State Plant Board has evidence or reason to believe that a change in the capacity of the tank or tank truck has occurred since the date it was last gauged.

History. Acts 1955, No. 50, § 11; A.S.A. 1947, § 75-1169.

Subchapter 10
— Additional Taxes and Fees

26-55-1001. Applicability.

26-55-1002. Additional tax levied on motor fuel.

26-55-1003. [Repealed.]

26-55-1004. Disposition of revenues.

26-55-1005. Motor fuel excise tax.

26-55-1006. Excise tax rates.

Publisher's Notes. Acts 1985, No. 456, § 6, contained an emergency clause to the effect that the act would be in full force and effect from and after its passage and approval; Acts 1985, No. 456 was vetoed by the Governor on March 19, 1985, but passed over his veto by the General Assembly on March 20, 1985.

Cross References. Additional taxes on motor fuel, distillate special fuels, and liquefied gas special fuels, § 26-55-1201 et seq.
Levy of tax, § 26-55-205.

Effective Dates. Acts 1985, No. 456, § 6. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the rural roads, highways, roads and streets in this State are operationally hazardous and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction and reconstruction of such roads, highways and streets is essential to the public health, welfare and safety of the people of this State and that only by the immediate passage of this Act may such vitally needed additional funds be provided to solve the aforementioned problem. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Vetoed, Mar. 19, 1985 and passed over veto Mar. 20, 1985.

Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the

aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval.” Acts 1999, No. 1028, § 9: Apr. 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that existing highway user revenue sources do not provide sufficient funds for the necessary maintenance, repair, construction and reconstruction of state highways, county roads and municipal streets; that there is an immediate and urgent need for adequate state highways, county roads and municipal streets; that the continued economic expansion and growth of this state will be jeopardized if an adequate system of state highways, county roads and municipal streets is not provided; and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve these problems. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2005, No. 685, § 4: Mar. 9, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the construction, reconstruction, and renovation of highways and roads comprising the federal interstate road system within the State of Arkansas; that a construction program cannot be accomplished without the issuance of bonds secured by federal highway assistance payments to finance the program; and that this act is immediately necessary in order to begin the process of facilitating the issuance of bonds. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

26-55-1001. Applicability.

The additional taxes and fees levied in this subchapter on motor fuel, distillate special fuels, liquefied petroleum gas special fuel, and vehicles using liquefied petroleum gas special fuel shall be applicable to motor fuel and distillate special motor fuels sold and to liquefied petroleum gas vehicles which are registered or for which registration is renewed on and after April 1, 1985.

History. Acts 1985, No. 456, § 4; A.S.A. 1947, § 75-1281.

Publisher's Notes. Acts 1985, No. 456, §§ 1-4, are also codified as § 26-56-501 et seq.

26-55-1002. Additional tax levied on motor fuel.

(a) In addition to the tax levied upon motor fuel in § 26-55-205, there is levied an excise tax of four cents (4¢) per gallon upon all motor fuel subject to the tax levied in that section.

(b) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of other motor fuel taxes.

History. Acts 1985, No. 456, § 1; A.S.A. 1947, § 75-1278; Acts 1989, No. 821, § 10.

Cross References. Additional taxes on motor fuel, distillate special fuels, and liquefied gas special fuels, § 26-55-1201 et seq.

26-55-1003. [Repealed.]

Publisher's Notes. This section, concerning additional fees for vehicles using liquefied gas special fuel, was repealed by Acts 1991, Nos. 364 and 382, § 6. The section was derived from Acts 1985, No. 456, § 2; A.S.A. 1947, § 75-1279.

26-55-1004. Disposition of revenues.

(a) (1) All taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration from the additional taxes and fees levied by this subchapter shall be classified as special revenues and shall be deposited into the State Treasury.

(2) The net amount thereof shall be transferred by the Treasurer of State on the last business day of each month, as follows:

(A) Fifteen percent (15%) of the amount to the County Aid Fund;

(B) Fifteen percent (15%) of the amount to the Municipal Aid Fund; and

(C) Seventy percent (70%) of the amount to the State Highway and

Transportation Department Fund.

(b) (1) All such funds credited the State Highway and Transportation Department Fund shall be used for construction, reconstruction, and maintenance of the rural state highways of the state and their extensions into municipalities and industrial access roads.

(2) The State Highway Commission shall provide to each member of the General Assembly on January 1, 1986, and annually thereafter, a report indicating how the money provided by this subchapter was spent, which roads were worked on, and what other progress was made regarding the plan outlined to the General Assembly by the commission during the debate on this subchapter.

History. Acts 1985, No. 456, § 3; A.S.A. 1947, § 75-1280.

26-55-1005. Motor fuel excise tax.

This act may be referred to and cited as the “Arkansas Distillate Special Fuel Excise Tax Act of 1999” and the “Motor Fuel Excise Tax Act of 1999”.

History. Acts 1999, No. 1028, § 1.

Meaning of “this act”. Acts 1999, No. 1028, codified as §§ 26-55-1005, 26-55-1006, 26-56-201, and 27-72-305.

26-55-1006. Excise tax rates.

(a) In addition to the taxes levied on motor fuel in §§ 26-55-205, 26-55-1002, and 26-55-1201, there is levied an additional excise tax of three cents (3¢) per gallon on all motor fuels subject to the taxes levied in §§ 26-55-205, 26-55-1002, and 26-55-1201.

(b) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of the other motor fuel taxes under Arkansas law.

(c) The additional tax levied by this section shall be taken into consideration and used when calculating tax credits or additional tax due under § 26-55-710.

(d) The additional taxes collected pursuant to this section shall be considered special revenues and shall be distributed as set forth in the Arkansas Highway Revenue

Distribution Law, § 27-70-201 et seq.

History. Acts 1999, No. 1028, §§ 3, 4; 2005, No. 685, § 3; 2009, No. 655, § 62.

Amendments. The 2005 amendment deleted former (d)(2); and redesignated former (d)(1) as present (d).

The 2009 amendment, in (a), deleted (a)(2) and (a)(3), redesignated the remaining subdivision accordingly, deleted “On and after July 1, 1999” at the beginning, substituted “three cents (3¢)” for “one cent (1¢),” and made related and minor stylistic changes.

Subchapter 11 **— International Fuel Tax Agreement**

26-55-1101. Definition.

26-55-1102. Authority to enter Agreement — Audits not precluded — Identification decal costs.

26-55-1103. Persons subject to Agreement provisions.

26-55-1101. Definition.

As used in this subchapter, “director” means the Director of the Department of Finance and Administration or his or her authorized agent.

History. Acts 1989, No. 854, § 1.

26-55-1102. Authority to enter Agreement — Audits not precluded — Identification decal costs.

(a) The Director of the Department of Finance and Administration is authorized to enter into the International Fuel Tax Agreement of July 1987 with jurisdictions outside this state to provide for cooperation and assistance among member jurisdictions in the administration and collection of taxes imposed upon the consumption of all fuels used in vehicles operated or intended to operate interstate. Provided, however, that such agreement shall not be effective until stated and agreed to in writing and filed with the director.

(b) The agreement authorized by this subchapter may provide for determining the base jurisdiction for fuel users, users' record requirements, audit procedures, exchange of information, eligibility for licensing, definition of qualified motor vehicles, definition of motor fuels, bond requirements, reporting requirements, reporting periods, methods for collecting and forwarding fuel taxes and penalties to another jurisdiction, and other provisions to facilitate the administration of the agreement.

(c) No agreement authorized by this subchapter shall preclude the director from auditing the records of any person subject to the provisions of this chapter or the Special Motor Fuels Tax Law, § 26-56-101 et seq.

(d) For the purposes of this subchapter, the amount necessary to recover reasonable administrative costs for issuance of a vehicle identification decal is hereby determined to be that amount required to be paid for the distinctive marking under § 26-55-708.

History. Acts 1989, No. 854, § 1.

26-55-1103. Persons subject to Agreement provisions.

Upon and after the date on which the International Fuel Tax Agreement of July 1987

becomes effective, every person who holds a valid license issued by a member jurisdiction of such agreement shall be subject to the provisions of such agreement, which provisions shall prevail in the case of any conflict with the provisions of this chapter or the Special Motor Fuels Tax Law, § 26-56-101 et seq. Provided, however, that for all persons other than those holding a valid license issued by a member jurisdiction of the International Fuel Tax Agreement of July 1987, the provisions of this chapter and the Special Motor Fuels Tax Law, § 26-56-101 et seq. shall be and remain fully applicable. **History.** Acts 1989, No. 854, § 1.

Subchapter 12

— Additional Taxes on Motor Fuel, Distillate Special Fuels, and Liquefied Gas Special Fuels

26-55-1201. Additional taxes on motor fuel, distillate special fuels and liquefied gas special fuels.

26-55-1202. Additional funds deposited into State Treasury.

Effective Dates. Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

Acts 1991, Nos. 1040 and 1239, § 11: Apr. 8, 1991, and Apr. 10, 1991, respectively. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that there is an immediate need for the construction and repair of the State Highway System. For these reasons, it is declared necessary for the preservation of the public peace, health, and safety that this Act become effective without delay. It is, therefore, declared that an emergency exists, and this Act shall take effect from the date of its passage and approval."

26-55-1201. Additional taxes on motor fuel, distillate special fuels and liquefied gas special fuels.

(a) On and after March 6, 1991, in addition to the taxes levied upon motor fuel in §§ 26-55-205 and 26-55-1002 and upon distillate special fuels in §§ 26-56-201 and 26-56-502 and upon liquefied gas special fuels in §§ 26-56-301 and 26-56-502, and in addition to any other taxes levied on such fuel or fuels during the Seventy-Eighth Regular Session of the General Assembly, there is hereby levied an excise tax of five cents (5¢) per gallon upon all motor fuel and liquefied gas special fuels and an excise tax of two cents (2¢) per gallon upon all distillate special fuels subject to the taxes levied in §§ 26-55-205, 26-55-1002, 26-56-201, 26-56-502, 26-56-301 and 26-56-502.

(b) Such additional taxes shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of other motor fuel taxes, distillate special fuels taxes, and liquefied gas special fuels taxes.

History. Acts 1991, No. 364, § 1; 1991, No. 382, § 1.

Publisher's Notes. Identical acts 1991, Nos. 364 and 382, § 1, are also codified as § 26-56-601.

26-55-1202. Additional funds deposited into State Treasury.

(a) All of the additional taxes, fees, penalties, and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited into the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

- (1) Fifteen percent (15%) of the amount thereof to the County Aid Fund;
- (2) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and
- (3) Seventy percent (70%) of the amount thereof to a special account in the State

Highway and Transportation Department Fund to be designated the "1991 Highway Construction and Maintenance Account".

(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding however, § 27-70-206.

(c) Provided that, in keeping with the spirit of Pub. L. No. 97-424, § 105, and the Arkansas State Highway Commission's goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this act for the purposes of achieving those goals.

History. Acts 1991, No. 364, § 5; 1991, No. 382, § 5; 1991, No. 1040, §§ 5-8; 1991, No. 1239, §§ 5-8.

Publisher's Notes. Identical Acts 1991, Nos. 364 and 382, § 5, are also codified as § 26-56-602. Identical Acts 1991, Nos. 1040 and 1239, § 4, provided:

“(a) This Act shall be liberally construed to accomplish the purposes thereof. This Act shall constitute the sole authority necessary to accomplish the purposes hereof, and to this end it shall not be necessary that the provisions of other laws pertaining to the development of public facilities and properties and the financing thereof be complied with.

“(b) This Act shall be interpreted to supplement existing laws conferring rights and powers upon the Authority and the Commission, and the rights and powers set forth herein shall be regarded as alternative methods for the accomplishment of the purposes of this Act.”

U.S. Code. Public Law 97-424, referred to in this section, is codified primarily as 23 U.S.C. § 101 et seq., 26 U.S.C. § 4041 et seq., and 26 U.S.C. § 6411 et seq.

Subchapter 13

— Refunds — Motor Fuels Used by Fire Departments

26-55-1301. Definitions.

26-55-1302. Applicability.

26-55-1303. Refund permit.

26-55-1304. Applications for refunds.

- 26-55-1305. Refund paid from Gasoline Tax Refund Fund.
26-55-1306. Records — Inspection.
26-55-1307. Construction.
26-55-1308. Director's powers.

26-55-1301. Definitions.

As used in this subchapter:

- (1) “Director” means the Director of the Department of Finance and Administration or any of his or her deputies, employees, or agents;
(2) “Distillate special fuel” means distillate special fuel as defined in § 26-56-102;
(3) (A) “Fire truck” means fire department-owned firefighting apparatus used to respond to fire alarms, including, but not limited to, tanker trucks, pumper trucks, and equipment trucks.
(B) “Fire truck” does not include passenger vehicles and ambulances; and
(4) “Motor fuel” means motor fuel as defined in § 26-55-202.

History. Acts 2001, No. 419, § 1.

Publisher's Notes. Acts 2001, No. 419, § 1, is also codified as § 26-56-701.

26-55-1302. Applicability.

Any fire department that purchases motor fuel or distillate special fuel for use in a fire truck shall be entitled to a refund of the motor fuel tax or distillate special fuel tax paid.
History. Acts 2001, No. 419, § 2.

Publisher's Notes. Acts 2001, No. 419, § 2, is also codified as § 26-56-702.

26-55-1303. Refund permit.

- (a) No fire department shall secure a refund of tax under this subchapter unless the fire department is the holder of an unrevoked permit which was issued by the Director of the Department of Finance and Administration before the purchase of the motor fuel or the distillate special fuel.
(b) The permit shall be numbered and shall entitle the fire department to make an annual application for refund under this subchapter.
(c) An application for the permit shall be filed with the director on forms prescribed by the director and shall contain such information as the director may require.
(d) No person shall knowingly make a false or fraudulent statement in an application for a refund permit or in an application for a refund of any taxes under this subchapter.
(e) The refund permit of any person who violates any provision of this subchapter shall be revoked by the director and shall not be reissued until two (2) years have elapsed after the date of the revocation.

History. Acts 2001, No. 419, § 3.

Publisher's Notes. Acts 2001, No. 419, § 3, is also codified as § 26-56-703.

26-55-1304. Applications for refunds.

(a) The refund permit holder shall file with the Director of the Department of Finance and Administration an application for refund on forms furnished by the director which shall include, but not be limited to, the following information:

(1) The quantity of motor fuel and distillate special fuel purchased for use in its fire trucks;

(2) A statement that the motor fuel and distillate special fuel have been used exclusively in its fire trucks;

(3) The amount of the tax claimed to be refunded;

(4) The name, post office, and resident address of the fire department;

(5) The name and address of the sellers from whom the motor fuel and distillate special fuel were purchased; and

(6) Other information as the director shall require.

(b) (1) An application for a refund shall be accompanied by a paid receipt for the purchase price of motor fuel and distillate special fuel on which the refund is sought.

(2) The application shall be notarized and made to the director.

(c) All claims for a refund under the provisions of this subchapter shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(d) (1) The director shall promulgate a rule establishing the annual date for claiming a refund pursuant to this subchapter.

(2) A refund shall only be granted for a purchase of motor fuel and distillate special fuel made within one (1) calendar year of the annual date for claiming the refund.

History. Acts 2001, No. 419, § 4.

Publisher's Notes. Acts 2001, No. 419, § 4, is also codified as § 26-56-704.

26-55-1305. Refund paid from Gasoline Tax Refund Fund.

(a) All valid claims for refund of the motor fuel tax under the provisions of this subchapter shall be paid from the Gasoline Tax Refund Fund and shall be subject to the same conditions and limitations as provided under § 26-55-407, except that all the motor fuels covered by the provisions of this subchapter shall be subject to the full refund of the motor fuel taxes paid.

(b) (1) (A) The Director of the Department of Finance and Administration shall annually estimate the amount necessary to pay refunds to the users of distillate special fuel who are entitled to refunds with respect to distillate special fuel taxes paid in this state as authorized in this subchapter.

(B) Upon certification by the director, the Treasurer of State shall transfer from the gross amount of distillate special fuel taxes collected each month the amount so certified and shall credit the amount to the fund.

(2) The transfers from the distillate special fuel taxes collected each month shall be made after deducting allowances for bad checks or claims but before making any other distribution as provided by law.

(c) (1) All valid claims for refund of the distillate special fuel tax under the provisions of this subchapter shall be paid from the fund.

(2) The refund for purchases of distillate special fuel tax shall not include the moneys which have been pledged to the repayment of highway bonds under § 26-56-201.

(d) All warrants drawn against the fund that are not presented for payment within one (1)

year after issuance shall be void.

(e) Neither the director nor any member or employee of the Department of Finance and Administration shall be held personally liable for making any refund by reason of a fraudulent claim filed as a basis for such a refund.

History. Acts 2001, No. 419, § 5.

Publisher's Notes. Acts 2001, No. 419, § 5, is also codified as § 26-56-705.

26-55-1306. Records — Inspection.

(a) The Director of the Department of Finance and Administration shall keep a permanent record by fire department of the amount of refund claimed and paid to each claimant.

(b) The records shall be open to public inspection.

History. Acts 2001, No. 419, § 6.

Publisher's Notes. Acts 2001, No. 419, § 6, is also codified as § 26-56-706.

26-55-1307. Construction.

Nothing in this subchapter shall be construed as an impairment of the obligation existing between the State of Arkansas and the holders of Arkansas state highway bonds, whether the bonds have already been issued or may be issued in the future.

History. Acts 2001, No. 419, § 7.

Publisher's Notes. Acts 2001, No. 419, § 7, is also codified as § 26-56-707.

26-55-1308. Director's powers.

The Director of the Department of Finance and Administration may make, amend, and enforce regulations, subpoena witnesses and documents, administer oaths, and do and perform all other acts necessary to carry out the purpose and intent of this subchapter.

History. Acts 2001, No. 419, § 8.

Publisher's Notes. Acts 2001, No. 419, § 8, is also codified as § 26-56-708.

Chapter 56 Special Motor Fuels Taxes

Subchapter 1 — General Provisions

Subchapter 2 — Distillate Special Fuels

Subchapter 3 — Liquefied Gas

Subchapter 4 — Diesel-Powered Vehicles

Subchapter 5 — Additional Taxes and Fees

Subchapter 6 — Additional Taxes on Motor Fuel, Distillate Special Fuels, and Liquefied Gas Special Fuels

Subchapter 7 — Refunds — Motor Fuels Used by Fire Departments

A.C.R.C. Notes. References to “this chapter” in subchapters 1-6 may not apply to subchapter 7 which was enacted subsequently.

Research References

Am. Jur. 72 Am. Jur. 2d, State Tax., § 616 et seq.

Subchapter 1 — General Provisions

26-56-101. Title.

26-56-102. Definitions.

26-56-103. Penalties.

26-56-104. Rules and regulations.

26-56-105. Payment of tax by the Arkansas State Highway and Transportation Department.

26-56-106. Failure, refusal, etc., to make report or pay tax — Penalties, interest — Attorney's fees.

26-56-107. False or fraudulent reports — Fraudulent avoidance of tax — Penalty.

26-56-108. Assessment of delinquent tax — Time limitations.

26-56-109. Distribution of revenues.

Effective Dates. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 7: June 10, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing highway user tax laws of this State are inadequate to provide sufficient funds to properly construct, reconstruct and maintain the State highways, county roads and city streets of this State; that the existing investment of millions of dollars in public roads, streets and bridges is in jeopardy if additional funds are not provided; that increased motor vehicle traffic poses a serious threat to public safety unless immediate steps are taken to provide a more adequate and better maintained system of public roads, streets and bridges; that the existing Special Motor Fuels Tax Law of this State is not conducive to proper enforcement, and immediate steps must be taken to provide for a more enforceable law in order to avoid tax evasion; and, that the immediate passage of this Act is necessary to correct the aforementioned circumstances. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 199, §§ 2, 3: July 1, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that a limitation period for collection of taxes, penalties and interest is necessary to the economic welfare of suppliers, dealers and users of special motor fuel in this State; that it is an undue burden and hardship on such suppliers, dealers and users to maintain records for an indefinite period, and that this Act is immediately necessary to establish a limitation on the collection of such taxes and to thereby remove an undue burden on such suppliers, dealers and users. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall take effect on the date of its passage and approval." Approved Mar. 6, 1967.

Acts 1987, No. 985, § 17, as revised by Acts 1987 (1st Ex. Sess.), No. 20, § 7: Aug. 1, 1987. Acts 1987, No. 985, § 17 provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for essential needs of the citizens of this State and the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect on and after July 1, 1987." However, Acts 1987 (1st Ex. Sess.), No. 20, § 7 provided: "Act 985 of 1987 shall not be in effect on and after July 1, 1987, as stated in Section 17 of Act 985 of 1987 but shall be in full force and effect on and after August 1, 1987."

Acts 1987 (1st Ex. Sess.), No. 20, § 10: June 12, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that, for the purpose of administering the distillate special fuel tax to increase revenues necessary for essential services required by the

citizens of this State, it is necessary to remove the requirement of an exemption certificate for purchasers of distillate special fuel for off-road use. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 688, § 10: Mar. 21, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that some taxpayers are not properly completing and timely filing tax returns; that these failures create an administrative burden upon the Department of Finance and Administration; and that this act is designed to impose a fifty dollar (\$50) penalty for failure to timely file returns, even if no tax is due, or if returns are not properly completed.

Therefore, an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 1026, § 9: Apr. 12, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that confusion exists among wholesalers of diesel fuel with respect to the reporting of inventories of diesel fuel for taxation purposes pursuant to the ‘Special Motor Fuels Tax Law’ and as a consequence diesel fuel tax revenues may be due the state at an earlier date than some wholesalers are remitting them. It is also found that such fuel tax revenues are greatly needed by the state in a timely manner as contemplated by the current diesel fuel tax laws in order that improvements may be expeditiously made to the State Highway System, the county roads, and the municipal streets. It is further found that the amendments contained in this act clarifying the ‘Special Motor Fuels Tax Law’ are necessary to correct the aforementioned problems. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2007, No. 87, § 8: July 1, 2007: Emergency clause provided: “It is found and determined by the General Assembly that due to sharp increases in oil prices, traditional fuel taxation has become a large percentage of the cost of production for Arkansas farmers thereby creating burdensome price increases for Arkansas consumers; that a change in the manner in which tax is paid on dyed diesel fuel is necessary to reduce the cost of production for Arkansas farmers; and that this act is necessary in order to provide tax relief as soon as reasonably possible. Therefore, an emergency is declared to exist and this act being necessary for the preservation of public peace, health, and safety shall become effective on July 1, 2007.”

26-56-101. Title.

This chapter may be known and cited as the “Special Motor Fuels Tax Law”.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 1, § 1; A.S.A. 1947, § 75-1239.

26-56-102. Definitions.

As used in this chapter:

(1) “Bill of lading” means and includes any serially numbered document which shall clearly indicate the following:

- (A) The seller's supplier license number;
- (B) The origin of the transport trip;
- (C) The approximate destination or destinations of the transport trip;
- (D) The type or types of distillate special fuel being transported and the quantity or quantities of distillate special fuel to be delivered to each destination;

(E) The person or persons responsible for the payment of the distillate special fuel tax; and

(F) Such other information or forms as the Director of the Department of Finance and Administration by regulation may adopt or require to implement the intent of this subchapter;

(2) (A) “Bulk” as used in connection with the sale and handling of distillate special fuel means a quantity of distillate fuel in excess of sixty gallons (60 gals.).

(B) “Bulk” as used in connection with the sale and handling of liquefied gas special fuels means any quantity of liquefied gas other than gas in cylinders containing one hundred pounds (100 lbs.) or less;

(3) (A) “Bulk storage facility” means an above-ground or below-ground storage tank connected to a fueling rack customarily used for making wholesale sales.

(B) “Bulk storage facility” does not mean or include any storage tanks or facilities located at any retail outlet of distillate special fuel owned by that supplier nor any storage tanks or facilities located at any other retail outlet of distillate special fuel;

(4) “Dealer” means and includes every person who sells distillate special fuels or liquefied gas special fuels at retail and delivers such special fuels into the special fuel tanks of motor vehicles;

(5) “Director” means the Director of the Department of Finance and Administration or his or her duly authorized agents;

(6) (A) (i) “Distillate special fuel” means and includes all liquids or combination of liquids used or suitable for use in an internal combustion engine or motor for the generation of power for motor vehicles, except fuels subject to the tax levied by the Motor Fuel Tax Law, § 26-55-201 et seq., or liquefied gas special fuels as defined herein.

(ii) “Distillate special fuel” includes products commonly referred to as diesel, kerosene, jet fuel, heating oil or fuel oil, cutter stock, and light cycle oil.

(B) “Distillate special fuel” does not include:

(i) Oil that is:

(a) Derived solely from plants or animals or any mixture of plants or animals;

(b) Free from any petroleum products; and

(c) Not chemically altered by distillation, transesterification, or other similar chemical process; or

(ii) Oil that is:

(a) Normally sold for cooking purposes and purchased from retail outlets; or

(b) Used cooking oil recycled and gathered from restaurants and commercial food processors;

(7) “Exporting” means taking distillate special fuel or liquefied gas special fuels out of this state;

(8) “First receiver” means a supplier who purchases distillate special fuel from a pipeline importer or who imports distillate special fuel into the state by motor vehicle tank truck;

(9) “Gallon” means one (1) U.S. gallon adjusted in volume at a temperature of sixty degrees Fahrenheit (60° F);

(10) “Importing” means bringing distillate special fuel or liquefied gas special fuels into this state;

(11) “Interstate user” means any person who imports or exports distillate special fuel into or out of this state in the fuel supply tanks of motor vehicles owned or operated by him or her;

(12) (A) “Liquefied gas special fuels” means and includes all combustion gases derived from petroleum or natural gas which are in a gaseous state at normal atmospheric temperature and pressure but which may be maintained in a liquefied state at normal atmospheric temperature by the application of sufficient pressure, used or suitable for use in an internal combustion engine or motor for the generation of power for motor vehicles.

(B) “Liquefied gas special fuels” does not include fuel subject to the tax levied by the Motor Fuel Tax Law, § 26-55-201 et seq., and does not include distillate special fuel as defined in subdivision (6) of this section;

(13) “Motor vehicles” means and includes any automobile, truck, truck-tractor, tractor, bus, vehicle, or other conveyance which is propelled by an internal combustion engine or motor and is licensed or required to be licensed for highway use;

(14) “Off-road consumer” means any person who purchases distillate special fuel in bulk quantities and not for motor vehicle use;

(15) “Person” means every natural person, fiduciary, partnership, limited liability company, firm, association, corporation, business trust combination acting as a unit, any receiver appointed by any state or federal court, or any municipality, county, or any subdivision, department, agency, board, commission, or other instrumentality of this state, except the Arkansas State Highway and Transportation Department;

(16) (A) “Pipeline importer” means a supplier who imports distillate special fuel by common carrier pipeline, barge, or rail.

(B) A supplier who imports distillate special fuel exclusively by motor vehicle tank truck is not a pipeline importer;

(17) “Purchase” includes any acquisition of ownership;

(18) “Received” means and includes the following:

(A) Distillate special fuel which is produced, refined, prepared, distilled, manufactured, blended, or compounded at any refinery at any place in the State of Arkansas by any person shall be deemed to be “received” by such person thereat when the distillate special fuel shall have been loaded at such refinery or other place into tank cars, ships, or barges, or when the distillate special fuels shall have been placed in any tank at or by such refinery and from which any withdrawals are made directly into tank trucks, tank wagons, pipelines, or other types of transportation equipment, containers, or facilities, other than tank cars, ships, or barges, or from which any sales or deliveries not involving transportation are made directly;

(B) Distillate special fuel which is imported into the State of Arkansas from any other state, territory, or foreign country by vessel and delivered in that vessel to any person at a marine terminal in this state for storage or imported into this state by pipeline and delivered to any person by that pipeline or a connecting pipeline at a pipeline terminal or pipeline tank farm in this state for storage shall be deemed to have been “received” by such person thereat when the distillate special fuel shall have been loaded into tank cars, ships, or barges at such marine or pipeline terminal or tank farm for any purpose, or when the distillate special fuel shall have been placed in any tank of less

than one hundred thousand gallons (100,000 gals.) capacity thereat, or elsewhere, by such person, or when the distillate special fuel shall have been placed in any tank thereat, or elsewhere by such person, and from which any withdrawals are made directly into tank trucks, tank wagons, pipelines, or other types of transportation equipment, containers, or facilities, other than tank cars, ships, or barges, or from which tank any sales or deliveries not involving transportation are made directly, but not before;

(C) Distillate special fuel purchased in a tank car which shall be unloaded in the State of Arkansas, shall be deemed to be “received” at the time when and place where the tank car is unloaded, but not before;

(D) Distillate special fuel imported by any person into this state from any other state, territory, or foreign country, other than by vessel for storage at marine terminals as provided in this section, or by pipeline for storage at pipeline terminals or pipeline tank farms as provided in this section, or by tank car, shall be deemed to be “received”, in the case of distillate special fuel imported from a foreign country at the time when and the place where the distillate special fuel shall be withdrawn from the original container in which the same was imported, but not before, and shall be deemed to be “received” in the case of distillate special fuel imported from another state or territory of the United States, at the time when and the place where the interstate transportation of such distillate special fuel shall have been completed within this state, but not before;

(E) Distillate special fuel purchased by one (1) licensed supplier from another licensed supplier shall be deemed to be “received” by the supplier purchasing the distillate special fuel at the time possession of the distillate special fuel passes;

(19) “Sale” includes any exchange, gift, or other disposition;

(20) (A) “Supplier” means any person who is customarily in the wholesale business of offering distillate special fuel or liquefied gas special fuels for resale or use to any person in this state and who makes bulk sales of fuel.

(B) “Supplier” includes pipeline importers and first receivers;

(21) “Terminal” means and includes every person in the business of withdrawing or removing distillate special fuel from any pipeline outlet in this state and then storing such distillate special fuel in any type of storage container;

(22) “Use” or “used” means:

(A) Keeping distillate special fuel or liquefied gas special fuels in storage and selling, using, or otherwise disposing of the same for the operation of motor vehicles;

(B) Selling distillate special fuel or liquefied gas special fuels in this state to be used for operating motor vehicles;

(C) Operating a motor vehicle in this state with distillate special fuel or liquefied gas special fuels; and

(D) Importing distillate special fuel or liquefied gas special fuels into this state; and

(23) “User” means and includes every person who delivers or causes to be delivered any distillate special fuel or any liquefied gas special fuels into the supply tank of motor vehicles used or operated by him or her.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 1, § 2; 1979, No. 591, § 1; A.S.A. 1947, § 75-1240; Acts 1987, No. 985, §§ 2-5; 1987 (1st Ex. Sess.), No. 20, §§ 2, 3; 1993, No. 618, § 1; 1993, No. 1026, § 1; 1993, No. 1029, § 4; 1995, No. 1160, § 29; 1997, No.

1212, §§ 1, 2; 2007, No. 690, § 2.

Publisher's Notes. Acts 1987, No. 985, § 1, provided:

"Except as otherwise specifically provided in this Act, all terms and phrases used herein will have the same meaning as ascribed to them under Act 40 of 1965, First Extraordinary Session, as amended."

Acts 1993, No. 1026, § 5, provided:

"The Director of the Department of Finance and Administration is hereby authorized to make and promulgate all rules and regulations deemed necessary or desirable by that Director in order that the amendments contained in this act be effectuated as soon as practicable following the passage and approval of this act."

Acts 1993, No. 1029, § 7, provided:

"The Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

Amendments. The 2007 amendment added present (6)(B); and made related changes.

26-56-103. Penalties.

Any person who violates or fails or refuses to comply with any provision of this chapter for which a specific penalty is not otherwise prescribed shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned not less than ten (10) days nor more than sixty (60) days, or both so fined and imprisoned.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268.

26-56-104. Rules and regulations.

The Director of the Department of Finance and Administration is authorized and empowered to promulgate such rules and regulations, not inconsistent with this chapter, as the director shall deem necessary and desirable to facilitate the collection of the taxes levied in this chapter and to otherwise effectuate the purposes of this chapter, and these rules and regulations shall have the same effect as if specifically set forth in this chapter.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 1; A.S.A. 1947, § 75-1266.

26-56-105. Payment of tax by the Arkansas State Highway and Transportation Department.

(a) The Arkansas State Highway and Transportation Department shall pay the special motor fuel tax established by this chapter on the special motor fuels used in its motor vehicles as defined in § 26-56-102(13).

(b) The department shall remit this tax each month to the Director of the Department of Finance and Administration who will distribute the tax as outlined in this chapter.

(c) For purposes of computing this tax, the department shall use its fuel consumption reports and shall file with the director an appropriate monthly report stating the gallons used in the department's motor vehicles and the tax due and payable.

(d) The department shall not be required to maintain separate special fuel storage facilities for fuel used in its motor vehicles and in its off-the-road equipment.

History. Acts 1979, No. 591, § 2; A.S.A. 1947, § 75-1243.1.

26-56-106. Failure, refusal, etc., to make report or pay tax — Penalties, interest — Attorney's fees.

(a) (1) Once a supplier, dealer, or user of distillate special fuel or liquefied gas special fuels has become liable to file a report with the Director of the Department of Finance and Administration, he or she must continue to file a report, even though no tax is due, until such time as he or she notifies the director in writing that he or she is no longer liable for those reports.

(2) Any supplier, dealer, or user of distillate special fuel or liquefied gas special fuels who fails, neglects, or refuses to make any report required by this chapter or to pay any tax levied at the time and in the manner required in this chapter in addition to any other penalty provided in this chapter shall be liable for the amount of the tax due, plus any penalties allowed by law.

(b) If the tax, penalty, and interest are collected by proceedings in court, an additional penalty of twenty percent (20%) of the tax shall be imposed and collected as attorney's fees.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268; Acts 1991, No. 688, § 4.

26-56-107. False or fraudulent reports — Fraudulent avoidance of tax — Penalty.

Upon conviction, a person who makes a false or fraudulent report under this chapter or who fraudulently attempts to avoid the payment of the tax levied in this chapter on any distillate special fuel or liquefied gas special fuels is guilty of an unclassified misdemeanor and shall be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) or by imprisonment for not less than thirty (30) days nor more than six (6) months, or both fined and imprisoned.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268; Acts 2009, No. 655, § 63.

Amendments. The 2009 amendment inserted “an unclassified,” and made minor stylistic changes.

26-56-108. Assessment of delinquent tax — Time limitations.

No assessment of delinquent distillate special fuel tax or liquefied gas special fuel tax or penalties or interest shall be made for any month after the expiration of three (3) years from the date set for the filing of such monthly return. However, that in case of a false or fraudulent report with intent to evade tax or of failure to file a report, assessment may be made at any time.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268.

26-56-109. Distribution of revenues.

Except as provided in § 26-56-224(b) – (f), all taxes, penalties, and other amounts collected under the provisions of this chapter shall be classified as special revenues, and the net amount shall be distributed as provided by the Arkansas Highway Revenue

Distribution Law, §§ 27-70-201 — 27-70-203, 27-70-206, and 27-70-207.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 2; A.S.A. 1947, § 75-1267; Acts 2007, No. 87, § 3.

Amendments. The 2007 amendment added “Except as provided in § 26-56-224(b)-(f)” at the beginning.

Subchapter 2 **— Distillate Special Fuels**

- 26-56-201. Imposition of tax — Exemptions.
- 26-56-202. Collection and payment of tax.
- 26-56-203. [Repealed.]
- 26-56-204. Licenses and bonds for suppliers and users, etc., generally.
- 26-56-205. [Repealed.]
- 26-56-206. Dealers' licenses and bonds — Municipal taxes.
- 26-56-207. [Repealed.]
- 26-56-208. Suppliers' and users' reports — Computation and remittance of tax.
- 26-56-209. Records required — Invoices — Falsification of records.
- 26-56-210. Prima facie presumptions — Failure to keep records, issue invoices, or file reports — Tax, penalties, and interest.
- 26-56-211. [Repealed.]
- 26-56-212. Bonded and unbonded interstate users — Penalty for insufficient purchase.
- 26-56-213. Bonded and unbonded users — Knowing failure to pay tax or penalty.
- 26-56-214. Interstate users — Reports — Computation of tax and refunds.
- 26-56-215. Interstate users — Tax refund procedure.
- 26-56-216. Power to stop, investigate, and impound vehicles — Assessment of tax.
- 26-56-217. Separate storage tanks for taxable distillate special fuels and for tax-free storage.
- 26-56-218. Bulk sales.
- 26-56-219. Cargo tank to carburetor connections unlawful — Penalties.
- 26-56-220. Unlawful activities regarding operation of motor vehicles.
- 26-56-221. Distribution of taxes.
- 26-56-222. Disposition of funds collected under §§ 26-56-201, 26-56-214, and 27-14-601.
- 26-56-223. Definitions.
- 26-56-224. Fuel used for off-road purposes — Imposition of tax on dyed distillate special fuel.
- 26-56-225. Use of dyed distillate special fuel.
- 26-56-226. Penalty for improper use of dyed distillate special fuel.
- 26-56-227. Mixed dyed and undyed distillate special fuel — Additional penalty.
- 26-56-228. Authority of director.
- 26-56-229. Multiple violations.
- 26-56-230. Disposition of taxes, fees, and other revenues.
- 26-56-231. Rules and regulations.
- 26-56-232. Electronic reports — Electronic funds transfer.

Preambles. Acts 1968 (1st Ex. Sess.), No. 35 contained a preamble which read:

“Whereas, Section 11 of Act 40 of the First Extraordinary Session of 1965 provides that in determining whether a distillate special fuel user is entitled to a refund or owes the state tax on distillate special fuels for the monthly reporting period, the number of gallons of distillate special fuel used in the State by such user shall be determined upon the basis of five (5) miles per gallon of fuel consumed; and

“Whereas, the Arkansas Supreme Court, in the case of Larey, Commr. v. Continental Southern Lines, Inc., et al (October 23, 1967) held that the prescribed method of computing the tax due on distillate special fuel by interstate users results in discrimination against certain interstate users and in favor of similar intrastate users and is therefore unconstitutional; and

“Whereas, it is believed that legislation is immediately necessary to prescribe the method of computing such tax liability or tax credit;

“Now, therefore”

Effective Dates. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 7: June 10, 1965. Emergency clause provided: “It is hereby found and determined by the General Assembly that the existing highway user tax laws of this State are inadequate to provide sufficient funds to properly construct, reconstruct and maintain the State highways, county roads and city streets of this State; that the existing investment of millions of dollars in public roads, streets and bridges is in jeopardy if additional funds are not provided; that increased motor vehicle traffic poses a serious threat to public safety unless immediate steps are taken to provide a more adequate and better maintained system of public roads, streets and bridges; that the existing Special Motor Fuels Tax Law of this State is not conducive to proper enforcement, and immediate steps must be taken to provide for a more enforceable law in order to avoid tax evasion; and, that the immediate passage of this Act is necessary to correct the aforementioned circumstances. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1967, No. 138, § 2: July 1, 1967.

Acts 1967, No. 357, § 12: Mar. 15, 1967. Emergency clause provided: “It is hereby found and determined by the General Assembly that the laws of this State levying a tax upon special motor fuels and prescribing the procedure for collecting the same are confusing and difficult of enforcement and that this Act is immediately necessary to clarify the laws levying the special motor fuel tax in order that said tax may be more effectively and efficiently enforced. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval.”

Acts 1973, No. 445, § 26: July 1, 1973. Emergency clause provided: “It is hereby found and determined by the General Assembly that immediate steps must be taken to provide additional State funds, and to allocate federal revenue sharing funds, for the construction of State highways which are essential to the public health, safety, and welfare and that the immediate passage of this Act is necessary in order that fiscal officials of the State may make plans to prepare for the collection of additional highway revenues effective from and after July 1, 1973. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1973.”

Acts 1977, No. 51, § 5: July 1, 1977. Emergency clause provided: “It is hereby found and determined by the Seventy-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1977 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1977 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977.”

Acts 1977, No. 354, § 5: July 1, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State of Arkansas is in need of additional funds for

the construction and maintenance of the State Highway System, the county roads, and municipal streets of this State; that the present laws governing the rate of tax to be computed upon the use of highways in this State with respect to the class of motor carriers covered by the provisions of this Act, do not adequately apportion to each class of user a mileage factor reasonably approximating the actual miles per gallon of fuel used in this State, and that by the enactment of this Act the State of Arkansas will obtain its fair and reasonable share of taxes due from said classes of motor carriers at the existing rates of tax, and will also gain the benefits of penalty for failure of motor carriers to comply with the motor fuel and distillate motor fuel tax laws in reporting and paying taxes upon which Arkansas motor fuel or distillate special fuel taxes have not been collected, and that the immediate passage of this Act is necessary to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1977.”

Acts 1979, No. 437, § 8: July 1, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that existing highway user revenue sources do not provide for the adequate maintenance, repair, construction and reconstruction of state highways, county roads and city streets; that the motor vehicular traffic on the public highways and streets of this State makes it immediately necessary that additional funds be provided in order to finance adequate highway, road and street maintenance and construction programs; that the continued economic expansion and growth of this State will be jeopardized if an adequate system of public roads and streets is not provided; and that only by the immediate passage of this Act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July first of 1979.”

Acts 1979, No. 764, § 5: July 1, 1979.

Acts 1980 (1st Ex. Sess.), No. 46, § 2: Jan. 30, 1980. Emergency clause provided: “It is hereby found and determined by the General Assembly that because of the increased tax liabilities accrued by interstate users of distillate special fuels through the lengthening of their tax reporting period from monthly to quarterly by Act 764 of 1979, the maximum surety bond required of interstate users may not adequately protect the state from revenue losses, it is necessary to the public peace, health, and safety that the maximum amount of such bonds be raised without delay. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 830, § 5: Mar. 25, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that the orderly administration of the motor fuel tax laws is essential for the effective collection of these taxes; that some uncertainty exists regarding the sale of fuels to the United States and, that this Act is necessary to clarify this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 803, § 14: July 1, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that this Act makes various changes in the motor fuel tax law and the special motor fuel tax law; that such changes should go into effect at the beginning of the next fiscal year; and that unless this emergency clause is adopted, this Act may not go into effect until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1987.”

Acts 1987, No. 985, § 17, as revised by Acts 1987 (1st Ex. Sess.), No. 20, § 7: Aug. 1, 1987. Acts 1987, No. 985, § 17 provided: “It is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for essential needs of the citizens of this State and the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect on and after July 1, 1987.” However, Acts 1987 (1st Ex.

Sess.), No. 20, § 7 provided: "Act 985 of 1987 shall not be in effect on and after July 1, 1987, as stated in Section 17 of Act 985 of 1987 but shall be in full force and effect on and after August 1, 1987."

Acts 1987 (1st Ex. Sess.), No. 20, § 10: June 12, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that, for the purpose of administering the distillate special fuel tax to increase revenues necessary for essential services required by the citizens of this State, it is necessary to remove the requirement of an exemption certificate for purchasers of distillate special fuel for off-road use. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 219, § 10: Feb. 22, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

Acts 1993, No. 1026, § 9: Apr. 12, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that confusion exists among wholesalers of diesel fuel with respect to the reporting of inventories of diesel fuel for taxation purposes pursuant to the 'Special Motor Fuels Tax Law' and as a consequence diesel fuel tax revenues may be due the state at an earlier date than some wholesalers are remitting them. It is also found that such fuel tax revenues are greatly needed by the state in a timely manner as contemplated by the current diesel fuel tax laws in order that improvements may be expeditiously made to the State Highway System, the county roads, and the municipal streets. It is further found that the amendments contained in this act clarifying the 'Special Motor Fuels Tax Law' are necessary to correct the aforementioned problems. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 777, § 13: July 1, 1995. Emergency clause provided: "It is found and determined by the Eightieth General Assembly of the State of Arkansas that current laws allowing for a refund of tax paid on gasoline used for agricultural purposes is an inefficient and impractical method of providing tax relief to farmers; that current laws collecting motor fuel tax on liquefied petroleum gas based upon a flat fee is inequitable and imposes an undue burden on some taxpayers in this State; that current licensing and bonding requirements on motor fuel and distillate special fuel dealers are unnecessary and contrary to federal law; that this bill is designed to correct each of these deficiencies in current law and this Act should be effective on July 1, 1995. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect on and after July 1, 1995."

Acts 1995, No. 954, § 6: Apr. 6, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly that the United States Congress, through the

passage of P.L. 103-66, has adopted legislation to curtail the illegal usage of diesel fuel that has not been taxed for federal taxation purposes by requiring the bulk of off-road non taxed diesel fuels be dyed and by requiring the bulk of on-road taxable diesel fuels be undyed; that confusion has arisen in this State due to the federal dyeing requirements and usage of dyed and undyed diesel fuel and Arkansas laws, which are silent in the area of dyed diesel fuels; that the federal government is experiencing success in curtailing the abuse of nontaxable diesel fuels, due to the dyeing requirements, and this State should realize more fuel tax revenues by adopting mechanisms to curtail such abuses with regard to state fuel taxes by adopting similar requirements; that the adoption of such mechanisms will more equitably insure that highway users pay their fair share for the construction, reconstruction and maintenance of highways and bridges in the State, county and municipal highway, road, and street systems; and that the provisions of this Act are essential to the continued operation of State government. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after its passage and approval.”

Acts 1999, No. 1028, § 9: Apr. 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that existing highway user revenue sources do not provide sufficient funds for the necessary maintenance, repair, construction and reconstruction of state highways, county roads and municipal streets; that there is an immediate and urgent need for adequate state highways, county roads and municipal streets; that the continued economic expansion and growth of this state will be jeopardized if an adequate system of state highways, county roads and municipal streets is not provided; and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve these problems. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2005, No. 685, § 4: Mar. 9, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the construction, reconstruction, and renovation of highways and roads comprising the federal interstate road system within the State of Arkansas; that a construction program cannot be accomplished without the issuance of bonds secured by federal highway assistance payments to finance the program; and that this act is immediately necessary in order to begin the process of facilitating the issuance of bonds. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 87, § 8: July 1, 2007: Emergency clause provided: “It is found and determined by the General Assembly that due to sharp increases in oil prices, traditional fuel taxation has become a large percentage of the cost of production for Arkansas farmers thereby creating burdensome price increases for Arkansas consumers; that a change in the manner in which tax is paid on dyed diesel fuel is necessary to reduce the cost of production for Arkansas farmers; and that this act is necessary in order to provide tax relief as soon as reasonably possible. Therefore, an emergency is declared to exist and this act being necessary for the preservation of public peace, health, and safety shall become effective on July 1, 2007.”

Acts 2007, No. 511, § 3: Mar. 27, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the construction, reconstruction and renovation of highways and roads comprising the U.S. Interstate system within the State of Arkansas and that such a program cannot be accomplished without the issuance of bonds secured by federal highway assistance payments to finance the program. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the

Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

26-56-201. Imposition of tax — Exemptions.

(a) (1) (A) There is levied an excise tax at the rate of nine and one-half cents (9½¢) per gallon on all distillate special fuel, except fuel utilized in propelling jet aircraft, sold or used in this state, or purchased for sale or use in this state.

(B) The additional levies provided in subdivision (a)(2) of this section and § 26-56-502 are specifically intended to apply to the taxes levied by this section and shall remain effective.

(2) In addition to the tax levied in subdivision (a)(1) of this section, there is levied an excise tax of one cent (1¢) for each gallon of distillate special fuel, as defined in § 26-56-102, sold or used in this state, or purchased for sale or use in this state, to be computed in the manner set forth in this section.

(b) The following are exempted from the tax levied by subsection (a) of this section:

(1) Sales to the United States Government;

(2) Sales to dealers, users, or off-road consumers for off-road use if and only if the fuel was delivered by the supplier into storage facilities clearly marked “NOT FOR MOTOR VEHICLE USE”;

(3) Sales of distillate special fuel by a licensed supplier for export from the State of Arkansas when shipped by common carrier f.o.b. destination to any other state or territory or to any foreign country, or the export of distillate special fuel by a licensed supplier from the State of Arkansas to any other state or territory or to any foreign country, provided that satisfactory proof of actual exportation of all such distillate special fuel is furnished at the time and in the manner prescribed by the Director of the Department of Finance and Administration;

(4) Sales of distillate special fuel by a pipeline importer who has first received the distillate special fuel in this state or to a licensed first receiver in this state; and

(5) Sales for other than motor vehicle use in quantities of sixty gallons (60 gals.) or less.

(c) A licensed first receiver shall not sell untaxed distillate special fuel to another licensed first receiver or pipeline importer, unless a specific exemption is available under subsection (b) of this section.

(d) (1) (A) In addition to the taxes levied on distillate special fuel in this section and § 26-56-502, there is levied an additional excise tax of four cents (4¢) per gallon upon all distillate special fuel subject to the taxes levied in this section and § 26-56-502.

(2) This additional excise tax shall be levied, collected, reported, and paid in the same manner and at the same time as is prescribed by law for the levying, collection, reporting, and payment of the other distillate special fuel taxes under Arkansas law.

(e) (1) (A) In addition to the taxes levied on distillate special fuel in this section and §§ 26-56-502 and 26-56-601, there is levied an excise tax of two cents (2¢) per gallon upon all distillate special fuel subject to the taxes levied in this section and §§ 26-56-502 and 26-56-601.

(B) Effective one (1) year after April 1, 1999, the additional tax levied by this subsection shall be increased by an additional two cents (2¢) per gallon.

(2) This additional excise tax shall be levied, collected, reported, and paid in the

same manner and at the same time as is prescribed by law for the levying, collection, reporting, and payment of the other distillate special fuel taxes under Arkansas law.

(3) The additional tax levied by this subsection shall be taken into consideration and used when calculating tax credits or additional tax due under § 26-56-214.

(f) The additional taxes collected pursuant to this section shall be considered special revenues and shall be distributed as set forth in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., subject to any requirements for the repayment of bonds issued under the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., and the Arkansas Interstate Highway Financing Act of 2007, § 27-64-401 et seq.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 1; 1967, No. 357, § 1; 1973, No. 445, § 1; 1979, No. 437, § 2; A.S.A. 1947, §§ 75-1241, 75-1269; Acts 1987, No. 985, §§ 6, 7; 1987 (1st Ex. Sess.), No. 20, §§ 1, 4-6; 1989, No. 821, § 10; 1991, No. 219, § 3; 1993, No. 618, §§ 2, 3; 1997, No. 1212, § 3; 1999, No. 1028, §§ 2, 4; 2005, No. 685, § 2; 2007, No. 511, § 2.

A.C.R.C. Notes. As enacted by Acts 1991, No. 219, § 3, subdivision (d)(1) of this section began: "On and after the effective date of this act,". Pursuant to Acts 1991, No. 219, § 10, the effective date of the act was March 1, 1991.

As enacted by Acts 1999, No. 1028, § 2, present subdivision (e)(1)(A) of this section began: "On and after the effective date of this act,". Pursuant to Acts 1999, No. 1028, § 9, the effective date of the act was April 1, 1999.

Publisher's Notes. Acts 1987, No. 985, § 1, provided:

"Except as otherwise specifically provided in this Act, all terms and phrases used herein will have the same meaning as ascribed to them under Act 40 of 1965, First Extraordinary Session, as amended."

Acts 1999, No. 1028, § 1, provided:

"This act may be referred to and cited as the 'Arkansas Distillate Special Fuels Excise Act of 1999' and the 'Motor Fuel Excise Tax Act of 1999'."

Amendments. The 2005 amendment deleted former (f)(2); redesignated former (f)(1) as present (f); and inserted "subject to any requirements ... § 27-64-301 et seq." in present (f).

The 2007 amendment substituted "and the Arkansas Interstate Highway Financing Act of 2007, § 27-64-401 et seq." for "and the Arkansas Interstate Highway Financing Act of 2005, § 27-64-301 et seq." at the end of (f).

26-56-202. Collection and payment of tax.

(a) The tax levied by this subchapter shall be collected and paid by suppliers.

(b) The tax levied by this subchapter shall be paid by an interstate user on distillate special fuel imported into this state by the interstate user under § 26-56-214.

(c) The tax levied by this subchapter shall be paid by any person who uses distillate special fuel in this state on which the tax levied in this subchapter has not been paid according to § 26-56-214.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 3; 1967, No. 138, § 1; 1967, No. 357, § 8; A.S.A. 1947, § 75-1243; Acts 1987, No. 985, § 9; 2009, No. 655, § 64.

Publisher's Notes. As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201.

Section 26-56-211, referred to in this section, was repealed by Acts 1987, No. 803, § 11.

Amendments. The 2009 amendment deleted "§ 26-56-211 [repealed] and" preceding "§ 26-56-214" in (b) and (c); and made minor stylistic changes.

26-56-203. [Repealed.]

Publisher's Notes. This section, concerning tax credit options, was repealed by Acts 1987, No. 803, § 8. The section was derived from Acts 1979, No. 909, §§ 1-3; A.S.A. 1947, §§ 75-1243.2 — 75-1243.4.

26-56-204. Licenses and bonds for suppliers and users, etc., generally.

(a) (1) (A) No person shall commence operations as a supplier, user, or off-road consumer of distillate special fuel without first procuring a license for that purpose from the Director of the Department of Finance and Administration. The license shall be issued and remain in effect until revoked as provided in this section.

(B) (i) Any person holding or applying for a supplier's license after August 1, 1987, shall make an election to operate either as a pipeline importer or first receiver. Once having made an election in writing filed with the director, the election will remain in force until such time as the supplier makes another written election to change the supplier's status.

(ii) The election and any change therein shall take effect on the first month following filing of the election.

(iii) The director may promulgate such forms and regulations as may be necessary to ensure uniformity with federal usage of exemption certificates issued for nonhighway diesel purchases.

(b) (1) Each application for a license or registration as a supplier, user, or off-road consumer of distillate special fuel, and each license or registration, shall have as a condition that the applicant and holder shall comply with the provisions of this subchapter.

(2) (A) Each annual registration as a user or off-road consumer shall have as a further condition that the applicant shall not deliver or permit delivery into the fuel supply tanks of motor vehicles any distillate special fuel which have been purchased tax-free by the applicant.

(B) A taxable use of distillate special fuel purchased tax-free by an applicant for an annual registration as a user or off-road consumer, in addition to the penal provisions prescribed in this subchapter, at the discretion of the director shall forfeit the right of the applicant to purchase distillate special fuel tax-free.

(c) (1) Every supplier shall file with the director a surety bond of not less than one and one-half (1½) times or one hundred fifty percent (150%) of the prior six (6) months average distillate special fuel tax due which is based upon the gallonage of distillate special fuel to be sold or distributed as shown by the application for a license if the applicant has not previously been engaged in the business of a supplier, or as shown by sales for the previous year if the applicant previously has been engaged in such business in this state. However, no bond shall be filed for less than one thousand dollars (\$1,000).

(2) If the director deems it necessary to protect the state in the collection of distillate special fuel taxes, the director may require any supplier to post a bond in an amount up to three (3) times or three hundred percent (300%) of the prior six (6) months average distillate special fuel tax due.

(3) (A) However, the director is authorized to waive the posting of bond by any licensed supplier organized and operating under the laws of Arkansas and wholly owned by residents of this state who has been licensed for a period of at least three (3) years and who has not been delinquent in remitting distillate special fuel taxes during the three-year

period immediately preceding application by the supplier for waiver of bond.

(B) If any supplier whose bond has been waived by the director as authorized in subdivision (c)(3)(A) of this section, subsequently becomes delinquent in remitting distillate special fuel taxes to the director, the director may require that the supplier post a bond in the amount required in this section, and the supplier shall not be eligible to petition for a waiver of bond for a period of three (3) years thereafter.

(d) (1) Each application of an interstate user for a license shall be accompanied by a surety bond of a surety company authorized to do business in this state, in favor of the director, satisfactory to the director, and in an amount to be fixed by the director of not less than one thousand dollars (\$1,000) nor more than fifty thousand dollars (\$50,000), guaranteeing the payment of any and all taxes, penalties, interest, attorney's fees, and costs levied by, accrued, or accruing under this subchapter.

(2) Any violation of this subchapter shall be cause for revocation of any license issued under this subchapter.

(e) (1) The bond or bonds shall be issued by a surety company qualified to do business in Arkansas, which shall be executed by the supplier or interstate user as the principal obligor and shall be made payable to the State of Arkansas as the obligee.

(2) The bond shall be conditioned upon the prompt filing of true reports and the payment by the supplier or interstate user to the director of any and all distillate special fuel taxes which are levied or imposed by the State of Arkansas, together with any and all penalties and interest thereon, and generally upon faithful compliance with the provisions of this subchapter.

(f) (1) In the event that liability upon the bond filed pursuant to this section by the supplier or interstate user with the director shall be discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if in the opinion of the director any surety on the bond shall have become unsatisfactory or unacceptable, then the director may require the filing of a new bond with a satisfactory surety in the same form and amount; failing which, the director shall immediately cancel the license of the supplier or interstate user.

(2) If a new bond shall be furnished, the director shall cancel the bonds for which the new bond shall be substituted.

(g) In the event that upon a hearing of which the supplier or interstate user shall be given five (5) days' notice in writing, the director shall decide that the amount of the existing bond is insufficient to ensure payment to the State of Arkansas of the amount of the tax and any penalties and interest for which said supplier or interstate user is or may at any time become liable, then the supplier or interstate user upon written demand of the director shall immediately file an additional bond in the same manner and form and with a surety company thereon approved by the director in any amount determined by the director to be necessary to secure at all times the payment to the State of Arkansas of all taxes, penalties, and interest due under the provisions of this section, failing which, the director shall immediately cancel the license of the supplier or interstate user.

(h) (1) Any surety on any bond furnished as provided in this section shall be released and discharged from any and all liability to the State of Arkansas accruing on the bond after the expiration of sixty (60) days from the date upon which a surety shall have lodged with the director written request to be released and discharged. However, the request shall not operate to relieve, release, or discharge the surety from any liability

already accrued or which shall accrue before the expiration of the sixty-day period.

(2) Upon receipt of notice of such request, the director shall promptly notify the supplier or interstate user who furnished the bond, and unless the supplier or interstate user on or before the expiration of the sixty-day period files with the director a new bond with a surety company satisfactory to the director in the amount and form as provided in this section, the director shall immediately cancel the license of that supplier or interstate user.

(3) If a new bond shall be furnished as provided in this section, the director shall cancel the bond for which the new bond shall be substituted.

(i) In lieu of furnishing a bond or bonds executed by a surety company as provided in this section, any supplier or interstate user may furnish a bond or other instrument in a form prescribed by the director of equal, full amount to the amount of the bond or bonds required by this section, which will provide security or payment of all amounts as described in this section and in compliance with all provisions of this subchapter.

(j) (1) A supplier may operate under his or her supplier's license as a dealer or as a user without securing a separate license, but he or she shall be subject to all other conditions, requirements, and liabilities imposed by this subchapter upon a dealer or a user.

(2) A licensed supplier, but not a dealer, may use distillate special fuel in motor vehicles owned or operated by him or her without securing a separate license as a user, subject to all conditions, requirements, and liabilities imposed herein upon a user.

(k) (1) Any violation of this subchapter shall be cause for revocation of any license issued pursuant to this subchapter.

(2) (A) Should his or her license be revoked, any supplier or user may bring an action against the director in the circuit court of the county of his or her domicile within fifteen (15) days of the date of revocation to determine whether or not the supplier or user has in fact violated any of the provisions of this chapter.

(B) If the circuit court determines that the provisions of the law have been violated by the supplier or user, it shall affirm the director's action in revoking the license.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, §§ 7, 8; 1967, No. 357, § 2; 1980 (1st Ex. Sess.), No. 46, § 1; A.S.A. 1947, §§ 75-1247, 75-1248; Acts 1987, No. 985, § 12; 1987 (1st Ex. Sess.), No. 20, § 8; 1993, No. 618, §§ 4, 5; 1993, No. 1026, § 2; 1995, No. 777, §§ 4-6; 1997, No. 1212, §§ 4, 5.

Publisher's Notes. As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201. Acts 1993, No. 1026, § 5, provided:

"The Director of the Department of Finance and Administration is hereby authorized to make and promulgate all rules and regulations deemed necessary or desirable by that Director in order that the amendments contained in this act be effectuated as soon as practicable following the passage and approval of this act."

26-56-205. [Repealed.]

Publisher's Notes. This section, concerning dealers' licenses and bonds generally, was repealed by Acts 1995, No. 777, § 7. The section was derived from Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 7; 1967, No. 357, § 3; A.S.A. 1947, § 75-1247; Acts 1993, No. 344, § 1.

26-56-206. Dealers' licenses and bonds — Municipal taxes.

Section 26-56-204 does not prevent the collection of any privilege or occupation taxes by any municipality of this state for engaging in the business of a dealer within the limits of the municipality.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 7; 1967, No. 357, § 3; A.S.A. 1947, § 75-1247; Acts 2009, No. 655, § 65.

Publisher's Notes. Section 26-56-205 referred to in this section was repealed by Acts 1995, No. 777, § 7.

Amendments. The 2009 amendment substituted "Section 26-56-204 does not prevent" for "Nothing in §§ 26-56-204 and 26-56-205 [repealed] shall be construed so as to prevent."

26-56-207. [Repealed.]

Publisher's Notes. This section, concerning sales tickets, was repealed by Acts 1995, No. 777, § 7. The section was derived from Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 7; 1967, No. 357, § 3; 1968 (1st Ex. Sess.), No. 35, § 2; A.S.A. 1947, §§ 75-1247, 75-1251.1.

26-56-208. Suppliers' and users' reports — Computation and remittance of tax.

(a) (1) On or before the twenty-fifth day of each calendar month on forms prescribed by the Director of the Department of Finance and Administration, every supplier shall file with the director a report accounting for the distillate special fuel handled during the preceding month.

(2) The supplier shall file supporting documents necessary to assure accurate reporting.

(3) The report shall include the following:

(A) An itemized statement of the number of gallons of distillate special fuel received during the next-preceding calendar month by the supplier;

(B) An itemized statement of the number of gallons of distillate special fuel received or sold during the next-preceding calendar month and entitled to deduction or exemption under the provisions of this subchapter;

(C) The total number of gallons of dyed distillate special fuel sold to users during the next-preceding calendar month, but the report shall not contain an itemized listing identifying each purchaser; and

(D) Such other documents as the director requires.

(b) (1) When filing the report and paying the tax to the director as required in this section, the supplier shall be entitled to deduct from the total number of gallons upon which the tax levied under this chapter is due, the number of gallons:

(A) Purchased during the preceding calendar month from another licensed supplier and upon which the tax levied under this chapter was paid at the time of that purchase; and

(B) Lost due to fire, flood, storm, theft, or other cause beyond the supplier's control, other than through evaporation.

(2) The deduction for the loss may be included in the report filed for the month in which the loss occurred or in any subsequent report filed within a period of one (1) year.

(c) (1) On forms prescribed by the director, every pipeline company, water transportation company, and common carrier transporting distillate special fuel to points within Arkansas shall report under oath to the director all deliveries of distillate special

fuel so made to points within Arkansas.

(2) (A) The report shall cover a monthly period and shall be submitted within twenty-five (25) days after the close of the month covered by the report.

(B) The report shall show:

(i) The name and address of each person to whom deliveries of distillate special fuel have actually been made;

(ii) The name and address of each originally named consignee if distillate special fuel has been delivered to anyone other than the originally named consignee;

(iii) The point of origin, point of delivery, and date of delivery, as well as the name of the boat, barge, or vessel;

(iv) The number of gallons contained in the vessel, if shipped by water;

(v) The license number of each tank truck;

(vi) The number of gallons contained in the tank if transported by motor truck;

(vii) The point of origin, the name and address of the person or terminal to whom the delivery was made, the date of the delivery, and the quantity of distillate special fuel delivered if shipped by pipeline company; and

(viii) The manner and quantities if delivered by other means when such delivery is made.

(C) The report shall also show such additional information relative to a shipment of distillate special fuel as the director may require.

(d) (1) Every terminal purchasing or otherwise acquiring distillate special fuel by pipeline and selling, using, or otherwise disposing of the distillate special fuel for delivery in Arkansas and not required by a provision of this subchapter to be licensed as a supplier in distillate special fuel shall file a statement setting forth the:

(A) Name under which the terminal is transacting business within the State of Arkansas and the location with the street number address of the terminal's principal office or place of business within the state; and

(B) Name and address of the owner of the terminal, names and addresses of the partners if the terminal is a partnership, or names and addresses of the principal officers if the terminal is a corporation or association.

(2) On or before the twenty-fifth day of each calendar month on forms prescribed by the director, the terminal shall report to the director all purchases or other acquisitions and sales or other disposition of distillate special fuel during the next-preceding calendar month, which report shall include the following:

(A) Beginning inventories in gallons of distillate special fuel in storage;

(B) Ending inventories in gallons of distillate special fuel in storage;

(C) Withdrawals of distillate special fuel in gallons from the pipeline outlet resulting in additions of distillate special fuel to storage, including the name of the supplier licensed as an importer who requested the placement of the distillate special fuel into storage; and

(D) Removals of distillate special fuel from storage, specifically including:

(i) Bill of lading numbers which represent physical movements of

the distillate special fuel;

(ii) The date of each removal;

(iii) The quantity in gallons of distillate special fuel so removed;

(iv) The person who had the distillate special fuel available for that particular removal; and

(v) The person possessing a license from the director who requested the removal of the distillate special fuel from that storage.

(3) When any terminal purchasing or otherwise acquiring distillate special fuel by pipeline and selling or otherwise disposing of the distillate special fuel for delivery in Arkansas and not required by a provision of this subchapter to register as a supplier in distillate special fuel, fails to submit the terminal's monthly report to the director by the twenty-fifth day of each calendar month or when the terminal fails to submit in the monthly report the data required by this subchapter, the terminal shall be guilty of a violation and shall be fined an amount not greater than one hundred dollars (\$100) for the first offense and shall be fined an amount not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each subsequent offense.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 8; 1967, No. 497, § 1; A.S.A. 1947, § 75-1248; Acts 1987, No. 803, § 6; 1987, No. 985, §§ 8, 13, 14; 1993, No. 1026, § 3; 1993, No. 1029, §§ 5, 6; 1997, No. 1212, § 6; 2001, No. 777, § 1; 2005, No. 1994, § 176; 2007, No. 827, § 226.

Publisher's Notes. As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201.

Acts 1993, No. 1026, § 5, provided:

"The Director of the Department of Finance and Administration is hereby authorized to make and promulgate all rules and regulations deemed necessary or desirable by that Director in order that the amendments contained in this act be effectuated as soon as practicable following the passage and approval of this act."

Acts 1993, No. 1029, § 7, provided:

"The Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

Amendments. The 2005 amendment redesignated former (a)(1) and (a)(1)(A)-(D) as present (a) and (a)(1)-(4); and substituted "violation" for "misdemeanor" in (d)(3).

The 2007 amendment, in (d)(1), combined former (A) and (B) as present (A) and former (C) and (D) as present (B), inserted "of the terminal" in present (B), and made related and stylistic changes.

26-56-209. Records required — Invoices — Falsification of records.

(a) Every person required by law to secure a license under any motor fuel or distillate special fuel tax law shall keep records in the time and manner and subject to inspection and audit as required by the Arkansas Tax Procedure Act, § 26-18-101 et seq., for each place of business or place of storage in Arkansas, including a complete record of all distillate special fuel purchased or received and sold, delivered, or used by him or her showing for each purchase, receipt, sale, delivery, or use:

(1) The date;

(2) The name and address of the seller or of the persons from whom received, and if sold or delivered in bulk quantities, the name and address of the purchaser or recipient;

(3) An accurate record of the number of gallons of each product used for taxable purposes with quantities measured by a meter; and

(4) Inventories of distillate special fuel on hand at the end of each month at bulk storage facilities.

(b) (1) For each bulk sale and delivery of distillate special fuel, whether or not subject to tax under this subchapter, the record required shall include an invoice with serial numbers printed thereon showing the name and address of both the supplier and the purchaser, and the complete information set out in subsection (a) of this section for each such sale, one (1) counterpart of which shall be delivered to the purchaser and another counterpart kept by the supplier or dealer for the period of time and purpose provided in subsection (a) of this section.

(2) (A) For each delivery of distillate special fuel into the fuel supply tank of a motor vehicle, the required record shall include a serially-numbered invoice issued in not less than duplicate counterparts on which shall be printed or stamped with a rubber stamp the name and address of the supplier, dealer, or user making such delivery and on which shall be shown, in spaces to be provided on that invoice, the date of delivery, the number of gallons and kind of distillate special fuel so delivered, the total mileage recorded on the speedometer or hub meter of the motor vehicle into which delivered, and the motor vehicle registration number of the motor vehicle.

(B) The invoice shall reflect that the tax has been paid or accounted for on each of the products delivered.

(C) (i) One (1) counterpart of the invoice shall be kept by the supplier, dealer, or user making such delivery as a part of his or her record and for the period of time and purposes provided in subsection (a) of this section.

(ii) Another counterpart shall be delivered to the operator of the motor vehicle and carried in the cab compartment of the motor vehicle for inspection by the Director of the Department of Finance and Administration or his or her representatives until the fuel it covers has been consumed.

(c) (1) Every person who operates a motor vehicle that is equipped to use motor fuels taxable under the Motor Fuel Tax Law, § 26-55-201 et seq., and distillate special fuel interchangeably in the propulsion of the motor vehicle shall carry in the cab compartment of the motor vehicle for inspection by the director or his or her representative, not only the counterpart of the serially-numbered invoice required under subsection (b) of this section for the delivery of distillate special fuel into the fuel supply tanks of the motor vehicle but also an invoice or receipt from the seller for each delivery into the fuel supply tanks of the motor vehicle of motor fuels taxable under the Motor Fuel Tax Law, § 26-55-201 et seq., which latter invoice or receipt shall show the same information as to date of delivery, quantity, speedometer or hub meter mileage, and motor vehicle registration number as is required for the invoice covering distillate special fuel.

(2) These invoices shall be carried with the motor vehicle until the kinds of fuels covered thereby have been consumed.

(d) (1) On all deliveries of distillate special fuel to a user by common or contract carriers, the shipper shall stamp on the manifest or bill of lading in letters not less than one-quarter inch (1/4") high "TAX PAID" whenever the tax levied under this subchapter, other than the tax levied by § 26-56-224(b)-(f), has been paid, and "NOT FOR MOTOR VEHICLE USE" whenever the tax levied under this subchapter has not been paid or if

the fuel is dyed distillate special fuel.

(2) It shall be a violation of this chapter for any driver for a carrier to deliver distillate special fuel covered by a manifest or bill of lading stamped "NOT FOR MOTOR VEHICLE USE" into a tank marked "TAX-PAID SPECIAL FUELS".

(e) The willful issuance of any invoice, bill of sale, or receipt which is false, untrue, or incorrect in any material particular, or the alteration or changing except for errors, or forging any such invoice, bill of sale, or receipt, or any duplicate of any such receipt pertaining to distillate special fuel shall constitute a violation of this chapter.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 6; A.S.A. 1947, § 75-1246; Acts 1987, No. 985, § 11; 1993, No. 1026, § 4; 2007, No. 87, § 5.

Publisher's Notes. As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201. Acts 1993, No. 1026, § 5, provided:

"The Director of the Department of Finance and Administration is hereby authorized to make and promulgate all rules and regulations deemed necessary or desirable by that Director in order that the amendments contained in this act be effectuated as soon as practicable following the passage and approval of this act."

Amendments. The 2007 amendment, in the first sentence of (d), inserted "other than the tax levied by § 26-56-224(b)-(f)" and inserted "or if the fuel is dyed distillate special fuel."

26-56-210. Prima facie presumptions — Failure to keep records, issue invoices, or file reports — Tax, penalties, and interest.

(a) Any supplier, dealer, or user who fails to keep the records, issue the invoices, or file the reports required by this subchapter shall be prima facie presumed to have sold, delivered, or used for taxable purposes all distillate special fuel shown by a verified audit by the Director of the Department of Finance and Administration or any authorized representative, to have been delivered to such supplier, dealer, or user and unaccounted for at each place of business or place of storage from which distillate special fuel is sold, delivered, or used for any taxable purposes.

(b) (1) The director is authorized to fix or establish the amount of taxes, penalties, and interest due the State of Arkansas from such records of deliveries or from any records or information available to the director, and if the tax claim as developed from that procedure is not paid, the claim and any audit made by the director or an authorized representative, or any report filed by such supplier, dealer, or user, shall be admissible in evidence in any suit or judicial proceedings filed by the director and shall be prima facie evidence of the correctness of said claim or audit.

(2) However, the prima facie presumption of the correctness of the claim may be overcome by evidence adduced by the supplier, dealer, or user.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 10; A.S.A. 1947, § 75-1250.

Case Notes

Purpose.

Audits.

Burden of Proof.

Presumptions.

Purpose.

This section is intended to require dealers to preserve their records and invoices so that the state

can verify the payment of motor fuel taxes, if such taxes are due. *Ragland v. Gulf Oil Corp.*, 288 Ark. 185A, 705 S.W.2d 15 (1986).

Audits.

The only purpose of the audit requirement in this section is to provide an approved method to determine the quantity of fuel delivered to a dealer before it can be charged with that amount under the statute. *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 703 S.W.2d 449 (1986).

Where an audit of oil company established the delivery of 370,312 gallons, for which distributor could not account, and where the amount of fuel delivered to the distributor was never in dispute, and was effectively waived by distributor throughout the proceedings, the point was equally waived for purposes of this section; hence, the contention that this section required an audit before the presumption could arise was without merit. *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 703 S.W.2d 449 (1986).

Burden of Proof.

The burden is not on the state to show what use was made of the fuel when the dealer fails to keep the records required under the law; rather, the burden is on the dealer to show that the sales were not for taxable purposes. *Ragland v. Gulf Oil Corp.*, 288 Ark. 185A, 705 S.W.2d 15 (1986).

Presumptions.

This section creates a prima facie presumption that the fuel at issue was used for taxable purposes where distributor admittedly destroyed its records. *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 703 S.W.2d 449 (1986).

This section requires proof of specific transactions not subject to the tax in order to rebut the presumption of liability. *Ragland v. Gulf Oil Corp.*, 288 Ark. 185A, 705 S.W.2d 15 (1986).

26-56-211. [Repealed.]

Publisher's Notes. This section, concerning unlicensed importers, was repealed by Acts 1987, No. 803, § 11. The section was derived from Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, §§ 12, 13; 1967, No. 357, §§ 5, 7; A.S.A. 1947, §§ 75-1252, 75-1253.

26-56-212. Bonded and unbonded interstate users — Penalty for insufficient purchase.

Any distillate special fuel user who is a bonded or unbonded interstate distillate fuel user operating Class B vehicles as described in § 26-56-214, who upon arriving at a point of exit from this state shall have failed to purchase sufficient gallons of distillate special fuel in this state and pay the tax thereon as required by law, as determined in this subchapter, calculated at the rate of four miles per gallon (4 MPG) for each mile traveled in this state:

(1) The unbonded distillate special fuel user shall pay a penalty of four cents (4¢) per gallon on each gallon of distillate special fuel which he or she failed to buy in this state, in addition to paying the tax on the distillate special fuel at the point of exit from this state upon which the tax has not been paid; and

(2) Any bonded distillate special fuel user shall pay a penalty of four cents (4¢) per gallon of the total number of gallons of distillate special fuel which he or she failed to buy in this state during each report period, in addition to paying the tax upon the distillate special fuel upon which tax has not been paid.

History. Acts 1977, No. 354, § 2; A.S.A. 1947, § 75-1187.1.

Publisher's Notes. Acts 1977, No. 354, § 4, provided in part that the act would be supplemental to the Special Motor Fuels Tax Law, § 26-56-101 et seq.

26-56-213. Bonded and unbonded users — Knowing failure to pay tax or

penalty.

Upon conviction, a bonded or unbonded distillate special fuel user is guilty of a Class A misdemeanor if the bonded or unbonded distillate special fuel user knowingly fails to pay the:

(1) Arkansas gallonage tax due the State of Arkansas on motor fuel and distillate special fuel used on the highways of this state as required in § 26-56-214 with respect to distillate special fuel tax used on Class B vehicles; or

(2) Penalty on the fuel on which the Arkansas distillate special fuel tax has not been paid, as required in § 26-56-214.

History. Acts 1977, No. 354, § 3; A.S.A. 1947, § 75-1187.2; Acts 2009, No. 655, § 66.

Publisher's Notes. Acts 1977, No. 354, § 4, provided in part that the act would be supplemental to the Special Motor Fuels Tax Law, § 26-56-101 et seq.

Amendments. The 2009 amendment subdivided the section; in the introductory language, inserted "Upon conviction" and "is guilty of a Class A misdemeanor," and deleted "and intentionally" following "knowingly"; deleted "shall be guilty of a Class A misdemeanor and upon conviction shall be punished in the manner provided by law" at the end of (2); and made related and minor stylistic changes.

26-56-214. Interstate users — Reports — Computation of tax and refunds.

(a) Whenever an interstate user of distillate special fuel who is a bonded user of distillate special fuel in all states in which he or she operates has exportations in excess of importations of tax-paid distillate special fuel in the fuel supply tanks of motor vehicles which distillate special fuel was delivered by a supplier into bulk storage facilities of the user within the State of Arkansas, the supplier may make a refund or allow a credit for the amount of the tax upon such excess upon approval by the Director of the Department of Finance and Administration of a statement from the user to the effect that the tax-paid distillate special fuel was exported.

(b) (1) For the purpose of determining whether an interstate distillate special fuel user owes special motor fuel tax or is entitled to a credit or refund, the licensed interstate distillate special fuel user shall file a quarterly report on or before the last day of the month following the end of each calendar quarter.

(2) If it shall be determined by the quarterly report that the interstate user has used distillate special fuel in this state in excess of the number of gallons of the distillate special fuel upon which the Arkansas tax had been paid, the interstate user shall remit to the director, at the time of filing the report, an excise tax of eighteen and one-half cents (18½¢) per gallon of the excess gallonage used.

(3) If it shall be determined that the interstate user has purchased more gallons of distillate special fuel in this state than he or she has used in this state, then the interstate user shall be entitled to a credit or refund of eighteen and one-half cents (18½¢) per gallon of the excess gallonage purchased in the state.

(c) The quarterly report required by this subchapter shall be filed on or before the last day of the month following the end of each calendar quarter and shall be made on forms prescribed by the director and shall include such information as the director may require.

(d) (1) For the purpose of determining whether a distillate special fuel user owes tax or is entitled to a credit or refund as provided in subsection (b) of this section, the distillate special fuel user shall file with the director a report showing the quantities of special

motor fuels used in this state during the preceding calendar quarter. This report shall be due on or before the last day of the month following the end of each calendar quarter.

(2) If it shall be determined by the quarterly report filed with the director that the distillate special fuel user has used more gallons of special motor fuel in this state than the special motor fuel tax due thereon has been paid, the distillate special fuel user shall remit to the director an excise tax of eighteen and one-half cents ($18\frac{1}{2}\text{¢}$) per gallon of special motor fuel.

(3) Distillate special fuel users may not take credit on reports at a tax rate in excess of that actually paid.

(e) (1) For the purpose of determining whether a distillate special fuel user owes tax or is entitled to a credit or refund, the distillate special fuel user shall determine the average miles per gallon of fuel used. The average miles per gallon shall be determined by dividing total miles traveled in all jurisdictions by the total gallons of fuel used in all jurisdictions. The distillate special fuel user shall then determine the total amount of fuel used within the State of Arkansas by dividing the total number of miles traveled within the State of Arkansas by the average miles per gallon.

(2) The number of gallons of distillate special fuels upon which the tax has been paid by an interstate user shall be determined from the form obtained by the interstate user from a dealer or licensed bulk supplier on forms containing information prescribed by § 26-56-209.

(3) The taxpayer's tax liability shall be calculated by multiplying the number of gallons of fuel used within the State of Arkansas by eighteen and one-half cents ($18\frac{1}{2}\text{¢}$) per gallon. A taxpayer shall be entitled to credits against his or her tax liability for tax-paid fuel purchased within the State of Arkansas.

(f) (1) Any licensed interstate user who fails to maintain adequate mileage or fuel records, for the purpose of determining the amount the interstate user owes the State of Arkansas for tax on distillate special fuel used in this state as provided in this section, the number of gallons of distillate special fuel used in this state shall be determined by an assessment based on the following mileage factors per gallon of distillate special fuel as compared to the appropriate class of vehicle set out in subdivision (f)(2) of this section.

(2) For the purposes of this section:

(A) All automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles;

(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class B vehicles;

(C) All other vehicles, except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class C vehicles; and

(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

(3) The mileage factor per gallon of distillate special fuel for:

(A) Class A vehicles shall be twelve (12) miles;

(B) Class B vehicles shall be eight (8) miles;

(C) Class C vehicles shall be five (5) miles; and

(D) Class D vehicles shall be six (6) miles.

(4) These mileage factors shall be utilized in conjunction with the Arkansas mileage as determined through an audit and based upon the best records available regardless of source.

(g) For the purposes of determining the amount any unlicensed or unbonded user owes the State of Arkansas for tax on distillate special fuel used in this state, only the above mileage factors per gallon of distillate special fuel for the applicable vehicles shall be utilized.

(h) (1) If a quarterly report of a distillate special fuel user results in a net credit, the distillate special fuel user may elect to have the credit carried forward and applied against the special motor fuel tax due for the succeeding eight (8) quarters or until the credit is completely used, whichever occurs first. In the alternative, a taxpayer who is entitled to a net credit on his or her quarterly fuel use tax report may elect to have the amount of credit refunded to him or her.

(2) A distillate special fuel user who has a total tax liability for special motor fuel tax during the previous calendar year of less than one hundred dollars (\$100) upon application to the director may obtain permission to report his or her motor fuel tax liability on an annual basis. The annual report shall be due on or before the last day of the month following the end of each fiscal year.

(i) (1) The director shall prescribe the appropriate forms necessary for the administration of this subchapter.

(2) The director may make appropriate rules and regulations necessary to ensure the accurate reporting of the special motor fuel tax.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 11; 1967, No. 357, §§ 4, 9; 1968 (1st Ex. Sess.), No. 35, § 1; 1977, No. 354, § 1; 1979, No. 764, § 2; A.S.A. 1947, §§ 75-1187, 75-1251, 75-1251n; Acts 1987, No. 803, §§ 5, 7; 1991, No. 364, § 3; 1991, No. 382, § 3; 1995, No. 777, § 8.

A.C.R.C. Notes. Acts 1991, No. 364, § 5 as amended by identical Acts 1991, Nos. 1040 and 1239, §§ 5 and 6, and Acts 1991, No. 382, § 5, as amended by Acts 1991, identical acts Nos. 1040 and 1239, §§ 7 and 8, provided:

“(a) All of the additional taxes, fees, penalties and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited in the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

“(A) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

“(B) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

“Seventy percent (70%) of the amount thereof to a special account in the State Highway and Transportation Department Fund to be designated the ‘1991 Highway Construction and Maintenance Account’.

“(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding, however, § 27-70-206;

“(c) Provided that, in keeping with the spirit of section 105 of Public Law 97-424 and the Arkansas State Highway Commission’s goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the

Arkansas State Highway Commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this section for the purposes of achieving those goals.”

Publisher's Notes. Acts 1977, No. 354, § 4, provided in part that the act would be supplemental to the Special Motor Fuels Tax Law, § 26-56-101 et seq.

Cross References. Tax refund procedure for taxes paid on motor fuel and on special motor fuels by interstate users, § 26-55-714.

RESEARCH REFERENCES

A.L.R.

Construction and operation of statutory time limit for filing claim for state tax refund. 14 A.L.R.6th 119.

Case Notes

Constitutionality.

Constitutionality.

Application of the formula of five miles per gallon to interstate bus companies that actually obtain an average of 6.3 miles per gallon of distillate fuel was arbitrary, unreasonable, discriminatory, and unconstitutional, violating Ark. Const., Art. 2, § 3, and Art. 16, § 5, and U.S. Const., Art. 4, § 2, cl. 1, and Amend. 14, § 1, and constitutes an undue burden on interstate commerce in violation of U.S. Const., Art. 1, § 8, cl. 3. *Larey v. Continental Southern Lines, Inc.*, 243 Ark. 278, 419 S.W.2d 610 (1967) (decision prior to 1968 amendment).

26-56-215. Interstate users — Tax refund procedure.

(a) (1) The Director of the Department of Finance and Administration shall quarterly estimate the amount necessary to pay refunds to interstate users of special motor fuels who are entitled to refunds with respect to special motor fuel taxes paid in this state as authorized in § 26-56-214, and upon certification by the director, the Treasurer of State shall transfer from the gross amount of special motor fuel taxes collected each month the amount so certified and shall credit the amount to the Interstate Motor Fuel Tax Refund Fund, which is established on the books of the State Treasury, from which the Department of Finance and Administration shall make refunds as provided by law.

(2) The transfers from the gross motor fuel taxes and special motor fuel taxes collected each month shall be after deducting allowances for bad checks or claims but before making any other distribution as provided by law.

(b) All warrants drawn against the fund which are not presented for payment within one (1) year of issuance shall be void.

(c) Neither the director nor any member or employee of the department shall be held personally liable for making any refund by reason of a fraudulent claim being filed as a basis for such refund.

(d) The director is authorized to promulgate rules and regulations and to prescribe the necessary forms required for the administration of claims for tax refunds from interstate users of special motor fuels in this state as authorized by law, which rules and regulations shall be in conformance with the following requirements:

(1) The director shall first determine, with respect to each refund claim filed, that the bond of the interstate user is adequate to compensate the State of Arkansas for any losses with respect to the recovery of any refunds illegally claimed by the interstate user, and the director may require the increase of the bond if the director determines it to be inadequate before approving any such claim for refund;

(2) Each interstate user of motor fuels and special motor fuels claiming refunds

shall maintain adequate records to substantiate each claim for refund, and the director may reject any claim for refund if the director determines the applicant has not maintained adequate records or has not conformed to the rules and regulations of the department in filing the claim therefor;

(3) Each claim for refund shall be upon the request of the interstate user, which shall be verified by the interstate user as to its accuracy and validity; and

(4) (A) Each quarterly report filed by a licensed interstate user of special motor fuels with the department shall reflect thereon the amount of special motor fuels purchased for use in Arkansas during the quarter, the number of gallons of special motor fuels upon which taxes are due the State of Arkansas for the quarter, and the excess gallonage upon which the interstate user is entitled to refunds.

(B) At the end of each calendar quarter, the licensed interstate user may make application for refund with respect to the number of gallons of special motor fuels upon which the special motor fuels taxes have been paid during the calendar quarter for which the interstate user is entitled to refund.

History. Acts 1977, No. 51, §§ 2, 3; 1983, No. 830, § 3; A.S.A. 1947, §§ 75-1155.1, 75-1155.2; Acts 1987, No. 803, §§ 2-4; 2009, No. 655, § 67.

Publisher's Notes. Acts 1977, No. 51, §§ 2, 3, as amended, are also codified as § 26-55-714.

Amendments. The 2009 amendment inserted "and" at the end of (d)(3), and made a minor stylistic change.

26-56-216. Power to stop, investigate, and impound vehicles — Assessment of tax.

(a) In order to enforce the provisions of this subchapter, the Director of the Department of Finance and Administration or his or her authorized representative is empowered to stop any motor vehicle which appears to be operating with distillate special fuel for the purpose of examining the invoices and for such other investigative purposes reasonably necessary to determine whether the taxes imposed by this subchapter have been paid, or whether the motor vehicle is being operated in compliance with the provisions of this subchapter.

(b) If after examination or investigation it is determined by the director or his or her authorized representative that the tax imposed by this subchapter has not been paid with respect to the fuels being used in the motor vehicle, the director or his or her representative shall immediately assess the tax due, together with the penalty hereinafter provided, to the owner of the motor vehicle, and give the owner written notice of the assessment by handing it to the driver of the motor vehicle.

(c) The director or his or her representative is empowered to impound any motor vehicle found to be operating in violation of this chapter by a person other than one who has furnished the bond required of users by § 26-56-204(c) until such time as any tax assessed as provided herein has been paid.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 9; A.S.A. 1947, § 75-1249.

26-56-217. Separate storage tanks for taxable distillate special fuels and for tax-free storage.

(a) (1) All users except suppliers of distillate special fuel who maintain their own

storage tanks in the state are required to have a separate storage tank for taxable distillate special fuel other than dyed distillate special fuel, which tanks are to be physically separate and apart from any other tanks or fueling units, and to indicate it by placing thereon in a conspicuous place the words "TAX-PAID FUELS" in letters not less than five inches (5") high.

(2) Suppliers are required to collect the tax on all distillate special fuel delivered into those tanks.

(b) (1) All users who have facilities for storing distillate special fuel intended for other than highway use and which facilities are suitable to fuel motor vehicles using distillate special fuel, except those facilities used for residential purposes, shall mark the storage facilities with the words "NOT FOR MOTOR VEHICLE USE" in letters not less than five inches (5") high, and suppliers may deliver into such storage facilities without collecting the tax levied in this subchapter other than the tax levied by § 26-56-224(b)-(f).

(2) (A) If users do not provide such tanks, then all distillate special fuel delivered by a supplier into storage tanks suitable for fueling motor vehicles become taxable, provided, however, that any city or county using a computerized fuel dispensing system that will automatically record each transaction as to pump operator and specific motor vehicle to which the distillate special fuel is dispensed may have taxable and nontaxable distillate special fuel delivered into the same tank.

(B) The distributor shall collect the tax on the taxable portion of each purchase based upon the sworn statement of the purchaser as to the amount of taxable distillate special fuel purchased.

(C) Each city or county shall file a report with the Director of the Department of Finance and Administration accounting for the taxable and nontaxable distillate special fuel used and miles driven by each motor vehicle which requires taxable distillate special fuel in such a manner, at such time, and on such forms as shall be prescribed by the director.

(D) The director may promulgate regulations to establish a system to periodically reconcile the taxable distillate special fuel purchased and actual taxable distillate special fuel used by the city or county.

(3) However, when a user has one (1) or more storage tanks used for the storage of distillate special fuel within the meaning of this chapter, and the user does not own, possess, lease, or otherwise operate a motor vehicle licensed or required to be licensed for use upon the public highway and capable of using said distillate special fuel, the requirement for marking such storage facilities "NOT FOR MOTOR FUEL USE" shall be waived.

(c) Nothing in this section shall be construed to amend or change the meaning of any other section of this chapter.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 4; 1973, No. 307, §§ 1, 2; A.S.A. 1947, §§ 75-1244, 75-1244.1; Acts 1991, No. 348, § 1; 2007, No. 87, §§ 6, 7.

Amendments. The 2007 amendment inserted "other than dyed distillate special fuels" in (a)(1); and added "other than the tax levied by § 26-56-224(b)-(f)" at the end of (b)(1).

26-56-218. Bulk sales.

(a) It shall be unlawful to make tax-free bulk sales of distillate special fuel to any user, dealer, or off-road consumer who has not filed with his or her supplier an annual registration for purchases of tax-free distillate special fuel.

(b) However, a sale shall be lawful if:

(1) At the time of sale and delivery, the supplier obtains from the purchaser a fully executed annual registration for purchases of tax-free distillate special fuel; and

(2) The supplier maintains the registration form for a period of six (6) years.

(c) When a user, dealer, or off-road consumer registration has been revoked and written notice of the revocation has been received by the supplier from the Director of the Department of Finance and Administration, it shall be unlawful for the supplier to make bulk sales or deliveries to the user, dealer, or off-road consumer of distillate special fuel on which the tax has not been paid.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 5; A.S.A. 1947, § 75-1245; Acts 1987, No. 985, § 10; 1993, No. 618, § 6.

Publisher's Notes. As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201.

26-56-219. Cargo tank to carburetor connections unlawful — Penalties.

(a) It is unlawful to transport distillate special fuel within the State of Arkansas in any cargo tank from which distillate special fuel is sold or delivered which has a connection by pipe, tube, valve, or otherwise with the carburetor or with the fuel supply tank feeding the carburetor of the motor vehicle transporting the products.

(b) (1) In addition to any other penalties which may be incurred there is levied a specific penalty of twenty-five dollars (\$25.00) for each violation of the provisions of this section.

(2) This penalty shall be assessed by the Director of the Department of Finance and Administration or his or her representative and shall be collected in the same manner as is provided for the collection of tax in § 26-56-216.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 13; A.S.A. 1947, § 75-1253.

26-56-220. Unlawful activities regarding operation of motor vehicles.

(a) It is unlawful and a violation of this chapter to operate with distillate special fuel any motor vehicle licensed for highway operation on which a speedometer, odometer, or hub meter is not kept at all times in good operating condition to correctly measure and register the miles traveled by the motor vehicle.

(b) It shall be unlawful for any user of distillate special fuel to operate a truck in the State of Arkansas without the true owner's name and address or adequate identification on the outside of both right and left cab doors in letters not less than two inches (2") high, as near the center on the outside of the doors as possible. The name and address of the owner must be legible at a distance of twenty-five feet (25').

(c) It shall be unlawful for any person to operate with distillate special fuel any vehicle of Arkansas domestic registry unless he or she has in his or her possession an invoice for the distillate special fuel and the invoice meets the requirements of § 26-56-209.

(d) (1) In addition to any other penalties which may be incurred there is levied a specific penalty of twenty-five dollars (\$25.00) for each violation of the provisions of this section.

(2) This penalty shall be assessed by the Director of the Department of Finance and Administration or his or her representative and shall be collected in the same manner

as is provided for the collection of tax in § 26-56-216.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 13; 1967, No. 357, § 6; A.S.A. 1947, § 75-1253.

26-56-221. Distribution of taxes.

(a) Taxes from one cent (1¢) of the tax levied on distillate special fuel in § 26-56-201(a)(1)(A) resulting from Acts 1979, No. 437, § 2, shall be remitted to the Treasurer of State separate from other distillate special fuel taxes.

(b) The gross amount of the taxes described in subsection (a) of this section shall be distributed under the Arkansas Highway Revenue Distribution Law, §§ 27-70-201 — 27-70-203, 27-70-206, and 27-70-207, without making any deduction for credit to the Constitutional Officers Fund and the State Central Services Fund.

History. Acts 1979, No. 437, § 3; A.S.A. 1947, § 75-1241.1; Acts 2009, No. 655, § 68.

A.C.R.C. Notes. Acts 1979, No. 437, § 2, is codified at § 26-56-201. The act amended Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 1, to raise the excise tax levied on distillate special fuel in that act from 8½¢ to 9½¢.

Amendments. The 2009 amendment rewrote the section.

26-56-222. Disposition of funds collected under §§ 26-56-201, 26-56-214, and 27-14-601.

(a) All of the additional taxes, fees, penalties, and interest collected under §§ 26-56-201, 26-56-214, and 27-14-601 shall be classified as special revenues and shall be deposited into the State Treasury.

(b) After deducting the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided under the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

- (1) Fifteen percent (15%) of the amount thereof to the County Aid Fund;
- (2) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and
- (3) Seventy percent (70%) of the amount thereof to the State Highway and

Transportation Department Fund.

(c) The funds shall be further disbursed in the same manner and used for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

History. Acts 1991, No. 219, § 6.

A.C.R.C. Notes. Acts 1991, No. 219, § 9, provided:

“Provided, nothing in this act shall be construed to amend, abrogate, modify, or repeal any of the provisions of the ‘Petroleum Storage Tank Trust Fund Act’, Arkansas Code § 8-7-901 et seq., and the fees levied by that act on each gallon of motor fuel or distillate special fuels shall continue to be collected as provided by those Code sections in addition to all taxes and fees imposed by other sections of the Code on such fuel or fuels as well as those additional taxes and fees imposed by this act.”

Acts 1992 (1st Ex. Sess.), Nos. 68 and 69, § 9 provided:

“All laws and parts of laws in conflict with this Act are hereby repealed, however, it is declared to be the intent of the General Assembly in amending subsection (d) of Arkansas Code § 27-14-601 by this Act to not only dedicate a portion of the fees to the State Highway and Transportation Department Fund collected for the separate registration of certain vehicles utilized or intended to be utilized to transport compacted seed cotton, under certain restrictions set out in this Act, but

also to clarify the intent of the General Assembly that all other taxes, fees, penalties, interest and other amounts collected under Arkansas Code § 27-14-601 be distributed in the same manner and utilized for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, Arkansas Code § 27-70-201, et seq., including an initial distribution of such taxes, fees, penalties, interest and other amounts to the County Aid Fund, the Municipal Aid Fund, and the State Highway and Transportation Department Fund. It is further declared by the General Assembly that the amendment contained in this Act to subsection (d) of Arkansas Code § 27-14-601 is in no way intended to repeal, amend, or abrogate the provisions of Arkansas Code § 26-56-222.”

Publisher's Notes. Act 1991, No. 219, § 6, is also codified as § 27-14-601.

26-56-223. Definitions.

As used in this section and §§ 26-56-224 — 26-56-231:

(1) The words and terms utilized herein, which words and terms are ascribed meanings in § 26-56-102, shall have the same meanings ascribed to such words and terms as are set out in § 26-56-102 unless the context clearly indicates a different meaning; and

(2) “Distillate special fuel” means the same as is set out in § 26-56-102 and includes diesel, but does not include products commonly referred to as kerosene, jet fuel, cutter stock, or light cycle oil.

History. Acts 1995, No. 954, § 1.

26-56-224. Fuel used for off-road purposes — Imposition of tax on dyed distillate special fuel.

(a) All distillate special fuel sold, used, or utilized in this state for off-road purposes, and not for the purpose of fueling motor vehicles, shall be dyed by the person or entity authorized to dye such fuels in accordance and in conformance with Pub. L. No. 103-66 and the Internal Revenue Service Regulation made and promulgated pursuant to Pub. L. No. 103-66 which were in effect on April 6, 1995.

(b) (1) There is levied an excise tax at the rate of six cents (6¢) per gallon on all dyed distillate special fuel sold, used, or utilized in this state.

(2) (A) If the dyed distillate special fuel contains biodiesel fuel, the excise tax in this subsection is levied only on the portion of the fuel that is not biodiesel fuel.

(B) As used in this subdivision (b)(2), “biodiesel fuel” means a diesel fuel substitute produced from nonpetroleum renewable resources.

(c) The excise tax levied in subsection (b) of this section shall be deposited as follows:

(1) Seventy-six and six-tenths percent (76.6%) shall be deposited as general revenues;

(2) Eight and five-tenths percent (8.5%) shall be deposited into the Property Tax Relief Trust Fund; and

(3) Fourteen and nine-tenths percent (14.9%) shall be deposited into the Educational Adequacy Fund.

(d) (1) The excise taxes levied by subsection (b) of this section shall be collected and remitted by suppliers of dyed distillate special fuel that are required to be licensed pursuant to § 26-56-204.

(2) The excise tax levied by subsection (b) of this section shall be paid by any person that uses dyed distillate special fuel on which the excise tax levied by subsection (b) of this section has not been paid.

(e) The excise taxes levied by subsection (b) of this section shall not apply to dyed

distillate special fuel sold for consumption by:

- (1) Vessels, barges, and other commercial watercraft;
- (2) Railroads;
- (3) Municipal buses as described in § 26-52-417; or
- (4) To fuel sold to the United States Government.

(f) The excise taxes levied by subsection (b) of this section shall be reported and paid on or before the twentieth day of each month by electronic funds transfer as authorized pursuant to § 26-19-101 et seq. on forms to be prescribed by the Director of the Department of Finance and Administration.

(g) All distillate special fuel that has not been dyed in accordance with subsection (a) of this section and that is sold, used, or utilized in this state for any purpose or purposes shall be taxable at the total per-gallon tax rates as set out in this chapter.

(h) Off-road consumers purchasing dyed distillate special fuel shall not be required to obtain the annual off-road consumer permits required by § 26-56-204(a), and bulk sales of such dyed distillate special fuel may be made to such off-road consumers notwithstanding the provisions of § 26-56-218.

History. Acts 1995, No. 954, § 1; 2007, No. 87, § 2.

Amendments. The 2007 amendment added "Imposition of tax on dyed distillate special fuel" to the end of the section heading; and inserted present (b) through (f) and redesignated the remaining subsections accordingly.

U.S. Code. Pub.L. 103-66, referred to in this section, is codified throughout the U.S. Code. The provisions of Pub.L. 103-66 relating to the dyeing of fuel are codified as 26 U.S.C. §§ 4082 and 6714.

26-56-225. Use of dyed distillate special fuel.

Dyed distillate special fuel shall not be used or utilized in the fuel supply tank of any motor vehicle with the exception of:

- (1) State and local government vehicles;
- (2) Local transit buses;
- (3) Intercity buses;
- (4) School buses;
- (5) Vehicles owned by aircraft museums;
- (6) Vehicles used by nonprofit educational organizations; and
- (7) Red Cross vehicles,

as such vehicles and buses are defined in Pub. L. No. 103-66 and the Internal Revenue Service Regulations made and promulgated pursuant to Pub. L. No. 103-66 which are in effect on April 6, 1995.

History. Acts 1995, No. 954, § 1.

U.S. Code. Pub.L. 103-66, referred to in this section, is codified throughout the U.S. Code. The provisions of Pub.L. 103-66 relating to fuels not used for taxable purposes is codified as 26 U.S.C. § 6427.

26-56-226. Penalty for improper use of dyed distillate special fuel.

(a) (1) The Director of the Department of Finance and Administration upon finding a motor vehicle using or utilizing dyed distillate special fuel for the purpose of operating

that motor vehicle not excepted in § 26-56-225, shall:

(A) Assess all taxes due the state at the total per-gallon tax rates set out in this chapter upon all fuel that could be contained in the fuel supply tank or tanks of that motor vehicle, if filled to capacity; and

(B) Assess a penalty of ten dollars (\$10.00) per gallon on all such fuel that could be contained in the fuel supply tank or tanks of such motor vehicle, if filled to capacity.

(2) Further, if any dyed distillate special fuel is found in any fuel storage tank or fuel storage facility outside of the terminal utilized by the operator of that motor vehicle, or any other person, for the purpose of fueling that motor vehicle, the director shall:

(A) For taxation purposes, make an assessment based on the entire amount of such fuel that could be contained in such fuel storage tank or fuel storage facility, if filled to capacity, at the total per-gallon tax rates set out in this chapter; and

(B) Assess a penalty of ten dollars (\$10.00) per gallon on all such fuels that could be contained in any such fuel storage tank or fuel storage facility, if filled to capacity, if such fuels are utilized by the operator of that motor vehicle, or are utilized by any other person, for the purpose of fueling that motor vehicle.

(b) (1) (A) The presence of any amount of dyed distillate special fuel in the fuel supply tank of any motor vehicle not excepted in § 26-56-225, or in a fuel storage tank or fuel storage facility outside of the terminal utilized by the operator of such motor vehicle, or any other person, for the purpose of fueling that motor vehicle shall create a rebuttable presumption that the entire amount of fuel that could be contained in the fuel supply tank of such motor vehicle, or that could be contained in such fuel storage tank or fuel storage facility, has been, or is being, used or utilized for taxable purposes.

(B) Thus the entire amount of such fuel that could be contained in such tank and facility, if filled to capacity, shall be susceptible to full distillate special fuel taxation.

(2) Such assessments shall be made against the operator or any other person the director deems responsible for the usage or utilization of such dyed distillate special fuel in that motor vehicle.

(c) All penalties authorized by this section shall be in addition to all other penalties provided in this chapter and in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1995, No. 954, § 1.

26-56-227. Mixed dyed and undyed distillate special fuel — Additional penalty.

(a) Dyed distillate special fuel shall not be mixed with undyed distillate special fuel in the fuel supply tank of any motor vehicle, other than in the fuel supply tank of a motor vehicle excepted in § 26-56-225, or in any fuel storage tank or fuel storage facility, other than fuel storage tanks or fuel storage facilities utilized exclusively for the purpose of fueling motor vehicles excepted in § 26-56-225.

(b) (1) The Director of the Department of Finance and Administration upon finding any fuel supply tank of a motor vehicle, fuel storage tank, or fuel storage facility outside of the terminal containing mixed dyed and undyed distillate special fuel, which fuel is being used or utilized in a motor vehicle or is being stored for ultimate usage or utilization in a motor vehicle not excepted in § 26-56-225 shall:

(A) Assess for taxation purposes the entire number of gallons of such fuel

that could be contained in those fuel supply tanks, fuel storage tanks, or fuel storage facilities, if such tanks or facilities were filled to capacity, as taxable gallons at the total per-gallon tax rates set out in this chapter; and

(B) Assess a penalty of ten dollars (\$10.00) per gallon on all such fuel.

(2) (A) The presence of any amount of dyed distillate special fuel in the fuel supply tank of any motor vehicle not excepted in § 26-56-225 or in a fuel storage tank or fuel storage facility outside of the terminal utilized by the operator of such motor vehicle, or any other person, for the purpose of fueling that motor vehicle, shall create a rebuttable presumption that the entire amount of fuel that could be contained in the fuel supply tank of such motor vehicle, or of a fuel storage tank or fuel storage facility, if mixed, has been, or is being, used or utilized for taxable purposes.

(B) Thus the entire amount of such fuel that could be contained in such tanks and facilities, if filled to capacity, shall be susceptible to full distillate special fuel taxation.

(3) Such assessments shall be made against the operator of any motor vehicle, or owner or operator of such fuel storage tank or fuel storage facility outside of the terminal, or any other person the director deems responsible for the usage or utilization of such distillate special fuel in any motor vehicle involved in the assessment.

(c) All penalties authorized by this section shall be in addition to all other penalties provided in this chapter and in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1995, No. 954, § 1.

26-56-228. Authority of director.

(a) (1) The Director of the Department of Finance and Administration shall have the authority to:

(A) Stop motor vehicles;

(B) Take samples of the fuel used or utilized for the operation of those motor vehicles;

(C) Measure the amounts of fuel that could be contained in the supply tanks of such motor vehicles; and

(D) Test such fuel, regardless of the location of such motor vehicles.

(2) The director shall have the authority to:

(A) Take samples of distillate special fuel stored in fuel storage tanks or fuel storage facilities outside of the terminal, which fuel may be used or utilized in motor vehicles;

(B) Measure the amount of fuel that could be contained in such tanks or facilities, if filled to capacity; and

(C) Test such fuel, regardless of the location of such tanks or facilities.

(b) (1) (A) Any person who shall refuse to allow the director to sample, test, and measure the fuel that could be contained in any fuel supply tank of a motor vehicle, or in any fuel storage tank, or in any fuel storage facility outside of the terminal shall be assessed taxes at the total per-gallon tax rates set out in this chapter upon all fuels as determined by the director that could be contained in such fuel supply tank, fuel storage tank, or fuel storage facility, if filled to capacity.

(B) Additionally, a penalty of ten dollars (\$10.00) per gallon on all such fuel shall be assessed.

(2) (A) It shall be prima facie evidence that the entire amount of such fuel in the fuel supply tank, fuel storage tank, or fuel storage facility outside of the terminal is taxable and that, by the refusal to allow such sampling, measuring, or testing, distillate special fuel taxes have not been paid on such fuel.

(B) The director shall add a penalty of twenty percent (20%) of the total amount of the assessed taxes excluding the ten-dollar-per-gallon penalty to the total amount assessed for willful refusal to allow such sampling, measuring, or testing, which penalty shall be in addition to all other penalties provided in this section, this chapter, and in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(3) Such assessments shall be made against the operator of any motor vehicle, fuel storage tank, or fuel storage facility outside of the terminal involved in the assessment or against any other person the director deems responsible for the use or utilization of such fuel in any motor vehicle involved in the assessment.

History. Acts 1995, No. 954, § 1.

26-56-229. Multiple violations.

(a) (1) In the event that assessments are made by the Director of the Department of Finance and Administration against the same operator or the same person for violating the provisions of § 26-56-226, § 26-56-227, or § 26-56-228 within three (3) years of any assessment made by the director for previous violations of any of those provisions, the director shall assess a penalty of twenty dollars (\$20.00) per gallon on all such fuel assessed, and for third and subsequent violations within a three-year period by the same operator or the same person, the director shall assess a penalty of thirty dollars (\$30.00) per gallon on all such fuel assessed.

(2) All assessments made pursuant to this section shall be in lieu of the ten-dollar-per-gallon penalty otherwise provided in §§ 26-56-226 — 26-56-228, but shall be in addition to all other penalties provided therein.

(b) All assessments and procedures related to assessments authorized by §§ 26-56-223 — 26-56-231 shall be conducted in accordance with and pursuant to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1995, No. 954, § 1.

26-56-230. Disposition of taxes, fees, and other revenues.

Except as provided in § 26-56-224(b) – (f), all taxes, fees, penalties, and other amounts collected under the provisions of §§ 26-56-223 — 26-56-231 shall be classified as special revenues, and the net amount shall be distributed as provided by the Arkansas Highway Revenue Distribution Law, §§ 27-70-201 — 27-70-203, 27-70-206, and 27-70-207.

History. Acts 1995, No. 954, § 1; 2007, No. 87, § 4.

Amendments. The 2007 amendment added “Except as provided in § 26-56-224(b)-(f)” at the beginning.

26-56-231. Rules and regulations.

(a) The Director of the Department of Finance and Administration, in consultation with the Director of State Highways and Transportation, shall have the authority to make and promulgate rules and regulations to fully implement and enforce the provisions of §§ 26-

56-223 — 26-56-230.

(b) Provisions shall be included in such rules and regulations to allow any user enumerated in § 26-56-225, upon proper notice and certification to the Director of the Department of Finance and Administration that dyed distillate special fuel is unavailable to that user at that time, to utilize untaxed, undyed distillate special fuel in motor vehicles belonging to such users.

History. Acts 1995, No. 954, § 1.

26-56-232. Electronic reports — Electronic funds transfer.

(a) The Director of the Department of Finance and Administration shall make all necessary preparations in order that all reports submitted beginning July 1, 1997, and thereafter, or beginning before that date, if possible, by:

(1) Distributors of motor fuel, as required by the Motor Fuel Tax Law, § 26-55-201 et seq.;

(2) Suppliers of distillate special fuel and liquefied gas special fuels, as required by this chapter;

(3) Alternative fuel suppliers, as required by the Alternative Fuels Tax Law, § 26-62-101 et seq.; and

(4) All other persons required to submit any type of reports to the director pursuant to those tax laws,

shall be submitted by electronic means and to ensure that such reports shall be processed electronically by the Department of Finance and Administration.

(b) The director shall also make and promulgate rules and regulations to ensure that such distributors, suppliers, and alternative fuel suppliers, beginning July 1, 1997, and thereafter, or beginning before that date, if possible, remit all taxes due the state pursuant to those tax laws by electronic funds transfer.

History. Acts 1995, No. 954, § 2.

Subchapter 3 — Liquefied Gas

26-56-301. Levy and imposition of tax — Alternative payment of fees.

26-56-302. Exemptions.

26-56-303. Suppliers and dealers — Licenses and bonds.

26-56-304. Users' permits generally.

26-56-305. Users' permits — Transfer.

26-56-306. Users' permits — Window decals.

26-56-307. Suppliers or interstate users — Computation, reporting, and payment of tax.

26-56-308. Reports and payment of tax by suppliers.

26-56-309. Reports by dealers.

26-56-310. Surrender of license or permit — Discontinuance of business.

26-56-311. Revocation of supplier's or dealer's license.

26-56-312. Importation or use by unlicensed persons.

26-56-313. Purchases by unlicensed persons — Payment of tax.

26-56-314. Nonresident users.

26-56-315. Conversion of vehicles for use of liquefied gas special fuel.

Effective Dates. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 7: June 10, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing highway user tax laws of this State are inadequate to provide sufficient funds to properly construct, reconstruct and maintain the State highways, county roads and city streets of this State; that the existing investment of millions of dollars in public roads, streets and bridges is in jeopardy if additional funds are not provided; that increased motor vehicle traffic poses a serious threat to public safety unless immediate steps are taken to provide a more adequate and better maintained system of public roads, streets and bridges; that the existing Special Motor Fuels Tax Law of this State is not conducive to proper enforcement, and immediate steps must be taken to provide for a more enforceable law in order to avoid tax evasion; and, that the immediate passage of this Act is necessary to correct the aforementioned circumstances. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 764, § 5: July 1, 1979.

Acts 1981, No. 818, § 3: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that liquefied gas special fuel user's permits expire on June 30th of each year and that this Act needs go into effect on the first day of the new permit periods and that therefore this Act needs to become effective on July 1, 1981. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1983, No. 830, § 5: Mar. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the orderly administration of the motor fuel tax laws is essential for the effective collection of these taxes; that some uncertainty exists regarding the sale of fuels to the United States and, that this Act is necessary to clarify this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

26-56-301. Levy and imposition of tax — Alternative payment of fees.

(a) There is levied and imposed an excise tax of seven and one-half cents ($7\frac{1}{2}\text{¢}$) per gallon upon the use, as defined in § 26-56-102(22), of all liquefied gas special fuels within this state. Such use of liquefied gas special fuels shall constitute and is declared to be the taxable incident of this levy.

(b) However, in lieu of the gallonage tax levied in this section with respect to liquefied gas special fuels used under this subchapter, except as otherwise provided herein the Director of the Department of Finance and Administration shall require the payment of the fees prescribed in § 26-56-304 in the case of all vehicles required to obtain liquefied gas special fuels user's permits under this subchapter, except licensed liquefied gas special fuels suppliers.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 1; A.S.A. 1947, § 75-1254.

26-56-302. Exemptions.

The tax levied by this subchapter shall not be applicable to the sale of liquefied gas special fuels to official United States Government agencies for use in official United States Government vehicles.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 2; 1983, No. 830, § 2; A.S.A. 1947, § 75-1255.

26-56-303. Suppliers and dealers — Licenses and bonds.

(a) No person shall engage in the business of a liquefied gas special fuels supplier or dealer in this state until that person has filed an application for and obtained a liquefied gas special fuels supplier's or dealer's license.

(b) (1) Application for licenses shall be filed on a form prescribed by Director of the Department of Finance and Administration and verified by affidavit, and shall show the name, address, and kind of business of the applicant, a designation of the applicant's principal place of business, and such other pertinent information as the director may require.

(2) The application must also contain as a condition to the issuance of the license an agreement under oath by the applicant to comply with the requirements of this subchapter and the rules and regulations of the director.

(c) (1) Before any such application may be approved by the director, the applicant shall file a bond with surety satisfactory to the director, payable to the State of Arkansas, and conditioned upon the applicant's compliance with the provisions of this subchapter and the rules and regulations of the director.

(2) The bond is to be in the sum of not less than five hundred dollars (\$500) and not more than twenty thousand dollars (\$20,000), the amount to be in each case fixed by the director. However, the amount of the bond may be increased or decreased within the aforementioned limits by the director at any time.

(3) No bond shall be cancelled by the sureties thereon until the expiration of sixty (60) days after receipt of notice of the cancellation by the director, and such cancellation shall have no retroactive effect.

(d) Upon approval of the application and bond, the director shall issue to the applicant a nontransferable liquefied gas special fuels supplier's license or dealer's license, as the case may be, bearing a distinctive number.

(e) The license shall remain in full force until surrendered, suspended, revoked, or cancelled in the manner provided in this subchapter.

(f) (1) Each liquefied gas special fuels supplier or dealer shall make application for and secure a duplicate of his or her license for each station or facility operated by such supplier or dealer at which liquefied gas special fuels are sold or used.

(2) The application shall be made on a form prescribed by the director showing the name, address, and the supplier or dealer license number of the applicant, the location of the station or facility for which the duplicate is applied, and such other pertinent information as the director may require.

(3) Upon approval of the application, the director shall issue to the applicant a nontransferable duplicate of the liquefied gas special fuels supplier's or dealer's license.

(g) There shall be displayed in a conspicuous place at each station or facility where liquefied gas special fuels are sold or used the original or duplicate liquefied gas special fuels supplier's or dealer's license under which the station or facility is operated.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 3; A.S.A. 1947, § 75-1256.

26-56-304. Users' permits generally.

- (a) Each liquefied gas special fuels user, including licensed liquefied gas special fuels suppliers and dealers who use liquefied gas special fuels in vehicles owned by the supplier or dealer, shall make application for and secure a liquefied gas special fuels user's permit for each vehicle owned and operated which uses liquefied gas special fuels.
- (b) The application must be made on a form prescribed by the Director of the Department of Finance and Administration, showing the name, address, and user license number or supplier or dealer license number of the applicant, the make, model, and motor number of the vehicle involved, the type of fuel used therein, and such other pertinent information as the director may require.
- (c) The fuel user's permit shall be obtained annually before the director shall register and issue a motor vehicle license for the vehicle.
- (d) (1) At the time of applying for such permit and prior to the registration and issuance of a motor vehicle license for the vehicle, each applicant except licensed liquefied gas special fuels suppliers shall remit to the director, in addition to the regular fee prescribed by law for the registration and licensing of the vehicle, an additional fee in an amount which is determined by the General Assembly, based upon information available from statistical studies of the motor vehicular use of liquefied gas special fuels by various classes of users, as follows:

Nonfarm Vehicles

Annual Additional Fee

Passenger cars and motor homes	
Pickup trucks, one-half (1/2) and three-quarter (3/4) ton	
Pickup trucks, one (1) ton	
Trucks, maximum gross loaded weight in excess of one (1)ton but not exceeding 22,500 pounds -----	520.00
Passenger buses except school buses manufactured and licensed as such -----	520.00
School buses manufactured and licensed as such	
Trucks, maximum gross loaded weight in excess of 22,500pounds -----	609.00

Farm Vehicles

In order to aid in the production of farm products and to eliminate apparent inequities in liquefied gas special fuels fees which are in lieu of the gallonage tax on such fuel used in vehicles operated primarily on farms and not on the main highway system of this state, a special classification is created for farm vehicles using liquefied gas special fuels and entitled to be registered and licensed as natural resources farm vehicles. The flat fee in lieu of the gallonage tax on the fuel used in such vehicle shall be as follows:

Pickup trucks, one-half (1/2) and three-quarter (3/4) ton

Pickup trucks, one (1) ton

Trucks, maximum gross loaded weight in excess of one (1)ton but not exceeding 22,500 pounds -----

178.00

Trucks, maximum gross loaded weight in excess of 22,500pounds -----

260.00

(2) If the director determines that the flat fee provided herein in lieu of the gallonage tax on liquefied gas special fuels is, in the case of common or contract carriers or other vehicles for hire, inadequate to compensate for the gallonage tax, the director may require such common or contract carriers or owners of other vehicles for hire to pay a fee based upon the actual mileage of the common or contract carrier or vehicle for hire for the previous year, the current year, or any other reasonable basis.

(3) The director shall establish regulations for computing the fees and for the enforcement of the collection thereof.

(4) If any new liquefied gas special fuels vehicle is placed in operation or any other vehicle shall be converted to a liquefied gas special fuels vehicle during the registration year, the owner shall be permitted to pay a proportionate part of the liquefied gas special fuels user's permit fee for such vehicle for the remainder of the current registration year based upon one-twelfth ($\frac{1}{12}$) of the annual fee for such vehicle for each calendar month or fraction thereof remaining in the current registration year.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 3; 1967, No. 316, § 1; 1981, No. 789, § 1; A.S.A. 1947, § 75-1256; Acts 1991, No. 364, § 4; 1991, No. 382, § 4.

A.C.R.C. Notes. Acts 1991, No. 364, § 5 as amended by identical Acts 1991, Nos. 1040 and 1239, §§ 5 and 6, and Acts 1991, No. 382, § 5, as amended by Acts 1991, identical acts Nos. 1040 and 1239, §§ 7 and 8, provided:

“(a) All of the additional taxes, fees, penalties and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited in the State Treasury. After deducting therefrom the amount to be credited

to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

“(A) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

“(B) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

“Seventy percent (70%) of the amount thereof to a special account in the State Highway and Transportation Department Fund to be designated the ‘1991 Highway Construction and Maintenance Account’.

“(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding, however, § 27-70-206;

“(c) Provided that, in keeping with the spirit of section 105 of Public Law 97-424 and the Arkansas State Highway Commission's goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the Arkansas State Highway Commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this section for the purposes of achieving those goals.”

26-56-305. Users' permits — Transfer.

When a motor vehicle permitted to use liquefied gas special fuels under this subchapter is altered to operate on a fuel other than liquefied gas special fuels or destroyed prior to the expiration of the permit period, the Director of the Department of Finance and Administration upon the request of the motor vehicle owner within ten (10) days of the conversion or destruction and the payment of a two-dollar transfer fee shall transfer the permit for the remainder of the permit period to another motor vehicle operating on liquefied gas special fuels owned by the person.

History. Acts 1981, No. 818, § 1; A.S.A. 1947, § 75-1265.1.

26-56-306. Users' permits — Window decals.

(a) The Director of the Department of Finance and Administration shall promulgate special serially numbered window decals to be issued for motor vehicles for which liquefied gas special fuels user's permits are issued, except motor vehicles of licensed liquefied gas special fuels suppliers, which distinctive window decals shall evidence not only the registration of the motor vehicle but shall evidence the fact that the special permit fee charged under § 26-56-304 has been paid.

(b) Each motor vehicle bearing such special and distinctive window decals shall entitle the owner or user of the motor vehicle to purchase liquefied gas special fuels from licensed liquefied gas special fuels suppliers only without the necessity of paying the gallonage tax levied thereon under § 26-56-301, it being the intent of that section that the payment of the special fee levied by § 26-56-304 shall be in lieu of and in full satisfaction of the liquefied gas special fuels gallonage taxes that would have otherwise been due on liquefied gas special fuels used in the motor vehicle during the period for which the license and permit is issued.

(c) When a motor vehicle bearing a special and distinctive liquefied gas special fuels window decal is transferred, the liquefied gas special fuels window decal shall remain with the motor vehicle, and, when the registration of the motor vehicle is transferred to the new owner, such new owner shall be entitled to purchase liquefied gas special fuels

for the motor vehicle without payment of the gallonage tax thereon the same as the former owner.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 3; 1967, No. 316, § 1; 1981, No. 789, § 1; A.S.A. 1947, § 75-1256.

26-56-307. Suppliers or interstate users — Computation, reporting, and payment of tax.

(a) Each licensed liquefied gas special fuels supplier or interstate user shall compute, report, and pay the tax on all liquefied gas special fuels used in each vehicle owned or operated by him or her in this state on which the tax levied by this subchapter has not been paid by ascertaining the total highway miles driven in this state and dividing this total by the applicable mileage factor, as set forth below, to compute the quantity of special fuel used upon which the tax levied in § 26-56-301 is applicable.

(b) (1) For the purpose of this section, all automobiles with a capacity of fewer than eight (8) passengers shall be deemed to be Class A vehicles.

(2) All truck-type vehicles with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class B vehicles.

(3) All vehicles with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.) or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class C vehicles.

(c) The mileage factor per gallon of liquefied gas special fuels for:

(1) Class A vehicles shall be twelve (12) miles;

(2) Class B vehicles shall be eight (8) miles; and

(3) Class C vehicles shall be four (4) miles.

(d) When calculating the number of gallons of liquefied gas special fuels on which the gallonage tax levied by § 26-56-301 is due, the suppliers and users shall be allowed a credit equal to the amount of the tax paid on each gallon of liquefied gas special fuels purchased or received in this state when each such credit is supported by a copy of the purchase invoice showing the amount of tax paid, signed by the supplier or dealer from which the liquefied gas special fuels was purchased or delivered.

(e) The due date of the interstate user reports shall be the twenty-fifth day following each calendar quarter.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 4; 1979, No. 764, § 3; A.S.A. 1947, § 75-1257.

26-56-308. Reports and payment of tax by suppliers.

(a) On or before the twenty-fifth day of each calendar month next following the calendar month for which the report is made, each liquefied gas special fuels supplier shall report to the Director of the Department of Finance and Administration:

(1) The total gallons of liquefied gas special fuels sold or delivered to each liquefied gas special fuels dealer, the name and address and dealer license number of each dealer, and the tax collected thereon;

(2) The number of gallons of liquefied gas special fuels sold or delivered to liquefied gas special fuels users other than dealers, the name and address of each user, the quantity sold or delivered to each user, and the tax collected thereon;

(3) If the liquefied gas special fuels are delivered into the supply tanks of any vehicle for which the flat fee provided for in § 26-56-304 has been paid, the vehicle license number of the vehicle;

(4) The number of gallons of liquefied gas special fuels used by such supplier for his or her own purposes, and the quantity thereof subject to the tax levied;

(5) The quantity of liquefied gas special fuels otherwise disposed of by the supplier and the portion thereof subject to the tax levied in § 26-56-304; and

(6) Such other information as the director may require by regulation.

(b) The report shall be made even though no tax is due.

(c) Each liquefied gas special fuels supplier at the time of filing the monthly report required by this section shall remit to the director any and all taxes due on liquefied gas special fuels covered by the report.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 7; A.S.A. 1947, § 75-1260.

26-56-309. Reports by dealers.

Every liquefied gas special fuel dealer on or before the twenty-fifth day of the month shall monthly file a report with the Director of the Department of Finance and Administration for the preceding calendar month showing:

(1) All liquefied gas special fuels sold, delivered, or used by such dealer, whether the liquefied gas special fuels are sold or delivered for a taxable or nontaxable use;

(2) The name and address of the purchasers;

(3) The quantity purchased by each; and

(4) In the case of liquefied gas special fuels delivered into the supply tanks of vehicles on which the flat fee provided in this subchapter has been paid, the name, address, and vehicle license number of the purchaser.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 8; A.S.A. 1947, § 75-1261.

26-56-310. Surrender of license or permit — Discontinuance of business.

(a) Whenever any person to whom a liquefied gas special fuels supplier's license, dealer's license, or liquefied gas special fuels user's permit has been issued, discontinues to supply, sell, or use liquefied gas special fuels within the state, such person shall notify the Director of the Department of Finance and Administration in writing of that fact within thirty (30) days thereafter and surrender his or her license or permit to the director.

(b) No person surrendering any such license or permit shall be entitled to any refund of any of the fees previously paid.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 9; A.S.A. 1947, § 75-1262.

26-56-311. Revocation of supplier's or dealer's license.

(a) If a licensed liquefied gas special fuels supplier or dealer fails to file any report required by this subchapter, or falsely or fraudulently files a report, or fails to pay the full amount of the tax levied by this subchapter, or if at any time the surety on such licensee's bond becomes unsatisfactory or inaccessible to the Director of the Department of Finance and Administration or the bond is discharged or cancelled, and a new bond is not furnished by the licensee within five (5) days after the demand of the director, the director may give notice to the licensee of an intention to revoke his license.

(b) The licensee shall be entitled to a period of ten (10) days after the mailing of the

notice within which to apply for a hearing on the question of having his or her license revoked, and the director shall designate a time and place for the hearing, giving the licensee five (5) days' notice thereof.

(c) After the hearing at which the licensee shall be entitled to present evidence and be represented by counsel, the director shall determine whether the licensee's license shall be revoked.

(d) (1) Upon the issuance of an order revoking the license, the licensee shall be entitled to appeal to the circuit court in any county in which the licensee may do business, where the question shall be tried de novo, but the director's order shall be affirmed if supported by substantial evidence.

(2) An appeal may be had from the judgment of the circuit court as in other cases as provided by law.

(e) (1) If the licensee fails to apply for a hearing within the prescribed time, the director may immediately revoke the license of the licensee and notify the licensee by registered mail, addressed to the last known address of the licensee appearing in the files of the director.

(2) The director shall also notify the surety company on the licensee's bond in like manner.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 9; A.S.A. 1947, § 75-1262.

26-56-312. Importation or use by unlicensed persons.

(a) Any person operating a motor vehicle on the highways of this state who for the first time imports liquefied gas special fuels into the state in the supply tank of a motor vehicle but who has not obtained a liquefied gas special fuels user's permit from this state or who is not a bonded liquefied gas special fuels supplier in this state shall nevertheless be deemed a liquefied gas special fuels user.

(b) For the purposes of determining the number of gallons of liquefied gas special fuels consumed in operating on the highways of this state, the liquefied gas special fuels user shall be required to pay to the Director of the Department of Finance and Administration the tax levied by this subchapter on each gallon of liquefied gas special fuels contained in the supply tank of the motor vehicle at the time of entry into the state and upon all liquefied gas special fuels used in this state upon which the tax levied in this subchapter has not been paid.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 5; A.S.A. 1947, § 75-1258.

26-56-313. Purchases by unlicensed persons — Payment of tax.

(a) Any person purchasing liquefied gas special fuels for delivery into the supply tanks of the motor vehicle of such person, if such person does not have a liquefied gas special fuels user's permit as evidenced by the appropriate license issued therefor as provided in this subchapter or if such person is not a bonded licensed liquefied gas special fuels supplier, shall pay to the supplier or dealer at the time of purchase of liquefied gas special fuels the gallonage tax levied in § 26-56-301 on each gallon of liquefied gas special fuels so delivered into the supply tanks of the motor vehicle.

(b) (1) At the time of making the delivery, the supplier or dealer shall prepare in duplicate a receipt reflecting the:

(A) Name and address of the purchaser;

(B) Make, model, and license number of the motor vehicle in which the liquefied gas special fuels are delivered;

(C) Total amount of gallons delivered; and

(D) Tax collected thereon.

(2) The supplier or dealer shall deliver the original copy to the purchaser and shall retain the duplicate copy for a period of two (2) years for inspection by the Director of the Department of Finance and Administration or his or her designated agents.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 6; A.S.A. 1947, § 75-1259.

26-56-314. Nonresident users.

If the Director of the Department of Finance and Administration deems it necessary for the proper enforcement and collection of the tax on liquefied gas special fuels used in this state against nonresident users, other than occasional nonresident users, the director may require the nonresident users to obtain a permit, post bond, and report and remit the tax in the same manner as is required in this subchapter for liquefied gas special fuels suppliers.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 5; A.S.A. 1947, § 75-1258.

26-56-315. Conversion of vehicles for use of liquefied gas special fuel.

(a) (1) Any liquefied gas special fuels dealer, garage, mechanic, owner, or operator of a motor vehicle who converts or causes a vehicle to be converted to enable the vehicle to be operated on liquefied gas special fuels shall report the conversion to the Director of the Department of Finance and Administration on forms prescribed by the director within ten (10) days after the conversion.

(2) If any owner or operator fails to report a conversion to the director within the time prescribed above, such person shall be assessed a penalty of fifty dollars (\$50.00) which shall be in addition to any criminal penalty provided in this chapter.

(b) No person shall convert or equip any motor vehicle for the use of liquefied gas special fuels unless the person is licensed to do so by the Liquefied Petroleum Gas Board and has also made application for and obtained a license as a liquefied gas special fuels converter from the director and posted a bond in an amount determined by the director conditioned that the person will report to the director all vehicles so converted by the person as required by this section.

(c) It shall be unlawful for any person to operate any vehicle which has been converted or equipped to use liquefied gas special fuels unless the vehicle has been reported to the director and a liquefied gas special fuels user's permit has been obtained therefor as required.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, §§ 10-12; A.S.A. 1947, §§ 75-1263 — 75-1265.

Subchapter 4 — Diesel-Powered Vehicles

26-56-401 — 26-56-404. [Repealed.]

26-56-405. Payment of tax by Arkansas State Highway and Transportation Department.

26-56-406 — 26-56-408. [Repealed.]

Effective Dates. Acts 1979, No. 903, § 9: Apr. 16, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relating to the collection of special motor fuel taxes for fuel used by certain classes of users are not adequate to assure the effective enforcement of such laws; that this Act is designed to correct this situation and should be given effect immediately to avoid further loss of revenues. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-56-401 — 26-56-404. [Repealed.]

Publisher's Notes. These sections, concerning purchase of tax-free diesel fuel and permits for diesel-powered vehicles, were repealed by Acts 1993, No. 618, § 7. The sections were derived from the following sources:

26-56-401. Acts 1979, No. 903, § 3; A.S.A. 1947, § 75-1274.

26-56-402. Acts 1979, No. 903, § 1; A.S.A. 1947, § 75-1272.

26-56-403. Acts 1979, No. 903, § 4; A.S.A. 1947, § 75-1275.

26-56-404. Acts 1979, No. 903, § 5; A.S.A. 1947, § 75-1276; Acts 1987, No. 640, § 1.

26-56-405. Payment of tax by Arkansas State Highway and Transportation Department.

(a) The Arkansas State Highway and Transportation Department shall continue to pay the special motor fuel tax established by this chapter on all diesel-powered motor vehicles as defined in § 26-56-102 owned by the department.

(b) For purposes of computing this tax, the department shall use its fuel consumption reports and shall file with the Director of the Department of Finance and Administration an appropriate monthly report stating the gallons used in the department's motor vehicles and the tax due and payable.

(c) The department shall remit the tax due each month to the director.

History. Acts 1979, No. 903, § 5; A.S.A. 1947, § 75-1276.

26-56-406 — 26-56-408. [Repealed.]

Publisher's Notes. These sections, concerning permit holder tax refund, diesel fuel sales tax liability, and disposition of fees and fines, were repealed by Acts 1993, No. 618, § 7. The sections were derived from the following sources:

26-56-406. Acts 1979, No. 903, § 2; A.S.A. 1947, § 75-1273.

26-56-407. Acts 1979, No. 903, § 3; A.S.A. 1947, § 75-1274.

26-56-408. Acts 1979, No. 903, § 6; A.S.A. 1947, § 75-1277.

Subchapter 5
— Additional Taxes and Fees

26-56-501. Applicability.

26-56-502. Additional tax levied on distillate special motor fuels.

26-56-503. [Repealed.]

26-56-504. Disposition of revenues.

Effective Dates. Acts 1985, No. 456, § 6. Emergency clause provided: "It is hereby found and

determined by the General Assembly that many of the rural roads, highways, roads and streets in this State are operationally hazardous and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction and reconstruction of such roads, highways and streets is essential to the public health, welfare and safety of the people of this State and that only by the immediate passage of this Act may such vitally needed additional funds be provided to solve the aforementioned problem. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Vetoed, Mar. 19, 1985 and passed over veto Mar. 20, 1985.

26-56-501. Applicability.

The additional taxes and fees levied in this subchapter on motor fuel, distillate special fuel, liquefied gas special fuels, and vehicles using liquefied gas special fuels shall be applicable to motor fuel and distillate special fuel sold and liquefied gas special fuels vehicles which are registered or for which registration is renewed on and after April 1, 1985.

History. Acts 1985, No. 456, § 4; A.S.A. 1947, § 75-1281.

Publisher's Notes. Acts 1985, No. 456, §§ 1-4, are also codified as § 26-55-1001 et seq.

26-56-502. Additional tax levied on distillate special motor fuels.

(a) In addition to the tax levied upon distillate special fuel in § 26-56-201 and upon liquefied gas special fuels in § 26-56-301, there is levied an excise tax of four cents (4¢) per gallon upon all liquefied gas special fuels and two cents (2¢) per gallon upon all distillate special fuel subject to the tax levied in those sections.

(b) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of other distillate special fuel taxes.

History. Acts 1985, No. 456, § 1; A.S.A. 1947, § 75-1278; Acts 1989, No. 821, § 10.

26-56-503. [Repealed.]

Publisher's Notes. This section, concerning additional fees for vehicles using liquefied gas special fuel, was repealed by Acts 1991, Nos. 364 and 382, § 6. The section was derived from Acts 1985, No. 456, § 2; A.S.A. 1947, § 75-1279.

26-56-504. Disposition of revenues.

(a) (1) All taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration from the additional taxes and fees levied by this subchapter shall be classified as special revenues and shall be deposited into the State Treasury.

(2) The net amount thereof shall be transferred by the Treasurer of State on the last business day of each month, as follows:

- (A) Fifteen percent (15%) of the amount to the County Aid Fund;
- (B) Fifteen percent (15%) of the amount to the Municipal Aid Fund; and
- (C) Seventy percent (70%) of the amount to the State Highway and

Transportation Department Fund.

(b) (1) All such funds credited to the State Highway and Transportation Department Fund shall be used for construction, reconstruction, and maintenance of the rural state highways of the state and their extensions into municipalities and industrial access roads.

(2) The State Highway Commission shall provide to each member of the General Assembly on January 1, 1986, and annually thereafter, a report indicating how the money provided by this subchapter was spent, which roads were worked on, and what other progress was made regarding the plan outlined to the General Assembly by the commission during the debate on this subchapter.

History. Acts 1985, No. 456, § 3; A.S.A. 1947, § 75-1280.

Subchapter 6

— Additional Taxes on Motor Fuel, Distillate Special Fuels, and Liquefied Gas Special Fuels

26-56-601. Excise tax levied.

26-56-602. Additional funds deposited into State Treasury.

Effective Dates. Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

Acts 1991, Nos. 1040 and 1239, § 11: April 8, 1991, and Apr. 10, 1991, respectively. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that there is an immediate need for the construction and repair of the State Highway System. For these reasons, it is declared necessary for the preservation of the public peace, health, and safety that this Act become effective without delay. It is, therefore, declared that an emergency exists, and this Act shall take effect from the date of its passage and approval."

26-56-601. Excise tax levied.

(a) On and after March 6, 1991, in addition to the taxes levied upon motor fuel in §§ 26-55-205 and 26-55-1002 and upon distillate special fuel in §§ 26-56-201 and 26-56-502 and upon liquefied gas special fuels in §§ 26-56-301 and 26-56-502, and in addition to any other taxes levied on such fuel or fuels during the Seventy-Eighth Regular Session of the General Assembly, there is hereby levied an excise tax of five cents (5¢) per gallon upon all motor fuel and liquefied gas special fuels and an excise tax of two cents (2¢) per gallon upon all distillate special fuel subject to the taxes levied in §§ 26-55-205, 26-55-1002, 26-56-201, 26-56-301, and 26-56-502.

(b) Such additional taxes shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of other motor fuel taxes, distillate special fuel taxes, and liquefied gas special fuels taxes.

History. Acts 1991, No. 364, § 1; 1991, No. 382, § 1.

Publisher's Notes. Identical Acts Nos. 364 and 382, § 1, are also codified as § 26-55-1201.

26-56-602. Additional funds deposited into State Treasury.

(a) All of the additional taxes, fees, penalties and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited into the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

- (1) Fifteen percent (15%) of the amount thereof to the County Aid Fund;
- (2) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and
- (3) Seventy percent (70%) of the amount thereof to a special account in the State

Highway and Transportation Department Fund to be designated the "1991 Highway Construction and Maintenance Account".

(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding however, § 27-70-206.

(c) Provided that, in keeping with the spirit of Pub. L. No. 97-424, § 105, and the State Highway Commission's goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this act for the purposes of achieving those goals.

History. Acts 1991, No. 364, § 5; 1991, No. 382, § 5; 1991, No. 1040, §§ 5-8; 1991, No. 1239, §§ 5-8.

Publisher's Notes. Identical Acts 1991, Nos. 364 and 382, § 5, are also codified as § 26-55-1202.

Identical Acts 1991, Nos. 1040 and 1239, § 4, provided:

"(a) This Act shall be liberally construed to accomplish the purposes thereof. This Act shall constitute the sole authority necessary to accomplish the purposes hereof, and to this end it shall not be necessary that the provisions of other laws pertaining to the development of public facilities and properties and the financing thereof be complied with.

"(b) This Act shall be interpreted to supplement existing laws conferring rights and powers upon the Authority and the Commission, and the rights and powers set forth herein shall be regarded as alternative methods for the accomplishment of the purposes of this Act."

U.S. Code. Public Law 97-424, referred to in this section, is codified primarily as 23 U.S.C. § 101 et seq., 26 U.S.C. § 4041 et seq., and 26 U.S.C. § 6411 et seq.

Subchapter 7

— Refunds — Motor Fuels Used by Fire Departments

26-56-701. Definitions.

26-56-702. Applicability.

26-56-703. Refund permit.

26-56-704. Applications for refund.

- 26-56-705. Refund paid from Gasoline Tax Refund Fund.
- 26-56-706. Records — Inspection.
- 26-56-707. Construction.
- 26-56-708. Director's powers.

A.C.R.C. Notes. References to “this chapter” in subchapters 1 through 6 may not apply to this subchapter which was enacted subsequently.

26-56-701. Definitions.

As used in this subchapter:

- (1) “Director” means the Director of the Department of Finance and Administration or any of his or her deputies, employees, or agents;
- (2) “Distillate special fuel” means distillate special fuel as defined in § 26-56-102;
- (3) (A) “Fire truck” means fire department-owned firefighting apparatus used to respond to fire alarms, including, but not limited to, tanker trucks, pumper trucks, and equipment trucks.
(B) “Fire truck” does not include passenger vehicles and ambulances; and
- (4) “Motor fuel” means motor fuel as defined in § 26-55-202.

History. Acts 2001, No. 419, § 1.

Publisher's Notes. Acts 2001, No. 419, § 1, is also codified as § 26-55-1301.

26-56-702. Applicability.

Any fire department that purchases motor fuel or distillate special fuel for use in fire trucks shall be entitled to a refund of the motor fuel tax or distillate special fuel tax paid.

History. Acts 2001, No. 419, § 2.

Publisher's Notes. Acts 2001, No. 419, § 2, is also codified as § 26-55-1302.

26-56-703. Refund permit.

- (a) No fire department shall secure a refund of tax under this subchapter unless the fire department is the holder of an unrevoked permit which was issued by the Director of the Department of Finance and Administration before the purchase of the motor fuel or the distillate special fuel.
- (b) The permit shall be numbered and shall entitle the fire department to make an annual application for refund under this subchapter.
- (c) An application for the permit shall be filed with the director on forms prescribed by the director and shall contain such information as the director may require.
- (d) No person shall knowingly make a false or fraudulent statement in an application for a refund permit or in an application for a refund of any taxes under this subchapter.
- (e) The refund permit of any person who violates any provision of this subchapter shall be revoked by the director and shall not be reissued until two (2) years have elapsed after the date of the revocation.

History. Acts 2001, No. 419, § 3.

Publisher's Notes. Acts 2001, No. 419, § 3, is also codified as § 26-55-1303.

26-56-704. Applications for refund.

(a) The refund permit holder shall file with the Director of the Department of Finance and Administration an application for refund on forms furnished by the director which shall include, but not be limited to, the following information:

(1) The quantity of motor fuel and distillate special fuel purchased for use in its fire trucks;

(2) A statement that the motor fuel and distillate special fuel have been used exclusively in its fire trucks;

(3) The amount of the tax claimed to be refunded;

(4) The name, post office, and resident address of the fire department;

(5) The name and address of the sellers from whom the motor fuel and distillate special fuel were purchased; and

(6) Other information as the director shall require.

(b) (1) An application for a refund shall be accompanied by a paid receipt for the purchase price of motor fuel and distillate special fuel on which the refund is sought.

(2) The application shall be notarized and made to the director.

(c) All claims for a refund under the provisions of this subchapter shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(d) (1) The director shall promulgate a rule establishing the annual date for claiming a refund pursuant to this subchapter.

(2) A refund shall only be granted for a purchase of motor fuel and distillate special fuel made within one (1) calendar year of the annual date for claiming the refund.

History. Acts 2001, No. 419, § 4.

Publisher's Notes. Acts 2001, No. 419, § 4, is also codified as § 26-55-1304.

26-56-705. Refund paid from Gasoline Tax Refund Fund.

(a) All valid claims for refund of the motor fuel tax under the provisions of this subchapter shall be paid from the Gasoline Tax Refund Fund and shall be subject to the same conditions and limitations as provided under § 26-55-407, except that all the motor fuels covered by the provisions of this subchapter shall be subject to the full refund of the motor fuel taxes paid.

(b) (1) (A) The Director of the Department of Finance and Administration shall annually estimate the amount necessary to pay refunds to the users of distillate special fuel who are entitled to refunds with respect to distillate special fuel taxes paid in this state as authorized in this subchapter.

(B) Upon certification by the director, the Treasurer of State shall transfer from the gross amount of distillate special fuel taxes collected each month the amount so certified and shall credit the amount to the fund.

(2) The transfers from the distillate special fuel taxes collected each month shall be made after deducting allowances for bad checks or claims but before making any other distribution as provided by law.

(c) (1) All valid claims for refund of the distillate special fuel tax under the provisions of this subchapter shall be paid from the fund.

(2) The refund for purchases of distillate special fuel tax shall not include the moneys which have been pledged to the repayment of highway bonds under § 26-56-201.

(d) All warrants drawn against the fund that are not presented for payment within one (1) year after issuance shall be void.

(e) Neither the director nor any member or employee of the Department of Finance and Administration shall be held personally liable for making any refund by reason of a fraudulent claim filed as a basis for such a refund.

History. Acts 2001, No. 419, § 5.

Publisher's Notes. Acts 2001, No. 419, § 5, is also codified as § 26-55-1305.

26-56-706. Records — Inspection.

(a) The Director of the Department of Finance and Administration shall keep a permanent record by fire department of the amount of refund claimed and paid to each claimant.

(b) The records shall be open to public inspection.

History. Acts 2001, No. 419, § 6.

Publisher's Notes. Acts 2001, No. 419, § 6, is also codified as § 26-55-1306.

26-56-707. Construction.

Nothing in this subchapter shall be construed as an impairment of the obligation existing between the State of Arkansas and the holders of Arkansas state highway bonds, whether the bonds have already been issued or may be issued in the future.

History. Acts 2001, No. 419, § 7.

Publisher's Notes. Acts 2001, No. 419, § 7, is also codified as § 26-55-1307.

26-56-708. Director's powers.

The Director of the Department of Finance and Administration may make, amend, and enforce regulations, subpoena witnesses and documents, administer oaths, and do and perform all other acts necessary to carry out the purpose and intent of this subchapter.

History. Acts 2001, No. 419, § 8.

Publisher's Notes. Acts 2001, No. 419, § 8, is also codified as § 26-55-1308.

Chapter 57 State Privilege Taxes

Subchapter 1 — General Provisions

Subchapter 2 — Arkansas Tobacco Products Tax Act of 1977

Subchapter 3 — Slot and Vending Machines Generally

Subchapter 4 — Coin-Operated Amusements

Subchapter 5 — Travel Bureaus or Services

Subchapter 6 — Insurance Premium Taxes

Subchapter 7 — Inedible Fats and Oils Collectors

Subchapter 8 — Additional Tax on Tobacco Products

- Subchapter 9 — Arkansas Soft Drink Tax Act
- Subchapter 10 — Vending Devices Sales Tax
- Subchapter 11 — Tax on Tobacco Products to Fund Breast Cancer Control and Research
- Subchapter 12 — Vending Devices Decal Act of 1997
- Subchapter 13 — Enforcement Enhancements

Research References

A.L.R.

Sales, use, or privilege tax on sales of, or revenues from sales of advertising. 40 A.L.R.4th 1114.

Subchapter 1 — General Provisions

[Reserved]

Subchapter 2 — Arkansas Tobacco Products Tax Act of 1977

- 26-57-201. Title.
- 26-57-202. Legislative findings and purpose.
- 26-57-203. Definitions.
- 26-57-204. Violations.
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- 26-57-208. Levy of tax — Rates of tax.
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- 26-57-211. [As amended by Acts 1997, No. 434.] [Repealed.]
- 26-57-211. Wholesaler to pay taxes — Reports and remittance of tax.
- 26-57-212. Wholesalers, warehousemen — Reports, payment of tax, and records.
- 26-57-213. Invoices.
- 26-57-214. Registration and licensing required prior to doing business.
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- 26-57-219. Permits and licenses — Annual privilege tax.
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- 26-57-221. Permits and licenses — Not transferable.
- 26-57-222. Permits and licenses — Duplicates.
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- 26-57-228. Purchases from unregistered, unlicensed dealers unlawful.

- 26-57-229. Licensee as wholesaler and retailer.
- 26-57-230. Common carriers.
- 26-57-231. Failure to allow inspection unlawful.
- 26-57-232. Wholesalers — Restrictions — Criminal violations.
- 26-57-233. Salesperson — Restrictions — Violations.
- 26-57-234. Retailers and vendors — Restrictions — Violations.
- 26-57-235. Cigarette stamps generally.
- 26-57-236. Stamp deputies. [As amended by Acts 1997, No. 434.]
- 26-57-236. Stamp deputies. [As amended by Acts 1997, No. 1337.]
- 26-57-237. Cigarette stamps — Sale or delivery.
- 26-57-238. Cigarette stamps — Refund on unsold, returned cigarettes.
- 26-57-239. Consumer to require stamps affixed in proper manner.
- 26-57-240. Counterfeiting of stamps unlawful — Penalty.
- 26-57-241. Reuse of containers unlawful — Penalty.
- 26-57-242. Wholesaler — Transporting cigarettes with stamps affixed outside state for reentry.
- 26-57-243. Unstamped and untaxed products — Personal possession limits.
- 26-57-244. Possession of untaxed, unstamped products — Notice and prima facie evidence.
- 26-57-245. Unstamped products or products with unpaid taxes — Purchase, sale, receipt, etc., a criminal offense.
- 26-57-246. Possession of improperly handled products as prima facie evidence.
- 26-57-247. Seizure, forfeiture, and disposition of tobacco products and other property.
- 26-57-248. Possession or sale of products with unpaid taxes — Supplemental fines.
- 26-57-249. Destruction of products upon conviction — Procedure.
- 26-57-250. Civil action to recover tax and penalties — Party defendants.
- 26-57-251. Civil actions brought in name of director — Criminal actions.
- 26-57-252. No bond for costs required.
- 26-57-253. Criminal actions — Appeals.
- 26-57-254. Health inspections.
- 26-57-255. Arkansas Tobacco Control Board.
- 26-57-256. Powers of the Arkansas Tobacco Control Board.
- 26-57-257. Director of Arkansas Tobacco Control.
- 26-57-258. Continuation of permits, licenses, regulations, etc., of Department of Finance and Administration.
- 26-57-259. Nonpreemption.
- 26-57-260. Definitions.
- 26-57-261. Requirements.
- 26-57-262. Sale of export cigarettes.

Effective Dates. Acts 1977, No. 546, § 41: July 1, 1977.

Acts 1979, No. 911, § 17: July 1, 1979.

Acts 1983, No. 255, § 5: Feb. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Supreme Court recently held certain provisions of the Arkansas Tobacco Products Tax Act of 1977 relating to residency of wholesale cigarette and wholesale tobacco permit holders to be unconstitutional as a violation of the commerce clause of the United States Constitution since there was no stated relationship

between the residency requirements and any valid governmental interests; that this Act is designed to clarify the intent and purpose of the residency requirement for wholesale cigarette and/or wholesale tobacco products dealers by recognizing the fact that smoking of cigarettes and use of other tobacco products can be hazardous to the health, safety and welfare of the people of Arkansas and that the State of Arkansas has a valid governmental interest in protecting the health, safety and welfare of her citizens; and that this Act is designed to recognize and establish such valid governmental interests and to reinstate the residency requirements for wholesale cigarette and wholesale tobacco products dealers and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 399, § 3: Mar. 10, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State is in urgent need of additional revenues to provide essential services to the citizens of this State; that the increase in the cigarette tax provided for in this Act will provide a portion of such urgently needed revenues and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1985, No. 356, § 3: Mar. 15, 1985. Emergency clause provided: “Prior to the passage of Act 399 of 1983, which amended Act 546 of 1977, cigarette vendors were considered to be the same as other retailers, and as a result of said Act, cigarette vendors were not permitted to purchase cigarettes for resale taxed at the same cigarette tax rate as for other retailers. The purpose of this amendment is to clarify that licensed retailers and licensed cigarette vendors are both retailers entitled to purchase cigarettes for resale at the same cigarette tax rate; and this act is necessary to correct the injustice created by Act 399 of 1983. Therefore, an emergency is declared to exist and this Act shall therefore become effective on and after its passage and approval.”

Acts 1985, No. 684, § 5: Mar. 27, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that additional legislation is needed to protect the health and welfare of the citizens of this State who use tobacco, and that it is necessary that the Director of the Arkansas Health Department be authorized to inspect locations in Arkansas where cigarettes and tobacco products are sold or stored, to determine whether such cigarettes and tobacco products are fresh and not contaminated; because of the relatively high Arkansas cigarette tax of twenty-one cents (21¢) per package of cigarettes, the State may begin to experience losses of cigarette tax revenues as a result of bootlegging of untaxed cigarettes in this State; and that this Act should be given effect immediately to alleviate this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1985, No. 824, § 5: Apr. 4, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that additional legislation is needed to protect the health and welfare of the citizens of this State who use tobacco, and that it is necessary that the Director of the Arkansas Health Department be authorized to inspect locations in Arkansas where cigarettes and tobacco products are sold or stored, to determine whether such cigarettes and tobacco products are fresh and not contaminated; because of the relatively high Arkansas cigarette tax of twenty-one cents (21¢) per package of cigarettes, the State may begin to experience losses of cigarette tax revenues as a result of bootlegging of untaxed cigarettes in this State; and that this Act should be given effect immediately to alleviate this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 628, § 4: Apr. 4, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly of Arkansas that the excise tax on tobacco products does not presently extend to cover all commercially sold products made from tobacco and that to achieve tax equity in the taxation of tobacco products the excise tax for such products should extend to snuff as well as other products made from tobacco and that in order to correct this tax inequity, it is essential the tax on tobacco products include snuff in its application. Therefore, an

emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force from and after its passage and approval.”

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 434, § 18: July 1, 1997. Emergency clause provided: “It is hereby found and determined that cancer is a leading cause of death among Arkansans; that, of cancer deaths, breast cancer claims more lives of women than any other type except lung cancer; that there are nineteen hundred (1900) new cases of breast cancer diagnosed each year; that breast cancer mortality rates have increased in Arkansas in recent years; that presently breast cancer is claiming the lives of over four hundred seventy (470) women in Arkansas each year; that this number of deaths will increase as our population grows older; that information barriers result in women being unaware of the risk of breast cancer or the value of early detection; that financial barriers prevent some women from taking advantage of mammography; and that there is a lack of funding for breast cancer research in the state; it is further found and determined that to reduce the number of lives continuing to be needlessly lost, it is necessary to increase the state tax on cigarettes and tobacco products to provide funding for breast cancer, to provide for screening, diagnostic, and treatment services for women at risk of developing breast cancer and to assure continuing research with respect to the cause, cure and prevention of breast cancer. This act will provide greatly needed revenues to fund essential research and services with respect to the cause, cure, detection and prevention of breast cancer, and breast cancer education in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1997.”

Acts 1997, No. 1337, § 30: became law without the Governor's signature. Noted Apr. 11, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that the regulation of the manufacture, distribution, and sale of tobacco products in this state should be transferred from the Department of Finance and Administration to an independent agency; that this act establishes the Arkansas Tobacco Control Board as such independent agency; that the transfer of duties should occur at the beginning of the next fiscal year; and that unless this emergency clause is adopted, the transfer will most likely not occur until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1997.”

Acts 1997, No. 1359, § 41: July 1, 1997. Emergency clause provided: “It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997.”

Acts 1999, No. 1285, § 7: Apr. 7, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that smoking of cigarettes is not only hazardous to the health of the smoker but also presents serious public health concerns; that federal law and regulations establish various policies relating to the manufacture, importation and marketing of cigarettes; that it is urgent that state law be aligned with the federal laws and regulations as soon as possible to assure that consumers be adequately informed of the adverse effects of cigarette smoking; and that this act is designed to align Arkansas law with federal law to assure that only those cigarettes manufactured according to specifications and packed in

containers labeled with appropriate warnings are available to Arkansas consumers and should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1368, § 6: Apr. 5, 2001. Emergency clause provided: "It is found and determined by the General Assembly that lack of compliance with state and local tax laws reduces the available revenues to fund the public schools and other essential state services, and that this act is designed and intended to ensure that adequate funding is available for those programs and to ensure full compliance with the tax laws of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1669, § 38: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2001 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2001 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001."

Acts 2001, No. 1698, § 4: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly that changes in distributions and funding sources must take place at the beginning of the state fiscal year in order to maintain approved accounting standards and to reduced confusion and that in the event of an extended session, this act may not take effect until after July 1 thereby placing the funding of the breast cancer program in jeopardy. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001."

Acts 2003, No. 1185, § 267: Jan. 1, 2005, by its own terms.

Acts 2005, No. 384, § 4: Mar. 31, 2005. Effective date clause provided: "Effective date. Section 1 shall apply to all funds placed into, due to be placed into, or being held in a qualified escrow account pursuant to Arkansas Code § 26-57-261 on or after March 31, 2005."

Acts 2005, No. 384, § 5: Feb. 24, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that smoking poses a serious health risk to Arkansans; that the Master Settlement Agreement is a critical component in reducing the rate of smoking in Arkansas; and that the provisions of this act are immediately necessary for the continued effective administration and enforcement of provisions of the Master Settlement Agreement in Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 180, § 6: Mar. 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that existing funding levels are inadequate to meet the medical care needs of the state. That without immediately obtaining adequate funding levels for medical care the citizens of this state will suffer irreparable harm to their health and well-being. This bill shall immediately provide additional funding that is needed to make the funding level adequate and humane. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on March 1, 2009."

Acts 2009, No. 542, § 2: Mar. 24, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that stamp deputies are required to furnish a bond; that the bond requirement allows cigarette wholesalers to make purchases on open account; that the bond requirement is in need of clarification to ensure that the original legislative intent is fulfilled; and that this act is immediately necessary to prevent possible confusion. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto." Acts 2009, No. 940, § 5: Apr. 6, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the tax on cigarettes has been drastically increased; that the increase went into effect on March 1, 2009; that there are cities that adjoin border cities that are separated by a river from a city in an adjoining state; that these border cities are able to sell cigarettes at the rate of the adjoining state; and that this creates a drastic loss in cigarette sales for the cities that adjoin these border cities. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Research References

Am. Jur. 71 Am. Jur. 2d, State Tax., § 615.

U. Ark. Little Rock L.J.

Arkansas Law Survey, Junean, Constitutional Law, 9 U. Ark. Little Rock L.J. 111.

26-57-201. Title.

This subchapter shall be known and may be cited as the "Arkansas Tobacco Products Tax Act of 1977".

History. Acts 1977, No. 546, § 1; A.S.A. 1947, § 84-4501.

Case Notes

Proceedings.

Proceedings.

Even though the director for the Arkansas Tobacco Control Board sent the tobacco company an offer of settlement "recommending" a \$500 fine for the tobacco company which gave unlawful rebates to retailers, and the company accepted the offer, the defense of agency estoppel was not preserved, and because the evidence established that the company had paid rebates to at least 28 Arkansas retail establishments, it was not arbitrary or capricious for the Board to reject the "recommendation" and impose a \$28,000 fine, and suspension of the company's permit for six months. *H.T. Hackney Co. v. Davis*, 353 Ark. 797, 120 S.W.3d 79 (2003).

Cited: *Wometco Servs., Inc. v. Gaddy*, 272 Ark. 452, 616 S.W.2d 466 (1981).

26-57-202. Legislative findings and purpose.

(a) It is recognized, found, and determined by the General Assembly that:

(1) The Surgeon General has determined that the smoking of cigarettes is detrimental to the health of the smoker;

(2) The General Assembly had already recognized this hazard many years ago when it enacted § 5-27-227 regulating the sale of tobacco to minors, §§ 20-27-701 — 20-27-703 [repealed] establishing a policy for public smoking, and this subchapter, to provide for close supervision and control of the sale of cigarettes and other tobacco

products;

(3) The state has a very valid governmental interest in preserving and promoting the public health and welfare of its citizens; and

(4) It is the responsibility of the General Assembly to enact legislation to protect and further this essential governmental interest.

(b) It is therefore the intent of this subchapter to:

(1) Provide for the close supervision and control of the licensing of persons to sell cigarettes and other tobacco products in this state in order to assure that cigarettes and other tobacco products distributed in the state are fresh, not contaminated, and are properly taxed, stamped, stored, and distributed only to persons authorized to receive these products; and

(2) Impose licenses, fees, taxes, and restrictions on the privilege of dealing in or otherwise doing business in tobacco products in order to promote the public health and welfare of the citizens of this state and to protect the revenue collection procedures incorporated within this subchapter.

History. Acts 1977, No. 546, § 3; 1979, No. 911, § 5; 1983, No. 255, § 1; 1985, No. 684, § 1; 1985, No. 824, § 1; A.S.A. 1947, § 84-4503.

A.C.R.C. Notes. Sections 20-27-701 — 20-27-703 referred to in subdivision (a)(2) of this section were repealed by Acts 2006 (1st Ex. Sess.), No. 8, § 2. For current laws concerning public smoking, see §§ 20-27-704 — 20-27-709, the Arkansas Clean Indoor Air Act of 2006, § 20-27-1801 et seq., and the Arkansas Protection from Secondhand Smoke for Children Act of 2006, § 20-27-1901 et seq.

Case Notes

Cited: Wometco Servs., Inc. v. Gaddy, 272 Ark. 452, 616 S.W.2d 466 (1981); Ark. Tobacco Control Bd. v. Santa Fe Natural Tobacco Co., 360 Ark. 32, 199 S.W.3d 656 (2004).

26-57-203. Definitions.

As used in this subchapter:

(1) “Annual” or “annually” means the fiscal year from July 1 through the next June 30;

(2) “Cigar” means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, other than any roll of tobacco that is a cigarette under subdivision (3) of this section;

(3) “Cigarette” means any roll of tobacco wrapped in:

(A) Paper or in any substance not containing tobacco; or

(B) Any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to or purchased by consumers as a cigarette;

(4) “Consumer” means a member of the public at large;

(5) “First sale” means the sale of tobacco products made by a manufacturer to licensed wholesalers and licensed vendors or a licensed retailer only;

(6) (A) “General tobacco products vendor” means any person that operates a vending machine or that uses any other mechanical device from which cigarettes or other tobacco products are delivered to the consumer by inserting coins in the machine or device, and that purchases tobacco products only from licensed wholesalers.

(B) A general tobacco products vendor may operate licensed vending

machines on the general tobacco product vendor's own premises and on the premises of others as a principal business;

(7) "Gross sales" means the amount received for tobacco products sold at retail, including both the federal and state taxes of the tobacco products when purchased by a retailer;

(8) "Licensed" means that the person has received a license or permit from the Director of Arkansas Tobacco Control and is otherwise qualified to do business in this state, except that "licensed" does not mean that a person is registered as a manufacturer;

(9) "Manufacturer" means any person who produces any tobacco product for sale and includes, but is not limited to, importers and distributors that deal in tobacco products as manufacturers and that are required under this subchapter to sell only to licensed wholesalers or licensed retailers located in Arkansas;

(10) "Person" means any individual, retailer, wholesaler, manufacturer, firm, association, company, partnership, limited liability company, corporation, joint-stock company, club, agency, syndicate, the State of Arkansas, county, municipal corporation or other political subdivision of this state, receiver, trustee, fiduciary, or trade association;

(11) "Place of business" means the place where orders are taken or received or where tobacco products are sold;

(12) "Restricted tobacco products vendor" means a person that is licensed to operate vending machines owned by the person only on the person's own premises, and is otherwise subject to all other restrictions imposed on a general tobacco products vendor;

(13) "Retailer" means any person who purchases tobacco products from licensed wholesalers for the purpose of selling them over the counter at retail to consumers;

(14) "Salesperson" means the agent or employee of a wholesaler that sells or offers for sale to licensed wholesalers or licensed retailers or that solicits for sale, takes orders for, or in any manner promotes the sale or use of tobacco products;

(15) (A) "Stamps" means the Arkansas cigarette stamps denoting the tax on cigarettes.

(B) When affixed to a container of cigarettes, the stamps shall indicate that the tax has been paid;

(16) "Tobacco products" means all products containing tobacco for consumption and includes, but is not limited to, cigarettes, cigars, little cigars, cigarillos, chewing tobacco, smokeless tobacco, snuff, smoking tobacco, including pipe tobacco, and smoking tobacco substitutes;

(17) "Tobacco products vending machine" means any coin-operated vending machine from which tobacco products are sold;

(18) "Warehouse" means a place where tobacco products are stored for another person and to or from which place the tobacco products are shipped or delivered upon order by the owner of the tobacco products to the warehouse; and

(19) (A) "Wholesaler" means any person, not a manufacturer or owned or operated by a manufacturer, that does business within this state at or from an established place of business that purchases unstamped or untaxed cigarettes or other tobacco products directly from manufacturers that distribute tobacco products in Arkansas, and that sells to properly licensed cigarette vendors or retailers.

(B) However, where an Arkansas city is separated from a city in another state only by a state line, a person that is a resident of the Arkansas city that maintains a

warehouse in the adjoining city in the adjoining state may qualify as a wholesaler under this subchapter if that person is regularly engaged in the sale of tobacco products to licensed retailers within Arkansas as a first sale and is eligible to purchase unstamped cigarettes direct from manufacturers.

History. Acts 1977, No. 546, § 2; 1979, No. 911, §§ 1-4; 1983, No. 255, § 2; A.S.A. 1947, § 84-4502; Acts 1987, No. 628, § 1; 1995, No. 1160, § 30; 1997, No. 1337, § 1; 2005, No. 1376, § 1; 2007, No. 827, §§ 227-229.; 2009, No. 785, § 7.

Amendments. The 2005 amendment inserted present (2), (3)(A) and (3)(B) and redesignated the remaining subdivisions accordingly; and substituted “any roll of tobacco wrapped in” for “all rolled tobacco, or substitutes therefor, for smoking which is wrapped in paper or any substitute other than natural leaf tobacco in its natural state” in (3).

The 2007 amendment deleted “or ‘vendor’” following “‘General tobacco products vendor’” in (6)(A); in present (12), substituted “person that” for “vendor who” and “person only on the person’s own” for “vendor on the vendor’s”; and deleted former (15).

The 2009 amendment substituted “Director of Arkansas Tobacco Control” for “Director of the Arkansas Tobacco Control Board” in (8).

Case Notes

Constitutionality.

Constitutionality.

This section is not merely a burden on interstate commerce, it brings tobacco commerce to a halt at the borders unless it is conducted by Arkansans; thus, this section and § 26-57-217 are unconstitutional to the extent they prevent nonresidents from engaging in business in Arkansas. *Ragland v. McLane Co.*, 287 Ark. 216, 697 S.W.2d 892 (1985).

Trial court erred in finding that the Arkansas Tobacco Control Board incorrectly interpreted the Tobacco Act as limiting retail sales to physical locations in the state and in holding that barring direct-to-consumer sales of cigarettes would violate the dormant Commerce Clause of the United States Constitution; the Tobacco Control Board correctly interpreted the Tobacco Act to require cigarette retailers to sell face-to-face and such interpretation did not violate the dormant Commerce Clause. *Ark. Tobacco Control Bd. v. Santa Fe Natural Tobacco Co.*, 360 Ark. 32, 199 S.W.3d 656 (2004).

Cited: *Wometco Servs., Inc. v. Gaddy*, 272 Ark. 452, 616 S.W.2d 466 (1981).

26-57-204. Violations.

Any person who violates any of the sections of this subchapter for which a specific penalty is not provided is guilty of a violation.

History. Acts 1977, No. 546, § 30; A.S.A. 1947, § 84-4530.

Cross References. Violations, §§ 5-1-108, 5-4-201.

26-57-205. Enforcement of subchapter.

It is the duty of all state, county, and city officers to enforce the provisions of this subchapter.

History. Acts 1977, No. 546, § 25; A.S.A. 1947, § 84-4525.

26-57-206. Rules.

The Director of the Department of Finance and Administration and the Director of Arkansas Tobacco Control are empowered to promulgate rules for the proper enforcement of their powers and duties as specifically prescribed by this subchapter,

except the Director of Arkansas Tobacco Control shall have no authority to promulgate rules regarding manufacturers.

History. Acts 1979, No. 911, § 16; A.S.A. 1947, § 84-4523n; Acts 1997, No. 1337, § 2; 2009, No. 785, § 8.

Amendments. The 2009 amendment substituted “Director of Arkansas Tobacco Control” for “Director of the Arkansas Tobacco Control Board” in two places, and deleted “and regulations” following “rules” in the heading and two places in the text.

26-57-207. Business of handling, receiving, etc., a privilege.

The business of handling, receiving, possessing, storing, distributing, taking orders for, for soliciting orders of, selling, offering for sale, and dealing in, through sale, barter, or exchange, any cigarettes or other tobacco products is declared to be a privilege under the Arkansas Constitution and laws of the State of Arkansas.

History. Acts 1977, No. 546, § 3; 1983, No. 255, § 1; 1985, No. 684, § 1; 1985, No. 824, § 1; A.S.A. 1947, § 84-4503.

Case Notes

Cited: Wometco Servs., Inc. v. Gaddy, 272 Ark. 452, 616 S.W.2d 466 (1981).

26-57-208. Levy of tax — Rates of tax.

An excise or privilege tax is levied as follows:

(1) (A) The excise or privilege tax on cigarettes sold in this state is ten dollars and fifty cents (\$10.50) per one thousand (1,000) cigarettes sold.

(B) (i) Whenever there are two (2) adjoining cities each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in such adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside of Arkansas.

(ii) The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(C) (i) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line or in any Arkansas city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state.

(ii) The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(D) (i) The tax on cigarettes shall be at the rate imposed by law on cigarettes sold in the adjoining state when the cigarettes are sold in an Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city.

(ii) As used in subdivision (1)(D)(i) of this section, “Arkansas border city” means a city that is entitled to the border zone cigarette tax rate and is separated by a navigable river from a city in the other state that is located in a metropolitan statistical area designated by the United States Census Bureau with a population of at least one million (1,000,000).

(iii) The tax shall not exceed the tax upon cigarettes otherwise imposed under Arkansas law.

(E) (i) The reduced border zone tax rates set forth in subdivisions (1)(B)-

(D) of this section apply only to sales made at retail by Arkansas border zone retailers to actual consumers of the cigarettes.

(ii) (a) The sale of cigarettes by an Arkansas border zone retailer to any other retailer or wholesaler does not qualify for the reduced border zone tax rate.

(b) The full amount of Arkansas cigarette excise tax will be due on any cigarettes sold in such a manner;

(2) (A) The excise or privilege tax on tobacco products other than cigarettes on the sale by wholesalers to retailers, or by licensed retailers to the Director of the Department of Finance and Administration within the state is sixteen percent (16%) of the manufacturer's selling price.

(B) The tax shall be computed on the actual manufacturer's invoice price before discounts;

(3) (A) (i) The taxes levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(ii) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(B) (i) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(a) Five percent (5%) of the total tobacco tax due for the first offense;

(b) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(c) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(ii) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(C) The provisions of this subdivision (3) shall not affect the provisions of § 26-57-228; and

(4) As provided in § 26-57-244, the director shall have the authority to make a direct assessment of excise tax against any person in possession of an untaxed tobacco product or unstamped cigarettes.

History. Acts 1977, No. 546, § 7; 1983, No. 399, § 1; 1985, No. 356, § 1; A.S.A. 1947, § 84-4507; Acts 1987, No. 628, § 2; 1997, No. 1337, § 3; 1999, No. 1246, § 1; 2007, No. 817, § 1; 2009, No. 940, § 1.

Amendments. The 2007 amendment added (4).

The 2009 amendment inserted (1)(D), redesignated the subsequent subdivision accordingly, and substituted "(1)(B)-(D)" for "(1)(B) and (C)" in (1)(E)(i).

Case Notes

Cited: Porter v. McCuen, 310 Ark. 562, 839 S.W.2d 512 (1992).

26-57-209. Exemption from tax.

Tobacco products sold to military departments of the United States or the State of Arkansas for resale on military bases within this state, and tobacco products sold and delivered to authorized purchasers outside this state for resale, and to other wholesalers

licensed under this subchapter, are not subject to the taxes imposed by § 26-57-208.

History. Acts 1977, No. 546, § 7; 1979, No. 911, § 8; A.S.A. 1947, § 84-4507.

26-57-210. Waiver of tax.

The Director of the Department of Finance and Administration has the authority to waive the tax on any tobacco products donated or given to inmates of correctional institutions or patients of hospitals by any patriotic or charitable organization or by the United States Government in the manner prescribed by the director.

History. Acts 1977, No. 546, § 17; A.S.A. 1947, § 84-4517; Acts 1997, No. 1337, § 4.

26-57-211. [As amended by Acts 1997, No. 434.] [Repealed.]

Publisher's Notes. This section, concerning wholesalers to pay taxes and reports and remittance of tax, was repealed by Acts 2009, No. 655, § 69. The section was derived from the following sources: Acts 1977, No. 546, § 8; A.S.A. 1947, § 84-4508; Acts 1993, No. 495, § 1; 1997, No. 434, § 7.

For current law, see the next section.

26-57-211. Wholesaler to pay taxes — Reports and remittance of tax.

(a) (1) (A) The taxes levied by this subchapter shall be reported and paid by wholesalers licensed under § 26-57-214.

(B) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed under § 26-57-214.

(2) (A) A taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(3) This subsection does not affect § 26-57-228.

(b) (1) On or before the fifteenth day of each month, every wholesaler shall file a report for the previous month's tax collections with the Director of the Department of Finance and Administration.

(2) The report shall provide the information prescribed by the director.

(c) (1) (A) (i) When the report under subsection (b) of this section is filed, the wholesaler shall remit to the director with the report ninety-eight percent (98%) of the tax due for the previous month.

(ii) The discount of two percent (2%) under subdivision (c)(1)(A)(i) of this section does not apply to taxes due under § 26-57-804 or § 26-57-805.

(B) If the stamps deputy fails to remit the tax on or before the twentieth

day of each applicable month, the wholesaler forfeits his or her claim to the discount described in subdivision (c)(1)(A) of this section, and the wholesaler shall remit to the director one hundred percent (100%) of the amount of tax due, plus any penalty or interest due.

(2) If the payment of any tax due becomes delinquent, the taxpayer shall remit the full amount of the tax due plus penalty.

(d) (1) The director may add a penalty of ten percent (10%) of the tax due to the tax due for the failure to file a report or for the failure to remit the taxes at the time required, or for both.

(2) If the director determines there has been an attempt to evade the tax, a penalty of not more than fifty percent (50%) of the tax due shall be added to the tax due.

(e) (1) (A) In computing the amount of tax due under this subchapter and any act supplemental to this subchapter, a wholesaler may deduct the cost of cigarette tax stamps and tobacco taxes lost through bad debts.

(B) Any deduction taken or refund paid attributable to bad debts shall not include interest.

(C) A bad debt incurred for a sale made before August 13, 1993, shall not be deducted.

(D) A bad debt must be deducted within three (3) years of the date of the sale for which the debt was incurred.

(E) If a deduction is taken for a bad debt and the taxpayer subsequently collects the debt in whole or in part, the tax on the amount so collected shall be paid and reported on the next return due after the collection.

(2) (A) As used in this section, "bad debt" means any cigarette or tobacco tax that the wholesaler legally claims as a bad debt deduction for federal income tax purposes.

(B) "Bad debt" includes without limitation a worthless check, a worthless credit card payment, and an uncollectible credit account.

(C) "Bad debt" does not include financing charges or interest, an uncollectible amount on property that remains in the possession of the taxpayer or vendor until the full purchase price is paid, expenses incurred in attempting to collect any debt, a debt sold or assigned to a third party for collection, and repossessed property.

History. Acts 1977, No. 546, § 8; A.S.A. 1947, § 84-4508; Acts 1993, No. 495, § 1; 1997, No. 434, § 7; 1997, No. 1337, § 5; 1999, No. 1246, § 2; 2009, No. 655, § 70.

Amendments. The 2009 amendment rewrote (a)(3) and (c)(1); substituted "without limitation" for "but is not limited to" in (e)(2)(B) and made minor stylistic changes throughout the section.

26-57-212. Wholesalers, warehousemen — Reports, payment of tax, and records.

(a) (1) Every licensed wholesaler and warehouse that handles, receives, stores, sells, and disposes of tobacco products in any manner in this state shall file a report with the Director of the Department of Finance and Administration on or before the fifteenth day of each month.

(2) Retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(3) (A) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(4) The provisions of this subsection shall not affect the provisions of § 26-57-228.

(b) The report shall include:

(1) A statement of the tobacco products on hand at the beginning of the preceding month;

(2) The receipts and disbursements of tobacco products handled during the preceding month; and

(3) Any other information about the purchases and sales as may be prescribed by the director.

(c) All taxes due for the preceding month shall be remitted to the director at the time the report is filed.

(d) (1) (A) Every wholesaler and warehouse shall permit personnel of the Department of Finance and Administration and auditors of the Arkansas Tobacco Control Board to enter into and to inspect their stock of tobacco products and all books, invoices, and any documents and records relating to receipts and disbursements of tobacco products.

(B) Auditors shall not release to the board or to the public any information identifying customers of the manufacturer, wholesaler, or warehouse except when necessary to notify the board of alleged violations of this subchapter.

(2) However, the board shall have no authority under this subchapter or any other act, to require any manufacturer or other person to disclose any confidential, competitive commercial information furnished by a manufacturer, without that manufacturer's written permission.

(e) (1) (A) Every tobacco product wholesaler doing business in this state and whose main warehouse or headquarters is in another state, shall keep a record of all purchases and sales transactions involving cigarettes, cigars, cigarette papers, snuff, and other tobacco products.

(B) The record shall be maintained at a facility located in Arkansas.

(C) The record shall be accumulated on or before the twentieth day of each month covering the previous calendar month.

(2) Any person who fails to maintain records required by this section shall be subject to a fine of:

(A) One hundred dollars (\$100) for the first offense;

(B) Two hundred fifty dollars (\$250) for the second offense;

(C) Five hundred dollars (\$500) and a ninety-day suspension of license for the third offense; and

(D) One thousand dollars (\$1000) and permanent revocation of license for the fourth and subsequent offenses.

(f) (1) (A) All purchases of cigars, cigarettes, cigarette papers, smoking tobacco, and other tobacco products for distribution within the State of Arkansas by any nonresident tobacco products wholesaler shall be evidenced by a separate invoice from the seller correctly showing the date of purchase and the quantity of each of the articles purchased by the wholesaler for distribution within Arkansas.

(B) Such stock purchased for distribution within Arkansas shall be kept in an entirely separate part of the building, separate and apart from stock purchased for sale or distribution in another state.

(2) At the time of shipping or delivering any cigars, cigarettes, cigarette papers, smoking tobaccos, or other tobacco into the State of Arkansas, every nonresident tobacco product wholesaler shall make a true duplicate invoice of the transaction which shall show full and complete details of the sale or delivery of those articles and shall retain the duplicate invoice, subject to use and inspection by the department and the board for a period of three (3) years.

(3) Nonresident tobacco wholesalers shall also keep a record of all cigarettes, cigarette papers, cigars, smoking tobaccos, and other tobacco products purchased by them for distribution within the State of Arkansas, and all books, records, and memoranda pertaining to the purchase and sale of such products shall be subject to inspection by the department and the board.

History. Acts 1977, No. 546, § 19; A.S.A. 1947, § 84-4519; Acts 1989, No. 893, § 1; 1997, No. 1337, §§ 6, 7; 1999, No. 1246, § 3.

26-57-213. Invoices.

(a) The tax shall be set out and identified on each invoice or statement as the “Arkansas Cigarette or Tobacco Products Excise Tax” as a separate billing or item.

(b) Copies of all invoices for the purchase or sale of any tobacco products shall be retained by each manufacturer, wholesaler, vendor, and retailer for a period of three (3) years, subject to examination by the Director of the Department of Finance and Administration and the Director of Arkansas Tobacco Control or their authorized agents upon demand at any time during regular business hours, except that only the Director of the Department of Finance and Administration may examine the invoices of manufacturers.

History. Acts 1977, No. 546, § 7; 1979, No. 911, § 8; A.S.A. 1947, § 84-4507; Acts 1997, No. 1337, § 8; 2009, No. 785, § 9.

Amendments. The 2009 amendment substituted “Director of Arkansas Tobacco Control” for “Director of the Arkansas Tobacco Control Board” in (b).

26-57-214. Registration and licensing required prior to doing business.

(a) No person shall deal with, deliver or cause to be delivered to any retailer or consumer, or otherwise do business in tobacco products in this state without having first registered with the Director of Arkansas Tobacco Control and obtained a permit or license for that purpose, except that a manufacturer need only to register in accordance with § 26-57-215(b)(1).

- (b) All permits and licenses shall be issued by the director.
- (c) A wholesaler, retailer, general tobacco products vendor, or restricted tobacco products vendor who intends to sell tobacco products at or from one (1) or more places of business owned, rented, or leased by it shall be required to obtain a separate license for each such place of business.
- (d) (1) Any person licensed as a wholesaler shall not operate as a retailer unless a retailer's license is first secured.
- (2) Any person licensed as a retailer shall not operate as a wholesaler unless a wholesaler's license is first secured.
- (e) Any person who pleads guilty or nolo contendere to or is found guilty of buying, selling, or otherwise doing business in cigarettes or tobacco products in this state without first obtaining the appropriate license or permit is guilty of a Class C misdemeanor.
- History.** Acts 1977, No. 546, § 4; 1979, No. 911, § 7; A.S.A. 1947, § 84-4504; Acts 1997, No. 1337, § 9; 2003, No. 372, § 1; 2009, No. 785, § 10.

Amendments. The 2003 amendment added (e).
The 2009 amendment, in (a), inserted "deliver or cause to be delivered to any retailer or consumer," substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board," and made a related change.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Tobacco Products, 26 U. Ark. Little Rock L. Rev. 495.

26-57-215. Permits and licenses — Types.

- (a) Every person, except manufacturers, listed in this section, before commencing business, or if already in business, before continuing, shall pay an annual privilege fee and secure a permit or license from the Director of Arkansas Tobacco Control.
- (b) (1) Every manufacturer whose products are sold in this state shall register with the Director of the Department of Finance and Administration. A manufacturer so registered is not licensed for purposes of this subchapter.
- (2) Every wholesaler of cigarettes who operates a place of business shall secure a wholesale cigarette permit and every wholesaler of any other tobacco products except cigarettes who operates a place of business shall secure a wholesale tobacco permit. Any wholesaler doing business in both cigarettes and other tobacco products shall secure both a wholesale cigarette permit and a wholesale tobacco permit.
- (3) Every salesperson of any tobacco product who contacts a retailer in this state for the purpose of soliciting or taking and processing orders for the sale of tobacco products, or who through contact delivers or causes delivery of any tobacco product to a retailer in this state, shall first secure a salesperson's license. Application shall be made by the wholesaler or general tobacco products vendor who is the salesperson's employer. A salesperson's license is not transferable to another employer and must be surrendered to the Director of Arkansas Tobacco Control by the employer upon termination of the salesperson's employment.
- (4) (A) Every retailer of cigarettes who operates a place of business shall secure a retail cigarette permit and every retailer of any other tobacco products, except cigarettes, who operates a place of business shall secure a retail tobacco permit. Any

retailer doing business in both cigarettes and other tobacco products shall secure both a retail cigarette permit and a retail tobacco permit.

(B) Retailers may secure temporary permits to operate at picnics, fairs, carnivals, circuses, or any other temporary public gathering for periods not to exceed ten (10) days for a fee of five dollars (\$5.00).

(5) Every person engaged in the business of selling, leasing, renting, or otherwise disposing of or dealing with any tobacco product vending machine in this state shall secure a dealer's license.

(6) (A) (i) Every general tobacco products vendor and every restricted tobacco products vendor must obtain a proper license from the Director of Arkansas Tobacco Control. However, municipal corporations may license and tax the privilege of doing business as a general tobacco products vendor or restricted tobacco products vendor in cities where such vendors maintain an established place of business, provided that the machine license tax imposed may not exceed fifty percent (50%) of the amounts levied on such vendors' licenses under this subchapter.

(ii) If a municipality by ordinance licenses or taxes the privilege of doing business as a general tobacco products vendor or restricted tobacco products vendor, proof that such a license is in good standing shall be a mandatory condition for the issuance of a state license required under this section.

(B) (i) In addition, every general tobacco products vendor or restricted tobacco products vendor must obtain a permit stamp for each machine of any type placed in operation in this state for the purpose of vending any tobacco products. This stamp shall be affixed to the machine in a conspicuous location together with a decal or card reciting the name, address, and license number of the vendor operating the machine.

(ii) No stamp will be issued for any machine upon which the state gross receipts or state compensating tax has not been paid, and the Director of the Department of Finance and Administration shall require proof of payment before the initial issue of a stamp for any tobacco products vending machine.

History. Acts 1977, No. 546, § 5; 1979, No. 911, § 6; A.S.A. 1947, § 84-4505; Acts 1997, No. 1337, § 10; 2009, No. 785, §§ 11–13.

Amendments. The 2009 amendment substituted “Director of Arkansas Tobacco Control” for “Director of the Arkansas Tobacco Control Board” in (a), (b)(3), and (b)(6)(A)(i); and rewrote the first sentence in (b)(3).

26-57-216. Permits and licenses — Number and location.

The Arkansas Tobacco Control Board is empowered to determine in its reasonable discretion and in accordance with the provisions of this subchapter:

- (1) The number of licenses to be granted in the state;
- (2) The locations thereof; and
- (3) The persons to whom they are to be granted.

History. Acts 1977, No. 546, § 3; 1979, No. 911, § 5; 1983, No. 255, § 1; 1985, No. 684, § 1; 1985, No. 824, § 1; A.S.A. 1947, § 84-4503; Acts 1997, No. 1337, § 11.

Case Notes

Cited: Wometco Servs., Inc. v. Gaddy, 272 Ark. 452, 616 S.W.2d 466 (1981).

26-57-217, 26-57-218. [Repealed.]

Publisher's Notes. These sections, concerning permits and licenses, residency requirements and public hearings, were repealed by Acts 1997, No. 1337, § 12. They were derived from the following sources:

26-57-217. Acts 1977, No. 546, § 5; 1979, No. 911, § 6; 1983, No. 255, §§ 3, 4; A.S.A. 1947, §§ 84-4505, 84-4505.1.

26-57-218. Acts 1977, No. 546, § 3; 1979, No. 911, § 5; 1983, No. 255, § 1; 1985, No. 684, § 1; 1985, No. 824, § 1; A.S.A. 1947, § 84-4503.

26-57-219. Permits and licenses — Annual privilege tax.

(a) The annual privilege tax or fee for each permit or license authorized by § 26-57-215 is established as follows:

- (1) Wholesale Cigarette Permit \$ 500.00
- (2) Wholesale Tobacco Permit 500.00
- (3) General Tobacco Products Vending Permit (vender) 100.00
- (4) Tobacco Products Vending Machine License, per machine 10.00
- (5) (A) Retail Cigarette/Tobacco Permit for retailers whose weekly gross sales are less than \$5,000 20.00
- (B) Retail Cigarette/Tobacco Permit for retailers whose weekly gross sales are between \$5,000 and \$15,000 30.00
- (C) Retail Cigarette/Tobacco Permit for retailers whose weekly gross sales are in excess of \$15,000 50.00
- (6) Salesperson's License 25.00
- (7) Dealer's License 25.00
- (8) Manufacturer's Representative Fee 25.00

(b) (1) All permits and licenses issued under this section shall expire on June 30 of the year following the effective date of issuance.

(2) Upon the failure to timely pay the annual privilege fee, a late fee of two (2) times the amount of any license or permit fee in question will be owed in addition to the annual privilege fee.

(3) No permit or license shall be issued to the applicant until the late fee and the license or permit fee has been paid.

(c) No permit or license issued under this section shall be renewed for a permit or license holder who is delinquent more than ninety (90) days on any privilege fee, tax relating to the sale or dispensation of cigarettes or tobacco products, or any other state and local tax due the Director of the Department of Finance and Administration.

(d) A person who is delinquent more than ninety (90) days on any state or local tax may not renew or obtain a permit or license issued under this section except upon certification that the permit or license holder has entered into a repayment agreement with the Department of Finance and Administration and that the person is current on the payments.

History. Acts 1977, No. 546, § 5; 1979, No. 911, § 6; A.S.A. 1947, § 84-4505; Acts 1997, No. 1337, § 13; 1997, No. 1359, § 22; 1999, No. 1591, §§ 6, 7; 2001, No. 1368, § 2.

A.C.R.C. Notes. As enacted by Acts 2001, No. 1368, § 2, subsection (c) began:

“Beginning June 1, 2002,”.

26-57-220. Permits and licenses — Duration.

All permits and licenses issued under this subchapter shall expire on June 30 of the year following the effective date of issuance.

History. Acts 1977, No. 546, § 5; A.S.A. 1947, § 84-4505.

26-57-221. Permits and licenses — Not transferable.

No license or permit is transferable, and the location of any place of business for which any license is issued may not be changed without permission of the Director of Arkansas Tobacco Control.

History. Acts 1977, No. 546, § 5; 1979, No. 911, § 6; A.S.A. 1947, § 84-4505; Acts 1997, No. 1337, § 14; 2009, No. 785, § 14.

Amendments. The 2009 amendment substituted “Director of Arkansas Tobacco Control” for “Director of the Arkansas Tobacco Control Board.”

26-57-222. Permits and licenses — Duplicates.

When a permit or license is lost by a holder, a duplicate permit or license may be issued upon application and for a fee of five dollars (\$5.00) when sufficient proof has been given the Director of Arkansas Tobacco Control.

History. Acts 1977, No. 546, § 5; A.S.A. 1947, § 84-4505; Acts 1997, No. 1337, § 14; 2009, No. 785, § 14.

Amendments. The 2009 amendment substituted “Director of Arkansas Tobacco Control” for “Director of the Arkansas Tobacco Control Board.”

26-57-223. Permits and licenses — Suspension or revocation.

(a) All permits and licenses issued under this subchapter may be suspended or revoked by the Director of Arkansas Tobacco Control for any violation of this subchapter or the rules pertaining to this subchapter.

(b) The director may revoke for one (1) year all licenses or permits to deal in tobacco products of any person who is convicted of violating this subchapter or the regulations pertaining to this subchapter a second time.

History. Acts 1977, No. 546, §§ 25, 30; A.S.A. 1947, §§ 84-4525, 84-4530; Acts 1997, No. 1337, § 14; 2001, No. 965, § 1; 2009, No. 785, § 14.

Amendments. The 2009 amendment, in (a), substituted “Director of Arkansas Tobacco Control” for “Director of the Arkansas Tobacco Control Board,” and substituted “rules” for “regulations.”

Case Notes

Proceedings.

Proceedings.

Even though the director for the Arkansas Tobacco Control Board sent the tobacco company an offer of settlement “recommending” a \$500 fine for the tobacco company which gave unlawful rebates to retailers, and the company accepted the offer, the defense of agency estoppel was not preserved, and because the evidence established that the company had paid rebates to at least 28 Arkansas retail establishments, it was not arbitrary or capricious for the Board to reject the

“recommendation” and impose a \$28,000 fine, and suspension of the company's permit for six months. *H.T. Hackney Co. v. Davis*, 353 Ark. 797, 120 S.W.3d 79 (2003).

26-57-224. Vendor's bond.

(a) Every vendor before beginning operation or commencing business in this state shall give bond to the State of Arkansas.

(b) The bond shall be conditioned upon the faithful performance of the duties and obligations imposed by this subchapter and the regulations promulgated by the Director of the Department of Finance and Administration.

(c) The bond required shall be established by the following table:

- | | |
|----------------------------------|------------|
| (1) Up to 30 machines | \$2,000.00 |
| (2) 31 to 60 machines | 3,000.00 |
| (3) 61 to 90 machines | 4,000.00 |
| (4) 91 to 120 machines | 5,000.00 |
| (5) Over 120 machines | 6,000.00 |

(d) This bond shall be executed by a solvent surety company authorized to do business in this state or such other responsible surety approved by the director.

History. Acts 1977, No. 546, § 6; A.S.A. 1947, § 84-4506; Acts 1997, No. 1337, §§ 15, 16.

26-57-225. Failure to secure permit unlawful.

Any person required to pay taxes under the provisions of this subchapter who fails to secure a permit is guilty of a violation for the first and second offense and is guilty of a Class C misdemeanor for each additional offense.

History. Acts 1977, No. 546, § 28; A.S.A. 1947, § 84-4528.

26-57-226. Sale, delivery, etc., without license — Penalty.

Any person within the jurisdiction of this state who is not licensed to sell, deliver, or cause to be delivered tobacco products to consumers who sells, takes orders from, delivers, or causes to be delivered immediately or in the future any tobacco products to consumers, is guilty of a:

- (1) Class C misdemeanor for the first offense; and
- (2) Class B misdemeanor for each additional offense.

History. Acts 1977, No. 546, § 23; A.S.A. 1947, § 84-4523.

26-57-227. Operation of vending machine without license a public nuisance — Seizure and sale — Redemption.

(a) Any person who engages in the business of owning, operating, or leasing any tobacco product vending machines without first obtaining the license described in this subchapter is declared to be maintaining a public nuisance.

(b) Any tobacco product vending machine so operated may be seized and sold by the Director of Arkansas Tobacco Control at public auction upon the order of the Pulaski County Circuit Court.

(c) These machines may be redeemed prior to sale by the owner upon the payment of all taxes due on the machine and all costs and expenses incurred in enforcing this section if the offender pays all taxes and costs within ten (10) days after seizure of the machines by

the director.

History. Acts 1977, No. 546, § 28; A.S.A. 1947, § 84-4528; Acts 1997, No. 1337, § 17; 2009, No. 785, § 15.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (b).

26-57-228. Purchases from unregistered, unlicensed dealers unlawful.

(a) It is unlawful for any retailer of tobacco products to purchase tobacco products from any person other than a registered manufacturer, licensed wholesaler, or other licensed retailer.

(b) Any retailer violating the provisions of this subchapter is guilty of a Class B misdemeanor for each purchase defined in subsection (a) of this section.

History. Acts 1977, No. 546, § 9; A.S.A. 1947, § 84-4509.

26-57-229. Licensee as wholesaler and retailer.

(a) A person who is licensed as a wholesaler and as a retailer shall maintain wholesale and retail stocks in separate buildings. However, this subsection shall not apply if stamps denoting payment of the tax on the wholesale stocks and the retail stocks of cigarettes are properly affixed.

(b) Every wholesaler who maintains a business as a retailer shall keep a record of his or her wholesale operations showing the amount of stamps purchased, if any, and all purchases from whatever source, and all sales whether to himself or herself as retailer or to another. This record shall be subject to inspection by the Department of Finance and Administration and the Arkansas Tobacco Control Board.

(c) Records shall be kept on forms prescribed by the Director of the Department of Finance and Administration.

(d) When a wholesaler refuses to keep the records required by or to comply with the provisions of this section, the Director of Arkansas Tobacco Control shall revoke all permits that have been issued to the wholesaler.

History. Acts 1977, No. 546, § 20; A.S.A. 1947, § 84-4520; Acts 1997, No. 1337, § 18; 2009, No. 785, § 16.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (d).

26-57-230. Common carriers.

(a) Common carriers transporting tobacco products may be required by the Director of the Department of Finance and Administration or the Arkansas Tobacco Control Board to give a statement of all consignments of tobacco products showing date, point of origin, point of delivery, and to whom delivered.

(b) All common carriers shall permit their records relating to shipment or receipt of tobacco products to be examined by the Department of Finance and Administration or the board.

(c) Any person who fails or refuses to give to the department or the board the statement, reports, or invoices required by this section or who refuses to permit the department or

the board to examine the person's records is guilty of a Class C misdemeanor.

History. Acts 1977, No. 546, § 24; A.S.A. 1947, § 84-4524; Acts 1997, No. 1337, § 19.

26-57-231. Failure to allow inspection unlawful.

Any person required to pay taxes under the provisions of this subchapter who fails or refuses to permit the Department of Finance and Administration or the Arkansas Tobacco Control Board to examine or inspect the person's taxable stock of tobacco products, invoice books, papers, and memoranda considered necessary to secure information directly relating to the enforcement of this subchapter is guilty of a:

- (1) Violation for the first and second offense; and
- (2) Class C misdemeanor for each additional offense.

History. Acts 1977, No. 546, § 28; A.S.A. 1947, § 84-4528; Acts 1997, No. 1337, § 19.

26-57-232. Wholesalers — Restrictions — Criminal violations.

(a) A wholesaler shall conduct the wholesaler's business subject to the following restrictions:

(1) The wholesaler shall secure a permit from the Director of Arkansas Tobacco Control;

(2) Except as otherwise provided herein, the wholesaler may sell tobacco products only to persons properly licensed under this subchapter;

(3) The wholesaler before selling, delivering, or otherwise disposing of cigarettes to retailers in this state shall affix stamps of the proper denominations to show that the tax has been paid. The stamp shall be affixed in the manner prescribed by the Director of the Department of Finance and Administration; and

(4) (A) The wholesaler with each sale of cigarettes shall supply the retailer with an invoice showing the quantity, kind, and price of cigarettes sold, and shall supply the stamps required to show that the tax has been paid.

(B) The wholesaler shall retain a copy of this information in the wholesaler's files for three (3) years subject to the inspection by the Department of Finance and Administration and the Arkansas Tobacco Control Board.

(b) Any wholesaler who fails or refuses to affix or cancel the stamps or who fails or refuses to keep the records or who fails or refuses to furnish the statements and information or make the reports as required by this subchapter or as prescribed by the Director of the Department of Finance and Administration and the Director of Arkansas Tobacco Control, or who violates any of the requirements of §§ 26-57-212, 26-57-229, and 26-57-242 is guilty of a violation for the first offense and a Class C misdemeanor for each additional offense.

History. Acts 1977, No. 546, §§ 11, 23; 1979, No. 911, § 9; A.S.A. 1947, §§ 84-4511, 84-4523; Acts 1997, No. 1337, § 19; 2009, No. 785, §§ 17, 18.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (a)(1) and (b).

26-57-233. Salesperson — Restrictions — Violations.

Every salesperson who sells, offers for sale, takes orders, and solicits for sale any tobacco products for immediate or future delivery to wholesalers of tobacco products in this state

may do so only under the following restrictions:

(1) The salesperson shall secure a permit from the Director of Arkansas Tobacco Control;

(2) The salesperson may sell to or take orders for tobacco products from licensed wholesalers provided that the tobacco products are consigned or delivered only to registered manufacturers or licensed wholesalers;

(3) The salesperson may sell to or take orders for tobacco products from licensed retailers provided that the tobacco products shall be delivered to the retailer only by a licensed wholesaler; and

(4) (A) The wholesaler shall keep complete records of all sales or orders taken for dealers in tobacco products in this state, copies of all invoices, orders taken, and other instruments as evidence of sales or disposition of tobacco products.

(B) The wholesaler shall retain this information in a designated place within this state for three (3) years subject to inspection by the Department of Finance and Administration and the Arkansas Tobacco Control Board.

History. Acts 1977, No. 546, §§ 10, 23; A.S.A. 1947, §§ 84-4510, 84-4523; Acts 1997, No. 1337, § 19; 2009, No. 655, § 71; 2009, No. 785, § 19.

Amendments. The 2009 amendment by No. 655 inserted "and" at the end of (3). The 2009 amendment by No. 785 substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (1).

26-57-234. Retailers and vendors — Restrictions — Violations.

(a) Retailers and vendors shall conduct their businesses subject to the following restrictions:

(1) Retailers and vendors not possess, place in their stock, have on their premises, sell, or otherwise dispose of any cigarettes to which stamps denoting the tax due thereon have not been affixed;

(2) Retailers and vendors require that properly cancelled stamps are affixed to all cigarettes purchased or otherwise received or accepted by them before they purchase or otherwise become the owner or possessor of the cigarettes;

(3) Retailers and vendors require from the wholesaler at the time of each purchase or receipt of cigarettes an invoice showing the quantity, kind, and price of the cigarettes and the stamps required to show that the tax has been paid, and date of sale or delivery;

(4) The retailer shall keep records showing the description and date of the receipt of each lot of tobacco products, from whom purchased, and when received on the premises, or any other requirements prescribed by the Director of the Department of Finance and Administration. These records shall be subject to inspection by the Department of Finance and Administration and the Arkansas Tobacco Control Board;

(5) The Director of the Department of Finance and Administration may require retailer reports covering receipts and sales of tobacco products monthly or for any other period;

(6) The retailer shall permit the department and the board or any peace officer acting under their direction to inspect the retailer's stock of merchandise and premises, including any room or building used in connection with the retailer's business.

(b) Upon a retailer's failure to comply with any part of this section, the Director of

Arkansas Tobacco Control may revoke the retailer's permit.

(c) Any retailer or vendor who fails or refuses to retain in his or her files invoices of tobacco products and stamps, or who fails or refuses to furnish the statements and information or make the reports concerning receipts and sales of tobacco products as required by this subchapter or prescribed by the Director of the Department of Finance and Administration, or who violates any of the requirements of this section, is guilty of a violation.

History. Acts 1977, No. 546, §§ 22, 23; 1979, No. 911, §§ 10-12; A.S.A. 1947, §§ 84-4522, 84-4523; Acts 1997, No. 1337, § 19; 2009, No. 785, § 20.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (b).

26-57-235. Cigarette stamps generally.

(a) The purpose of the stamps is to provide a method for collecting the tax imposed on cigarettes sold in this state.

(b) The Director of the Department of Finance and Administration shall prescribe the kind of stamps to be used in the administration of this subchapter.

(c) (1) The director shall prepare and maintain an adequate supply of cigarette stamps.

(2) The director shall require a printer's certificate with each set of stamps delivered.

(3) The cost of printing the stamps shall be paid from the appropriation made for the administration of the Department of Finance and Administration.

(4) (A) All stamps prescribed by the director for affixation to cigarette packages shall be designed and furnished in such a fashion as to permit identification of the person that affixed the stamp to the particular package of cigarettes by means of a number or other mark on the stamp.

(B) The department shall maintain for not less than three (3) years information identifying the person that affixed the tax stamp to each package of cigarettes, which information shall not be confidential or exempt from disclosure to the public.

History. Acts 1977, No. 546, § 12; A.S.A. 1947, § 84-4512; Acts 1989, No. 699, § 1; 1997, No. 1337, § 19; 2001, No. 1545, § 3.

Case Notes

Cited: Ark. Tobacco Control Bd. v. Santa Fe Natural Tobacco Co., 360 Ark. 32, 199 S.W.3d 656 (2004).

26-57-236. Stamp deputies. [As amended by Acts 1997, No. 434.]

(a) The Director of the Department of Finance and Administration shall furnish stamps to licensed wholesalers directly or through stamp deputies.

(b) The director may appoint and commission stamp deputies, who shall be the owners or officers of wholesalers, to handle the stamps and collect the tax on cigarettes before sales of cigarettes are made to the retailers.

(c) Stamp deputies within the scope of their authority are agents of the director and shall be accountable as such for any wrongful acts.

(d) Each stamp deputy shall furnish a bond in an amount and in the form as prescribed

by the director.

(e) A stamp deputy's open account shall not exceed seventy-five percent (75%) of the total amount of the bond provided by the stamp deputy.

(f) Stamp deputies shall keep records of all stamp sales and tax collections and shall make the reports prescribed by the director.

(g) (1) A commission shall be paid by the director to stamp deputies for the sales and collection of cigarette tax stamps and for affixing the tax stamps to each package of cigarettes.

(2) The commission shall not be less than three percent (3%) of the total aggregate cigarette tax collected.

(h) (1) All deposits held by any bank for a stamp deputy which represent the sales of stamps are trust funds and shall be held as a special deposit.

(2) The commission shall not be less than three percent (3%) of the total aggregate cigarette tax collected.

History. Acts 1977, No. 546, §§ 13, 14; A.S.A. 1947, §§ 84-4513, 84-4514; Acts 1997, No. 434, § 8; 2001, No. 1669, § 32; 2001, No. 1698, § 1; 2009, No. 180, § 1; 2009, No. 655, § 72.

A.C.R.C. Notes. This section was repealed by Acts 2009, No. 655, § 72. However, it was also amended by Acts 2009, No. 180, § 1. Pursuant to Acts 2009, No. 655, § 128, the amendment by Acts 2009, No. 180, § 1, supersedes the repeal by Acts 2009, No. 655, § 72.

Amendments. The 2009 amendment by No. 180 substituted "three percent (3%)" for "three and eight-tenths percent (3.8%)" in (g).

26-57-236. Stamp deputies. [As amended by Acts 1997, No. 1337.]

(a) The Director of the Department of Finance and Administration shall furnish stamps to licensed wholesalers directly or through stamp deputies.

(b) The director may appoint and commission stamp deputies who shall be the owners or officers of wholesalers to handle the stamps and collect the tax on tobacco products before sales of tobacco products are made to the retailers.

(c) Stamp deputies within the scope of their authority are agents of the director and shall be accountable as such for any wrongful acts.

(d) Each stamp deputy shall furnish a bond in an amount and in the form as prescribed by the director.

(e) Stamp deputies shall keep records of all stamp sales and tax collections and shall make the reports prescribed by the director.

(f) The Director of the Department of Finance and Administration shall pay a commission to stamp deputies for the sale of cigarette tax stamps, the affixing of a cigarette tax stamps stamp to each package of cigarettes, and the collection of cigarette taxes. The commission paid shall not be less than three percent (3%) of the total aggregate cigarette tax collected.

(g) All deposits held by any bank for a stamp deputy which represent the sales of stamps are trust funds and shall be held as a special deposit. In the event of the failure or insolvency of the bank, the deposits shall be classed and considered as preferred claims due the State of Arkansas.

(h) A stamp deputy's open account shall not exceed seventy-five percent (75%) of the total amount of the bond provided by the stamp deputy.

History. Acts 1977, No. 546, §§ 13, 14; A.S.A. 1947, §§ 84-4513, 84-4514; Acts 1997, No. 1337, § 19; 2009, No. 180, § 2; 2009, No. 542, § 1; 2009, No. 655, § 73.

Amendments. The 2009 amendment by No. 180 substituted “three percent (3%)” for “three and eight-tenths percent (3.8%)” in (f).

The 2009 amendment by No. 542 added (h).

The 2009 amendment by No. 655 rewrote (f).

26-57-237. Cigarette stamps — Sale or delivery.

(a) The Director of the Department of Finance and Administration or the director's stamp deputy may sell or deliver cigarette stamps only to licensed wholesalers.

(b) No person shall have in his or her possession any cigarette stamps except such as have been issued in the regular way in the manner provided for in this subchapter.

(c) (1) Any cigarette or tobacco products wholesaler or any other person required by law to affix cigarette tax stamps to cigarettes sold or offered for sale in this state shall have the option to receive the stamps directly from the director or to request that the stamps be shipped to the person in a manner to be selected by the director.

(2) When the stamps are shipped to the wholesaler or other person, the shipping and insurance cost shall be borne by the wholesaler. The wholesaler or other person to whom the stamps are shipped shall be liable for payment of the stamps only upon actual receipt thereof.

(3) The receipt of tax stamps by a cigarette or tobacco products wholesaler or other person to whom the stamps are shipped shall be evidenced by a written receipt signed by the person to whom the stamps are shipped or a person designated by him or her.

(4) A wholesaler or other person who chooses a method of shipment other than the method selected by the director shall pay the director for the stamps prior to shipment.

History. Acts 1977, No. 546, § 15; A.S.A. 1947, § 84-4515; Acts 1987, No. 725, § 1; 1997, No. 1337, § 19.

26-57-238. Cigarette stamps — Refund on unsold, returned cigarettes.

When cigarettes to which stamps have been affixed are unsold and are returned by the retailer or the wholesaler who paid tax on them to the wholesaler or manufacturer from whom they were originally purchased, refund of the tax paid on such cigarettes may be made in the manner prescribed by the Director of the Department of Finance and Administration.

History. Acts 1977, No. 546, § 16; A.S.A. 1947, § 84-4516; Acts 1997, No. 1337, § 19.

26-57-239. Consumer to require stamps affixed in proper manner.

Every consumer shall require when he or she purchases, receives, takes into his or her possession, or has delivered upon his or her premises cigarettes in packages, cartons, or other containers, that the proper stamps be affixed in the manner required by this subchapter to show that the tax has been paid thereon.

History. Acts 1977, No. 546, § 18; A.S.A. 1947, § 84-4518.

26-57-240. Counterfeiting of stamps unlawful — Penalty.

Upon conviction, a person is guilty of a Class D felony if the person:

(1) Falsely and fraudulently makes, forges, or counterfeits any stamps prescribed for use in the administration of this subchapter;

(2) Knowingly has in his or her possession any false, altered, forged, previously used, or counterfeit stamps prescribed for use in the administration of this subchapter; or

(3) Knowingly utters, publishes, passes, or tenders as true any false, altered, forged, previously used, or counterfeit stamps prescribed for use in the administration of this subchapter.

History. Acts 1977, No. 546, § 29; A.S.A. 1947, § 84-4529; Acts 2009, No. 655, § 74.

Amendments. The 2009 amendment rewrote the section.

26-57-241. Reuse of containers unlawful — Penalty.

Any person who reuses or refills with cigarettes any box, package, or container from which tax paid tobacco products have been removed is guilty of a Class D felony.

History. Acts 1977, No. 546, § 29; A.S.A. 1947, § 84-4529; Acts 2005, No. 1994, § 245.

Amendments. The 2005 amendment substituted “Class D felony” for “felony and upon conviction shall be punished as is provided by § 5-1-106(c).”

26-57-242. Wholesaler — Transporting cigarettes with stamps affixed outside state for reentry.

(a) Every wholesaler of tobacco products doing business at or from an established place of business located within this state and authorized to purchase untaxed tobacco products on an open account directly from manufacturers who have general distribution of tobacco products in Arkansas, and who sell to licensed retailers, are prohibited from transporting cigarettes to which stamps have been affixed outside the boundaries of the State of Arkansas for warehousing or reentry into this state, or both, for either sale or resale.

(b) The prohibition contained in this section does not apply to any wholesaler of tobacco products who was actually engaged in and had established distribution practice of transporting cigarettes upon which the Arkansas stamp had been affixed outside the boundaries of the State of Arkansas for warehousing or reentry into the State of Arkansas, or both, for sale or resale on or before January 1, 1972.

(c) Upon violation of this section by a wholesaler, the Director of Arkansas Tobacco Control shall revoke the wholesaler's permit.

History. Acts 1977, No. 546, § 21; A.S.A. 1947, § 84-4521; Acts 1997, No. 1337, § 20; 2009, No. 785, § 21.

Amendments. The 2009 amendment substituted “Director of Arkansas Tobacco Control” for “Director of the Arkansas Tobacco Control Board” in (c).

26-57-243. Unstamped and untaxed products — Personal possession limits.

The possession limit of tobacco products by any person, upon his or her person or in his or her personal luggage for his or her personal use, not taxed or stamped in accordance with the provisions of this subchapter, is as follows:

(1) One (1) carton of ten (10) packages plus one (1) package of twenty (20)

cigarettes. A person purchasing cigarettes from a United States military base or installation may have in his or her possession three (3) cartons of ten (10) packages;

(2) One (1) box of fifty (50) cigars, small cigars, or cigarillos; or

(3) Three pounds (3 lbs.) of smoking tobacco.

History. Acts 1977, No. 546, § 27; A.S.A. 1947, § 84-4527; Acts 1997, No. 880, § 1.

26-57-244. Possession of untaxed, unstamped products — Notice and prima facie evidence.

(a) It is unlawful for any person to receive or have in his or her possession for sale, consumption, or any other purpose, any untaxed tobacco products or unstamped cigarettes unless the tax prescribed by this subchapter has been paid directly to the Director of the Department of Finance and Administration by the person in possession of the untaxed tobacco products or unstamped cigarettes.

(b) The absence of the stamps from any container of cigarettes is notice to all persons that the tax has not been paid and is prima facie evidence of the nonpayment of the tax.

(c) If tax has been paid to the director on any untaxed tobacco products or unstamped cigarettes, a consumer may establish proof of such payment by providing a receipt or any other documentation that clearly indicates that the tax was paid.

(d) The provisions of this section do not relieve any retail cigarette and tobacco permit holder from the obligations placed on them by § 26-57-228.

(e) No retail cigarette or tobacco permit holder shall have in his or her possession any unstamped cigarettes nor shall he or she have in his or her possession any tobacco products on which the tax prescribed by this subchapter has not been paid.

(f) (1) An Arkansas consumer who purchases any untaxed tobacco products or unstamped cigarettes shall be liable for reporting and remitting all excise tax due on such tobacco products or cigarettes as levied under this subchapter.(2) The tax due shall be reported on forms provided by the director on or before the fifteenth day of the month following the month in which the untaxed purchase was made.

(3) The report shall provide the information prescribed by the director.

(4) When a report is filed, the consumer shall remit the full amount of tax due on the untaxed purchase to the director.

(g) The director is authorized to directly assess the excise tax due on any untaxed tobacco products or unstamped cigarettes against a consumer who purchases such items and fails to report and remit the excise tax due in a timely manner.

(h) Subsections (f) and (g) of this section shall be subject to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(i) The provisions of this section shall not apply to wholesalers and common carriers.

History. Acts 1977, No. 546, § 26; A.S.A. 1947, § 84-4526; Acts 2007, No. 817, § 2.

Amendments. The 2007 amendment rewrote (a); inserted present (c) through (h); and redesignated former (c) as present (i).

Case Notes

Common Carriers.

Prima Facie Evidence.

Common Carriers.

Wisconsin resident who was trucking a load of cigarettes from Missouri to Texas via a direct route

who made full disclosure at the port of entry that his cargo consisted of cigarettes was in interstate commerce and not subject to Arkansas cigarette tax. *Pfeiffer v. State*, 226 Ark. 825, 295 S.W.2d 365 (1956) (decision under prior law).

Prima Facie Evidence.

Absence of proper stamps from tobacco products raised a presumption of nonpayment of the tax. *Gates v. Hughson*, 186 Ark. 348, 53 S.W.2d 581 (1932) (decision under prior law).

In an action for tax and penalties on unstamped cigarettes, the state needed to show only possession as the absence of stamps made a prima facie showing casting on the defendant the law's contemplated burden. *Thompson v. Holmes*, 222 Ark. 233, 258 S.W.2d 236 (1953), decision under prior law).

26-57-245. Unstamped products or products with unpaid taxes — Purchase, sale, receipt, etc., a criminal offense.

Except as otherwise authorized by this subchapter, any person who purchases, sells, offers for sale, receives, possesses, or transports upon his or her person, on his or her premises, or in his or her vehicle any cigarettes which do not have affixed thereon the stamps required by this subchapter, or any other tobacco products upon which the taxes imposed by this subchapter have not been paid, is guilty of a criminal offense that is a:

- (1) Class C felony if the tax value of the total amount of tobacco products is equal to or exceeds one hundred dollars (\$100); or
- (2) Class A misdemeanor if the tax value of the total amount of tobacco products is less than one hundred dollars (\$100).

History. Acts 1977, No. 546, § 23; 1979, No. 911, § 12; A.S.A. 1947, § 84-4523; Acts 2009, No. 655, § 75.

Amendments. The 2009 amendment inserted “or” at the end of (1).

26-57-246. Possession of improperly handled products as prima facie evidence.

The possession of tobacco products which have not been handled according to this subchapter by any person shall be prima facie evidence that that person intended to evade the tax thereon in order to cheat and defraud the State of Arkansas.

History. Acts 1977, No. 546, § 25; A.S.A. 1947, § 84-4525.

26-57-247. Seizure, forfeiture, and disposition of tobacco products and other property.

(a) Cigarettes to which stamps have not been affixed as provided by law are subject to seizure and shall be held as evidence for prosecution.

(b) The Director of Arkansas Tobacco Control may seize and hold for disposition of the courts or the Arkansas Tobacco Control Board all tobacco products found in the possession of a person dealing in, or a consumer of, tobacco products if:

- (1) Prima facie evidence exists that the full amount of excise tax due on the tobacco products has not been paid to the Director of the Department of Finance and Administration;
- (2) Tobacco products are in the possession of a wholesaler who does not possess a current Arkansas wholesale cigarette or tobacco permit;
- (3) A retail establishment does not possess a current Arkansas retail cigarette and tobacco permit; or

(4) The tobacco products have been offered for sale to the public at another location without a current Arkansas retail cigarette and tobacco permit.

(c) Property, including money, used to facilitate a criminal violation of this subchapter or the Unfair Cigarette Sales Act, § 4-75-701 et seq., may be seized and forfeited to the state.

(d) (1) A prosecuting attorney may institute a civil action against a person who is convicted of a criminal violation under this subchapter or the Unfair Cigarette Sales Act, § 4-75-701 et seq., to obtain a judgment for:

(A) Damages in an amount equal to the value of the property, funds, or a monetary instrument involved in the violation;

(B) The proceeds acquired by a person involved in the enterprise or by reason of conduct in furtherance of the violation; and

(C) Costs incurred by the board in the investigation and prosecution of both criminal and civil proceedings.

(2) The standard of proof in an action brought under subdivision (d)(1) of this section is preponderance of the evidence.

(e) The following are subject to forfeiture under this section upon order by a circuit court:

(1) Tobacco products distributed, dispensed, or acquired in violation of this subchapter;

(2) Raw materials, products, or equipment used or intended for use in manufacturing, compounding, processing, delivering, importing, or exporting a tobacco product in violation of this subchapter;

(3) Property that is used or intended for use as a container for property described in subdivision (e)(1) or (2) of this section;

(4) (A) Except as provided in subdivision (e)(4)(B) of this section, a conveyance, including an aircraft, vehicle, or vessel, that is used or intended to be used to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in subdivision (e)(1) or (2) of this section.

(B) (i) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this subchapter.

(ii) A conveyance is not subject to forfeiture under this section by reason of an act or omission established by the owner of the conveyance to have been committed or omitted without his or her knowledge or consent.

(C) Upon a showing described in subdivision (e)(4)(B)(i) of this section by the owner or interest holder of a conveyance, the conveyance may nevertheless be forfeited if the prosecuting attorney establishes that the owner or interest holder either knew or should reasonably have known that the conveyance would be used to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in subdivision (e)(1) or (2) of this section.

(D) A conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to an act or omission in violation of this subchapter;

(5) A book, record, or research product or material, including a formula,

microfilm, tape, or data that is used or intended for use in violation of this subchapter;

(6) (A) Except as provided in subdivision (e)(6)(B) of this section, a thing of value, including:

(i) Firearms furnished or intended to be furnished in exchange for a tobacco product in violation of this subchapter;

(ii) Proceeds or profits traceable to an exchange described in subdivision (e)(6)(A)(i) of this section; and

(iii) Money, negotiable instruments, or security used or intended to be used to facilitate a violation of this subchapter.

(B) Property shall not be forfeited under subdivision (e)(6)(A) of this section to the extent of the interest of an owner by reason of an act or omission established by him or her by a preponderance of the evidence to have been committed or omitted without his or her knowledge or consent;

(7) (A) Money, coins, or currency found in close proximity to a forfeitable tobacco product or a forfeitable record of an importation of a tobacco product is presumed to be forfeitable under this section.

(B) The burden of proof is upon a claimant of the money, coins, or currency to rebut the presumption in subdivision (e)(7)(A) of this section by a preponderance of the evidence; and

(8) (A) Except as provided in subdivision (e)(8)(B) of this section, real property if it substantially assisted in, facilitated in any manner, or was used or intended for use in the commission of any act prohibited by this subchapter.

(B) (i) Real property is not subject to forfeiture under this section by reason of an act or omission established by the owner of the real property by a preponderance of the evidence to have been committed or omitted without his or her knowledge or consent.

(ii) A forfeiture of real property encumbered by a mortgage or other lien is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to an act or omission in violation of this subchapter.

(iii) If the circuit court finds by a preponderance of the evidence that grounds for a forfeiture exist under this section, the court shall enter an order requiring the forfeiture of the real property.

(C) Upon an order of forfeiture of real property, the order shall be filed on the day issued and shall have prospective effect.

(D) A forfeiture of real property does not affect the title of a bona fide purchaser who purchased the real property before the issuance of the order, and the order has no force or effect on the title of the bona fide purchaser.

(E) A lis pendens filed in connection with an action pending under this section that may result in the forfeiture of real property is effective only from the time filed and has no retroactive effect.

(f) A tobacco product that is possessed, transferred, sold, or offered for sale in violation of this subchapter may be seized and immediately forfeited to the state.

(g) (1) Property subject to forfeiture under this subchapter may be seized by a law enforcement agent upon process issued by a circuit court having jurisdiction over the property on petition filed by the prosecuting attorney of the judicial circuit.

(2) Seizure without process may be made if:

(A) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(B) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this subchapter;

(C) The seizing law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(D) The seizing law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this subchapter.

(h) (1) A state or local law enforcement agency shall not transfer property seized by the state or local agency under this section to a federal entity for forfeiture under federal law unless the circuit court having jurisdiction over the property enters an order, upon petition by the prosecuting attorney, authorizing the property to be transferred to the federal entity.

(2) The transfer shall not be approved unless it reasonably appears that the activity giving rise to the investigation or seizure involves more than one (1) state or the nature of the investigation or seizure would be better pursued under federal law.

(i) (1) Property seized for forfeiture under this section is not subject to replevin but is deemed to be in the custody of the seizing law enforcement agency subject only to an order or decree of the circuit court having jurisdiction over the property seized.

(2) Subject to a need to retain the property as evidence, when property is seized under this subchapter, the seizing law enforcement agency may:

(A) Remove the property to a place designated by the circuit court;

(B) Place the property under constructive seizure, posting notice of pending forfeiture on it by:

(i) Giving notice of pending forfeiture to its owners and interest holders; or

(ii) Filing notice of pending forfeiture in an appropriate public record relating to the property;

(C) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money or is not needed for evidentiary purposes, deposit it into an interest-bearing account; or

(D) Provide for another agency or custodian, including an owner, secured party, mortgagee, or lienholder, to take custody of the property and service, maintain, and operate it as reasonably necessary to maintain its value in an appropriate location within the jurisdiction of the court.

(3) (A) In case of transfer of property, a transfer receipt shall be prepared by the transferring agency.

(B) The transfer receipt shall:

(i) List a detailed and complete description of the property being transferred;

(ii) State to whom the property is being transferred and the source or authorization for the transfer; and

(iii) Be signed by both the transferor and the transferee.

(C) Both transferor and transferee shall maintain a copy of the transfer receipt.

(4) A person who acts as custodian of property under this section is not liable to any person on account of an act done in a reasonable manner in compliance with an order under this subchapter.

(j) (1) Property seized by a state or local law enforcement officer under this section who is detached to, deputized or commissioned by, or working in conjunction with a federal agency remains subject to this section.

(2) (A) If property is seized for forfeiture by a law enforcement agency under this section, the seizing law enforcement officer shall prepare and sign a confiscation report.

(B) (i) The party from whom the property is seized shall also sign the confiscation report if present and shall immediately receive a copy of the confiscation report.

(ii) If the party refuses to sign the confiscation report, the confiscation report shall be signed by one (1) additional law enforcement officer, stating that the party refused to sign the confiscation report.

(C) The original confiscation report shall be:

(i) Filed with the seizing law enforcement agency within forty-eight (48) hours after the seizure; and

(ii) Maintained in a separate file.

(D) One (1) copy of the confiscation report shall be retained by the seizing law enforcement officer.

(3) The confiscation report shall contain the following information:

(A) A detailed description of the property seized including serial or model numbers and odometer or hour reading of vehicles or equipment;

(B) The date of seizure;

(C) The name and address of the party from whom the property was seized;

(D) The reason for the seizure;

(E) The location where the property will be held;

(F) The seizing law enforcement officer's name; and

(G) A signed statement by the seizing law enforcement officer stating that the confiscation report is true and complete.

(4) Within three (3) business days after receiving the confiscation report, the seizing law enforcement agency shall forward a copy of the confiscation report to the prosecuting attorney for the district where the property was seized and to the Director of Arkansas Tobacco Control.

(5) (A) The Division of Legislative Audit shall notify the Director of Arkansas Tobacco Control and a circuit court in the county of a law enforcement agency, prosecuting attorney, or other public entity that the law enforcement agency, prosecuting attorney, or public entity is ineligible to receive forfeited funds, forfeited property, or grants from the council, if the Division of Legislative Audit determines by its own investigation or upon written notice from the Director of Arkansas Tobacco Control that:

(i) The law enforcement agency failed to complete and file the confiscation reports as required by this section;

(ii) The law enforcement agency, prosecuting attorney, or public entity has not properly accounted for the seized property; or

(iii) The prosecuting attorney has failed to comply with the notification requirement set forth in subdivision (j)(4) of this section.

(B) After the notice, the circuit court shall not issue an order distributing seized property to that law enforcement agency, prosecuting attorney, or public entity, nor shall a grant be awarded by the council to that law enforcement agency, prosecuting attorney, or public entity until:

(i) The appropriate officials of the law enforcement agency, prosecuting attorney, or public entity have appeared before the Legislative Joint Auditing Committee; and

(ii) The Legislative Joint Auditing Committee has adopted a motion authorizing subsequent transfers of forfeited property to the law enforcement agency, prosecuting attorney, or public entity.

(C) (i) If a law enforcement agency, prosecuting attorney, or other public entity is ineligible to receive forfeited property, the circuit court shall order money that would have been distributed to that law enforcement agency, prosecuting attorney, or public entity to be transmitted to the Treasurer of State for deposit into the Special State Assets Forfeiture Fund.

(ii) If the property is not cash, the circuit court shall order the property converted to cash under this section and the proceeds transmitted to the Treasurer of State for deposit into the Special State Assets Forfeiture Fund.

(D) Moneys deposited into the Special State Assets Forfeiture Fund are not subject to recovery or retrieval by an ineligible law enforcement agency, prosecuting attorney, or other public entity.

(6) The Director of Arkansas Tobacco Control shall establish by rule a standardized confiscation report form to be used by all law enforcement agencies, with specific instructions and guidelines concerning the nature and dollar value of all property, including firearms, to be included in the confiscation report and forwarded to the office of the local prosecuting attorney and the Director of Arkansas Tobacco Control under this subsection.

(k) (1) (A) The prosecuting attorney shall initiate forfeiture proceedings by filing a complaint with the circuit clerk of the county where the property was seized and by serving the complaint on all known owners and interest holders of the seized property in accordance with the Arkansas Rules of Civil Procedure.

(B) The complaint may be based on in rem or in personam jurisdiction but shall not be filed to avoid the distribution requirements set forth in subdivision (l)(1) of this section.

(C) The prosecuting attorney shall mail a copy of the complaint to the Director of Arkansas Tobacco Control within five (5) calendar days after filing the complaint.

(2) (A) The complaint shall include a copy of the confiscation report and shall be filed within sixty (60) days after receiving a copy of the confiscation report from the seizing law enforcement agency.

(B) In a case involving real property, the complaint shall be filed within sixty (60) days of the defendant's conviction on the charge giving rise to the forfeiture.

(3) (A) The prosecuting attorney may file the complaint after the expiration of the time only if the complaint is accompanied by a statement of good cause for the late

filing.

(B) However, the complaint shall not be filed more than one hundred twenty (120) days after either the date of the seizure or, in a case involving real property, the date of the defendant's conviction.

(C) (i) If the circuit court determines that good cause has not been established, the circuit court shall order that the seized property be returned to the owner or interest holder.

(ii) In addition, items seized but not subject to forfeiture under this section or subject to disposition under law or the Arkansas Rules of Criminal Procedure may be ordered returned to the owner or interest holder.

(iii) If the owner or interest holder cannot be determined, the court may order disposition of the property.

(4) Within the time set forth in the Arkansas Rules of Civil Procedure, the owner or interest holder of the seized property shall file with the circuit clerk a verified answer to the complaint that shall include:

(A) A statement describing the seized property and the owner's interest or interest holder's interest in the seized property with supporting documents to establish the owner's interest or interest holder's interest;

(B) A certification by the owner or interest holder stating that he or she has read the document and that it has not been filed for an improper purpose;

(C) A statement setting forth any defense to forfeiture; and

(D) The address at which the owner or interest holder will accept mail.

(5) (A) If the owner or interest holder fails to file an answer, the prosecuting attorney may move for default judgment under the Arkansas Rules of Civil Procedure.

(B) (i) If a timely answer has been filed, the prosecuting attorney has the burden of proving by a preponderance of the evidence that the seized property should be forfeited.

(ii) After the prosecuting attorney has presented proof, an owner or interest holder of the property seized is allowed to present evidence showing why the seized property should not be forfeited.

(iii) If the circuit court determines that grounds for forfeiting the seized property exist and that a defense to forfeiture has not been established by the owner or interest holder, the circuit court shall enter an order under this section. However, if the circuit court determines either that the prosecuting attorney has failed to establish that grounds for forfeiting the seized property exist or that the owner or interest holder has established a defense to forfeiture, the court shall order that the seized property be immediately returned to the owner or interest holder.

(l) (1) If the circuit court having jurisdiction over the seized property finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under this subchapter, the circuit court shall enter an order:

(A) To permit the law enforcement agency or prosecuting attorney to retain the seized property for law enforcement or prosecutorial purposes, subject to the following provisions:

(i) (a) Seized property may not be retained for official use for more than three (3) years, unless the circuit court finds that the seized property has been used for law enforcement or prosecutorial purposes and authorizes continued use for

those purposes on an annual basis.

(b) At the end of the retention period, the seized property shall be sold and eighty percent (80%) of the proceeds shall be deposited into the tobacco control fund of the retaining law enforcement agency or prosecuting attorney, and twenty percent (20%) of the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund.

(c) The retaining law enforcement agency or prosecuting attorney may sell the retained seized property during the time allowed for retention. However, the proceeds of the sale shall be distributed as set forth in subdivision (1)(1)(A)(i)(b) of this section;

(ii) If the circuit court determines that retained seized property has been used for personal use or by non-law enforcement personnel for non-law enforcement purposes, the circuit court shall order the seized property to be sold under § 5-5-101(e) and (f), and the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund;

(iii) (a) A law enforcement agency may use forfeited property or money if the circuit court's order specifies that the forfeited property or money is forfeited to the prosecuting attorney, sheriff, chief of police, Department of Arkansas State Police, Director of Arkansas Tobacco Control, or Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department.

(b) After the order, the prosecuting attorney, sheriff, chief of police, Department of Arkansas State Police, Director of Arkansas Tobacco Control, or Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department shall maintain an inventory of the forfeited property or money, be accountable for the forfeited property or money, and be subject to subdivision (j)(5) of this section with respect to the forfeited property or money;

(iv) (a) An aircraft is forfeited to the office of the Director of Arkansas Tobacco Control and may be used only for tobacco smuggling interdiction efforts within the discretion of the Director of Arkansas Tobacco Control.

(b) However, if the Director of Arkansas Tobacco Control determines that the aircraft should be sold, the sale shall be conducted under § 5-5-101(e) and (f), and the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund;

(v) A firearm not retained for official use shall be disposed of in accordance with state and federal law; and

(vi) A tobacco product shall be destroyed pursuant to a court order;

(B) (i) To sell seized property that is not required by law to be destroyed and that is not harmful to the public.

(ii) Seized property described in subdivision (1)(1)(B)(i) of this section shall be sold at a public sale by the retaining law enforcement agency or prosecuting attorney under § 5-5-101(e) and (f); or

(C) To transfer a motor vehicle to a school district for use in a driver education course.

(2) Disposition of forfeited property under this subsection is subject to the need to retain the forfeited property as evidence in any related proceeding.

(3) Within three (3) business days after the entry of the order, the circuit clerk shall forward to the Director of Arkansas Tobacco Control copies of the confiscation report, the circuit court's order, and other documentation detailing the disposition of the seized property.

(m) (1) (A) Subject to subdivision (j)(5) of this section, the proceeds of sales conducted under this section and moneys forfeited or obtained by judgment or settlement under this subchapter shall be deposited and distributed in the manner provided in this subsection.

(B) Moneys received from a federal forfeiture for a violation of this subchapter shall be deposited and distributed under this section.

(2) (A) The proceeds of a sale and moneys forfeited or obtained by judgment or settlement under this subchapter shall be deposited into the asset forfeiture fund of the prosecuting attorney and is subject to the following provisions:

(i) If, during a calendar year, the aggregate amount of moneys deposited in the asset forfeiture fund exceeds twenty thousand dollars (\$20,000) per county, the prosecuting attorney, within fourteen (14) days after that time, shall notify the circuit judges in the judicial district and the Director of Arkansas Tobacco Control;

(ii) Subsequent to the notification set forth in this section, twenty percent (20%) of the proceeds of an additional sale and additional moneys forfeited or obtained by judgment or settlement under this subchapter in the same calendar year shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund, and the remainder shall be deposited into the asset forfeiture fund of the prosecuting attorney;

(iii) Failure by the prosecuting attorney to comply with the notification requirement set forth in this section renders the prosecuting attorney and an entity eligible to receive forfeited moneys or property from the prosecuting attorney ineligible to receive forfeited moneys or property, except as provided in this section; and

(iv) Twenty percent (20%) of moneys in excess of twenty thousand dollars (\$20,000) that have been retained but not reported as required by this section are subject to recovery for deposit into the Special State Assets Forfeiture Fund.

(B) The prosecuting attorney shall administer expenditures from the asset forfeiture fund, which is subject to audit by the Division of Legislative Audit. Moneys distributed from the asset forfeiture fund shall be used only for law enforcement and prosecutorial purposes. Moneys in the asset forfeiture fund shall be distributed in the following order:

(i) For the satisfaction of a bona fide security interest or lien;

(ii) For payment of a proper expense of the proceeding for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;

(iii) Any balance under three hundred fifty thousand dollars (\$350,000) shall be distributed proportionally so as to reflect generally the contribution of the appropriate local or state law enforcement or prosecutorial agency's participation in any activity that led to the seizure or forfeiture of the property or deposit of moneys under this subchapter; and

(iv) Any balance over three hundred fifty thousand dollars (\$350,000) shall be forwarded to the Director of Arkansas Tobacco Control to be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund

for distribution under this section.

(C) (i) For a forfeiture in an amount greater than three hundred fifty thousand dollars (\$350,000) from which expenses are paid for a proceeding for forfeiture and sale under this section, an itemized accounting of the expenses shall be delivered to the Director of Arkansas Tobacco Control within ten (10) calendar days after the distribution of the funds.

(ii) The itemized accounting shall include the expenses paid, to whom paid, and for what purposes the expenses were paid.

(3) (A) Moneys received by a prosecuting attorney or law enforcement agency from a federal forfeiture for a violation of this subchapter shall be deposited and maintained in a separate account.

(B) However, a balance over three hundred fifty thousand dollars (\$350,000) shall be distributed as required under this section.

(4) Other moneys shall not be maintained in the account except for interest income generated by the account.

(5) Moneys in the account shall only be used for law enforcement and prosecutorial purposes consistent with governing federal law.

(6) The account is subject to audit by the Division of Legislative Audit.

(7) A balance over three hundred fifty thousand dollars (\$350,000) shall be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund in which it shall be maintained separately and distributed consistently with governing federal law and upon the advice of the Director of Arkansas Tobacco Control.

(n) In personam jurisdiction may be based on a person's presence in the state or on his or her conduct in the state, as set out in § 16-4-101(c), and is subject to the following additional provisions:

(1) A temporary restraining order under this section may be entered ex parte on application of the state upon a showing that:

(A) There is probable cause to believe that the property with respect to which the order is sought is subject to forfeiture under this section; and

(B) Notice of the action would jeopardize the availability of the property for forfeiture;

(2) (A) Notice of the entry of a temporary restraining order and an opportunity for hearing shall be afforded to a person known to have an interest in the property.

(B) The hearing shall be held at the earliest possible date consistent with Rule 65 of the Arkansas Rules of Civil Procedure and is limited to the issues of whether:

(i) There is a probability that the state will prevail on the issue of forfeiture and that failure to enter the temporary restraining order will result in the property's being destroyed, conveyed, alienated, encumbered, disposed of, received, removed from the jurisdiction of the circuit court, concealed, or otherwise made unavailable for forfeiture; and

(ii) The need to preserve the availability of property through the entry of the requested temporary restraining order outweighs the hardship on an owner or interest holder against whom the temporary restraining order is to be entered;

(3) The state has the burden of proof by a preponderance of the evidence to show that the defendant's property is subject to forfeiture;

(4) (A) On a determination of liability of a person for conduct giving rise to

forfeiture under this section, the circuit court shall enter a judgment of forfeiture of the property subject to forfeiture as alleged in the complaint and may authorize the prosecuting attorney or a law enforcement officer to seize property subject to forfeiture under this section not previously seized or not then under seizure.

(B) The order of forfeiture shall be consistent with subsection (l) of this section.

(C) In connection with the judgment, on application of the state, the circuit court may enter an appropriate order to protect the interest of the state in property ordered forfeited; and

(5) Subsequent to the finding of liability and order of forfeiture, the following procedures apply:

(A) The attorney for the state shall give notice of pending forfeiture in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure to an owner or interest holder who has not previously been given notice;

(B) An owner of or interest holder in property that has been ordered forfeited and whose claim is not precluded may file a claim within thirty (30) days after initial notice of pending forfeiture or after notice under Rule 4 of the Arkansas Rules of Civil Procedure, whichever is earlier; and

(C) The circuit court may amend the in personam order of forfeiture if the circuit court determines that a claimant has established that he or she has an interest in the property and that the interest is exempt under this section.

(o) The circuit court shall order the forfeiture of other property of a claimant or defendant up to the value of the claimant's or defendant's property found by the circuit court to be subject to forfeiture under this section if any of the forfeitable property had remained under the control or custody of the claimant or defendant and:

(1) Cannot be located;

(2) Was transferred or conveyed to, sold to, or deposited with a third party;

(3) Is beyond the jurisdiction of the circuit court;

(4) Was substantially diminished in value while not in the actual physical custody of the seizing law enforcement agency;

(5) Was commingled with other property that cannot be divided without difficulty; or

(6) Is subject to interest exempted from forfeiture under this subchapter.

(p) (1) There is created on the books of law enforcement agencies and prosecuting attorneys a tobacco control fund.

(2) The fund shall consist of moneys obtained under this section and other revenue as may be provided by law or ordinance.

(3) Moneys in the tobacco control fund shall be appropriated on a continuing basis and are not subject to the Revenue Stabilization Law, § 19-5-101 et seq.

(4) (A) The fund shall be used for law enforcement and prosecutorial purposes.

(B) Each prosecuting attorney shall submit to the Director of Arkansas Tobacco Control on or before June 30 of each year a report detailing moneys received and expenditures made from the tobacco control fund during the preceding twelve-month period.

(5) The law enforcement agencies and prosecuting attorneys shall submit to the Director of Arkansas Tobacco Control on or before June 30 of each year a report

detailing any moneys received and expenditures made from the tobacco control fund during the preceding twelve-month period.

(6) Moneys from the tobacco control fund may not supplant other local, state, or federal funds.

(7) The tobacco control fund is subject to audit by the Division of Legislative Audit.

History. Acts 1977, No. 546, § 25; A.S.A. 1947, § 84-4525; Acts 1997, No. 1337, § 21; 2009, No. 785, § 22; 2009, No. 939, § 1.

Amendments. The 2009 amendment by No. 785 substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (b).

The 2009 amendment by No. 939 rewrote the section heading, in (a), substituted "by law" for "in this subchapter" and made a minor stylistic change; rewrote (b); and added (c) through (p).

26-57-248. Possession or sale of products with unpaid taxes — Supplemental fines.

(a) Any person who places in his or her stock or who has in his or her possession or on his or her premises, or who sells or offers for sale, any tobacco products on which the tax prescribed by law has not been paid in addition to the other fines and forfeitures may be subject to a fine of:

(1) Twenty-five dollars (\$25.00) for each package of cigarettes, little cigars, and cigarillos up to twenty (20) packages and fifty dollars (\$50.00) for each package in excess of twenty (20) packages, so held, sold, or offered for sale; and

(2) Fifty dollars (\$50.00) for each box of cigars and twenty-five dollars (\$25.00) for each unit of other tobacco products so held, sold, or offered for sale.

(b) The penalty shall be held to be in the nature of a civil penalty and may be collected by civil action and may be levied by the Arkansas Tobacco Control Board or any circuit court of this state.

History. Acts 1977, No. 546, § 27; 1985, No. 684, § 2; 1985, No. 824, § 2; A.S.A. 1947, § 84-4527; Acts 2009, No. 785, § 23.

Amendments. The 2009 amendment deleted "Liquidated damages" from the section heading; made a minor stylistic change in (a); and in (b), substituted "a civil penalty" for "liquidated damages" and added "and may be levied by the Arkansas Tobacco Control Board or any circuit court of this state."

26-57-249. Destruction of products upon conviction — Procedure.

(a) Upon conviction of any person charged with a violation of any tobacco law or rule which resulted in the seizure of tobacco products, the court shall issue an order to destroy the tobacco products confiscated by the Director of Arkansas Tobacco Control or by any state, county, or municipal officer in this state.

(b) Upon a finding of guilty of any person charged with a violation of a state tobacco law or rule in a proceeding before the Arkansas Tobacco Control Board that resulted in the seizure of tobacco products, the Arkansas Tobacco Control Board shall issue an order to destroy the tobacco products confiscated by the director or by any state, county, or municipal officer in this state.

(c) Every court of record in this state shall notify the director of the disposition made of

each case in the court as to whether the defendant was convicted or acquitted.

(d) Upon application of the director, the Arkansas Tobacco Control Board or the court issuing a destruction order may instead release the tobacco products to the use and benefit of Arkansas Tobacco Control for suitable law enforcement or training purposes.

History. Acts 1977, No. 546, § 34; A.S.A. 1947, § 84-4534; Acts 1997, No. 1337, § 22; 2001, No. 966, § 1; 2009, No. 785, § 24.

Amendments. The 2009 amendment substituted “Destruction” for “Sale” in the section heading; rewrote (a), inserted (b), redesignated the subsequent subsection, and added (d).

26-57-250. Civil action to recover tax and penalties — Party defendants.

(a) When the Director of the Department of Finance and Administration finds from investigation that the state has lost tax revenue because of the evasion of any provision of this subchapter, the director may bring suit in the proper court to recover such tax and penalties.

(b) The action shall lie against the person evading the tax and against any person who aided, abetted, or assisted in such evasion.

History. Acts 1977, No. 546, § 31; A.S.A. 1947, § 84-4531; Acts 1997, No. 1337, § 22.

26-57-251. Civil actions brought in name of director — Criminal actions.

(a) All civil actions arising under this subchapter shall be brought by and in the name of the Director of the Department of Finance and Administration or the Director of Arkansas Tobacco Control, whichever is appropriate under the provisions of this subchapter.

(b) All criminal actions shall be brought and prosecuted by the proper prosecuting attorney.

History. Acts 1977, No. 546, § 32; A.S.A. 1947, § 84-4532; Acts 1997, No. 1337, § 22; 2009, No. 785, § 25.

Amendments. The 2009 amendment substituted “Director of Arkansas Tobacco Control” for “Director of the Arkansas Tobacco Control Board” in (a).

26-57-252. No bond for costs required.

No bond for costs shall be required of the Department of Finance and Administration or the Arkansas Tobacco Control Board in any court in this state for the prosecution of any violation of this subchapter.

History. Acts 1977, No. 546, § 33; A.S.A. 1947, § 84-4533; Acts 1997, No. 1337, § 22.

26-57-253. Criminal actions — Appeals.

(a) In all prosecutions in the district courts and city courts or other courts of this state, the State of Arkansas shall have the same right of appeal to the circuit courts of this state and upon the same terms as the defendant now has under the law in misdemeanor cases.

(b) When appealed, the cases shall be tried de novo by the circuit court.

History. Acts 1977, No. 546, § 33; A.S.A. 1947, § 84-4533; Acts 2003, No. 1185, § 267.

Amendments. The 2003 amendment substituted “district and city” for “municipal, police and

justice" in (a).

Effective Dates. Acts 2003, No. 1185, § 267; Jan. 1, 2005, by its own terms.

26-57-254. Health inspections.

In order to assure that the citizens of this state receive only tobacco products which are fresh and not contaminated, the Director of the Department of Health is authorized under this subchapter to make reasonable inspection of any tobacco products in places of storage or distribution authorized under this subchapter and may require any such tobacco products found to be contaminated or not fresh be removed from stock and be returned to the proper wholesaler or manufacturer for disposal according to law.

History. Acts 1977, No. 546, § 3; 1979, No. 911, § 5; 1983, No. 255, § 1; 1985, No. 684, § 1; 1985, No. 824, § 1; A.S.A. 1947, § 84-4503.

Case Notes

Cited: Wometco Servs., Inc. v. Gaddy, 272 Ark. 452, 616 S.W.2d 466 (1981).

26-57-255. Arkansas Tobacco Control Board.

(a) There is hereby created the Arkansas Tobacco Control Board to consist of eight (8) members appointed by the Governor. The board shall be constituted as follows:

(1) Two (2) members of the board shall be tobacco products wholesalers;

(2) Two (2) members of the board shall be tobacco products retailers; and

(3) Four (4) members of the board shall be members of the public at large who are not public employees or officials, at least one (1) of which shall be an African American, and two (2) of whom shall be selected from a list of at least eight (8) candidates supplied to the Governor by the Arkansas Medical Society.

(b) The Governor shall designate which member of the board shall act as chair and that person shall serve as chair for two (2) years unless his or her membership on the board ceases prior to the end of the two-year period.

(c) (1) All members of the board must be residents of the State of Arkansas and confirmed by the Senate.

(2) The term of office shall be five (5) years, except that the initial board shall be appointed to staggered terms in that the term of one (1) member expires each year.

(d) (1) The board shall have responsibility for the issuance, suspension, and revocation of the licenses and permits enumerated in § 26-57-219.

(2) All action by the board shall be by a majority vote of the full membership of the board, and the board may take no official action in connection with any matter except at a regular or special meeting. In the event of a tie vote of the members of the board, the Director of Arkansas Tobacco Control may cast the deciding vote.

(3) The board shall have no jurisdiction over manufacturers of tobacco products.

(e) No person who is not a citizen of the United States and who has not resided in the State of Arkansas for at least two (2) consecutive years immediately preceding the date of appointment may be appointed to the board nor employed by the board.

(f) Each member of the board and the director shall take and subscribe to an oath that he or she will support and enforce the provisions of this subchapter, the tobacco control laws of this state, the Arkansas Constitution, and the United States Constitution.

History. Acts 1997, No. 1337, § 23; 2009, No. 785, § 26.

Amendments. The 2009 amendment substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (d)(2).

26-57-256. Powers of the Arkansas Tobacco Control Board.

(a) The Arkansas Tobacco Control Board shall:

(1) Promulgate rules for the proper enforcement and implementation of this subchapter and the Unfair Cigarette Sales Act, § 4-75-701 et seq., subject to the restrictions in § 26-57-212(d);

(2) Receive applications for and issue, refuse, suspend, and revoke licenses and permits listed in § 26-57-219;

(3) Prescribe forms of applications for permits and licenses under this subchapter;

(4) (A) Cooperate with the Revenue Division of the Department of Finance and Administration in the enforcement of the tax laws affecting the sale of tobacco products in this state and in the enforcement of all other state and local tax laws.

(B) To facilitate efforts to cooperate with the division concerning the enforcement of all other state and local tax laws, the board shall immediately require that the following additional information be provided by all applicants for permit issuance or renewal:

(i) Federal tax identification numbers issued by the Internal Revenue Service;

(ii) Social Security numbers; and

(iii) State sales tax account numbers assigned by the Department of Finance and Administration, if applicable.

(C) (i) Each year the board shall provide a list of all applicants for the issuance or renewal of all tobacco permits and licenses to the Director of the Department of Finance and Administration.

(ii) This list shall contain the identifying information required by subdivision (a)(4)(B) of this section as well as the name of the permittee and the permittee's current business address;

(5) (A) Conduct public hearings when appropriate regarding any permit and license authorized by this subchapter or in violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 5-27-227, or any other federal, state, or local statute, ordinance, rule, or regulation concerning the sale of tobacco products to minors or the rules promulgated by the board.

(B) (i) After a notice and hearing held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-701 et seq., or the rules promulgated by the board, the board may suspend, revoke, or not renew any or all permits and licenses issued by the board to any person or entity.

(ii) In addition, the board may levy a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for each violation against any person or entity found to be in violation.

(iii) Each day of the violation shall be deemed a separate violation.

(C) In that regard, the board may examine or cause to be examined under oath any witness and the books and records of any licensee, person, or entity; and

(6) When requested by the written petition of at least three (3) interested parties, conduct public hearings to receive testimony on the facts relevant to the issuance of any license or permit under this subchapter.

(b) Unless the civil penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the Director of Arkansas Tobacco Control shall have the power to institute a civil action in the Pulaski County Circuit Court to recover the civil penalties assessed pursuant to the provisions of this subchapter.

(c) (1) The board shall have no authority in criminal prosecutions or the assessment or collection of any taxes related to the taxing of tobacco products.

(2) However, the board shall refuse to issue, suspend, revoke, or refuse renewal of any permit or license issued by the board for the failure to pay taxes or fees imposed on tobacco products or any permit or license fees imposed by this subchapter or any other state and local taxes.

(d) The board may assess penalties for a violation of § 5-27-227 according to the following schedule:

(1) If the alleged violator has received a notice of an alleged violation from the board or other agency or official with the authority to assess penalties containing the information specified in this subchapter, a civil penalty not to exceed two hundred fifty dollars (\$250) for a first violation within a forty-eight-month period;

(2) A civil penalty not to exceed five hundred dollars (\$500) for a second violation within a forty-eight-month period and suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed two (2) days;

(3) A civil penalty not to exceed one thousand dollars (\$1,000) for a third violation within a forty-eight-month period and suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed seven (7) days;

(4) A civil penalty not to exceed two thousand dollars (\$2,000) for a fourth or subsequent violation within a forty-eight-month period and suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed fourteen (14) days; and

(5) For a fifth or subsequent violation within a forty-eight-month period, in addition to any civil penalties authorized by this section, the license or permit under § 26-57-219 may be revoked.

(e) (1) A notice of an alleged violation of § 5-27-227 shall be given to the holder of a retail permit or license within ten (10) days of the alleged violation.

(2) The notice shall contain the date and time of the alleged violation.

(3) (A) The notice shall also include either the name of the person making the alleged unlawful sale or information reasonably necessary to determine the location in the store where the alleged unlawful sale was made.

(B) Information under subdivision (e)(3)(A) of this section shall include when appropriate without limitation, the cash register number, physical location of the sale in the store, and, if possible, the lane or aisle number.

(f) The board shall consider the following factors when reviewing a possible violation:

(1) The business has adopted and enforced a written policy against selling cigarettes or tobacco products to persons less than eighteen (18) years of age;

(2) The business has informed its employees of the applicable laws regarding the sale of cigarettes and tobacco products to persons less than eighteen (18) years of age;

(3) The business required employees to verify the age of cigarette or tobacco

product customers by way of photographic identification;

(4) The business has established and imposed disciplinary sanctions for noncompliance; and

(5) The appearance of the purchaser of the tobacco in any form or cigarette papers was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase.

(g) (1) A penalty under subsection (d) of this section for a violation of § 5-27-227 shall not be imposed upon a retailer or agent or employee of a retailer who can establish an affirmative defense that before the date of the violation the retailer or agent or employee of the retailer furnishing the tobacco in any form or cigarette papers reasonably relied upon proof of age that identified the person receiving the tobacco in any form or cigarette papers as being eighteen (18) years of age or older.

(2) As used in this section, “proof of age” means any document issued by a governmental agency containing a description of the person or the person's photograph, or both, and giving the person's date of birth and includes without limitation a passport, military identification card, or driver's license.

(h) Any cigarettes or tobacco products found in the possession of a person less than eighteen (18) years of age may be confiscated.

(i) An employee of a permit holder who violates § 5-27-227 is subject to a civil penalty not to exceed one hundred dollars (\$100) per violation.

(j) (1) For a corporation or business with more than one (1) retail location, to determine the number of accumulated violations for purposes of the penalty schedule set forth in subsection (d) of this section, violations of § 5-27-227 by one (1) retail location shall not be accumulated against other retail locations of that same corporation or business.

(2) For a retail location, for purposes of the penalty schedule set forth in subsection (d) of this section, violations accumulated and assessed against a prior owner of the retail location shall not be accumulated against a new owner of the same retail location.

(k) All penalties collected under this section shall be deposited into the State Treasury.

History. Acts 1997, No. 1337, § 23; 1999, No. 1591, § 4; 2001, No. 1368, §§ 3, 4; 2009, No. 655, § 76; 2009, No. 785, § 27.

A.C.R.C. Notes. As enacted by Acts 2001, No. 1368, § 3, present subdivision (a)(4)(C)(i) began: “Beginning January 1, 2002, and each year thereafter,”.

The amendment to this section by Acts 2009, No. 655, § 76, is superseded by the amendment to § 5-27-227 by Acts 2009, No. 785, § 6, pursuant to Acts 2009, No. 748, § 45, Acts 2009, No. 655, § 128, and § 1-2-207(b).

Amendments. The 2009 amendment by No. 785 substituted “rules” for “regulations” in (a)(1), deleted “and regulations” following “rules” in (a)(5)(A) and (a)(5)(B)(i), and substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)” in (a)(5)(B)(ii); substituted “Director of Arkansas Tobacco Control” for “Director of the Arkansas Tobacco Control Board” in (b); deleted “or penalties” following “taxes” in (c)(1); and added (d) through (k).

Case Notes

Construction With Other Law.

Proceedings.

Construction With Other Law.

Subdivision (a)(5) of this section clearly permits the Arkansas Tobacco Control Board to conduct hearings regarding any permit or license in violation of the Unfair Cigarette Sales Act, codified at

§ 4-75-701 et seq., and the Act encompasses § 4-75-708 and §§ 4-75-701 and 708. H.T. Hackney Co. v. Davis, 353 Ark. 797, 120 S.W.3d 79 (2003).

Proceedings.

Even though the director for the Arkansas Tobacco Control Board sent the tobacco company an offer of settlement "recommending" a \$500 fine for the tobacco company which gave unlawful rebates to retailers, and the company accepted the offer, the defense of agency estoppel was not preserved, and because the evidence established that the company had paid rebates to at least 28 Arkansas retail establishments, it was not arbitrary or capricious for the Board to reject the "recommendation" and impose a \$28,000 fine, and suspension of the company's permit for six months. H.T. Hackney Co. v. Davis, 353 Ark. 797, 120 S.W.3d 79 (2003).

26-57-257. Director of Arkansas Tobacco Control.

(a) (1) The Governor shall employ a person to serve as Director of Arkansas Tobacco Control.

(2) The Director of Arkansas Tobacco Control shall serve at the pleasure of the Governor.

(b) The Director of Arkansas Tobacco Control shall present all evidence tending to prove violations of law or regulations at hearings held by the Arkansas Tobacco Control Board.

(c) The Director of Arkansas Tobacco Control may employ such other personnel as he or she deems necessary, subject to the approval of the board and as authorized by the General Assembly.

(d) Any personnel employed by the Director of Arkansas Tobacco Control shall serve at his or her pleasure.

(e) (1) The Director of Arkansas Tobacco Control and the board each may adopt, keep, and use a common seal.

(2) This seal shall be used for authentication of the records, process, and proceedings of the Director of Arkansas Tobacco Control and the board, respectively.

(3) Judicial notice shall be taken of each use of this seal in all of the courts of the state.

(f) Any process, notice, or other paper that the Director of Arkansas Tobacco Control may be authorized by law to issue shall be deemed sufficient if signed by the Director of Arkansas Tobacco Control and authenticated by the seal of the Director of Arkansas Tobacco Control.

(g) Any process, notice, or other paper that the board may be authorized by law to issue shall be deemed sufficient if signed by the chair of the Arkansas Tobacco Control Board and authenticated by the seal of the board.

(h) All acts, orders, proceedings, rules, regulations, entries, minutes, and other records of the Director of Arkansas Tobacco Control and all reports and documents filed with the Director of Arkansas Tobacco Control may be proved in any court of this state by a copy thereof certified to by the Director of Arkansas Tobacco Control with the seal of the Director of Arkansas Tobacco Control attached.

(i) All acts, orders, proceedings, rules, entries, minutes, and other records of the board and all reports and documents filed with the Director of Arkansas Tobacco Control may be proved in any court of this state by a copy thereof certified to by the chair of the board with the seal of the board attached.

(j) (1) The Director of Arkansas Tobacco Control shall maintain records of all permits and licenses issued, suspended, denied, or revoked by the board.

(2) The records shall be in such form as to provide ready information as to the identity of the licensees, including the names of major stockholders and directors of corporations holding licenses or permits and the location of the licensed or permitted premises.

(k) The Director of Arkansas Tobacco Control shall recognize the Office of Alcohol and Drug Abuse Prevention as the agency responsible for ensuring full compliance with the Public Health Service Act, § 1926(b), 42 U.S.C. § 300x-26(b), and shall call upon administrative departments of the state, county, and city governments, sheriffs, city police departments, or other law enforcement officers for such information and assistance as the Director of Arkansas Tobacco Control may deem necessary in the performance of the duties imposed upon him or her by this subchapter.

(l) The Director of Arkansas Tobacco Control may inspect or cause to be inspected any premises where tobacco products are distributed, stored, or sold.

(m) The Director of Arkansas Tobacco Control may:

(1) Examine or cause to be examined any person under oath and examine or cause to be examined books and records of any licensee;

(2) Hear testimony and take proof material to his or her information and the discharge of his or her duties under this section;

(3) Administer oaths or cause oaths to be administered; and

(4) (A) Issue subpoenas to require the attendance of witnesses and the production of books and records.

(B) Any circuit court by written order may require the attendance of witnesses or the production of relevant books or other records subpoenaed by the Director of Arkansas Tobacco Control, and the court may compel obedience to its order by proceedings for contempt.

(n) All hearings and appeals from any hearing shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(o) The Director of Arkansas Tobacco Control shall exercise other powers, functions, and duties as are or may be imposed or conferred upon him or her by law or the board.

(p) The Director of Arkansas Tobacco Control shall have other powers, functions, and duties pertaining to the issuance, suspension, and revocation of the permits and licenses enumerated in § 26-57-219, which previously were granted to the Director of the Department of Finance and Administration, except the authority to regulate manufacturers, and which are specifically delegated to the Department of Finance and Administration by this subchapter.

(q) (1) (A) The power and duty to collect taxes imposed on tobacco and tobacco products is specifically exempted from the powers and duties granted or assigned to the board or the department.

(B) However, a permit or license holder's failure to pay taxes or fees imposed on tobacco products or any permit or license fees imposed by this subchapter in a timely manner is grounds for the nonissuance, suspension, revocation, or nonrenewal of any permits or licenses issued by the board.

(C) Failure to timely and fully pay any other state and local taxes as reported by the Director of the Department of Finance and Administration shall also constitute grounds for the nonissuance, suspension, revocation, or nonrenewal of any permits or licenses issued by the board.

(2) (A) Each year the Director of the Department of Finance and Administration shall report to the Director of Arkansas Tobacco Control all permit and license holders who are more than ninety (90) days delinquent on any state and local taxes.

(B) The Director of Arkansas Tobacco Control shall not issue or renew any permit or license issued under this section for any permit or license holder more than ninety (90) days delinquent on any privilege fee or tax addressed in this section unless the permittee or licensee demonstrates that he or she is current under a valid repayment agreement for the delinquent tax.

(3) (A) Each year the Director of Arkansas Tobacco Control shall send notices to all permit and license holders more than ninety (90) days delinquent on any state and local taxes.

(B) This notice shall inform the permit or license holder that he or she is delinquent on payment of state and local taxes due the Director of the Department of Finance and Administration and that the permit or license holder will be unable to obtain or renew the permit or license that he or she holds until such time as the person becomes current in the payment of the tax due the Director of the Department of Finance and Administration, or until such time as the person enters into a valid repayment agreement with the department for the payment of the delinquent tax.

(r) The enforcement of state laws relating to the prohibition of the barter or sale of tobacco in any form or cigarette papers to minors by multiple state agencies shall be coordinated to avoid duplicative inspections of the same retailer by multiple state agencies.

History. Acts 1997, No. 1337, § 23; 1999, No. 1591, § 2; 2001, No. 1368, § 5; 2009, No. 655, §§ 77–83; 2009, No. 785, § 28.

A.C.R.C. Notes. As enacted by Acts 2001, No. 1368, § 5, present subdivision (q)(2)(A) of this section began:

“Beginning April 1, 2002, and each year thereafter.”

As enacted by Acts 2001, No. 1368, § 5, present subdivision (q)(3)(A) of this section began:

“Beginning May 15, 2002, and each year thereafter.”

The amendments to this section by Acts 2009, No. 655, §§ 77-83, are superseded by the amendments to this section by Acts 2009, No. 785, § 28, and the amendments to § 5-27-227 by Acts 2009, No. 785, § 6, pursuant to Acts 2009, No. 748, § 45, Acts 2009, No. 655, § 128, and § 1-2-207(b).

Amendments. The 2009 amendment by No. 785 substituted “Director of Arkansas Tobacco Control” for “Director of the Arkansas Tobacco Control Board” throughout the section; deleted “regulations” following “rules” in (i); deleted “In the conduct of any hearings” at the beginning of (m); substituted “Director of Arkansas Tobacco Control” for “board” in (q)(2)(A), (q)(2)(B), and (q)(3)(A); deleted (r) through (aa) and (cc) and redesignated (bb) as present (r); and made related changes.

Case Notes

Proceedings.

Proceedings.

Even though the director for the Arkansas Tobacco Control Board sent the tobacco company an offer of settlement “recommending” a \$500 fine for the tobacco company which gave unlawful rebates to retailers, and the company accepted the offer, the defense of agency estoppel was not preserved, and because the evidence established that the company had paid rebates to at least 28 Arkansas retail establishments, it was not arbitrary or capricious for the Board to reject the “recommendation” and impose a \$28,000 fine, and suspension of the company's permit for six

months. *H.T. Hackney Co. v. Davis*, 353 Ark. 797, 120 S.W.3d 79 (2003).

26-57-258. Continuation of permits, licenses, regulations, etc., of Department of Finance and Administration.

All permits, licenses, certifications, determinations, regulations, and other actions of the Department of Finance and Administration under this subchapter in effect on June 30, 1997, shall continue in full force and effect until modified by the Arkansas Tobacco Control Board.

History. Acts 1997, No. 1337, § 23.

26-57-259. Nonpreemption.

(a) This act and the rules, regulations and other actions of the Arkansas Tobacco Control Board shall not be construed or interpreted so as to preempt or in any other manner qualify or limit the enactment and enforcement of any federal, state, county, municipal, or other local regulation of the manufacture, sale, storage, or distribution of tobacco products that is more restrictive than this act or the rules and regulations promulgated by the board.

(b) This act and the rules, regulations and other actions of the board shall not be construed or interpreted so as to preempt or otherwise limit any legal or equitable claims or causes of action brought under the common law or any federal or state statutes.

(c) Nothing in this act nor any rule or regulation of the board shall be construed or interpreted so as to require any state, county, municipal, or other local authority to exhaust any administrative remedies through the board including, but not limited to, the right to seize and forward to the board the state license of any vendor or retailer found to have illegally sold tobacco products to a person less than eighteen (18) years of age, provided that the vendor or retailer shall be given a hearing before the board within five (5) business days of the seizure.

History. Acts 1997, No. 1337, § 26.

A.C.R.C. Notes. References to “this chapter” in subchapters 1, 3, 4-6 and §§ 26-57-201 — 26-57-258 may not apply to this section, which was enacted subsequently.

Meaning of “this act”. Acts 1997, No. 1337, codified as §§ 5-27-227, 26-57-203, 26-57-206, 26-57-208, 26-57-210 — 26-57-216, 26-57-219, 26-57-221 — 26-57-224, 26-57-227, 26-57-229 — 26-57-238, 26-57-242, 26-57-247, 26-57-249 — 26-57-252, 26-57-255 — 26-57-259.

26-57-260. Definitions.

As used in this section and § 26-57-261:

(1) “Adjusted for inflation” means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement;

(2) (A) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person.

(B) Solely for the purposes of the definition of “affiliate”, the term:

(i) “Owns”, “is owned”, and “ownership” mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more; and

(ii) “Person” means an individual, partnership, committee, association, corporation, or any other organization or group of persons;

(3) “Allocable share” means the allocable share as that term is defined in the

Master Settlement Agreement;

(4) (A) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) Tobacco in any form that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette; or

(iii) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in subdivision (4)(A)(i) of this section.

(B) “Cigarette” includes “roll-your-own”, that is, any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

(C) For purposes of this definition of “cigarette”, nine hundredths (0.09) of an ounce of roll-your-own tobacco shall constitute one (1) individual cigarette;

(5) “Master Settlement Agreement” means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers;

(6) “Qualified escrow fund” means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars (\$1,000,000,000) when such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with § 26-57-261(a)(2)(B);

(7) “Released claims” means released claims as that term is defined in the Master Settlement Agreement;

(8) “Releasing parties” means releasing parties as that term is defined in the Master Settlement Agreement;

(9) (A) “Tobacco product manufacturer” means an entity that, after the date of enactment of this section and § 26-57-261, directly and not exclusively through any affiliate:

(i) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer, except where the importer is an original participating manufacturer, as that term is defined in the Master Settlement Agreement, who will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and who pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States;

(ii) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(iii) Becomes a successor of an entity described in subdivision (9)(A)(i) or (9)(A)(ii) of this section.

(B) "Tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer, unless such affiliate itself falls within any of subdivisions (9)(A)(i)-(9)(A)(iii) of this section; and

(10) (A) "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or roll-your-own tobacco containers bearing the excise tax stamp of the state.

(B) The Department of Finance and Administration shall promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

History. Acts 1999, No. 1165, § 1.

Case Notes

Cited: *Dos Santos v. Beebe*, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

26-57-261. Requirements.

(a) Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after the date of enactment of this section and § 26-47-260, shall do one (1) of the following:

(1) Become a participating manufacturer, as that term is defined in section II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(2) (A) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

(i) 1999: \$.0094241 per unit sold after the date of enactment of this section and § 26-57-260;

(ii) 2000: \$.0104712 per unit sold;

(iii) For each of 2001 and 2002: \$.0136125 per unit sold;

(iv) For each of 2003 through 2006: \$.0167539 per unit sold; and

(v) For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(B) A tobacco product manufacturer that places funds into escrow pursuant to subdivision (a)(2)(A) of this section shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under subdivision (a)(2)(B)(i) of this section:

(a) In the order in which they were placed into escrow; and

(b) Only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined under section IX(i) of the Master Settlement Agreement including after final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) To the extent not released from escrow under subdivisions (a)(2)(B)(i) or (a)(2)(B)(ii) of this section, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which they were placed into escrow.

(C) Each tobacco product manufacturer who elects to place funds into escrow pursuant to subdivision (a)(2) of this section shall annually certify to the Attorney General that the tobacco product manufacturer is in compliance with subdivision (a)(2) of this section. The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer who fails to place into escrow the funds required under this section. Any tobacco product manufacturer who fails in any year to place into escrow the funds required under this section shall:

(i) Be required within fifteen (15) days to place such funds into escrow as shall bring him or her into compliance with this section. The court, upon a finding of a violation of subdivision (a)(2) of this section, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

(ii) In the case of a knowing violation, be required within fifteen (15) days to place such funds into escrow as shall bring him or her into compliance with this section. The court, upon a finding of a knowing violation of subdivision (a)(2) of this section, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

(iii) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary for a period not to exceed two (2) years.

(b) Each failure to make an annual deposit required under this section shall constitute a separate violation.

History. Acts 1999, No. 1165, § 2; 2005, No. 384, § 1.

A.C.R.C. Notes. Acts 2005, No. 384, § 3, provided:

“Severability.

(a) If this act or any portion of the amendment to Arkansas Code § 26-57-261(2)(B)(ii) made by this act is held by a court of competent jurisdiction to be unconstitutional, then Arkansas Code § 26-57-261(2)(B)(ii) shall be deemed to be repealed in its entirety.

“(b) If Arkansas Code § 26-57-261(2)(B) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this act shall be deemed repealed and Arkansas Code § 26-57-261(2)(B)(ii) be restored as if the amendment made by this act had not been made.

“(c) Neither any holding of unconstitutionality nor the repeal of Arkansas Code § 26-57-

261(2)(B)(ii) shall affect, impair, or invalidate any other portion of Arkansas Code § 26-57-261 or the application of Arkansas Code § 26-57-261 to any other person or circumstance, and the remaining portions of Arkansas Code § 26-57-261 shall continue in full force and effect.”

Amendments. The 2005 amendment, in (2)(B)(ii), inserted “on account of units sold in the state” and substituted “the Master Settlement Agreement payments ... units sold” for “on account of the units sold” for “in a particular year was greater than the state’s allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement, as determined pursuant to section IX(i)(2) of the Master Settlement Agreement and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment” in (2)(B)(ii).

Effective Dates. Acts 2005, No. 384, § 4, provided: “Effective date. Section 1 shall apply to all funds placed into, due to be placed into, or being held in a qualified escrow account pursuant to Arkansas Code § 26-57-261 on or after March 31, 2005.”

Case Notes

Constitutionality.

Federal Preemption.

Constitutionality.

Where an amendment to this section implementing a settlement between states and tobacco companies required a non-participating manufacturer to pay amounts in escrow pending any finding of future liability, the post-deprivation remedy of either returning the escrowed funds at the end of 25 years or litigation if the right to return was disputed was constitutionally sufficient. *Dos Santos v. Beebe*, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

Where a tobacco products manufacturer which did not participate in a settlement between states and tobacco companies alleged that an amendment to this section, which provided that the nonparticipating manufacturer paid more into escrow and retroactively eliminated refunds of the manufacturer’s prior escrow overpayments, impermissibly burdened the manufacturer’s free speech rights through economic pressure to participate in the settlement, no unconstitutional burden was shown since the manufacturer did not pay more than participating companies and merely lost its prior competitive advantage. *Dos Santos v. Beebe*, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

Where a tobacco products manufacturer which did not participate in a settlement between states and tobacco companies alleged that an amendment to this section implementing the settlement had the effect of causing or allowing participating companies to conduct their business as though they were part of an output cartel, to the extent that the amendment might foster monopolistic conduct, the amendment did not violate Ark Const. Art. 2, § 19, since the regulatory scheme of which the amendment formed a part was created to serve the public interest in combating the serious health effects of smoking. *Dos Santos v. Beebe*, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

Tobacco product distributors’ equal protection claims were dismissed where distributors were not required to pay more for their Arkansas sales than would a participating manufacturer. *Grand River Enters. Six Nations, Ltd. v. Beebe*, 418 F. Supp. 2d 1082 (W.D. Ark. 2006).

Tobacco product distributors’ substantive due process claims relating to the prospective application of this section were dismissed where there was a rational relationship between the allocable share amendment and the states expressed purpose of ensuring effective administration of a master settlement agreement, which was a critical component in reducing the rate of smoking in Arkansas. *Grand River Enters. Six Nations, Ltd. v. Beebe*, 418 F. Supp. 2d 1082 (W.D. Ark. 2006).

This section and § 26-57-1303 did not violate a tobacco importer’s First Amendment rights where its only complaint, a loss of competitive advantage, did not unconstitutionally burden speech, whether considered personal or commercial. *Int’l Tobacco Ptnrs., LTD v. Beebe*, 420 F. Supp. 2d 989 (W.D. Ark. 2006).

Tobacco importer’s claim that prospective application of this section violated procedural due process was dismissed where the post-deprivation remedy, either return of the funds at the end of 25 years or litigation if the right to return was disputed, was constitutionally sufficient. *Int’l Tobacco Ptnrs., LTD v. Beebe*, 420 F. Supp. 2d 989 (W.D. Ark. 2006).

Tobacco importer's claim that retroactive application of this section violated substantive due process survived a motion to dismiss where the importer had a protected property interest and it had alleged a substantial financial impact on its business. *Int'l Tobacco Ptnrs., LTD v. Beebe*, 420 F. Supp. 2d 989 (W.D. Ark. 2006).

The Allocable Share Amendment, subdivision (a)(2)(B)(ii) of this section, does not violate the dormant Commerce Clause, U.S. Const., Art. I, § 8, cl. 3; the Amendment does not make any distinction between in-state and out-of-state non-participating cigarette manufacturers, the Amendment is not clearly excessive in relation to the legitimate interest in public health, and the Amendment does not affect interstate commerce. *Grand River Enters. Six Nations v. Beebe*, 574 F.3d 929 (8th Cir. 2009).

The Allocable Share Amendment, subdivision (a)(2)(B)(ii) of this section, does not violate the Equal Protection Clause; although the Amendment does treat participating cigarette manufacturers under a master settlement agreement and non-participating manufacturers differently, the difference in treatment is rationally related to the state's legitimate interest in collecting future medical costs related to tobacco use. *Grand River Enters. Six Nations v. Beebe*, 574 F.3d 929 (8th Cir. 2009).

The Allocable Share Amendment, subdivision (a)(2)(B)(ii) of this section, does not violate the Due Process Clause; the state's interest in reducing smoking-related healthcare costs outweighs any private interest in escrow payments made by cigarette manufacturers. Also, before any escrow funds are permanently retained, the state must seek and be granted a court judgment or enter into a settlement. *Grand River Enters. Six Nations v. Beebe*, 574 F.3d 929 (8th Cir. 2009).

The Allocable Share Amendment, subdivision (a)(2)(B)(ii) of this section, did not violate the First Amendment rights of appellants, including a cigarette manufacturer that was a non-participant in a master settlement agreement. The loss of a competitive advantage that existed before the Amendment was enacted did not equate to an unlawful burden. *Grand River Enters. Six Nations v. Beebe*, 574 F.3d 929 (8th Cir. 2009).

Federal Preemption.

Tobacco importer's claim that the allocable share amendment set forth in this section and § 26-57-1303(c) violated 15 U.S.C.S. § 1 was dismissed where the amendment did not mandate price-setting or output price fixing by private parties and, as a result, the state statutes were not preempted by the Sherman Act. *Int'l Tobacco Ptnrs., LTD v. Beebe*, 420 F. Supp. 2d 989 (W.D. Ark. 2006).

The Allocable Share Amendment, subdivision (a)(2)(B)(ii) of this section, was not preempted by the Sherman Act, 15 U.S.C.S. § 1; although the Amendment placed some pressure on certain cigarette manufacturers to raise prices to offset required escrow payments, that pressure did not force the manufacturers to raise prices in all cases, and the Amendment did not create a hybrid restraint of trade. Also, because the Amendment was enacted by the state legislature, Parker state action immunity applied. *Grand River Enters. Six Nations v. Beebe*, 574 F.3d 929 (8th Cir. 2009).

26-57-262. Sale of export cigarettes.

(a) Findings and Purpose.

(1) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The Surgeon General has determined that smoking causes lung cancer, heart disease, and other serious diseases and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) It is the policy of the state that consumers be adequately informed about the adverse health effects of cigarette smoking by including warning notices on each package of cigarettes.

(3) It is the intent of the General Assembly to align state law with federal laws, regulations, and policies relating to the manufacture, importation, and marketing of cigarettes, and in particular, the Federal Cigarette Labeling and Advertising Act, 15

U.S.C. § 1331 et seq., and 26 U.S.C. § 5754.

(4) The General Assembly finds that consumers and retailers purchasing cigarettes are entitled to be fully informed about any adverse health effects of cigarette smoking by the inclusion of warning notices on each package of cigarettes and to be assured through appropriate enforcement measures that cigarettes they purchase were manufactured for consumption within the United States.

(b) Definitions.

As used in this section:

(1) (A) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) Tobacco, in any form, that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to or purchased by consumers as a cigarette; or

(iii) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to or purchased by consumers as a cigarette described in subdivision (b)(1)(A)(i) of this section.

(B) “Cigarette” includes “roll your own”, which is any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

(C) For purposes of this definition of “cigarette”, nine one-hundredths (0.09) of an ounce of “roll your own” tobacco shall constitute one (1) individual “cigarette”; and

(2) “Package” means a pack, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed or intended for distribution to consumers.

(c) Tax Stamps.

(1) No tax stamp may be affixed to or made upon any package of cigarettes if:

(A) The package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 et seq., for the placement of labels, warnings, or any other information upon a package of cigarettes that is manufactured, packaged, or imported for sale, distribution, or use within the United States;

(B) The package is labeled “For Export Only”, “U.S. Tax Exempt”, “For Use Outside U.S.”, or similar wording indicating that the manufacturer did not intend that the product be sold in the United States;

(C) The cigarettes in the package do not comply with any other applicable requirements imposed pursuant to federal law and federal implementing regulations;

(D) The package in any way violates federal trademark or copyright laws;

(E) The package or a package containing individually stamped packages has been altered by adding or deleting the wording, labels, or warnings described in this subdivision (c)(1); or

(F) With respect to the cigarettes, any person is not in compliance with 15 U.S.C. § 1335a relating to submission of ingredient information to federal authorities, 19

U.S.C. §§ 1681-1681b relating to imports of certain cigarettes, 26 U.S.C. § 5754, relating to previously exported tobacco products, or any other federal law or implementing federal regulations.

(2) Any person who sells or holds for sale cigarette packages to which is affixed a tax stamp in violation of this section shall be subject to the penalties prescribed in subdivision (c)(5) of this section.

(3) The Arkansas Tobacco Control Board may revoke a wholesale or retail license of any person who sells or holds for sale cigarette packages to which is affixed a tax stamp in violation of this section.

(4) The Department of Finance and Administration or Arkansas Tobacco Control may seize and destroy or sell to the manufacturer only for export packages that do not comply with this section.

(5) A violation of this section is a deceptive act or practice and shall constitute a Class A misdemeanor.

(6) On or before the fifteenth business day of each month, each person licensed to affix the state tax stamp to cigarettes shall file with the Director of the Department of Finance and Administration for all cigarettes imported into the United States to which the person has affixed the tax stamp in the preceding month copies of the customs certificates with respect to the cigarettes required to be submitted by 19 U.S.C. § 1681a(c).

(7) Any person who sells, distributes, or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation of this section may bring an action in good faith for appropriate injunctive relief.

History. Acts 1999, No. 1285, §§ 1-3; 2001, No. 1545, §§ 1, 2; 2009, No. 785, § 29.

Amendments. The 2009 amendment made a minor stylistic change in (c)(3), and substituted “Arkansas Tobacco Control” for “the board” in (c)(4).

Subchapter 3 **— Slot and Vending Machines Generally**

26-57-301 — 26-57-314. [Repealed.]

26-57-301 — 26-57-314. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1993, No. 344, § 2. The subchapter was derived from the following sources:

26-57-301. Acts 1933, No. 137, § 2; Pope's Dig., § 13421; A.S.A. 1947, § 84-2602.

26-57-302. Acts 1933, No. 137, § 2; Pope's Dig., § 13421; Acts 1947, No. 344, § 4; A.S.A. 1947, §§ 84-2602, 84-2608.

26-57-303. Acts 1931, No. 167, § 1; Pope's Dig., § 13418; A.S.A. 1947, § 84-2601.

26-57-304. Acts 1931, No. 167, § 1; Pope's Dig., § 13418; A.S.A. 1947, § 84-2601.

26-57-305. Acts 1931, No. 167, § 3; Pope's Dig., § 13419; A.S.A. 1947, § 84-2603.

26-57-306. Acts 1931, No. 167, § 2; 1933, No. 137, § 1; Pope's Dig., § 13420; Acts 1939, No. 201, § 6; A.S.A. 1947, § 84-2604.

26-57-307. Acts 1947, No. 344, § 1; 1979, No. 911, §§ 13, 16; 1983, No. 707, § 1; A.S.A. 1947, §§ 84-2605, 84-2605n.

26-57-308. Acts 1947, No. 344, § 2; 1949, No. 252, § 1; A.S.A. 1947, § 84-2606.

26-57-309. Acts 1947, No. 344, § 4; A.S.A. 1947, § 84-2608.

26-57-310. Acts 1947, No. 344, § 3; A.S.A. 1947, § 84-2607.

26-57-311. Acts 1931, No. 167, § 4; 1933, No. 137, § 4; Pope's Dig., § 13423; A.S.A. 1947, § 84-

2618.

26-57-312. Acts 1933, No. 137, § 5; Pope's Dig., § 13424; A.S.A. 1947, § 84-2619.

26-57-313. Acts 1931, No. 167, § 5; 1933, No. 137, § 6; Pope's Dig., § 13425; Acts 1947, No. 344, § 6; A.S.A. 1947, §§ 84-2610, 84-2620.

26-57-314. Acts 1983, No. 713, §§ 1-3; A.S.A. 1947, §§ 84-2650 — 84-2652.

Subchapter 4 **— Coin-Operated Amusements**

26-57-401. Purposes.

26-57-402. Definitions.

26-57-403. Automatic money payoff mechanisms not legalized.

26-57-404. Privilege tax on amusement devices.

26-57-405. License tag for machines.

26-57-406. Unlicensed games a public nuisance — Seizure and sale — Redemption.

26-57-407. Disposition of revenue collected.

26-57-408. Owning, operating, or leasing a privilege — Privilege fee imposed.

26-57-409. Annual license fee — Renewals.

26-57-410. Licenses — Eligibility.

26-57-411. Licenses — Surety bond required.

26-57-412. Licenses — Issuance.

26-57-413. Licenses — Revocation or suspension.

26-57-414. Owning, operating, or leasing without license a public nuisance —
Seizure and sale of devices — Redemption — Subsequent license
fee credit.

26-57-415. Notification of purchase or lease of device.

26-57-416. Lessor's records — Sales taxes.

26-57-417. Decal or card with licensee's number.

26-57-418. Sale of coin-operated amusement devices declared privilege — Fee
imposed on salespersons.

26-57-419. Licenses to sell.

26-57-420. Notice to purchaser of tax consequences of sale required.

26-57-421. Selling in violation of subchapter a misdemeanor — Penalty.

Cross References. Municipal taxes, § 26-77-301 et seq.

Effective Dates. Acts 1939, No. 201, § 12: approved Mar. 9, 1939. Emergency clause provided: "Whereas, there is no adequate law in this State defining and regulating amusement games and whereas without such law the State is being deprived of revenue upon such business through the unregulated conduct thereof, and whereas the passage of such law is necessary for the immediate preservation of the public peace, health and safety of the inhabitants of this State, an emergency exists and this Act shall take effect and be in force from and after its passage."

Acts 1941, No. 319, § 19: approved Mar. 26, 1941. Emergency clause provided: "It is hereby determined that the education interest of the children of the State can be best served by improving the salaries and qualifications of teachers; and it is found that this act is necessary for the preservation of the peace, health, and safety of the people, an emergency is hereby declared to exist, and this act shall take effect and be in full force from, and after, its passage."

Acts 1949, No. 76, § 4: approved Feb. 11, 1949. Emergency clause provided: "Whereas, there is no adequate law in this State defining and regulating coin operated automatic amusement machines and whereas without such law the State is being deprived of revenue upon such business through the unregulated conduct thereof, and whereas, the passage of such law is

necessary for the immediate preservation of the public peace, health and safety of the inhabitants of this State, an emergency exists and this Act shall take effect and be in force from and after its passage.”

Acts 1981, No. 868, § 5: Mar. 28, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly that the law relating to licensing of persons owning, operating and leasing coin operated amusement devices contains certain residency restrictions regarding the issuance of such licenses; that such law is inappropriate as applied to persons seeking licenses to operate coin operated amusement games at carnivals and county, district and state fairs; that this Act is designed to amend such law to provide for the licensing of such persons and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1985, No. 397, § 3: Mar. 18, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas Supreme Court recently held certain provisions of the Slot and Vending Machine Act (Ark. Stat. Ann. § 84-2601 et seq. [Repealed].) relating to the residency of applicants for permits and licenses pursuant to that Act, to be unconstitutional as a violation of the equal protection and privileges and immunities clauses of the United States Constitution, since there was no valid relationship between the residency requirement and any legitimate State governmental interests; that this Act is designed to clarify the intent and purpose of the residency requirement for the business of owning, operating or leasing of such coin-operated amusement devices, by recognizing the fact that the operation of coin-operated music and amusement machines are frequently used in places of amusement, dancehalls, roadhouses, and places where alcoholic beverages are sold and consumed; that many of our citizens are attracted to such places because of the presence of such devices, and as a result could be exposed to alcohol, controlled substances and unwholesome conditions detrimental to the health, safety and well-being of our citizens; that the purpose of this Act is to clarify this State’s interest in regulating closely the licensing of such persons who own or operate such amusement and music devices, and that the residency requirements of this Act are designed to assist in such regulation and control by this State, and this Act should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, safety and welfare, shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Case Notes

Municipal Regulation.

Municipal Regulation.

A city ordinance declaring that pinball machines or other gaming devices are a public nuisance and that it is unlawful for any business establishment or individual to possess pinball machines in any manner within the city is void because of conflict with state statutes. *Piggott v. Eblen*, 236 Ark. 390, 366 S.W.2d 192 (1963).

26-57-401. Purposes.

The purposes of this subchapter are to permit, license, and regulate the operation of coin-operated amusement devices and to fix a penalty for a violation of this subchapter.

History. Acts 1939, No. 201, § 1; A.S.A. 1947, § 84-2611n; Acts 2009, No. 655, § 84.

Publisher’s Notes. Section 26-57-306 referred to in this section was repealed by Acts 1993, No.

344, § 2.

Amendments. The 2009 amendment rewrote the section.

Case Notes

Gambling.

Gambling.

There is a narrow exception to the rule that chancery courts will refrain from interfering with prosecutorial functions, but that exception is limited to the chancery court's protection of property rights in the form of lawful businesses; it does not apply to forms of illegal gambling. *Dickey v. Signal Peak Enters.*, 340 Ark. 276, 9 S.W.3d 517 (2000).

Where defendant was charged with possession of gambling devices and a jury found him not guilty by mistake of law due to his reliance upon inapplicable law in operating his arcade business, defendant's assertion of the defense was an admission that he had engaged in illegal conduct and, because the jury found defendant's machines were illegal, the trial court did not err in ordering the machines forfeited and destroyed. *Mullins v. State*, 359 Ark. 414, 198 S.W.3d 504 (2004).

26-57-402. Definitions.

As used in this subchapter:

(1) "Amusement device" means any coin-operated machine, device, or apparatus which provides amusement, diversion, or entertainment and includes, but is not limited to, such games as:

- (A) Radio rifles;
- (B) Miniature football;
- (C) Golf;
- (D) Baseball;
- (E) Hockey;
- (F) Bumper pool;
- (G) Tennis;
- (H) Shooting galleries;
- (I) Pool tables;
- (J) Bowling;
- (K) Shuffleboard;
- (L) Pinball tables;
- (M) Marble tables;
- (N) Music vending phonographs;
- (O) Jukeboxes;
- (P) Cranes;
- (Q) Video games;
- (R) Claw machines;
- (S) Bowling machines;
- (T) Countertop machines;
- (U) Novelty arcade machines;
- (V) Other similar musical devices for entertainment; and
- (W) Other miniature games, whether or not such games show a score,

which are not otherwise excluded in this subchapter;

(2) (A) "Any money or property", "other articles", "other valuable things", or "any representative of anything that is esteemed of value", as used in the antigambling

statutes, § 5-66-101 et seq., shall not be expanded to include:

(i) A free amusement feature such as the privilege of playing additional free games if a certain score is made on a pinball table or on any other amusement device described in this section; or

(ii) Toys, novelties, or representations of value redeemable for those items which are won by the player of a bona fide amusement device which rewards players exclusively with merchandise limited to toys, novelties, or representations of value redeemable for those items, which have a wholesale value of not more than ten (10) times the cost charged to play the amusement device one (1) time or five dollars (\$5.00), whichever is less.

(B) (i) In the event of the accumulation of redeemable representations of value by any player, no toy or novelty having a wholesale value of more than twelve dollars and fifty cents (\$12.50) may be given or awarded by any amusement device operator or redeemed by any player.

(ii) The toys and novelties shall be displayed in a single area on each premises.

(iii) Furthermore, each operator shall maintain records validating the wholesale value of the toys and novelties.

(iv) The toys and novelties shall be located solely on the premises where the amusement device is played;

(3) “Coin-operated” means any machine, device, or apparatus which is operated by placing through a slot or any kind of opening or container any coin, slug, token, or other object or article necessary to be inserted before the machine operates or functions but does not include any machine or device which is classified by the United States Government as requiring a federal gaming stamp under applicable provisions of the Internal Revenue Code;

(4) “Novelty” means an article of trade whose value is chiefly decorative, comic, or the like, and whose appeal is often transitory;

(5) “Person” means any individual, firm, association, company, partnership, limited liability company, corporation, joint-stock company, club, agency, syndicate, the State of Arkansas, county, municipal corporation or other political subdivision of this state, receiver, trustee, fiduciary, or trade association; and

(6) “Toy” means a small article of little value but prized as a souvenir or for some other special reason, a trinket, a knickknack, or a bauble.

History. Acts 1939, No. 201, § 2; 1949, No. 76, § 1; 1977, No. 553, § 1; A.S.A. 1947, §§ 84-2611, 84-2633; Acts 1995, No. 740, § 1; 1995, No. 1160, § 31; 1999, No. 1231, § 1.

Publisher's Notes. Acts 1995, No. 740 became law without the Governor's signature.

Effective Dates. Acts 1995, No. 740 became effective July 28, 1995.

Acts 1995, No. 1160 became effective Apr. 11, 1995.

Case Notes

Amusement Devices.

Any Money or Property.

Gambling Device.

Amusement Devices.

Three countertop machines were not gaming devices per se where no tokens, money, or prizes were offered in connection with the machines, and the countertop machines were specifically

listed as amusement devices under subdivision (1) of this section; the machines were more akin to video arcade machines intended for amusement because a player inserted money and could play gambling-like games, but never received anything in return except amusement. *State v. 26 Gaming Machs.*, 356 Ark. 47, 145 S.W.3d 368 (2004).

Any Money or Property.

When a pinball machine that gives free games, permissible under this section, is set up and the free games won on the machine are converted to cash by the proprietor's paying off these games in money, the machine clearly becomes a gaming device. *Bostic v. City of Little Rock*, 241 Ark. 671, 409 S.W.2d 825 (1966).

Gambling Device.

Just as devices described as slot machines in another case were determined to be illegal gaming devices, defendant's devices were gambling devices proscribed by § 5-66-104; because they were slot machines, they were expressly excluded by § 26-57-403(a) from the definition of amusement devices found at subdivision (1) of this section. *Paris v. State*, 87 Ark. App. 344, 192 S.W.3d 277 (2004).

Cited: *Mullins v. State*, 359 Ark. 414, 198 S.W.3d 504 (2004).

26-57-403. Automatic money payoff mechanisms not legalized.

(a) Nothing contained in this section and §§ 26-57-401, 26-57-402, and 26-57-404 — 26-57-407 shall be deemed to legalize, authorize, license, or permit any machine commonly known as a slot machine, roscoe, or jackpot, or any machine equipped with any automatic money payoff mechanism.

(b) Any person owning or possessing an amusement device described in § 26-57-402 or any person employed by or acting on behalf of the person, who gives to any other person money for a noncash prize, toy, or novelty received as a reward in playing the amusement device or for free games won on the amusement device shall be guilty of a Class A misdemeanor.

History. Acts 1939, No. 201, § 3; 1949, No. 76, § 2; A.S.A. 1947, § 84-2612; Acts 1995, No. 740, § 2; 2005, No. 1994, § 209.

Publisher's Notes. Acts 1995, No. 740 became law without the Governor's signature.

Amendments. The 2005 amendment deleted "26-57-306 [repealed]" preceding "26-57-401" in (a); and inserted "Class A" in (b).

Case Notes

Amusement Devices.

Gambling Device.

Amusement Devices.

Three countertop machines were not gaming devices per se where no tokens, money, or prizes were offered in connection with the machines, and the countertop machines were specifically listed as amusement devices under § 26-57-402(1); the machines were more akin to video arcade machines intended for amusement because a player inserted money and could play gambling-like games, but never received anything in return except amusement. *State v. 26 Gaming Machs.*, 356 Ark. 47, 145 S.W.3d 368 (2004).

Gambling Device.

Just as devices described as slot machines in another case were determined to be illegal gaming devices, defendant's devices were gambling devices proscribed by § 5-66-104; because they were slot machines, they were expressly excluded by subsection (a) of this section from the definition of amusement devices found at § 26-57-402(1). *Paris v. State*, 87 Ark. App. 344, 192 S.W.3d 277 (2004).

Cited: *Piggott v. Eblen*, 236 Ark. 390, 366 S.W.2d 192 (1963).

26-57-404. Privilege tax on amusement devices.

(a) On each amusement device there shall be imposed an annual privilege tax of five dollars (\$5.00).

(b) The Director of the Department of Finance and Administration shall collect for each amusement device the full annual license fee when paid during the first six (6) months of the fiscal year, but any license fee paid during the last six (6) months of the fiscal year shall be upon the basis of one-half (1/2) of the annual tax.

History. Acts 1939, No. 201, § 4; A.S.A. 1947, § 84-2613; Acts 1999, No. 1231, § 2.

Case Notes

In General.
Sales Tax Deductions.

In General.

Acts 1931, No. 167, imposing a higher tax on coin-operated miniature pool tables than Acts 1931, No. 156 imposed on standard pool tables, was not discriminatory. *Thompson v. Wiseman*, 189 Ark. 852, 75 S.W.2d 393 (1934) (decision under prior law).

Sales Tax Deductions.

Tax assessed by this section has been held not a tax that could be deducted from the sales tax under provision exempting a portion of all retail sales or articles on which a state privilege tax or license was already collected. *Bangs v. McCarroll*, 202 Ark. 103, 149 S.W.2d 53 (1941).

Cited: *Piggott v. Eblen*, 236 Ark. 390, 366 S.W.2d 192 (1963).

26-57-405. License tag for machines.

(a) Upon payment of the tax provided for in § 26-57-404, the Director of the Department of Finance and Administration will issue a license tag.

(b) The license tag shall:

(1) State the period of time the amusement device may be operated; and

(2) Be attached to the amusement device before placing it in operation.

History. Acts 1939, No. 201, § 4; A.S.A. 1947, § 84-2613.

Case Notes

Cited: *Piggott v. Eblen*, 236 Ark. 390, 366 S.W.2d 192 (1963).

26-57-406. Unlicensed games a public nuisance — Seizure and sale — Redemption.

Every amusement device as defined in § 26-57-402 upon which the individual privilege tax of five dollars (\$5.00) has not been paid is declared to be a public nuisance and may be seized by any authorized agent of the Department of Finance and Administration and sold by the Director of the Department of Finance and Administration on an order of the Pulaski County Circuit Court. However, the owner of the amusement device shall have the privilege of redeeming the amusement device within ten (10) days by paying the tax due and costs.

History. Acts 1939, No. 201, § 5; A.S.A. 1947, § 84-2614.

Case Notes

Cited: *Piggott v. Eblen*, 236 Ark. 390, 366 S.W.2d 192 (1963).

26-57-407. Disposition of revenue collected.

(a) All revenue collected under this section and §§ 26-57-401 — 26-57-406 shall be deposited into the State Treasury.

(b) The first thirty thousand dollars (\$30,000) annually collected shall be placed to the credit of the Public School Fund, and all moneys over thirty thousand dollars (\$30,000) annually collected shall be placed to the credit of the State Board of Health for rural health work.

History. Acts 1939, No. 201, § 8; 1941, No. 319, § 8; A.S.A. 1947, § 84-2616; Acts 2009, No. 655, § 85.

Publisher's Notes. The School Equalizing Fund referred to in this section has been superseded by the Public School Fund. See § 19-5-305.

Section 26-57-306 referred to in this section was repealed by Acts 1993, No. 344, § 2.

Amendments. The 2009 amendment substituted “§§ 26-57-401 – 26-57-406” for §§ 26-57-306 [repealed] and 26-57-401 – 26-57-407” in (a); and made minor stylistic and punctuation changes.

Case Notes

Cited: Piggott v. Eblen, 236 Ark. 390, 366 S.W.2d 192 (1963).

26-57-408. Owning, operating, or leasing a privilege — Privilege fee imposed.

(a) The business of owning, operating, or leasing coin-operated amusement devices, including, but not limited to, the coin-operated amusement devices defined in § 26-57-402, is declared to be a privilege.

(b) It is further declared that the owners, operators, and lessors of coin-operated amusement devices shall pay a fee for the privilege of owning, operating, or leasing coin-operated amusement devices in addition to the privilege tax required by § 26-57-404 to be paid on amusement devices.

History. Acts 1977, No. 553, § 1; A.S.A. 1947, § 84-2633; Acts 2009, No. 655, § 86.

Amendments. The 2009 amendment rewrote (b).

Case Notes

Cited: Ragland v. Forsythe, 282 Ark. 43, 666 S.W.2d 680 (1984).

26-57-409. Annual license fee — Renewals.

(a) The annual fee for the license provided for in § 26-57-412 shall:

(1) For all licensees operating not more than three (3) amusement devices, be the sum of five hundred dollars (\$500); and

(2) For all licensees operating more than three (3) amusement devices, be the sum of one thousand dollars (\$1,000).

(b) However, those who restrict the placement of coin-operated amusement devices exclusively to carnivals and county, district, and state fairs shall pay a monthly license fee as follows:

(1) Licensees operating not more than three (3) amusement devices, the sum of seventy-five dollars (\$75.00) a month; and

(2) Licensees operating more than three (3) amusement devices, the sum of one hundred fifty dollars (\$150) a month.

(c) Any licensee who operates amusement devices for more than three (3) months in any one (1) calendar year is required to pay the annual fee for a license.

(d) However, the residency requirements in § 26-57-410 do not apply to those applicants whose placement of coin-operated amusement devices is limited exclusively to carnivals and county, district, and state fairs. Such license is valid for a maximum of three (3) months and may not be renewed, extended, or reissued. No more than one (1) license may be issued in one (1) calendar year.

(e) (1) Annual fees shall be paid on a fiscal-year basis beginning July 1 of each year. Licenses issued subsequent to July 1 shall be paid for as though they were for a full year.

(2) However, licensees who restrict the operation of amusement devices to carnivals and county, district, and state fairs shall pay their license fee at least thirty (30) days prior to the opening of any carnival or county, district, or state fair in which they will be operating amusement devices.

History. Acts 1977, No. 553, §§ 2, 4, 9; 1981, No. 868, §§ 1-3; 1985, No. 397, § 1; A.S.A. 1947, §§ 84-2634, 84-2636, 84-2641.

26-57-410. Licenses — Eligibility.

(a) No license as required in § 26-57-412 shall be issued unless:

(1) The applicant is twenty-one (21) years of age or more;

(2) The applicant is a resident of the State of Arkansas and has been such continuously for at least one (1) year prior to the date of his or her application; and

(3) At least one-half (½) of any partnership or corporation applicant is owned by a resident of Arkansas who has been such continuously for at least one (1) year prior to the application and which resident shall be the party accountable for the collection and reporting of all state taxes and compliance with this subchapter.

(b) No license as provided for in § 26-57-412 shall be issued to:

(1) Any convicted felon;

(2) Any person of known criminal tendencies; or

(3) A former licensee whose license has been revoked until two (2) years subsequent to the date of such revocation.

History. Acts 1977, No. 553, §§ 2, 5; 1981, No. 868, § 1; 1985, No. 397, § 1; A.S.A. 1947, §§ 84-2634, 84-2637.

Case Notes

Constitutionality.

Constitutionality.

Subdivisions (a)(2) and (a)(3) of this section were held unconstitutional as to the residency requirement contained therein as violating the equal protection and privileges and immunities clauses of the United States Constitution. *Ragland v. Forsythe*, 282 Ark. 43, 666 S.W.2d 680 (1984) (decision prior to 1985 amendment).

26-57-411. Licenses — Surety bond required.

(a) Prior to the issuance or renewal of any license under this subchapter, the Director of the Department of Finance and Administration shall require the applicant to procure a suitable surety bond in the principal sum of six thousand dollars (\$6,000) to insure the faithful and prompt payment of all sales taxes, use taxes, or privilege taxes which may become due in connection with the operation of the licensed business and to secure the faithful performance of all duties and obligations imposed by this subchapter.

(b) No surety bond is required prior to the issuance of a license under this subchapter to an applicant who restricts the placement of amusement devices to carnivals and county, district, and state fairs for a period not exceeding three (3) months in any one (1) calendar year.

History. Acts 1977, No. 553, § 11; 1981, No. 868, § 4; A.S.A. 1947, § 84-2643; Acts 2007, No. 450, § 1.

Amendments. The 2007 amendment added the (a) and (b) designations; and in (b), substituted "No surety bond is required prior to the issuance of a license under this subchapter to an applicant who" for "However, if the licensee" and deleted "the required surety bond will be in the amount of two thousand five hundred dollars (\$2,500)" following "year."

26-57-412. Licenses — Issuance.

- (a) Licenses for the privilege of owning, operating, or leasing coin-operated amusement devices shall be issued by the Director of the Department of Finance and Administration.
- (b) Applications for the licenses shall be on a form prescribed by the director.
- (c) At the time of the issuance of such licenses, each licensee shall be assigned a number.

History. Acts 1977, No. 553, § 3; A.S.A. 1947, § 84-2635.

26-57-413. Licenses — Revocation or suspension.

- (a) The Director of the Department of Finance and Administration may revoke or suspend the license authorized under this subchapter for cause.
- (b) Any person, partnership, limited liability company, or corporation that is a licensee under this subchapter shall be notified in writing that the revocation or suspension of its license is being considered and the reason therefor.
- (c) The licensee shall have fifteen (15) days in which to notify the director that a hearing is desired, after which time a hearing shall be had not less than fifteen (15) days subsequent to the expiration of the fifteen-day period of notice.
- (d) (1) Any licensee whose license has been revoked or suspended may appeal to the Pulaski County Circuit Court within twenty (20) days after revocation or suspension by filing a copy of the notice of the revocation or suspension with the clerk of the circuit court and causing a summons to be served on the director.
 - (2) The case shall be tried de novo in the circuit court.
 - (3) Either party may prosecute an appeal to the Supreme Court as in other cases.

History. Acts 1977, No. 553, § 3; A.S.A. 1947, § 84-2635; Acts 1995, No. 1160, § 32.

26-57-414. Owning, operating, or leasing without license a public nuisance — Seizure and sale of devices — Redemption — Subsequent license fee credit.

- (a) Any person who engages in the business of owning, operating, or leasing coin-operated amusement devices without first obtaining the license prescribed in § 26-57-412 is declared to be maintaining a public nuisance.
- (b) (1) A coin-operated amusement device owned, operated, or leased without first obtaining the license prescribed in § 26-57-412 shall be seized by an authorized agent of the Revenue Division of the Department of Finance and Administration and sold by the Director of the Department of Finance and Administration at public auction on an order of the Pulaski County Circuit Court.

(2) However, a coin-operated amusement device seized under subdivision (b)(1) of this section may be redeemed before sale by the owner of the coin-operated amusement device upon the payment of:

(A) All sales or use taxes due on the coin-operated amusement device;

(B) The sales tax on the receipt of the wrongfully operated coin-operated amusement device;

(C) All costs and expenses incurred in connection with the seizure and obtaining the order of the court; and

(D) A penalty of one thousand dollars (\$1,000).

(c) If the offender applies for a license as provided in this subchapter within thirty (30) days subsequent to the payment of the penalty, five hundred dollars (\$500) of such penalty shall be allowed as the first annual license fee in the event the license is granted.

History. Acts 1977, No. 553, § 8; A.S.A. 1947, § 84-2640; Acts 2009, No. 655, § 87.

Amendments. The 2009 amendment subdivided (b)(2), and made minor stylistic changes throughout (b).

26-57-415. Notification of purchase or lease of device.

(a) All licensees under this subchapter within ten (10) days of the date of purchase or lease of any amusement device upon which an annual privilege tax is levied by the state shall furnish the Director of the Department of Finance and Administration with a copy of the invoice or lease agreement, showing the description and serial number of the amusement device and evidence that the Arkansas sales tax has been paid.

(b) In the event that the amusement device was purchased or leased from outside the state, the invoice or lease agreement shall be accompanied by the appropriate form and a check or money order for the state compensating tax.

History. Acts 1977, No. 553, § 6; A.S.A. 1947, § 84-2638.

26-57-416. Lessor's records — Sales taxes.

(a) In all cases in which a licensee under this subchapter leases amusement devices to others, it shall be the duty of the licensee to keep records of the amount of rent received by the licensee and the amount retained by the lessee and to furnish carbon copies of such records to the lessee.

(b) (1) A licensee shall ascertain the amount of sales tax due on the receipts of the amusement device and withhold the amount of the sales tax due from the receipts and remit the sales tax due to the Revenue Division of the Department of Finance and Administration.

(2) The amount of sales tax shall not be taken into consideration in determining the rent due the licensee.

(c) All records required to be kept by the licensee under the provision of this subchapter shall be made available to the Director of the Department of Finance and Administration within a reasonable time after request or the license of the offending licensee may be revoked as provided in this subchapter.

History. Acts 1977, No. 553, § 7; A.S.A. 1947, § 84-2639; Acts 2009, No. 655, § 88.

Amendments. The 2009 amendment substituted "amusement device" for "machine" in (b)(1), and made minor stylistic changes.

26-57-417. Decal or card with licensee's number.

(a) In addition to the tax stamp which must be displayed on each amusement device as required under other statutes, each licensee under this subchapter shall procure and exhibit on each amusement device owned or operated under such license a decal or card showing the number of the license under which the amusement device is operated.

(b) (1) Any coin-operated amusement device exhibited without the decal or card showing the number of the license as required in subsection (a) of this section is declared to be the maintenance of a public nuisance, and such an amusement device may be seized as provided in § 26-57-414.

(2) However, if the owner of the coin-operated amusement device is a licensed operator under this subchapter, the owner may redeem the coin-operated amusement device upon the payment of a penalty of ten dollars (\$10.00).

History. Acts 1977, No. 553, § 10; A.S.A. 1947, § 84-2642; Acts 2009, No. 655, § 89.

Amendments. The 2009 amendment substituted "coin-operated amusement device" for "machine" twice in (b)(2), and made minor stylistic changes.

26-57-418. Sale of coin-operated amusement devices declared privilege — Fee imposed on salespersons.

The selling, offering for sale, the taking of orders, or the soliciting for sale of coin-operated amusement devices, as defined in § 26-57-402, is declared to be a privilege. It is further declared that salespersons shall pay a fee for this privilege.

History. Acts 1977, No. 553, § 12; A.S.A. 1947, § 84-2644.

26-57-419. Licenses to sell.

(a) Licenses to sell coin-operated amusement devices shall be issued by the Director of the Department of Finance and Administration.

(b) Applications for such licenses shall be on a form prescribed by the director.

(c) (1) No license shall be issued to any corporation which is owned in whole or in part by any convicted felon or person who formerly held a license which was revoked until two (2) years subsequent to such revocation.

(2) The same restriction shall hold true on members of partnerships or individuals applying for licenses.

(3) Salespersons employed by licensees shall in like manner be subject to such restrictions.

(d) Any person, firm, partnership, limited liability company, or corporation who applies for a license to sell coin-operated amusement devices as provided in this section prior to the issuance of such license shall be required to procure a suitable surety bond in the principal sum of one thousand dollars (\$1,000) to ensure compliance with the provisions of this subchapter and to provide indemnity to any person who deals with the applicant in the event of the violation of this subchapter.

(e) The annual fee for each corporation, partnership, or individual which acquires a license to sell coin-operated amusement devices shall be twenty-five dollars (\$25.00), and additional annual licenses for salespersons employed by such licensees may be acquired for five dollars (\$5.00).

(f) (1) The director may revoke or suspend such licenses for cause.

(2) Any licensee shall be notified in writing that the revocation or suspension of its license is being considered and the reason therefor.

(3) The licensee shall have fifteen (15) days in which to notify the director that a hearing is desired, after which time a hearing shall be held not less than fifteen (15) days subsequent to the expiration of the fifteen-day period of notice.

(4) (A) Any licensee whose license has been revoked or suspended may appeal to the Pulaski County Circuit Court by filing a copy of the notice of revocation or suspension with the clerk of the court within twenty (20) days of receipt thereof and causing the issuance of a summons to be served on the director. The hearing shall be de novo in the circuit court.

(B) Either party may appeal to the Supreme Court as in other cases.

History. Acts 1977, No. 553, §§ 12, 13, 17; A.S.A. 1947, §§ 84-2644, 84-2645, 84-2649; Acts 1995, No. 1160, § 33.

26-57-420. Notice to purchaser of tax consequences of sale required.

(a) (1) Before a sale of any coin-operated amusement device is concluded, the licensee or his or her salesperson shall notify the purchaser that the operation of the coin-operated amusement device is subject to taxation under this subchapter.

(2) All receipts, invoices, bills of sale, or other documents must contain thereon a notice citing the applicable sections of the law and warning the purchaser of the applicable tax.

(b) (1) Any sale which is made without notifying the purchaser of the existence of the aforementioned applicable sections of the law or when the documents executed in connection with the sale do not cite the appropriate statutes and warn of applicable tax shall be void, and the purchaser may at his or her option cancel the sale, whereupon the licensee shall immediately rebate the purchase price or the deposit made by the purchaser.

(2) The failure of the licensee to rebate such funds after demand by the purchaser shall entitle the purchaser to file suit against the bond of the licensee which is required by § 26-57-419(d), and the license of the licensee shall be revoked if the purchaser obtains a judgment against the bondsman.

History. Acts 1977, No. 553, §§ 14, 15; A.S.A. 1947, §§ 84-2646, 84-2647; Acts 2009, No. 655, § 90.

A.C.R.C. Notes. Section 26-57-301 et seq. referred to in subdivision (a)(2) of this section was repealed by Acts 1993, No. 344, § 2.

Amendments. The 2009 amendment, in (a)(1), inserted "coin-operated" and substituted "under this chapter" for "as set forth in §§ 26-57-301 et seq. [repealed] and 26-57-402 –26-57-407."

26-57-421. Selling in violation of subchapter a misdemeanor — Penalty.

Any person who sells, offers for sale, takes orders, or solicits for the sale of coin-operated amusement devices without first obtaining a license and making the bond provided in § 26-57-419 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed five hundred dollars (\$500) or by confinement in the county jail for a period not exceeding sixty (60) days, or by both fine and confinement.

History. Acts 1977, No. 553, § 16; A.S.A. 1947, § 84-2648.

Subchapter 5 — Travel Bureaus or Services

- 26-57-501. Penalties.
- 26-57-502. Regulation and licensing.
- 26-57-503. Notice of engaging in business.
- 26-57-504. License fee.
- 26-57-505. Bond.
- 26-57-506. Disposition of tax.

Effective Dates. Acts 1939, No. 151, § 8: approved Feb. 28, 1939. Emergency clause provided: "Now, therefore, whereas the Old Age Pension Fund is in dire need of funds to care for the infirm and its beneficiaries, an emergency is declared and it is necessary for the preservation of the public peace, health and safety that this Act shall become effective without delay and take effect and be in full force from and after its passage."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-57-501. Penalties.

Any person, firm, partnership, limited liability company, or corporation failing to comply with a provision of this subchapter shall be guilty of a violation and upon conviction shall be fined in a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

History. Acts 1939, No. 151, § 6; A.S.A. 1947, § 84-2219; Acts 1995, No. 1160, § 34; 2005, No. 1994, § 177.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor."

26-57-502. Regulation and licensing.

The regulation and licensing of the business conducted in this state by what is known as travel bureaus or travel services operating for the purpose of securing transportation in private automobiles from one (1) destination to another on the share-expense basis both within and without the State of Arkansas is placed in the Revenue Division of the Department of Finance and Administration, and the Director of the Department of Finance and Administration is authorized to license and collect the fees therefor and enforce this subchapter in its entirety by due process of law.

History. Acts 1939, No. 151, § 1; A.S.A. 1947, § 84-2214.

26-57-503. Notice of engaging in business.

(a) Any person, firm, partnership, limited liability company, or corporation in this state who shall enter into or conduct such a business as is described in § 26-57-502 immediately upon engaging in or commencing the business shall notify the Director of the Department of Finance and Administration by letter of that fact, setting forth the date

of commencement and stating his or her intention to abide by all the provisions of this subchapter.

(b) The notice shall be filed by the director in such manner as will enable the director to properly inspect and record the latter compliance of such person with the provisions of this subchapter.

History. Acts 1939, No. 151, § 2; A.S.A. 1947, § 84-2215; Acts 1995, No. 1160, § 35.

26-57-504. License fee.

Any person, firm, partnership, limited liability company, or corporation now engaged in or who becomes engaged in a business as set forth in this subchapter is taxed a license of two hundred dollars (\$200) per year.

History. Acts 1939, No. 151, § 3; A.S.A. 1947, § 84-2216; Acts 1995, No. 1160, § 36.

26-57-505. Bond.

A person, firm, partnership, limited liability company, or corporation shall also make a bond to the State of Arkansas in the sum of one thousand dollars (\$1,000) for the faithful performance under this subchapter.

History. Acts 1939, No. 151, § 4; A.S.A. 1947, § 84-2217; Acts 1995, No. 1160, § 37.

26-57-506. Disposition of tax.

The Director of the Department of Finance and Administration shall remit the funds so collected to the State Treasury, and the Treasurer of State is directed to credit all such moneys to the Old Age Pension Fund.

History. Acts 1939, No. 151, § 5; A.S.A. 1947, § 84-2218.

Subchapter 6 — Insurance Premium Taxes

26-57-601. Tax additional.

26-57-602. Local taxes.

26-57-603. Tax reports generally.

26-57-604. Remittance of tax.

26-57-605. Wet marine and foreign trade insurers — Report and remittance of tax.

26-57-606. [Repealed.]

26-57-607. Failure to report and pay tax.

26-57-608. Nonliability of officers as to taxes or fees paid under invalid laws.

26-57-609. [Repealed.]

26-57-610. Disposition of taxes.

26-57-611. Disposition of nonallocated funds.

26-57-612. Quarterly premium taxes.

26-57-613. Exceptions.

26-57-614. Fire protection services — Additional tax.

26-57-615. Domiciled insurers' premium tax credit for certain fees payable to other jurisdictions.

26-57-616. Time limitations for assessments, collection, and refunds.

Cross References. Appropriation of insurance premium tax for firemen's relief and pension funds, Fire and Police Pension Review Board, and Fire and Police Pension Guarantee Fund, § 24-11-809.

Effective Dates. Acts 1959, No. 304, § 3: effective 12:01 o'clock a.m. on Jan. 1, 1960.

Acts 1959, No. 697, § 697: effective 12:01 o'clock a.m. on Jan. 1, 1960.

Acts 1968 (1st Ex. Sess.), No. 24, § 10: Feb. 19, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that benefits under Firemen's Relief and Pension Funds are inadequate; that additional funds are necessary to properly finance the Firemen's Relief and Pension Funds in order that benefits to firemen and their dependents may be increased to meet the increasing cost of living and in order to assure that competent persons may be retained in the various Fire Departments to provide the fire protection that is essential to public health and safety in this State; and, that this Act will provide additional needed funds and will increase benefits under the Firemen's Relief and Pension Fund. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1979, No. 824, § 2: Jan. 1, 1980.

Acts 1985, No. 804, § 33: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 992, § 7: Jan. 1, 1985.

Acts 1989, No. 772, § 27: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 833, § 9: Jan. 1, 1992.

Acts 1992 (1st Ex. Sess.), No. 10, § 14: Mar. 4, 1992. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, meeting in First Extraordinary Session, that an appropriation to the Department of Finance and Administration is necessary in order to disburse funds collected after January 1, 1992, under the provisions of Arkansas Code § 14-284-401 et seq. and § 26-57-614, and that the creation of the Fire Protection Premium Tax Fund will allow those monies to be disbursed for the provision of adequate fire protection services in the most efficient manner. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers' compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 881, § 28: Mar. 25, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly of the State of Arkansas that the present funeral pre-need laws, employee leasing firm laws, and other insurance laws are inadequate to protect the public. In pertinent part, the changes to the Insurance Code needed to assure the stability of funding for the Fraud Investigation Division of the Department must be enacted in the laws of this state well before the new fiscal year beginning July 1, 1999. The changes to authorized appropriations, as well as changes to the disability (health) insurance laws on individuals to conform to the federal laws on group policies with guaranteed renewability require immediate adoption; and unless this emergency clause is adopted, this act might not become

effective until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1570, § 10: Apr. 15, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly, that certain provisions of the law governing the Firemen's and Police Officers' Pension and Relief Fund need to be amended concerning the distribution and allocation of funds and that the effective administration of State government makes it necessary for these changes to begin immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Research References

A.L.R.

State “retaliatory” statutes imposing special taxes or fees on foreign insurers doing business within the state. 30 A.L.R.4th 873.

U. Ark. Little Rock L.J.

Survey, Insurance, 12 U. Ark. Little Rock L.J. 643.

Case Notes

Constitutionality.

Constitutionality.

Acts 1963, No. 527 which purported to amend Acts 1959, No. 148, § 69, was in violation of Ark. Const., Amend. No. 19 (Ark. Const., Art. 5, §§ 37-41), which prohibits any increase in taxes except by the vote of three-fourths of each house. *Combs v. Glen Falls Ins. Co.*, 237 Ark. 745, 375 S.W.2d 809 (1964).

Notwithstanding the separability provision of Acts 1963, No. 527, § 2, the Supreme Court, in holding the tax increase provisions of Acts 1963, No. 527, amending Acts 1959, No. 148, § 69, invalid, held that the alternatives offered by the section to insurance companies of paying the higher tax or making extensive investments in Arkansas were complementary and interdependent and to enforce one without the other would be a perversion of legislative intent and equivalent to the enactment of a statute the General Assembly did not see fit to adopt. *Combs v. Glen Falls Ins. Co.*, 237 Ark. 745, 375 S.W.2d 809 (1964).

26-57-601. Tax additional.

The premium tax levied by §§ 26-57-603 — 26-57-605 shall be in addition to the tax paid by casualty companies and self-insurers writing workers' compensation insurance under § 11-9-101 et seq.

History. Acts 1959, No. 148, § 69; 1979, No. 908, § 1; 1981, No. 595, § 1; A.S.A. 1947,

§ 66-2302; Acts 1987, No. 1033, § 1.

Publisher's Notes. Acts 1987, No. 1033, § 10, provided:

"The provisions of this Act as to premium taxes shall apply to all premiums which are collected in calendar year 1987 upon which the premium tax is reported and paid in 1988, and the provisions of this Act as to income taxes shall apply to all income years beginning on or after January 1, 1987."

26-57-602. Local taxes.

The taxes levied by §§ 26-57-603 — 26-57-605 upon any insurer shall be in lieu of all other state, county, city, town, or municipal taxes on premium receipts. No county, city, town, or municipality shall impose any privilege tax or license fee upon any such insurer or its agents for the privilege of transacting the business of insurance.

History. Acts 1959, No. 148, § 69; 1979, No. 908, § 1; 1981, No. 595, § 1; A.S.A. 1947, § 66-2302; Acts 1987, No. 1033, § 1.

Publisher's Notes. As to applicability of Acts 1987, No. 1033, see Publisher's Notes, § 26-57-601.

26-57-603. Tax reports generally.

(a) Each authorized, each formerly authorized, and each unauthorized insurer as defined in § 23-60-102(12) shall file with the Insurance Commissioner on or before March 1 of each year a report in form as prescribed by the commissioner showing, except as to wet marine and foreign trade insurance as defined in § 26-57-605(d), total direct premium income including policy, membership, and other fees, and all other considerations for insurance, from all kinds and classes of insurance, whether designated as premium or otherwise, written by it during the preceding calendar year on account of policies and contracts covering property, subjects, or risks located, resident, or to be performed in this state, with proper proportionate allocation of premium as to such persons, property, subjects, or risks in this state insured under policies or contracts covering persons, property, subjects, or risks located or resident in more than one (1) state, after deducting from the total direct premium income dividends and similar returns paid or credited to policyholders other than as to life insurance, applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, and the amount of reduction in, or refund of, premiums allowed to industrial life policyholders for payment of premiums directly to an office of the insurer.

(b) No deduction shall be made of the cash surrender values of policies.

(c) Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

(d) Each authorized, unauthorized, or formerly authorized domestic, foreign, and alien insurer shall pay to the Treasurer of State through the commissioner, as a tax imposed for the privilege of transacting business in this state, a tax upon the net premiums and net considerations, except as provided in § 26-57-605. The tax shall be computed thereon at a rate of two and one-half percent (2½%). The premiums written shall be reported at such times and in such form and context as prescribed by the commissioner; and the taxes shall be paid on a quarterly estimate basis as prescribed by the commissioner and shall be reconciled annually at the time of filing the annual report required in subsections (a)-(c)

of this section.

(e) That portion of the tax paid by an insurer in accordance with § 24-11-809 shall be separately specified in the report in such manner as may be prescribed by the commissioner to enable the commissioner to make a proper apportionment of the funds.

History. Acts 1959, No. 148, § 69; 1968 (1st Ex. Sess.), No. 24, § 5; 1979, No. 908, § 1; 1981, No. 595, § 1; 1985, No. 804, § 6; A.S.A. 1947, § 66-2302; Acts 1987, No. 1033, § 1; 1989, No. 772, § 19.

Publisher's Notes. Acts 1985, No. 804, § 32, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of a law would be deemed to be in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act. As to applicability of Acts 1987, No. 1033, see Publisher's Notes, § 26-57-601.

26-57-604. Remittance of tax.

(a) (1) (A) Coincident with the filing of the tax report, each authorized life or accident and health insurer, including licensed health maintenance organizations, may apply for a credit for the noncommissioned salaries and wages of the insurer's Arkansas employees which are paid in connection with its insurance operations.

(B) The credit may be applied as an offset against the premium tax imposed in § 26-57-603(d) on life and accident and health insurance.

(2) (A) In no event shall the offset reduce the accident and health premium tax due by more than eighty percent (80%).

(B) In no event shall the offset reduce the life premium tax due by more than seventy percent (70%).

(C) The taxes shall be reported and paid on a quarterly estimated basis as prescribed by the Insurance Commissioner and shall be reconciled annually at the time of filing the annual report required in § 26-57-603(a)-(c).

(3) Furthermore, an employee must be employed for six (6) months in the facilities for the salary or wages to be eligible to qualify for the life or disability premium tax credit.

(4) (A) (i) Except as provided in subdivision (a)(4)(B) of this section, on or before March 1 of each year, any such authorized life or accident and health insurer, including health maintenance organizations, desiring to qualify under this provision shall furnish the appropriate data and request on forms prescribed by the commissioner.

(ii) For purposes of calculating the taxes under §§ 23-63-102 — 23-63-104, an insurer qualifying for a credit under this section shall compute the tax due under §§ 23-63-102 — 23-63-104, if any, by using an Arkansas premium tax rate of two and one-half percent (2½%).

(B) (i) Subdivision (a)(4)(A) of this section shall only apply for tax years beginning prior to January 1, 2000.

(ii) On or before March 1 of 2000 and each year thereafter, any such authorized life or disability insurer, including health maintenance organizations, desiring to qualify under this provision shall furnish the appropriate data and request on forms prescribed by the commissioner.

(iii) However, for purposes of calculating the taxes under §§ 23-63-102 — 23-63-104, an insurer qualifying for a credit under this section shall compute the tax due under §§ 23-63-102 — 23-63-104, if any, by using an Arkansas premium tax

rate of two and one-half percent (2½%) without regard to the credit specified in this section.

(b) (1) Each insurer other than those in § 26-57-603(d) and subsection (a) of this section shall pay to the Treasurer of State through the commissioner, as a tax imposed for the privilege of transacting business in this state, a tax at the rate of two and one-half percent (2½%) upon the net premiums and net considerations on all kinds of insurance, except as provided in § 26-57-605.

(2) The taxes shall be paid on a quarterly estimate basis as prescribed by the commissioner and shall be reconciled annually at the time of filing the annual report required in § 26-57-603(a)-(c).

(c) (1) In addition to any premium tax credit not related to the same eligible property for which an insurer qualifies under subsection (a) of this section, there is allowed a premium tax credit for the amount of the Arkansas historic rehabilitation income tax credit allowed by the certification of completion issued by the Department of Arkansas Heritage under the Arkansas Historic Rehabilitation Income Tax Credit Act, § 26-51-2201 et seq.

(2) The premium tax credit under this subsection may be used to offset the premium tax imposed by §§ 26-57-603 — 26-57-605.

(3) The amount of the premium tax credit under this section that may be claimed by the taxpayer in a tax year shall not exceed the amount of premium tax due by the taxpayer.

(4) Any unused premium tax credit may be carried forward for a maximum of five (5) consecutive taxable years for credit against the premium tax.

(5) The Insurance Commissioner shall promulgate rules to implement this section.

History. Acts 1959, No. 148, § 69; 1975, No. 450, § 1; 1979, No. 908, § 1; 1981, No. 595, § 1; A.S.A. 1947, § 66-2302; Acts 1987, No. 1033, § 1; 1989, No. 772, § 20; 1999, No. 881, § 23; 2001, No. 1604, § 124; 2009, No. 498, § 3.

Publisher's Notes. As to applicability of Acts 1987, No. 1033, see Publisher's Notes, § 26-57-601.

Amendments. The 2009 amendment added (c).

Effective Dates. Acts 2009, No. 498, § 4, provided: "This act is effective for tax years beginning on and after January 1, 2009, and ending on or before December 31, 2015."

Case Notes

In General.

Purpose.

Exemptions.

In General.

Tax levied by this section is a privilege tax rather than an income tax. *American Ins. Co. v. Harkey*, 247 Ark. 297, 445 S.W.2d 84 (1969).

Insurance company whose authority to do business in Arkansas was revoked was liable for tax on premiums collected before its authority was revoked, but was not liable for tax on premiums collected after such revocation. *American Ins. Co. v. Harkey*, 247 Ark. 297, 445 S.W.2d 84 (1969).

Purpose.

Immunity of domestic corporations from gross premium tax was intended to give encouragement and to promote domestic development and not as an advantage to be claimed by policyholders. *United Mut. Life Ins. Co. v. State ex rel. Att'y Gen.*, 194 Ark. 371, 108 S.W.2d 484 (1937)

(decision under prior law).

Exemptions.

A legal reserve mutual company was not liable for taxes on premiums collected from policyholders on business acquired from a fraternal beneficiary company when the fraternal beneficiary company was itself exempt from payment of such taxes. *United Mut. Life Ins. Co. v. State ex rel. Att'y Gen.*, 194 Ark. 371, 108 S.W.2d 484 (1937) (decision under prior law).

Exemption provisions from gross premium tax in favor of fraternal beneficiary society were intended to inure to the certificate holders as distinguished from the parent agency. *United Mut. Life Ins. Co. v. State ex rel. Att'y Gen.*, 194 Ark. 371, 108 S.W.2d 484 (1937) (decision under prior law).

26-57-605. Wet marine and foreign trade insurers — Report and remittance of tax.

(a) As to wet marine and foreign trade insurance written in this state during the preceding calendar year, on or before March 1 of each year, each authorized, unauthorized, or formerly authorized insurer shall file its report with the Insurance Commissioner, on forms as prescribed by the commissioner of its gross underwriting profit thereon.

(b) As a tax imposed for the privilege of transacting such insurance in this state, a tax of three-quarters of one percent ($\frac{3}{4}\%$) of the gross underwriting profit shall be reported and paid on a quarterly estimate basis at such times and upon forms as shall be prescribed by the commissioner and reconciled annually at the time of filing the annual report.

(c) (1) The gross underwriting profit shall be ascertained by deducting from the net premiums, which are the gross premiums less all return premiums and premiums for reinsurance, on wet marine and foreign trade insurance contracts, the net losses paid, which are the gross losses paid less salvage and recoveries on reinsurance ceded, during the calendar year under those contracts.

(2) In the case of insurers issuing participating contracts, the gross underwriting profit shall not include for computation of the tax prescribed by this section the amounts refunded or paid as participation dividends by the insurers to the holders of the contracts.

(d) As used in this subchapter, "wet marine and foreign trade insurance" includes only:

(1) Insurances upon vessels, crafts, hulls, and of interests therein, of, or with relations thereto;

(2) Insurance of marine builder's risks, marine war risks, and contracts of marine protection and indemnity insurance;

(3) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition; and

(4) Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment, or reshipment incident thereto.

History. Acts 1959, No. 148, § 69; 1979, No. 908, § 1; 1981, No. 595, § 1; A.S.A. 1947, § 66-2302; Acts 1987, No. 1033, § 1; 1989, No. 772, § 21.

Publisher's Notes. Acts 1959, No. 148, § 69, in part, is also codified as § 23-60-102. As to applicability of Acts 1987, No. 1033, see Publisher's Notes, § 26-57-601.

Case Notes

In General.

In General.

Tax due on March 1 is on privilege exercised preceding year and is based on premiums received in that year while company was authorized to do business in Arkansas. *American Ins. Co. v. Harkey*, 247 Ark. 297, 445 S.W.2d 84 (1969).

26-57-606. [Repealed.]

Publisher's Notes. This section, concerning foreign automobile insurance companies and annual reports, was repealed by Acts 2005, No. 506, § 48. The section was derived from Acts 1979, No. 824, § 1; A.S.A. 1947, § 66-2302.2.

26-57-607. Failure to report and pay tax.

(a) The Insurance Commissioner in his or her discretion may suspend or revoke the certificate of authority of any insurer or health maintenance organization that fails to report and pay the premium tax levied under §§ 26-57-604 and 26-57-605 on the date due or during any reasonable extension of time which may have been expressly granted by the commissioner for good cause upon the insurer's request.

(b) In addition, any insurer or health maintenance organization that fails to report or pay the tax when due shall be subject to a penalty of one hundred dollars (\$100) for each day of the delinquency. The penalty shall be collected by the commissioner if necessary by a civil suit therefor brought by the commissioner in the Pulaski County Circuit Court, unless the penalty is waived by the commissioner upon a showing by the insurer or organization of good cause for its failure to file its report or tax payment on or before the date due.

History. Acts 1959, No. 148, § 69; 1979, No. 908, § 1; 1981, No. 595, § 1; A.S.A. 1947, § 66-2302; Acts 1989, No. 772, § 22.

26-57-608. Nonliability of officers as to taxes or fees paid under invalid laws.

No personal liability shall arise against any director, trustee, officer, or agent of any insurer by reason of any payment made by or on behalf of such insurer on account of any taxes, licenses, or fees paid pursuant to any law, even though such law is subsequently held to be invalid.

History. Acts 1959, No. 148, § 71; A.S.A. 1947, § 66-2304.

26-57-609. [Repealed.]

Publisher's Notes. This section, concerning the allocation of tax, was repealed by Acts 1999, No. 1570, § 5. The section was derived from Acts 1975, No. 450, § 2; 1985, No. 992, § 5; A.S.A. 1947, § 66-2302.1; Acts 1987, No. 1033, § 2.

26-57-610. Disposition of taxes.

The Insurance Commissioner shall deposit all taxes collected under the provisions of §§ 26-57-604 and 26-57-605 into the State Treasury, and on the last business day of each month the Treasurer of State shall classify such taxes as to the following types of revenues and credit the net amounts respectively of taxes collected under the provisions of §§ 26-57-604 and 26-57-605 as indicated in this section:

(1) The taxes based on premiums collected as special revenues shall be distributed to the respective cities, incorporated towns, and fire protection districts in this state for credit to the respective firemen's relief and pension funds;

(2) Except as provided in subdivision (3) of this section, all other taxes collected under §§ 26-57-604 and 26-57-605 shall be classified as general revenues, and the net amount of taxes collected under §§ 26-57-604 and 26-57-605 shall be credited to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.; and

(3) Amounts collected under §§ 26-57-604 and 26-57-605 above the forecasted level for insurance premium taxes set by the Chief Fiscal Officer of the State under § 10-3-1404(a) shall be credited by the Treasurer of State to the Arkansas Medicaid Program Trust Fund and shall be disbursed and used for the sole purpose of increasing per diem reimbursement for general hospital inpatient services provided to Medicaid beneficiaries and to increase private duty nursing rates for registered nurses and licensed practical nurses in home health agencies in the following amounts:

	FY 2006	
(A) Raise the capitated daily rate for hospitals to a maximum		
of	\$850	\$6,500,000
(B) Medicaid private duty nursing rate increase for registered nurses and licensed		
practical	nurses	\$200,000

History. Acts 1959, No. 148, § 70; 1959, No. 304, § 2; 1968 (1st Ex. Sess.), No. 24, § 3; A.S.A. 1947, § 66-2303; Acts 2005, No. 2222, § 1.

Amendments. The 2005 amendment inserted "except as provided in subdivision (3) of this section" in (2); added (3); and made related changes.

Cross References. Workmen's compensation companies, additional charges, § 11-9-301.

Case Notes

Constitutionality.
Applicability.

Constitutionality.

The imposition of a so-called tax by Acts 1917, No. 264, § 1, consisting of a percentage of the premiums paid, upon corporations which insured in other states in companies not authorized to do business in this state was held invalid under U.S. Const. Amend. 14. *Saint Louis Cotton Compress Co. v. Arkansas*, 260 U.S. 346, 43 S. Ct. 125, 67 L. Ed. 297 (1922) (decision under prior law).

Acts 1931, No. 235, imposing a higher privilege tax on gross receipts of foreign companies, did not violate U.S. Const. Amend. 14, since the classification was neither capricious nor arbitrary. *Central States Life Ins. Co. v. State*, 190 Ark. 605, 80 S.W.2d 628 (1935) (decision under prior law).

Acts 1931, No. 235 was not passed in violation of Const. Art. 5, § 31, although passed by a mere majority vote, since funds derived therefrom were to be used for public health and the necessary expenses of state government. *Central States Life Ins. Co. v. State*, 190 Ark. 605, 80 S.W.2d 628 (1935) (decision under prior law).

Applicability.

Acts 1931, No. 235 was to apply to gross premium receipts for the entire year 1931, although practically one-half of the fiscal year 1931 expired before the act became effective. *Du Laney v. Continental Life Ins. Co.*, 185 Ark. 517, 47 S.W.2d 1082 (1932) (decision under prior law).

Money paid for annuity insurance was taxable. *State ex rel. Holt v. New York Life Ins. Co.*, 198 Ark. 820, 131 S.W.2d 639 (1939) (decision under prior law).

State was not entitled to recover in suit against life insurance company for back taxes on annuity insurance premiums where insurance company made report of the premiums collected and paid the taxes due thereon, there being no element of fraud in its failure to report its annuity premiums, as the administrative officers of the state were of the opinion that such premiums were not taxable. *State ex rel. Holt v. New York Life Ins. Co.*, 198 Ark. 820, 131 S.W.2d 639 (1939) (decision under prior law).

26-57-611. Disposition of nonallocated funds.

The Insurance Commissioner shall deposit all premium taxes collected under this subchapter that are not allocated and appropriated for the various funds under the Workers' Compensation Law, § 11-9-101 et seq., for the Arkansas Fire and Police Pension Review Board and firemen's relief and pension funds under § 24-11-809 and for the Arkansas Fire and Police Pension Review Board and police officer's pension and relief funds under § 24-11-301 into the State Treasury as general revenues.

History. Acts 1987, No. 1033, § 1; 2009, No. 655, § 91.

A.C.R.C. Notes. Sections 24-11-810 and 26-57-609 referred to in this section were repealed by Acts 2003, No. 1797, § 6, and Acts 1999, No. 1570, § 5, respectively.

Publisher's Notes. As to applicability of Acts 1987, No. 1033, see Publisher's Notes, § 26-57-601.

Amendments. The 2009 amendment deleted "24-11-810 [repealed], and 26-57-609 [repealed]" following "§ 24-11-809" and made related and minor stylistic changes.

26-57-612. Quarterly premium taxes.

Any insurer, health maintenance organization, or other entity which is required by any section of the Arkansas Code to report and pay quarterly premium taxes, and has a total quarterly premium tax due of twenty-five dollars (\$25.00) or less may defer payment of such sum to the following quarter or quarters of that calendar year, provided such tax payment is remitted to the State Insurance Department no later than March 1 of the following year coincident with the required filing of the annual statement.

History. Acts 1989, No. 772, § 23.

26-57-613. Exceptions.

The provisions of this subchapter shall not be applicable to surplus line insurers on the Insurance Commissioner's approved list.

History. Acts 1989, No. 772, § 23.

26-57-614. Fire protection services — Additional tax.

(a) (1) It is found and determined by the General Assembly that additional funding is needed to improve the fire protection services in this state.

(2) It is further found and determined that the public policy of this state is to provide adequate fire protection services for property of citizens through the use of properly trained and equipped firefighters, and that the provisions of this section and §§ 14-284-401 — 14-284-409 are necessary in furtherance of the public health and safety.

(b) In addition to the premium taxes collected from insurers under other provisions of Arkansas law, each authorized insurer and each formerly authorized insurer shall pay to the Fire Protection Premium Tax Fund a tax at the rate of one-half of one percent (½%) on net direct written premiums for coverages upon real and personal property, including, but not limited to, fire, allied lines, farm owner and homeowner multiple peril, vehicle physical damage, and vehicle collision, or any combination thereof.

(c) This tax shall be collected by the Insurance Commissioner from the insurers at the same time and in the same manner as provided in the premium tax sections of the laws of this state under this subchapter and deposited into the fund.

(d) An assessment upon which this premium tax is based shall be made on forms prescribed by the commissioner.

(e) (1) A premium tax payment shall be made upon a company check payable to the fund.

(2) If the cumulative premium tax payment is less than twenty-five dollars (\$25.00), then the insurer may defer payment to the following quarter or quarters of the current calendar year but shall pay the tax no later than March 1 of the following year.

(f) The provisions of this section and § 14-284-401 et seq. are intended to be supplemental to current provisions of Arkansas law, and shall not be construed as repealing or superseding any other laws applicable thereto.

History. Acts 1991, No. 833, §§ 1, 2, 8; 1992 (1st Ex. Sess.), No. 10, § 7; 2005, No. 506, § 49.

Publisher's Notes. Acts 1991, No. 833, § 1 is also codified as § 14-284-401.

Acts 1991, No. 833, § 8 is also codified as § 14-284-402.

Amendments. The 2005 amendment redesignated former (e) as present (e)(1); and added (e)(2).

Cross References. Dues for volunteer fire departments, § 14-20-108.

26-57-615. Domiciled insurers' premium tax credit for certain fees payable to other jurisdictions.

(a) If, by the laws of any state other than Arkansas or by the retaliatory laws of any state other than Arkansas, any insurer domiciled in Arkansas on or after April 6, 1993, shall be required to pay any fee based on the insurer's premium volume in such other state of licensure, and the fee imposed by such other state is due and payable either because the administrative and financial regulatory fee, "financial fee", based on premium volume assessed by the State Insurance Department Trust Fund Act, § 23-61-701 et seq., as it is popularly known, on insurers licensed in Arkansas and organized or domiciled in such other state is greater than the comparable fee assessed in such other state, or such other state has no comparable fee but requires payment on a retaliatory basis, then to the extent

such fee amounts are legally due and are paid in such other state, any insurer domiciled in Arkansas on and after April 6, 1993, may claim a dollar-for-dollar credit for such fees paid against its annual premium taxes due the State of Arkansas under this subchapter, but such credit shall only be calculated on the amount which would not have been required to be paid in such other state of licensure in the absence of the existence of the financial fee assessed under the State Insurance Department Trust Fund Act, § 23-61-701 et seq., and in no event shall the credit permitted by this section exceed ninety percent (90%) of the insurer's annual premium tax due the State of Arkansas.

(b) (1) Credits permitted in subsection (a) of this section shall be reported annually on March 1.

(2) The Insurance Commissioner shall prescribe the forms for reporting such credits and further shall examine insurer claims for credit made under this section.

(3) If the commissioner shall determine that any amount for which a credit shall have been claimed was not legally due to another state, or that an error exists in the amount of the credit shown on such return, or the amount claimed is a refund or refunded, the commissioner shall take appropriate action under any and all civil and administrative Arkansas laws at the commissioner's disposal, including suspension or revocation of the Arkansas certificate of authority of the noncomplying insurer, for collection and recovery of the premium tax due resulting from the disallowance of a claim for credit made under this section or to disallow any such claim for refund.

History. Acts 1993, No. 901, § 44; 2009, No. 655, § 92.

Amendments. The 2009 amendment rewrote (b)(1).

26-57-616. Time limitations for assessments, collection, and refunds.

(a) No assessment of any insurance premium tax levied under §§ 11-9-301 — 11-9-307, 23-75-119, 23-76-131, or this subchapter shall be made after the expiration of five (5) years from the date the tax report was required to be filed or the date the tax report was filed, whichever period expires later.

(b) No amended tax report or verified claim for credit or refund of an overpayment of any insurance premium tax collected under §§ 11-9-301 — 11-9-307, 23-75-119, 23-76-131, or this subchapter shall be filed after five (5) years from the date the tax report was required to be filed or the date the tax report was filed, whichever period expires later, nor shall any credit, overpayment, or previously unclaimed offset, deduction, or other reduction be paid or allowed.

(c) All usual and customary records used in the preparation of a tax report shall be maintained for a period of five (5) years after the tax report was required to be filed or was filed, whichever period expires later.

History. Acts 1999, No. 977, § 1.

Subchapter 7 — Inedible Fats and Oils Collectors

26-57-701 — 26-57-705. [Repealed.]

26-57-701 — 26-57-705. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1993, No. 111, § 1 and No. 344, § 2.

The subchapter was derived from the following sources:

26-57-701. Acts 1975, No. 323, § 1; A.S.A. 1947, § 84-2220.

26-57-702. Acts 1975, No. 323, § 2; A.S.A. 1947, § 84-2221.

26-57-703. Acts 1975, No. 323, § 3; A.S.A. 1947, § 84-2222.

26-57-704. Acts 1975, No. 323, § 4; A.S.A. 1947, § 84-2223.

26-57-705. Acts 1975, No. 323, § 5; A.S.A. 1947, § 84-2224.

Subchapter 8 **— Additional Tax on Tobacco Products**

26-57-801. Excise tax.

26-57-802. Additional tax — Applicability — Reporting and remitting.

26-57-803. Additional tax — Applicability.

26-57-804. Additional tax on cigarettes.

26-57-805. Additional tax on tobacco products other than cigarettes.

26-57-806. Additional tax on cigarettes.

26-57-807. Additional tax on tobacco products other than cigarettes.

Effective Dates. Acts 1991, No. 1135, § 20: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that the distribution of general revenues and the creation of the various funds and fund accounts are essential to be in force at the beginning of the state fiscal year and that in the event that the General Assembly extends beyond the sixty day limit, the effective date of this act would not begin at that time creating confusion and not permitting the agencies to implement those programs as approved by the General Assembly. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1991, No. 1211, § 9: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is urgent need for additional revenues to fund the Meals on Wheels Program and other transportation services for the benefit of elderly citizens; that this act is designed to provide such additional revenues and should be given effect as soon as is practical. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1991."

Acts 1992 (2nd Ex. Sess.), No. 2, § 7: Feb. 1, 1993. Emergency clause provided: "It is hereby found and determined that the State of Arkansas is lacking adequate funds to provide for the healthcare of its citizens covered by Medicaid; that increased funds must be raised to adequately provide for those needs; and that this act is designed to provide the necessary revenues to the state sufficient to meet these needs. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective on and after February 1, 1993."

Acts 1993, No. 1177, § 2: Feb. 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that this act amends Act 2 of the Second Extraordinary Session of the 78th General Assembly; that Act 2 goes into effect on February 1, 1993; that this act should go into effect at the same time that Act 2 goes into effect; and that unless this emergency clause is adopted this act will not go into effect until July, 1993. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after February 1, 1993."

Acts 2003 (1st Ex. Sess.), No. 38, § 4: May 8, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that revenue available for the support of necessary state services has declined significantly as a result of the nationwide

economic slowdown; that without additional revenue some state services will be reduced or eliminated; that some Arkansas residents will suffer as a result of service reductions or cuts; and that this bill will provide the necessary revenue to avoid state service reductions or cuts. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.” Acts 2009, No. 180, § 6: Mar. 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that existing funding levels are inadequate to meet the medical care needs of the state. That without immediately obtaining adequate funding levels for medical care the citizens of this state will suffer irreparable harm to their health and well-being. This bill shall immediately provide additional funding that is needed to make the funding level adequate and humane. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on March 1, 2009.”

Acts 2009, No. 940, § 5: Apr. 6, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the tax on cigarettes has been drastically increased; that the increase went into effect on March 1, 2009; that there are cities that adjoin border cities that are separated by a river from a city in an adjoining state; that these border cities are able to sell cigarettes at the rate of the adjoining state; and that this creates a drastic loss in cigarette sales for the cities that adjoin these border cities. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Research References

Am. Jur. 71 Am. Jur. 2d State Tax, § 28 et seq.
71 Am. Jur. 2d State Tax, § 359.

26-57-801. Excise tax.

(a) Every person required by the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., to pay the excise tax on tobacco products and every other person selling cigarette paper at wholesale within this state shall also pay an excise tax on the sale of cigarette paper.

(b) The tax shall be in the amount of twenty-five cents (25¢) per package of approximately thirty-two (32) sheets.

(c) The tax shall be remitted to the Director of the Department of Finance and Administration at the same time and in the same manner as prescribed by the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

(d) The director shall promulgate such regulations as the director deems necessary for the implementation of this section.

History. Acts 1987, No. 1045, § 1.

26-57-802. Additional tax — Applicability — Reporting and remitting.

(a) In addition to any other taxes levied on cigarettes, there is levied a tax of fifty cents (50¢) per one thousand (1000) cigarettes sold in the state.

(b) (1) The additional tax levied in this section shall also be applicable to cigarettes sold in Arkansas within three hundred feet (300') of a state line or in any city that adjoins a state line. It is the intent of this section that the rate of tax on cigarettes sold in Arkansas

within three hundred feet (300') of a state line or in any Arkansas city that adjoins a state line shall be:

(A) The rate imposed by law on cigarettes sold in the adjoining state plus the fifty cents (50¢) per one thousand (1,000) cigarettes levied in this section and cited in § 26-57-803(a)(2); or

(B) The rate imposed by law on cigarettes sold in the adjoining state plus the twenty-five cents (25¢) per one thousand (1,000) cigarettes levied in this section and cited in § 26-57-803(a)(3).

(2) The rate shall not exceed the total tax levied on cigarettes in this state.

(c) The additional tax levied in this section shall be reported and remitted in the same manner and at the same time as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

(d) (1) The first three million dollars (\$3,000,000) of the net revenues derived from the additional tax levied in this section shall be deposited into the State Treasury to the credit of the Aging and Adult Services Fund Account, to be used exclusively for transportation services benefitting the elderly, including the Meals on Wheels Program and the remainder shall be deposited into the State Treasury as general revenues.

(2) As used in this subsection and pertaining to taxes levied on cigarettes, “the first three million dollars (\$3,000,000) of the net revenues derived from the additional tax” means the first three million dollars (\$3,000,000) each year of the net revenues derived from the additional tax.

(e) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of an untaxed tobacco product or unstamped cigarettes.

History. Acts 1991, No. 1135, § 18; 1991, No. 1211, § 1-4; 2001, No. 1173, § 1; 2007, No. 817, § 3.

Amendments. The 2007 amendment added (e).

Effective Dates. Acts 1991, No. 1211, § 5, provided:

“The tax levied herein shall be in effect on and after July 1, 1991.”

Case Notes

Cited: Porter v. McCuen, 310 Ark. 562, 839 S.W.2d 512 (1992).

26-57-803. Additional tax — Applicability.

(a) (1) In addition to the excise or privilege taxes levied under §§ 26-57-208 and 26-57-802, there is levied a tax of four dollars and seventy-five cents (\$4.75) per one thousand (1,000) cigarettes sold in the state.

(2) Whenever there are two (2) adjoining cities, each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in such adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside of Arkansas plus the fifty cents (50¢) per one thousand (1,000) cigarettes presently imposed by § 26-57-802. The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(3) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line, in any Arkansas city which adjoins a state line, or in any city that is separated only by a navigable river from a city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state plus the twenty-five cents (25¢) per one

thousand (1,000) cigarettes presently imposed by § 26-57-802. The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(4) (A) The tax on cigarettes shall be at the rate imposed by law on cigarettes sold in the adjoining state plus the additional tax levied by § 26-57-802 when the cigarettes are sold in an Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city.

(B) As used in subdivision (a)(4)(A) of this section, “Arkansas border city” means a city that is entitled to the border zone cigarette tax rate and is separated by a navigable river from a city in the other state that is located in a metropolitan statistical area designated by the United States Census Bureau with a population of at least one million (1,000,000).

(C) The tax shall not exceed the tax upon cigarettes otherwise imposed under Arkansas law.

(b) In addition to the tax imposed by § 26-57-208(2), there is levied an additional excise or privilege tax on the sale of tobacco products other than cigarettes by wholesalers to retailers or by licensed retailers to the Director of the Department of Finance and Administration at seven percent (7%) of the manufacturer's selling price. The tax shall be computed before discounts.

(c) (1) (A) The taxes levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(B) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(2) (A) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(3) The provisions of this subsection shall not affect the provisions of § 26-57-228.

(d) As provided in § 26-57-244, the director may make a direct assessment of excise tax against any person in possession of an untaxed tobacco product or unstamped cigarettes.

History. Acts 1992 (2nd Ex. Sess.), No. 2, §§ 1, 2, 5; 1993, No. 1177, § 1; 1997, No. 1339, § 1; 1999, No. 1246, §§ 4, 5; 2007, No. 817, § 4; 2007, No. 827, § 230; 2009, No. 940, § 2.

Publisher's Notes. Acts 1997, No. 1339, became law without the Governor's signature.

Amendments. The 2007 amendment by No. 817 added present (d).

The 2007 amendment by No. 827 rewrote (a)(1) and (b), and deleted former (c).

The 2009 amendment inserted (a)(4).

26-57-804. Additional tax on cigarettes.

(a) In addition to the excise or privilege taxes levied under §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101, there is levied an additional tax of twelve dollars and fifty cents (\$12.50) per one thousand (1,000) cigarettes sold in the state.

(b) (1) (A) Whenever there are two (2) adjoining cities each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in the adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside Arkansas.

(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.

(2) (A) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line in any Arkansas city that adjoins a state line or in any city that is separated only by a navigable river from a city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state.

(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.

(3) (A) The tax on cigarettes shall be at the rate imposed by law on cigarettes sold in the adjoining state if the cigarettes are sold in an Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city.

(B) As used in subdivision (b)(3)(A) of this section, "Arkansas border city" means a city that is entitled to the border zone cigarette tax rate and is separated by a navigable river from a city in the other state that is located in a metropolitan statistical area designated by the United States Census Bureau with a population of at least one million (1,000,000).

(C) The tax shall not exceed the tax upon cigarettes otherwise imposed under Arkansas law.

(4) (A) A wholesaler or retailer shall not sell cigarettes to a retailer located outside a border zone described in subdivisions (b)(1)-(3) of this section unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.

(B) A retailer located outside a border zone described in subdivisions (b)(1)-(3) of this section shall not possess or offer for sale cigarettes unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.

(C) A violation of this subdivision (b)(4) shall be grounds for the suspension or revocation of a permit or license issued by the Director of Arkansas Tobacco Control.

(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-210 shall apply to this section.

(d) The additional tax levied under this section shall be imposed, reported, remitted, and administered in the same manner and at the same time as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

(e) The Director of the Department of Finance and Administration shall pay the commission authorized by § 26-57-236(g) with respect to the tax levied by this section.

(f) The revenue derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections.

(g) As provided in § 26-57-244, the director may make a direct assessment of excise tax against any person in possession of unstamped cigarettes.

History. Acts 2003 (1st Ex. Sess.), No. 38, § 1; 2007, No. 817, § 5; 2007, No. 827, § 231; 2009, No. 180, § 3; 2009, No. 655, § 93; 2009, No. 785, § 30; 2009, No. 940, § 3.

A.C.R.C. Notes. As enacted by Acts 2003 (1st Ex. Sess.), No. 38, § 1, subsection (a) began: "Beginning June 1, 2003,".

Pursuant to Acts 2009, No. 655, § 128, the amendments by Acts 2009, No. 180, §§ 1 and 3, supersede the amendment to this section by Acts 2009, No. 655, § 93.

Amendments. The 2007 amendment by No. 817 added present (g).

The 2007 amendment by No. 827 deleted former (d).

The 2009 amendment by No. 180 substituted "shall pay" for "shall not pay" in (e).

The 2009 amendment by No. 785 substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board" in (b)(3)(C).

The 2009 amendment by No. 940 inserted (b)(3), redesignated the subsequent subdivision accordingly, substituted "(b)(1)-(3)" for "(b)(1) and (2)" in (b)(4)(A) and (b)(4)(B), and substituted "(b)(4)" for "(b)(3)" in (b)(4)(C).

26-57-805. Additional tax on tobacco products other than cigarettes.

(a) (1) In addition to the excise or privilege taxes levied under §§ 26-57-208, 26-57-803, and 26-57-1102, there is levied an additional tax on tobacco products other than cigarettes on the first sale to wholesalers or retailers within the state at seven percent (7%) of the manufacturer's selling price.

(2) The tax shall be computed on the manufacturer's actual invoice price before discounts and deals.

(b) (1) The tax levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(2) However, retailers shall be liable for reporting and paying this tax when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-210 shall apply to this section.

(d) The revenue derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections for that month.

(e) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of an untaxed tobacco product.

History. Acts 2003 (1st Ex. Sess.), No. 38, § 2; 2007, No. 817, § 6.

A.C.R.C. Notes. As enacted by Acts 2003 (1st Ex. Sess.), No. 38, § 2, subdivision (a)(1) began: "Beginning June 1, 2003,".

Amendments. The 2007 amendment added (e).

26-57-806. Additional tax on cigarettes.

(a) In addition to the excise or privilege taxes levied under §§ 26-57-208, 26-57-802, 26-57-803, 26-57-804, and 26-57-1101, there is levied an additional tax of twenty-eight dollars (\$28.00) per one thousand (1,000) cigarettes sold in the state.

(b) (1) (A) Whenever there are two (2) adjoining cities each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in the adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside Arkansas.

(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.

(2) (A) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line in any Arkansas city that adjoins a state line or in any city that is separated only by a navigable river from a city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state.

(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.

(3) (A) The tax on cigarettes sold in any Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city shall be at the rate imposed by law on cigarettes sold in the adjoining state.

(B) As used in subdivision (a)(3)(A) of this section, “Arkansas border city” means a city which is entitled to the border zone cigarette tax rate and is separated by a navigable river from the city in the other state that is located in a metropolitan statistical area designated by the United States Census Bureau with a population of at least one million (1,000,000).

(C) The tax shall not exceed the tax upon cigarettes otherwise imposed under Arkansas law.

(4) (A) A wholesaler or retailer shall not sell cigarettes to a retailer located outside a border zone described in subdivisions (b)(1)–(3) of this section unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, 26-57-804, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.

(B) A retailer located outside a border zone described in subdivisions (b)(1)–(3) of this section shall not possess or offer for sale cigarettes unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, 26-57-804, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.

(C) A violation of this subdivision (b)(4) shall be grounds for the suspension or revocation of a permit or license issued by the Director of Arkansas Tobacco Control.

(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-210 shall apply to this section.

(d) The additional tax levied under this section shall be imposed, reported, remitted, and administered in the same manner and at the same time as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

(e) The revenue derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections for that month in accordance

with the Revenue Stabilization Law, § 19-5-201 et seq.

(f) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of unstamped cigarettes.

History. Acts 2009, No. 180, § 4; 2009, No. 940, § 4.

Amendments. The 2009 amendment by No. 940 inserted (b)(3), redesignated the subsequent subdivision accordingly, substituted “(b)(1)-(3)” for “(b)(1) and (2)” in (b)(4)(A) and (b)(4)(B), and substituted “(b)(4)” for “(b)(3)” in (b)(4)(C).

26-57-807. Additional tax on tobacco products other than cigarettes.

(a) (1) In addition to the excise or privilege taxes levied under §§ 26-57-208, 26-57-803, 26-57-805 and 26-57-1102, there is levied an additional tax on tobacco products other than cigarettes on the first sale to wholesalers or retailers within the state at thirty-six percent (36%) of the manufacturer's selling price.

(2) The tax shall be computed on the manufacturer's actual invoice price before discounts and deals.

(b) (1) The tax levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(2) However, retailers shall be liable for reporting and paying this tax when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed under § 26-57-214.

(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-210 shall apply to this section.

(d) The additional tax levied under this section shall be imposed, reported, remitted, and administered in the same manner and at the same time as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

(e) The revenue derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections for that month in accordance with the Revenue Stabilization Law, § 19-5-201 et seq.

(f) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of an untaxed tobacco product.

History. Acts 2009, No. 180, § 5.

Subchapter 9

— Arkansas Soft Drink Tax Act

26-57-901. Title.

26-57-902. Definitions.

26-57-903. Administration.

26-57-904. Tax rate.

26-57-905. Exemptions.

26-57-906. Tax reporting.

26-57-907. Tax rate.

26-57-908. Disposition of revenues.

26-57-909. Licenses.

Publisher's Notes. Pursuant to Acts 1989, No. 987, § 3, former subchapter 9, former §§ 26-57-901 — 26-57-905, concerning nursing homes, expired on June 30, 1991. The former subchapter was derived from Acts 1989, No. 987, § 1.

Effective Dates. Acts 1992 (2nd Ex. Sess.), No. 7, § 13: Mar. 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need of additional revenues which are necessary to provide adequate funding for essential services required by the citizens of this State and the provisions of this act are necessary to increase State revenues. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after March 1, 1993."

Acts 1993, No. 1073, § 35: July 1, 1993. Emergency Clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that the distribution of general revenues and the creation of the various funds and fund accounts are essential to be in force at the beginning of the state fiscal year and that in the event that the General Assembly extends beyond the sixty day limit, the effective date of this act would not begin at that time creating confusion and not permitting the agencies to implement those programs as approved by the General Assembly. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1994 (2nd Ex. Sess.), No. 27, § 10: Aug. 23, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly meeting in Second Extraordinary Session, that it is necessary to establish a fund account on the books of the State Treasurer, State Auditor and Chief Fiscal Officer of the State in order to properly account for the funds of the Department of Human Services — Division of Youth Services and to continue to provide this essential governmental service; and that a delay in the effective date of this Act could work irreparable harm upon the proper administration and provision of essential governmental program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

Case Notes

Applicability.
Referendum.

Applicability.

This subchapter nowhere prohibits the soft drink tax from being passed on to retailers. Foxsmith, Inc. v. Coca-Cola Bottling Co., 323 Ark. 13, 912 S.W.2d 923 (1996).

Referendum.

The ballot title of the referendum on Acts 1992 (2d Ex. Sess.) No. 7, codified as § 26-57-901 et seq., held sufficient. Walker v. McCuen, 318 Ark. 508, 886 S.W.2d 577 (1994).

26-57-901. Title.

This subchapter shall be known and may be cited as the "Arkansas Soft Drink Tax Act" and is hereby declared to levy a state tax as defined in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 1.

Case Notes

Applicability.

Applicability.

This subchapter nowhere prohibits the soft drink tax from being passed on to retailers. Foxsmith,

26-57-902. Definitions.

(a) Terms used in this subchapter which are defined by the Arkansas Tax Procedure Act, § 26-18-101 et seq., shall have the meaning set out in the Arkansas Tax Procedure Act, § 26-18-101 et seq., unless otherwise provided or unless a different meaning is required by the use of the term.

(b) As used in this subchapter:

(1) “Bottle” means any closed or sealed glass, metal, paper, plastic, or any other type of container regardless of the size or shape of such container;

(2) “Bottled soft drinks” means any complete, ready to consume, nonalcoholic drink, whether carbonated or not, commonly referred to as a “soft drink”, contained in any bottle;

(3) “Director” means the Director of the Department of Finance and Administration or his or her authorized agent;

(4) “Distributor, manufacturer, or wholesale dealer” means any person who receives, stores, manufactures, bottles, or sells bottled soft drinks, soft drink syrups, simple syrups, or powders, or base products for mixing, compounding, or making soft drinks for sale to retail dealers, other manufacturers, wholesale dealers, or distributors for resale purposes;

(5) “Milk” means:

(A) Natural liquid milk, regardless of animal source or butterfat content;

(B) Natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content; or

(C) Dehydrated natural milk, whether or not reconstituted;

(6) “Natural fruit juice” means the:

(A) Original liquid resulting from the pressing of fruit;

(B) Liquid resulting from the reconstitution of natural fruit juice concentrate; or

(C) Liquid resulting from the restoration of water to dehydrated natural fruit juice;

(7) “Natural vegetable juice” means the:

(A) Original liquid resulting from the pressing of vegetables;

(B) Liquid resulting from the reconstitution of natural vegetable juice concentrate; or

(C) Liquid resulting from the restoration of water to dehydrated natural vegetable juice;

(8) “Nonalcoholic beverage” means and includes all beverages not subject to tax under § 3-7-104;

(9) “Place of business” means any place:

(A) Where soft drinks, syrups, simple syrups, powder, or base products are manufactured; or

(B) Where bottled soft drinks, soft drink syrup, simple syrup, soft drink powder, or other soft drink base product, or any other item taxed under this subchapter is received;

(10) “Powder” or “other base” means a solid mixture of basic ingredients used in

making, mixing, or compounding soft drinks by mixing the powder or other base with water, ice, syrup or simple syrup, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a complete soft drink;

(11) “Retailer” or “retail dealer” means any person, other than a manufacturer, distributor, or wholesaler, who receives, stores, mixes, compounds, or manufactures any soft drink and sells or otherwise dispenses the soft drink to the ultimate consumer;

(12) (A) “Sale” means the transfer of title or possession for a valuable consideration of tangible personal property regardless of the manner by which the transfer is accomplished.

(B) When a retailer is also acting as a wholesaler or distributor, the duty to report and pay the tax imposed by this subchapter arises when the property is transferred to a retail store for sale to the ultimate consumer, as reflected by the records of the taxpayer;

(13) “Simple syrup” means a mixture of sugar and water;

(14) (A) “Soft drink” means any nonalcoholic beverage sold for human consumption including, but not limited to, the following:

(i) Soda water;

(ii) Ginger ale;

(iii) All drinks commonly referred to as “cola”;

(iv) Lime, lemon, lemon-lime, and other flavored drinks, whether naturally or artificially flavored, including any fruit or vegetable drink containing ten percent (10%) or less natural fruit juice or natural vegetable juice; and

(v) All other drinks and beverages commonly referred to as “soft drinks”.

(B) “Soft drink” does not include coffee or tea unless the coffee or tea is bottled as a liquid for sale; and

(15) “Syrup” means the liquid mixture of basic ingredients used in making, mixing, or compounding soft drinks by mixing the syrup with water, simple syrup, ice, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a complete soft drink.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 2.

26-57-903. Administration.

This subchapter is to be administered in all respects in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq., unless otherwise provided.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 1.

Case Notes

Applicability.

Applicability.

All Arkansas licensed soft drink distributors, as the parties or sellers responsible for collecting the tax, have the option of (1) including the tax in the cost of the product or (2) separately stating the tax on the invoice or document of sale. *Foxsmith, Inc. v. Coca-Cola Bottling Co.*, 323 Ark. 13, 912 S.W.2d 923 (1996).

26-57-904. Tax rate.

(a) There is hereby levied and there shall be collected a tax upon every distributor, manufacturer, or wholesale dealer, to be calculated as follows:

(1) Two dollars (\$2.00) per gallon for each gallon of soft drink syrup or simple syrup sold or offered for sale in the State of Arkansas;

(2) Twenty-one cents (21¢) per gallon for each gallon of bottled soft drinks sold or offered for sale in the State of Arkansas; and

(3) (A) When a package or container of powder or other base product, other than a syrup or simple syrup, is sold or offered for sale in Arkansas, and the powder is for the purpose of producing a liquid soft drink, then the tax on the sale of each package or container shall be equal to twenty-one cents (21¢) for each gallon of soft drink which may be produced from each package or container by following the manufacturer's directions.

(B) This tax applies when the sale of the powder or other base is sold to a retailer for sale to the ultimate consumer after the liquid soft drink is produced by the retailer.

(b) (1) Any retailer or retail dealer who purchases bottled soft drinks, soft drink syrup, simple syrup, powder, or base product from an unlicensed distributor, manufacturer, or wholesale dealer shall be liable for the tax levied in subsection (a) of this section on those purchases.

(2) A retailer shall not be subject to this tax if the retailer purchases syrups, simple syrups, powders or base products, or soft drinks from a supplier licensed under § 26-57-909.

History. Acts 1992 (2nd Ex. Sess.), No. 7, §§ 4, 5; 2009, No. 655, § 94.

Amendments. The 2009 amendment inserted “and” at the end of (a)(2).

Case Notes

Constitutionality.

In General.

Applicability.

Retailers Subject to Tax.

Constitutionality.

A retail dealer of soft drinks had standing to challenge the constitutionality of this section as an illegal exaction, notwithstanding that the tax imposed by the statute only applies to distributors, manufacturers, and wholesale dealers, because it had paid and would continue to pay the full amount of the tax, which its distributor passed on to it in a separately itemized charge on its sales invoices. *Ghegan & Ghegan, Inc. v. Weiss*, 338 Ark. 9, 991 S.W.2d 536 (1999).

In General.

The tax imposed by this section is one on products, not individuals. *Ghegan & Ghegan, Inc. v. Barclay*, 345 Ark. 514, 49 S.W.3d 652 (2001).

It is clear from the context of §§ 26-57-901 and this section that two different products are taxed: this section specifically distinguishes syrups from powders in its imposition of taxes. *Ghegan & Ghegan, Inc. v. Barclay*, 345 Ark. 514, 49 S.W.3d 652 (2001).

This chapter does not treat retailers — or the distributors, wholesalers, or manufacturers — differently; all are taxed the same. It is the product that is taxed differently. *Ghegan & Ghegan, Inc. v. Barclay*, 345 Ark. 514, 49 S.W.3d 652 (2001).

Applicability.

All Arkansas licensed soft drink distributors, as the parties or sellers responsible for collecting the tax, have the option of (1) including the tax in the cost of the product or (2) separately stating the tax on the invoice or document of sale. *Foxsmith, Inc. v. Coca-Cola Bottling Co.*, 323 Ark. 13, 912

S.W.2d 923 (1996).

Retailers Subject to Tax.

The one "subject to" the tax means the one who must file a monthly return and remit the tax to the state. Foxsmith, Inc. v. Coca-Cola Bottling Co., 323 Ark. 13, 912 S.W.2d 923 (1996).

26-57-905. Exemptions.

The following shall be exempt from the tax levied by § 26-57-904:

- (1) Syrups, simple syrups, powders or base products, or soft drinks sold to the United States Government;
- (2) Syrups, simple syrups, powders or base products, or soft drinks exported from the State of Arkansas by a distributor, wholesaler, or manufacturer;
- (3) Any powder or base product that is used in preparing coffee or tea;
- (4) Any frozen concentrate or freeze-dried concentrate to which only water is added to produce a soft drink containing more than ten percent (10%) natural fruit juice or natural vegetable juice;
- (5) Any soft drink containing more than ten percent (10%) natural fruit juice or natural vegetable juice;
- (6) Syrups, simple syrups, powders or base products, or soft drinks sold by one (1) distributor, wholesaler, or manufacturer to another distributor, wholesaler, or manufacturer who holds a license issued by the Director of the Department of Finance and Administration under the provisions of § 26-57-909 as a distributor, wholesaler, or manufacturer, provided that the license number of the distributor, wholesaler, or manufacturer to whom the soft drink is sold is clearly shown on the invoice for the sale which is claimed to be exempt. This exemption shall not apply to any sale to a retailer;
- (7) Any product whether sold in liquid or powder form which is intended by the manufacturer for consumption by infants and which is commonly referred to as "infant formula";
- (8) Any product whether sold in liquid or powder form which is intended by the manufacturer for use as a dietary supplement or for weight reduction;
- (9) Water to which no flavoring, whether artificial or natural, or carbonation has been added;
- (10) Any powder or other base product which is intended by the manufacturer to be sold and used for the purpose of domestically mixing soft drinks by the ultimate consumer; and
- (11) Any product containing milk or milk products.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 6.

26-57-906. Tax reporting.

- (a) (1) The tax levied by § 26-57-904 shall be paid by the distributor, wholesaler, or manufacturer when the syrup, powder or base product, or soft drink is sold.
- (2) The tax levied by § 26-57-904 shall be paid by a retailer who purchases syrups, powder or base products, or soft drinks from an unlicensed distributor, wholesaler, or manufacturer.
- (b) The distributor, wholesaler, or manufacturer and any retailer subject to this tax shall file a monthly return and remit the tax for the month to the Director of the Department of Finance and Administration on or before the fifteenth day of the month next following the month in which the sale or purchase was made.

(c) (1) The returns shall be made upon forms prescribed and furnished by the director and signed by the person required to collect and remit the tax or the person's agent.

(2) The return shall contain such information as the director shall require for the proper administration of this subchapter.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 7.

Case Notes

Retailers Subject to Tax.

Retailers Subject to Tax.

The one "subject to" the tax means the one who must file a monthly return and remit the tax to the state. Foxsmith, Inc. v. Coca-Cola Bottling Co., 323 Ark. 13, 912 S.W.2d 923 (1996).

26-57-907. Tax rate.

(a) If a distributor, manufacturer, or wholesale dealer sells bottled soft drinks, soft drink syrups, powders, or base products to retailers or retail dealers located in a city or incorporated town which is subject to the border city tax rate provided in § 26-52-303, then the tax shall be at the same rate as imposed by the adjoining state on distributors, manufacturers, or wholesale dealers, not to exceed the rate imposed by § 26-57-904.

(b) If a retailer or retail dealer is located in a city or incorporated town which is subject to the border city tax rate provided by § 26-52-303 and the retailer or retail dealer purchases bottled soft drinks, soft drink syrup, powder, or base products from an unlicensed distributor, manufacturer, or wholesale dealer, then the tax imposed by § 26-57-904 shall be at the same rate imposed by the adjoining state, not to exceed the rate imposed by § 26-57-904.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 8.

Case Notes

Cited: Ghegan & Ghegan, Inc. v. Barclay, 345 Ark. 514, 49 S.W.3d 652 (2001).

26-57-908. Disposition of revenues.

The revenues derived from the tax collected under this subchapter shall be remitted to the Treasurer of State, who shall deposit the revenues as trust funds into the State Treasury and shall credit the proceeds to the trust fund known as the Arkansas Medicaid Program Trust Fund.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 9; 1993, No. 1073, § 20; 1994 (2nd Ex. Sess.), No. 27, § 2.

26-57-909. Licenses.

(a) All distributors, wholesalers, or manufacturers of soft drinks, whether located within or without the State of Arkansas, who sell or offer syrups, simple syrups, powders, or base products, or soft drinks for sale to retail dealers within the State of Arkansas shall obtain a license for the privilege of conducting such business within Arkansas from the Director of the Department of Finance and Administration.

(b) Any retailer who purchases syrups, simple syrups, powders, or base products, or soft drinks from an unlicensed manufacturer, wholesaler, or distributor shall obtain a license for the privilege of conducting such business from the director.

- (c) Any person required to obtain a license under this subchapter shall obtain a license for each place of business owned or operated by the person.
- (d) The license shall be conspicuously displayed at the place of business for which it was issued.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 3.

Subchapter 10 **— Vending Devices Sales Tax**

26-57-1001. Definitions.

26-57-1002. Registration — Records — Amount of tax.

26-57-1003. Election not to register.

26-57-1004. Identification of taxpayer — Presumption of nonpayment.

26-57-1005. Disposition of revenues.

26-57-1006 — 26-57-1017. [Repealed.]

A.C.R.C. Notes. The repeal of former § 26-57-1003 by Acts 1995, No. 934 was deemed to supersede its amendment by Acts 1995, No. 1160. Former § 26-57-1003(1) was amended by Acts 1995, No. 1160 to read as follows:

“(1) ‘Person’ means any individual, partnership, limited liability company, association, or corporation.”

Publisher's Notes. Former subchapter 10, concerning the Vending Devices Decal Act of 1993, was repealed by Acts 1995, No. 934, § 5. The former subchapter was derived from the following sources:

26-57-1001. Acts 1993, No. 1037, § 1.

26-57-1002. Acts 1993, No. 1037, § 15.

26-57-1003. Acts 1993, No. 1037, § 2; 1995, No. 1160, § 38.

26-57-1004. Acts 1993, No. 1037, § 4.

26-57-1005. Acts 1993, No. 1037, § 10.

26-57-1006. Acts 1993, No. 1037, § 3.

26-57-1007. Acts 1993, No. 1037, §§ 6, 11.

26-57-1008. Acts 1993, No. 1037, § 5.

26-57-1009. Acts 1993, No. 1037, §§ 7, 8.

26-57-1010. Acts 1993, No. 1037, § 9.

26-57-1011. Acts 1993, No. 1233, § 2.

26-57-1012. Acts 1993, No. 1233, § 2.

26-57-1013. Acts 1993, No. 1233, § 2.

26-57-1014. Acts 1993, No. 1233, § 2.

26-57-1015. Acts 1993, No. 1233, § 2.

26-57-1016. Acts 1993, No. 1233, § 2.

26-57-1017. Acts 1993, No. 1233, § 2.

Cross References. Vending devices, § 26-57-1201 et seq.

Effective Dates. Acts 1995, No. 934, § 10: July 1, 1995. Emergency clause provided: “It is hereby found and determined that the Vending Devices Decal Act of 1993 will expire on June 30, 1995 and that it is necessary to provide for the payment of taxes on tangible personal property sold through vending devices after June 30, 1995 and this Act provides a fair and equitable method for collecting taxes on tangible personal property sold through vending devices after that date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995.”

Acts 2003 (2nd Ex. Sess.), No. 107, § 8: July 1, 2004. The amendment was effective by its own terms on July 1, 2004.

Acts 2003 (2nd Ex. Sess.), No. 107, § 12: became law without Governor's signature, Mar. 1,

2004. Emergency clause provided: "It is found and determined by the General Assembly, that the provision of an equal opportunity for an adequate education to all the citizens of the state is imperative; that additional funds are immediately needed to provide an equal opportunity for an adequate education; that this act is designed to provide the additional revenues needed to provide this equal opportunity to all citizens; and that a delay in the effective date of this act will cause irreparable harm upon the provision of essential education opportunities and the proper administration of educational programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of March 1, 2004."

26-57-1001. Definitions.

As used in this subchapter:

(1) "Director" means the Director of the Department of Finance and Administration or his or her authorized agents;

(2) "Person" means any individual, partnership, corporation, limited liability corporation, association, organization, or nonprofit corporation, and any county or municipal subdivision of this state;

(3) (A) "Vending device" means any machine or manual device which dispenses tangible personal property after a coin or thing of value is inserted.

(B) "Vending device" does not include devices used exclusively for the purpose of selling cigarettes, newspapers, magazines, or postage stamps; and

(4) "Vending device operator" means any person who sells tangible personal property through vending devices, and who elects to pay the taxes imposed by § 26-57-1002.

History. Acts 1995, No. 934, § 1.

26-57-1002. Registration — Records — Amount of tax.

(a) Any person who sells tangible personal property through vending devices may elect to register with the Director of the Department of Finance and Administration as a vending device operator and pay the state and local sales and use taxes as provided in this section.

(b) Any person who elects to register as a vending device operator shall obtain a gross receipts tax permit from the director as provided in § 26-52-201 et seq.

(c) (1) All tangible personal property purchased by a vending device operator for resale through a vending device shall be purchased exempt from the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and any local sales and use taxes pursuant to the sale for resale exemption provided for in § 26-52-401(12).

(2) The vending device operator shall maintain suitable records reflecting all purchases of tangible personal property during each calendar month for resale through a vending device.

(d) (1) (A) (i) A tax of four and one-half percent (4½%) is levied on the purchase price of all tangible personal property purchased or withdrawn from inventory during each calendar month by a vending device operator for resale through a vending device.

(ii) (a) An additional tax of one and one-half percent (1½%) is levied on the purchase price of all tangible personal property purchased or withdrawn from inventory during each calendar month by a vending device operator for resale

through a vending device.

(b) The additional tax levied under subdivision (d)(1)(A)(ii)(a) of this section shall be special revenue and credited to the Educational Adequacy Fund.

(B) The taxes levied in subdivision (d)(1)(A) of this section shall be in lieu of any state gross receipts tax on the gross receipts or gross proceeds derived from the sale of the tangible personal property by the vending device operator through a vending device.

(2) (A) An additional tax of one percent (1%) is levied on the purchase price of all tangible personal property purchased or withdrawn from inventory during each calendar month for resale through a vending device.

(B) This tax shall be in lieu of any local gross receipts taxes imposed by any city or county of this state on the gross receipts or gross proceeds derived from the sale of the property by the vending device operator through a vending device.

(e) The taxes levied by subsection (d) of this section shall be reported and paid in the same manner and at the same time as prescribed by law for the reporting and payment of the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(f) When calculating the taxes due under this section, a vending device operator shall be allowed to deduct any manufacturer's rebates received which lower the final purchase price paid by the vending device operator for tangible personal property sold through a vending device.

(g) Any vending device operator who manufactures the product which is withdrawn from stock for sale through a vending device shall calculate the tax due by multiplying the tax rate set out in subsection (d) of this section by the selling price for which the person would sell the product to another vending device operator for resale through a vending device.

History. Acts 1995, No. 934, § 2; 2003 (2nd Ex. Sess.), No. 107, § 8.

Amendments. The 2003 (2nd Ex. Sess.) amendment added (d)(1)(A)(ii); and substituted "The taxes levied in subdivision (d)(1)(A) of this section" for "This tax" in (d)(1)(B).

Effective Dates. Acts 2003 (2nd Ex. Sess.), No. 107, § 8: amendment effective by its own terms on July 1, 2004.

26-57-1003. Election not to register.

(a) Any person selling tangible personal property through a vending device, and who elects not to register as a vending device operator, shall:

(1) Surrender any gross receipts tax permits issued by the Director of the Department of Finance and Administration, unless the permit is needed to report taxable sales other than sales through a vending device; and

(2) (A) Pay the Arkansas gross receipts tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., the Arkansas compensating use tax under the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and any applicable local sales and use taxes to the person's vendor on all purchases of tangible personal property purchased for resale through a vending device.

(B) (i) The sale for resale exemption provided in § 26-52-401(12) shall not apply to purchases of tangible personal property for resale through vending devices unless the purchaser is registered with the director as a vending device operator.

(ii) However, any person not registered as a vending device operator who maintains property in inventory for subsequent resale on which the state and local sales and use taxes have not been paid, and who subsequently withdraws that property from inventory for sale through a vending device, shall report and pay the state and local sales and use taxes on the person's purchase price of such property withdrawn from inventory.

(b) Any person selling property through vending devices who has paid the state and local sales and use taxes in the manner provided by this section shall not be required to collect and remit state or local sales tax on sales of tangible personal property through the vending device.

(c) Any person who elects to pay tax on tangible personal property sold through vending devices in accordance with the provisions of this section and who manufactures the product which is withdrawn from stock for resale through a vending device shall pay the taxes due under this section by multiplying the tax rate by the selling price for which the person would sell the product to another for resale through a vending device.

History. Acts 1995, No. 934, § 3, 5.

26-57-1004. Identification of taxpayer — Presumption of nonpayment.

(a) All persons who sell tangible personal property through vending devices shall affix the name and identification number, if any, of the person responsible for the payment of the taxes imposed by §§ 26-57-1002 and 26-57-1003.

(b) (1) (A) If any vending device does not have the information required by subsection (a) of this section affixed thereto, there shall be a presumption that the taxes imposed by this subchapter have not been paid.

(B) The Director of the Department of Finance and Administration shall seal any vending device subject to this presumption in such a manner as to prevent any further sales through the vending device and shall assess and collect a penalty of fifty dollars (\$50.00) per vending device against the person selling tangible personal property through the vending device.

(2) The presumption in subdivision (b)(1) of this section shall be overcome if the person selling property through the vending device affixes the information required by this section to the vending device and proves that the taxes imposed by §§ 26-57-1002 and 26-57-1003 have been paid.

History. Acts 1995, No. 934, § 6.

26-57-1005. Disposition of revenues.

(a) The revenues derived from § 26-57-1002(d)(1) shall be general revenues and shall be deposited into the State Treasury in the same manner as the Arkansas gross receipts tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(b) All revenues derived from § 26-57-1002(d)(2) shall be deposited by the Treasurer of State into the Identification Pending Trust Fund for Local Sales and Use Taxes in accordance with the provisions of §§ 26-74-221 and 26-75-223, and all revenues deposited into that fund shall be distributed to the cities and counties of this state in accordance with the provisions of §§ 26-74-221(a)(2)(C)(ii) and 26-75-223(a)(2)(C)(ii).

History. Acts 1995, No. 934, § 4.

26-57-1006 — 26-57-1017. [Repealed.]

Publisher's Notes. As to the repeal of these sections, see Publisher's Notes at the beginning of this subchapter.

Subchapter 11
— Tax on Tobacco Products to Fund Breast Cancer Control and Research

- 26-57-1101. Additional tax — Cigarettes.
- 26-57-1102. Additional tax — Tobacco products other than cigarettes.
- 26-57-1103. Deposit of general revenues.
- 26-57-1104. Reporting and remittance.
- 26-57-1105. Applicability.
- 26-57-1106. Distribution of funds for breast cancer research and control — Allocation of moneys.
- 26-57-1107. Regulations.
- 26-57-1108. Appropriation from general revenue fund — Additional tax not collected.

Cross References. Breast cancer control, § 20-15-1301 et seq.

Effective Dates. Acts 1997, No. 434, § 18: July 1, 1997. Emergency clause provided: "It is hereby found and determined that cancer is a leading cause of death among Arkansans; that, of cancer deaths, breast cancer claims more lives of women than any other type except lung cancer; that there are nineteen hundred (1900) new cases of breast cancer diagnosed each year; that breast cancer mortality rates have increased in Arkansas in recent years; that presently breast cancer is claiming the lives of over four hundred seventy (470) women in Arkansas each year; that this number of deaths will increase as our population grows older; that information barriers result in women being unaware of the risk of breast cancer or the value of early detection; that financial barriers prevent some women from taking advantage of mammography; and that there is a lack of funding for breast cancer research in the state; it is further found and determined that to reduce the number of lives continuing to be needlessly lost, it is necessary to increase the state tax on cigarettes and tobacco products to provide funding for breast cancer, to provide for screening, diagnostic, and treatment services for women at risk of developing breast cancer and to assure continuing research with respect to the cause, cure and prevention of breast cancer. This act will provide greatly needed revenues to fund essential research and services with respect to the cause, cure, detection and prevention of breast cancer, and breast cancer education in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1997."

Acts 2001, No. 1669, § 38: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2001 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2001 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001."

Acts 2001, No. 1698, § 4: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly that changes in distributions and funding sources must take place at the beginning of the state fiscal year in order to maintain approved accounting standards and to

reduced confusion and that in the event of an extended session, this act may not take effect until after July 1 thereby placing the funding of the breast cancer program in jeopardy. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001.”

Acts 2005, No. 2219, § 2: July 1, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Rx Program created by the Eighty-fifth General Assembly will provide reduced price prescription medicine to many medically needy Arkansans; that the program is in immediate need of start-up funding for the administration and organization of the program; and that it is necessary for this act to become effective on July 1, 2005, in order for the program to begin benefiting needy Arkansans and to meet the state fiscal year budgeting requirements. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005.”

Acts 2007, No. 1236, § 20: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007.”

26-57-1101. Additional tax — Cigarettes.

(a) In addition to the excise or privilege taxes levied under §§ 26-57-208 and 26-57-802, there is hereby levied a tax of one dollar twenty-five cents (\$1.25) per one thousand (1000) cigarettes sold in the state.

(b) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of unstamped cigarettes.

History. Acts 1997, No. 434, § 5; 2007, No. 817, § 7.

Amendments. The 2007 amendment added (b) and made a related change.

26-57-1102. Additional tax — Tobacco products other than cigarettes.

(a) (1) In addition to the tax imposed by § 26-57-208(2), there is imposed an additional excise or privilege tax on tobacco products other than cigarettes on the first sale to wholesalers or retailers within the state at two percent (2%) of the manufacturer's selling price.

(2) The tax shall be computed on the actual manufacturer's invoice price before discounts and deals.

(b) (1) (A) The taxes levied by this section and § 26-57-1101 shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(B) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(2) (A) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first

offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(3) The provisions of this subsection shall not affect the provisions of § 26-57-228.

(c) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of untaxed tobacco products.

History. Acts 1997, No. 434, § 6; 1999, No. 1246, § 6; 2007, No. 817, § 8.

Amendments. The 2007 amendment added (c).

26-57-1103. Deposit of general revenues.

Notwithstanding Acts 2001 (1st Ex. Sess.), No. 2, § 11, beginning July 1, 2005, twenty-nine percent (29%) of all moneys collected from the additional tax levied in §§ 26-57-1101 and 26-57-1102 shall be deposited into the State Treasury as special revenue and distributed as follows:

(1) Twenty-five percent (25%) shall be credited to the University of Arkansas Medical Center Fund;

(2) Eight and one-third percent (8 $\frac{1}{3}$ %) shall be credited to the Breast Cancer Control Fund;

(3) Eight and one-third percent (8 $\frac{1}{3}$ %) shall be credited to the Breast Cancer Research Fund;

(4) Eight and one-third percent (8 $\frac{1}{3}$ %) shall be credited to the Miscellaneous Agencies Fund Account for the Arkansas Prostate Cancer Foundation; and

(5) Fifty percent (50%) shall be credited to the Aging and Adult Services Fund Account of the Department of Human Services Fund to be used to assist the Meals on Wheels Program.

History. Acts 1997, No. 434, § 9; 2001, No. 1669, § 33; 2001, No. 1698, § 2; 2005, No. 2219, § 1; 2007, No. 1236, § 17.

Amendments. The 2005 amendment rewrote this section.

The 2007 amendment, in present (1), substituted "Twenty" for "Except as provided in subsection (b) of this section, twenty" and substituted "University of Arkansas Medical Center Fund" for "Arkansas Rx Program Fund"; and deleted former (b).

26-57-1104. Reporting and remittance.

The additional taxes levied in §§ 26-57-1101 and 26-57-1102 shall be reported and remitted in the same manner and at the same time as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

History. Acts 1997, No. 434, § 10.

26-57-1105. Applicability.

The tax levied in §§ 26-57-1101 and 26-57-1102 shall be in effect on and after July 1, 1997 and shall apply to any inventory or stocks of cigarettes or tobacco products held by a wholesaler or retailer on that date.

History. Acts 1997, No. 434, § 11.

26-57-1106. Distribution of funds for breast cancer research and control — Allocation of moneys.

(a) All remaining moneys collected from the additional tax levied in §§ 26-57-1101 and 26-57-1102 shall be deposited into the State Treasury as special revenues to be distributed as follows:

(1) Twenty percent (20%) shall be credited to the Breast Cancer Research Fund, which is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State to be used exclusively for the purposes set forth in § 20-15-1303; and

(2) (A) Eighty percent (80%) shall be credited to the Breast Cancer Control Fund, which is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State to be used exclusively for the purposes set forth in § 20-15-1304 and at the option of the Department of Health in an amount not to exceed the amount appropriated by the General Assembly for the purpose of cervical cancer control.

(B) The Director of the Department of Health shall be the disbursing officer for the Breast Cancer Control Fund, and the Chancellor of the University of Arkansas for Medical Sciences shall be the disbursing officer for the Breast Cancer Research Fund.

(b) The moneys in the Breast Cancer Research Fund are to be allocated to the Breast Cancer Research Program for the awarding of grants, chairs, and contracts to researchers for research with respect to the cause, cure, treatment, prevention, and earlier detection of breast cancer and for developing leadership in research in Arkansas.

(c) (1) The moneys in the Breast Cancer Control Fund for the control of breast cancer are to be allocated according to the recommendations of the Breast Cancer Control Advisory Board, which shall establish the scope of services of the program and programmatic priorities based on the analysis of available information.

(2) The board shall also be responsible for developing eligibility criteria to be applied in evaluating requests for breast cancer control financial assistance from screened women who are found to be in need of diagnostic and treatment services.

(3) The board shall also review contractual agreements for breast cancer control with providers who will be rendering services through the program.

History. Acts 1997, No. 434, § 12; 2001, No. 1669, § 34; 2001, No. 1698, § 3.

Amendments. The 2001 amendment by identical act Nos. 1669 and 1698 substituted "All remaining" for "Ninety percent (90%) of all" in the introductory language of (a); substituted "the Treasurer of State, Auditor of State and" for "the State Treasurer, State Auditor and" in (a)(1) and (a)(2); substituted "§ 20-15-1303" for "§ 20-15-303" in (a)(1); substituted "§ 20-15-1304 and, at ... cervical cancer control" for "§ 20-15-304" in (a)(2); in (c), inserted "for the control of breast cancer," deleted "advisory" preceding "board shall," and inserted "for breast cancer control"; subdivided (c); and made minor stylistic changes throughout.

26-57-1107. Regulations.

The Department of Finance and Administration is hereby authorized to promulgate regulations as necessary to implement the tax provisions of this subchapter.

History. Acts 1997, No. 434, § 13.

26-57-1108. Appropriation from general revenue fund — Additional tax not collected.

(a) The taxes levied by this subchapter shall not be collected during any fiscal year for which the General Assembly has appropriated at least eight hundred thousand dollars (\$800,000) from general revenues to the Breast Cancer Research Fund and at least three million two hundred thousand dollars (\$3,200,000) of general revenues to the Breast Cancer Control Fund and funded those appropriations in Category A of the Revenue Stabilization Law, § 19-5-101 et seq., for that fiscal year.

(b) [Repealed.]

History. Acts 1997, No. 434, § 14; 2009, No. 655, § 95.

Amendments. The 2009 amendment deleted (b).

Subchapter 12
— Vending Devices Decal Act of 1997

26-57-1201. Title.

26-57-1202. Administration of law.

26-57-1203. Definitions.

26-57-1204. Application, issuance, and display of decal.

26-57-1205. Requirements to obtain vending device decal.

26-57-1206. Annual decal fee — Special decal — In lieu of sales tax.

26-57-1207. Taxable year — Decal for remainder of year — First year payment option.

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26-57-1211. Vending devices without decal affixed — Seizure and forfeiture.

26-57-1212. Procedure upon forfeiture.

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26-57-1214. Disposition of forfeiture sale proceeds.

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26-57-1216. Forfeiture determination — Appeal.

26-57-1217. Purpose.

Cross References. Vending and amusement machines, § 26-77-301 et seq.

Vending devices sales tax, § 26-57-1001 et seq.

Effective Dates. Acts 1997, No. 928, § 21: Jan. 1, 1998. Emergency clause provided: "It is hereby found by the General Assembly: (1) that it is impractical for the persons who are operators of vending devices, as defined by this Vending Devices Decal Act, to collect the state and local Gross Receipts (Sales) Taxes on the gross proceeds or gross receipts they realize from the sale of goods and services made through vending devices, inasmuch as such vendors do not deal in person with their customers at the point of sale; (2) that mechanical limitations on such vending devices dictate that prices for goods or services dispensed by these devices be adjusted in

increments of five cents (\$.05); (3) that the Sales Taxes imposed upon the sales made by vending devices must be borne by the persons who are the operators of such vending devices from the gross proceeds or gross receipts received for such sales (where other vendors are able to collect such state and local Gross Receipts (Sales) Taxes from their customers in addition to the gross receipts or gross proceeds they receive from their customer for the sale of similar goods and services as those sold by vending devices); (4) that the General Assembly finds this situation is unfair and discriminatory to the persons who are the operators of such vending devices; (5) that the states surrounding Arkansas have all recognized this specific problem imposed upon sales made by vending devices and have each provided some form of legislative relief for the persons who are operators of vending devices from their states' respective Sales Tax laws; (6) that a record was established under the prior Vending Device Decal Act that certain operators of vending devices were forced to be covered by paying the decal fee, when such operators preferred another method of taxation; (7) that it has been established that there was once a serious problem of compliance and accountability in this state with the payment of Sales Taxes on sales made by vending devices, due to the cash nature of such sales without receipts being prepared; and (8) that it being the intent of the General Assembly to place all persons who are operators of vending devices that elected to pay their taxes by way of this simplified vending device decal fee system (in lieu of paying the general state and local Gross Receipts (Sales) Taxes or special Vending Devices Sales Taxes) on the same competitive planes. Therefore an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect as of January 1, 1998."

Acts 2003 (2nd Ex. Sess.), No. 107, § 9: July 1, 2004. The amendment was effective by its own terms on July 1, 2004.

Acts 2003 (2nd Ex. Sess.), No. 107, § 12: became law without Governor's signature, Mar. 1, 2004. Emergency clause provided: "It is found and determined by the General Assembly, that the provision of an equal opportunity for an adequate education to all the citizens of the state is imperative; that additional funds are immediately needed to provide an equal opportunity for an adequate education; that this act is designed to provide the additional revenues needed to provide this equal opportunity to all citizens; and that a delay in the effective date of this act will cause irreparable harm upon the provision of essential education opportunities and the proper administration of educational programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of March 1, 2004."

26-57-1201. Title.

This subchapter shall be known and cited as the "Vending Devices Decal Act of 1997".

History. Acts 1997, No. 928, § 1.

26-57-1202. Administration of law.

The provisions of this subchapter will be subject to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., as those provisions shall apply to the administration of this subchapter by the Director of the Department of Finance and Administration.

History. Acts 1997, No. 928, § 2.

26-57-1203. Definitions.

As used in this subchapter:

(1) (A) "Coin-operated bulk vending device" means machines or devices containing unsorted merchandise which upon insertion of a coin or coins dispenses the merchandise in approximately equal portions, at random and without selection by the customer.

(B) Such vending machine is a simple mechanical device capable of

accepting a coin of only one (1) denomination with one (1) coin slot.

(C) Sorted or unsorted merchandise dispensed by such vending machines include gum, candy, toys, novelties, sanitary napkins, or other similar merchandise;

(2) (A) “Coin-operated manually powered vending device” means any and all machines or devices that:

(i) Use manual power rather than electromotive power for dispensing products; and

(ii) Upon payment or insertion of coins, tokens, or similar objects, dispense the type of tangible personal property described in subdivision (4)(A) of this section.

(B) “Coin-operated manually powered vending device” is intended to include:

(i) Coin-operated manually-powered vending devices that have one (1) or more coin slots as long as such dispensing devices are housed in one (1) cabinet; and

(ii) Manually powered devices that dispense prophylactics;

(C) “Coin-operated manually-powered vending device” is not intended to refer to a coin-operated bulk vending device, which term itself is otherwise defined by this section.

(3) “Coin-operated tabletop snack vending device” means any and all machines or devices without refrigeration capabilities that:

(A) Sit upon a counter, tabletop, or stand and provide for eighteen (18) selections, or less; and

(B) Upon the payment or insertion of a coin, token or similar object, dispenses tangible personal property, including candies, gum, chips, cookies, crackers or other edible snacks, but not cold drinks, hot drinks, or sandwiches;

(4) (A) “Coin-operated vending device” means any and all machines or devices which, upon the payment or insertion of a coin, token or similar object, dispense tangible personal property, including, but not limited to, candies, gum, cold drinks, hot drinks, sandwiches, chips, ballpoint pens, combs, cigarette lighters, soaps or detergents, or other edible or inedible items.

(B) “Coin-operated vending device” does not mean:

(i) Amusement and game machines;

(ii) Devices used exclusively for the purpose of selling cigarettes, newspapers, magazines or postage stamps; or

(iii) Devices used for the purpose of selling services such as pay telephone booths, parking meters, gas and electric meters, automatic teller machines, compressed air, or other devices used in the distribution of such needed services;

(5) “Decal registration year” or “decal fee year” means the period that begins on July 1 of a given year, and expires on June 30 of the following year, during which a vending device decal as required by this subchapter must be purchased and affixed to all vending devices operating within the state;

(6) “Operator” means the person who as owner, lessee, bailee, or otherwise is responsible for removing money from the vending device and who is the person who would otherwise be responsible for reporting and paying the applicable gross receipts sales taxes on sales made through the vending device.

- (7) "Owner" means the person who is the owner of any vending device.
- (8) "Person" means any individual, partnership, association, or corporation; and
- (9) "Vending device" means a:
 - (A) Coin-operated vending device;
 - (B) Coin-operated bulk vending device;
 - (C) Coin-operated manually powered vending device; and
 - (D) Coin-operated tabletop snack vending devices.

History. Acts 1997, No. 928, § 3.

26-57-1204. Application, issuance, and display of decal.

(a) (1) Any person who is the operator of a vending device in this state that is made available for use and operation by the general public whether the operator is the owner of such vending device, or a lessee, renter, bailee, etc. of the owner of such vending device in lieu of paying sales taxes under the provisions of the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or under the provisions of § 26-57-1001, et seq., may elect to pay the decal fees provided by § 26-57-1206.

(2) If such election is not made by the operator, then the general or special sales taxes that are otherwise applicable to the operation of the vending device shall be imposed upon the sale of tangible personal property from such vending device.

(b) The operator of a vending device who makes the election to pay the decal fees provided by this subchapter shall be responsible for applying to the Director of the Department of Finance and Administration for the issuance of an annual or special vending device decal for such vending device and at the same time shall pay to the director the annual or special vending device decal fee provided for by this subchapter, before such vending device is made available for use and operation by the general public.

(c) The director, upon receipt of full payment of the applicable decal fee, and upon approval of such application, shall issue to the person making such application an annual or special vending device decal for the type of vending device or devices covered by such application and payment.

(d) (1) The annual or special vending device decals, and the application provided for herein shall be in such form as prescribed by the director. These decals and applications shall contain on their faces such information and descriptions as shall be required by regulations adopted by the director to properly and reasonably implement the provisions of this subchapter.

(2) Any number of vending devices may be included in one (1) application, but all vending devices operated by the applying operator must be made subject to this alternative decal fee. Such operator may not choose to have part of his or her vending devices covered by the decal fee provided by this subchapter, while other vending devices operated by the same operator during the decal registration year would be subject to the general or special sales taxes that would be otherwise applicable to the sale of tangible personal property from such vending devices.

(e) Before any vending device is put into operation or placed where the vending device may be used or operated by any member of the general public, and at all times when the vending device is being used or operated or made available to members of the general public for use or operation, an annual or special vending device decal shall be firmly affixed to the vending device covered thereby by the person who is the operator of the

vending device so that the decal shall be plainly visible to and readable by the members of the general public.

History. Acts 1997, No. 928, § 4.

26-57-1205. Requirements to obtain vending device decal.

To obtain an annual or special vending device decal so as to be able to operate a vending device in this state an applicant for such vending device decal shall comply with the following requirements. The applicant:

(1) Must not be a convicted felon or a corporation whose president or principal shareholders are convicted felons; and

(2) Must have obtained from the Director of the Department of Finance and Administration an Arkansas gross receipts tax permit.

History. Acts 1997, No. 928, § 5.

26-57-1206. Annual decal fee — Special decal — In lieu of sales tax.

(a) (1) Every person who is the operator of a vending device, who elects to have the operation of the vending device covered by the provisions of this subchapter, and who makes available to the general public for use and operation vending devices described in this subchapter shall pay to the Director of the Department of Finance and Administration for the benefit of the state and its municipalities and counties the following annual vending device decal fee for each vending device before the vending device may be placed in service within the state for use by members of the public:

(A) For each coin-operated vending device requiring a coin or thing of value of twenty-five cents (25¢) or more for a sale, ninety-three dollars (\$93.00);

(B) For each coin-operated vending device requiring a coin or thing of value of less than twenty-five cents (25¢) for a sale, fifteen dollars (\$15.00);

(C) For each coin-operated bulk vending device requiring a coin or thing of value of more than twenty-five cents (25¢) for a sale, seven dollars and fifty cents (\$7.50);

(D) For each coin-operated bulk vending device requiring a coin or thing of value of twenty-five cents (25¢) or less for a sale, two dollars and fifty cents (\$2.50); and

(E) For each coin-operated manually powered vending device, coin-operated tabletop snack vending device, or other coin-operated manually powered vending device requiring a coin or thing of value of twenty-five cents (25¢) or more for a sale, thirty dollars (\$30.00).

(2) (A) After payment of the appropriate annual vending device decal fee, the annual vending device decal issued by the director shall bear on its face the year of its issue.

(B) The annual vending device decal must be affixed to each vending device in a place that is clearly visible to the user of the vending device before the vending device may be placed by the operator for public use or operation in this state.

(3) The annual vending device decal shall not be transferred from one (1) vending device to another, unless the person who is the operator of the vending device shall establish to the satisfaction of the director that the vending device to which the annual vending device decal is to be transferred is a vending device that is replacing the

vending device to which the annual vending device decal was originally affixed.

(b) In those instances in which it is shown to the satisfaction of the director that a vending device upon which an annual vending device decal fee is otherwise due will be placed in service for use by members of the general public for a definite period of time that is less than one (1) year, such as when the vending device shall be placed for public use in connection with fairs, carnivals, and places of amusement that operate only during certain seasons of the year, the director shall issue for those vending devices a special vending device decal and collect a special vending device decal fee computed as follows:

(1) (A) The special vending device decal may be issued for any number of thirty-day periods totaling less than a full year.

(B) The special vending device decal shall:

(i) State on its face that it is a special vending device decal, not an annual vending device decal;

(ii) Be for one (1) or more thirty-day periods;

(iii) State on its face the precise dates for which it has been issued;

and

(iv) Not be transferred from one (1) vending device to another vending device;

(2) The special vending device decal fee shall be computed and paid by the person who is the operator of the vending device on the basis of one-fifth (1/5) of the annual vending device decal fee charged by this subchapter for the type of vending device operated, for each thirty-day period for which the special decal is issued; and

(3) In the event the vending device is made available to the public for a period beyond that for which the special vending device decal is issued, then a full year's fee and penalty, as set out in § 26-57-1206, shall be due on the vending device from the person who is the operator of the vending device.

(c) (1) The annual or special vending device decal fees required to be paid by subsections (a) and (b) of this section shall be paid by the person who is the operator of the vending device in lieu of the requirement that the person collect and remit the:

(A) State and local gross receipts or sales taxes levied pursuant to the provisions of the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., any provision of §§ 26-74-101 et seq. and 26-75-101 et seq., or any other provision of the Arkansas Code which provides for the levy of a local sales tax; or

(B) Special sales taxes levied pursuant to the provisions of § 26-57-1001 et seq.

(2) It is the intent of the General Assembly that gross proceeds or gross receipts shall not be subject to any state or local gross receipts or sales taxes imposed in this state when:

(A) The gross receipts or gross proceeds are received by a person who is the operator of a vending device from the sale of any item of tangible personal property through the vending device; and

(B) The annual or special vending device decal fee has been paid and the decal is affixed to the vending device.

(d) Any sales made by the operator of a coin-operated vending device that are made without the use of a vending device, for example, office coffee service, manual hot foods lines, catering events, and other similar sales, shall be subject to the state and local gross

receipts or sales taxes levied pursuant to the provisions of the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., any provision of §§ 26-74-101 et seq. and 26-75-101 et seq., or any other provision of the Arkansas Code that provides for the levy of a local sales tax.

(e) (1) For all vending devices that the operator does not elect to have covered by the decal fee provided by this section, the operator of that vending device shall acquire from the director an identifying decal that the operator shall affix to the vending device in a prominent place so as to establish to the consuming public that the vending device is not covered by the provisions of this subchapter.

(2) By reasonable regulations the director shall establish the amount to be charged for an identifying decal and the amount shall not exceed the cost of producing the identifying decals.

(f) An operator who elects to pay tax at the wholesale level and which has been issued an identification number by the Department of Finance and Administration as of March 31, 1997, shall be entitled to utilize that identification number for all vending devices owned by that operator.

History. Acts 1997, No. 928, § 6; 2003 (2nd Ex. Sess.), No. 107, § 9; 2005, No. 1962, § 115; 2009, No. 655, § 96.

Amendments. The 2003 (2nd Ex. Sess.) amendment substituted “ninety-three dollars (\$93)” for “seventy dollars (\$70.00)” in (a)(1)(A).

The 2005 amendment, in (d), substituted “for example” for “e.g.,” “and other similar sales” for “etc.,” and “§§ 26-74-101 et seq. and 26-75-101 et seq.” for “Chapters 74 and 75 or Title 26.” The 2009 amendment rewrote (b)(1).

Effective Dates. Acts 2003 (2nd Ex. Sess.), No. 107, § 9: amendment effective by its own terms on July 1, 2004.

26-57-1207. Taxable year — Decal for remainder of year — First year payment option.

(a) (1) For the purpose of the annual or special vending device decal issued under § 26-57-1204, the decal fee year shall begin on the first day of July and end on the last day of the following June. This decal fee year shall be divided into two (2) halves.

(2) The Director of the Department of Finance and Administration shall in each instance issue annual vending device decals for the remainder of the decal year upon payment of the annual vending device decal fee on the basis of the full amount of the annual decal applied for between July 1 and December 31 of the decal fee year, and in return for the payment of an amount of one-half (½) of such annual vending device decal fee, for any such annual decal applied for between January 1 and June 30 of the decal fee year.

(b) For the first taxable year that the annual or special vending device decal fee is applicable, the person who is the operator of such vending devices that are subject to registration and payment of such decal fees shall register all such vending devices with the director, but for the first one-half year, after March 31, 1997, the operator shall pay one-half (½) of the decal fee for each such vending device on or before January 1, 1998. Thereafter, the entire annual or special vending device decal fee shall be due from the person who is the owner, lessor, renter, or operator of such vending devices on or before July 1 of the applicable taxable year.

History. Acts 1997, No. 928, § 7.

26-57-1208. Distribution of revenue.

(a) (1) It is declared to be the purpose of this subchapter to provide revenues for general governmental functions of the state and its counties and municipalities, in lieu of the state and local gross receipts or sales taxes or vending device sales taxes that would otherwise be due and owing from the person who is the operator of a vending device.

(2) For that purpose and to that end, it is expressly provided that the revenue derived by the Director of the Department of Finance and Administration from the sale of annual or special vending device decal fees, including penalties, shall be deposited by the director into the State Treasury and credited as provided in subsection (b) of this section.

(b) The vending device decal fees imposed by § 26-57-1206 or any proportionate amount of the vending device decal fees shall be divided as follows:

(1) Eighty percent (80%) of the fees collected under § 26-57-1206(a)(1)(B)-(E) and sixty percent (60%) of the fees collected under § 26-57-1206(a)(1)(A) shall be deposited to the credit of the General Revenue Fund Account of the State Apportionment Fund provided by § 19-5-202;

(2) Twenty percent (20%) of the fees collected under § 26-57-1206(a)(1)(B)-(E) and fifteen percent (15%) of the fees collected under § 26-57-1206(a)(1)(A) shall be deposited by the Treasurer of State into the Identification Pending Trust Fund for Local Sales and Use Taxes in accordance with the provisions of §§ 26-74-221 and 26-75-223, and all revenues deposited into that fund shall be distributed to the cities and counties of this state in accordance with the provisions of §§ 26-74-221(a)(2)(C)(ii) and 26-75-223(a)(2)(C)(ii); and

(3) Twenty-five percent (25%) of the fees collected under § 26-57-1206(a)(1)(A) shall be special revenues deposited by the Treasurer of State to the credit of the Educational Adequacy Fund.

History. Acts 1997, No. 928, § 8; 2003 (2nd Ex. Sess.), No. 107, § 10.

Amendments. The 2003 (2nd Ex. Sess.) amendment added "as follows" to the end of the introductory language of (b); substituted "Eighty percent (80%) ... § 26-57-1206(a)(1)(A) shall be" for "With eighty percent (80%) of such amount being" in (b)(1); substituted "Twenty percent (20%) ... § 26-57-1206(a)(1)(A) shall be" for "With twenty percent (20%) of such amount being" in (b)(2); added (b)(3); and made related changes.

Effective Dates. Acts 2003 (2nd Ex. Sess.), No. 107, § 10: amendment effective by its own terms on July 1, 2004.

26-57-1209. Penalties.

(a) (1) Any person who is the operator of a vending device who places a vending device in use and operation, or in a place available to members of the general public for use and operation, without a valid and current annual or special vending device decal having been affixed thereto, as required by §§ 26-57-1204 and 26-57-1206, shall be liable for the decal fee on such vending device in the full amount of the applicable annual vending device decal fee, as levied by this subchapter, and such annual vending device decal fee shall be collected by the Director of the Department of Finance and Administration in accordance with the provisions of § 26-57-1204.

(2) (A) In addition to the annual vending device decal fee that is due on such

vending device, the operator of the vending device who was responsible for failing to apply for and pay for the applicable annual vending device decal fee shall also be liable to pay the director a penalty which such person shall pay to the director and which the director shall assess against such person.

(B) The amounts of these penalties for failure to purchase and display the annual decal fee are to be paid by such operator, in addition to the applicable annual vending device decal fee, and such penalty shall be the larger of either twenty-five dollars (\$25.00) per vending device, or an amount equal to eight (8) times the annual vending decal fee applicable to each such vending device.

(b) Upon conviction, a person who is the operator of a vending device who places the vending device in operation in this state for use or operation by members of the general public without first attaching to the vending device a valid and current annual vending device decal or special vending device decal under this subchapter is guilty of a Class C misdemeanor for each vending device found not to have a valid and current annual vending device decal or special vending device decal under this subchapter.

History. Acts 1997, No. 928, § 9; 2009, No. 655, § 97.

Amendments. The 2009 amendment rewrote (b).

26-57-1210. Prohibited devices not legalized — Fees not refunded.

(a) Nothing in this subchapter shall be construed to legalize any coin-operated video gambling device, slot machine, or other coin-operated gambling device that may be prohibited by any of the other statutes of this state.

(b) The Director of the Department of Finance and Administration may assume that any vending device described in any application made under this subchapter and for which an annual or special vending device decal fee is paid is lawful, and no claim for refund of any such annual or special vending device decal fee shall be allowed based upon the inability of the operator of such coin-operated device to operate such vending device because of any other applicable law of this state.

History. Acts 1997, No. 928, § 10.

26-57-1211. Vending devices without decal affixed — Seizure and forfeiture.

(a) When any vending device as defined in § 26-57-1203(9) is placed on location for retail sales to the members of the general public in the State of Arkansas, or, after having been placed on location in this state, such vending device is left on location without the required vending device decal affixed thereon as may otherwise be provided for by the laws of this state, the vending device, including all cash in the receptacle thereof, if any, shall be considered forfeited to the State of Arkansas because of the absence of the required vending device decal from such vending device.

(b) Such vending device may be seized and sealed on site at its location by the Director of the Department of Finance and Administration or his or her authorized agent, and such vending device shall not be removed from such location by any person until such vending device is released from seizure by the director or his or her authorized agent.

(c) Such vending device may be seized by any authorized agent of the director, or by any sheriff or other law enforcement officer of this state acting upon the request and at the direction of the director.

History. Acts 1997, No. 928, § 11.

26-57-1212. Procedure upon forfeiture.

(a) Upon the seizure of such vending device, the vending device shall forthwith be delivered, together with the cash, if any, contained in the receptacle of such vending device, to the Director of the Department of Finance and Administration.

(b) The director or his or her authorized agent shall then proceed to make an administrative determination of whether or not the vending device and cash, if any, that have been seized should in fact be forfeited to the State of Arkansas.

(c) The owner of the vending device shall be given at least thirty (30) days' written notice of the date of the hearing on such forfeiture of the vending device. Such notice shall be considered a notice of proposed assessment under § 26-18-403, and the owner shall be entitled to an administrative hearing pursuant to § 26-18-405.

History. Acts 1997, No. 928, § 12.

26-57-1213. Sale of device upon forfeiture.

(a) In the event the Director of the Department of Finance and Administration or his or her authorized agent finds that the vending device, including the cash contents, if any, should be forfeited to the State of Arkansas, the director or his or her authorized agent shall make a written determination of forfeiture of the vending device to the State of Arkansas, and the director shall direct the sale of such vending device.

(b) The vending device shall be sold by the director, his or her authorized agent, the sheriff in the county where it was seized, or the sheriff of Pulaski County after thirty-days' written notice of sale, which notice of sale shall be given:

(1) In writing to the owner of such vending device at the owner's last known address;

(2) In writing to the operator of such vending device at the operator's last known address; and

(3) By posting five (5) notices of sale in conspicuous places in the county where the sale of such vending device is to be held. One (1) of such notices of sale shall be posted on a bulletin board at the county courthouse of said county.

(c) At the discretion of the director, notice of sale of such vending device may be given, alternatively to posting, by publishing the notice of sale in a newspaper of general circulation in such county at least thirty (30) days prior to such sale.

History. Acts 1997, No. 928, § 13.

26-57-1214. Disposition of forfeiture sale proceeds.

The sale of the vending device shall be for cash, and the proceeds of such sale shall be applied as follows:

(1) To the payment of the costs incident to the seizure and sale of such vending device;

(2) To the payment of any taxes or decal fee costs, including penalties, that may have accrued against the vending device; and

(3) The balance, if any, shall be remitted to the owner of the vending device.

History. Acts 1997, No. 928, § 14.

26-57-1215. Forfeiture includes cash contents.

The cash contained in any seized vending device, which cash is forfeited under the provisions of this subchapter, shall be forfeited to the State of Arkansas as an additional penalty and shall be in addition to all other penalties provided for under this subchapter.

History. Acts 1997, No. 928, § 15.

26-57-1216. Forfeiture determination — Appeal.

(a) The written determination of the Director of the Department of Finance and Administration or his or her authorized agent declaring a forfeiture of the vending device, including the cash contents thereof, if any, and directing the sale of such vending device shall be a final determination of the director and shall be treated for purposes of the owner's or operator's appeal of the director's determination as a final assessment, subject to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(b) Judicial review of the final determination by the director shall be available pursuant to the provisions of § 26-18-406.

History. Acts 1997, No. 928, § 16.

26-57-1217. Purpose.

The purpose for the enactment of this subchapter is to provide a simplified method for the operators of such vending devices to be able to pay their proportionate amount of state and local taxes, without being required to maintain complex financial records that would otherwise be required of such operators who are in the unique position among retailers in this state of not being able to pass the cost of sales taxes directly on to their customers, and to assure that the State of Arkansas and its cities and counties collect their fair share of taxes from what is almost entirely a cash business.

History. Acts 1997, No. 928, § 17.

Subchapter 13 — Enforcement Enhancements

26-57-1301. Findings and purpose.

26-57-1302. Definitions.

26-57-1303. Certifications — Directory — Tax stamps.

26-57-1304. Requirement for agent for service of process.

26-57-1305. Reporting of information — Escrow installments.

26-57-1306. Penalties and other remedies.

26-57-1307. Miscellaneous provisions.

Effective Dates. Acts 2003, No. 1073, § 8: Apr. 3, 2003. Emergency clause provided: "It is found and determined by the General Assembly that that violations of Arkansas Code §§ 26-57-260 and 26-57-261 threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the public health and that procedural enhancements will prevent violations and are immediately needed to aid the enforcement of Arkansas Code §§ 26-57-260 and 26-57-261 and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the state, and the public health. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor

vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2005, No. 384, § 5: Feb. 24, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that smoking poses a serious health risk to Arkansans; that the Master Settlement Agreement is a critical component in reducing the rate of smoking in Arkansas; and that the provisions of this act are immediately necessary for the continued effective administration and enforcement of provisions of the Master Settlement Agreement in Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

26-57-1301. Findings and purpose.

The General Assembly finds that:

(1) Violations of §§ 26-57-260 and 26-57-261 threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the public health; and

(2) Enacting procedural enhancements will help prevent violations and aid the enforcement of §§ 26-57-260 and 26-57-261 and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the state, and the public health.

History. Acts 2003, No. 1073, § 1.

Cross References. Tobacco Settlement Proceeds Act, § 19-12-101 et seq.

26-57-1302. Definitions.

(a) “Brand family” means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, “menthol”, “lights”, “kings”, and “100s”, and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes.

(b) “Cigarette” has the same meaning as in § 26-57-260(4).

(c) “Director” means the Director of Arkansas Tobacco Control.

(d) “Licensee” means any person or entity who has been granted and holds a permit or license under § 26-57-215, including a wholesale cigarette license or permit, a wholesale tobacco license or permit, a salesperson’s license or permit, a retail cigarette license or permit, a retail tobacco license or permit, or a dealer’s license or permit.

(e) “Master Settlement Agreement” has the same meaning as in § 26-57-260(5).

(f) “Nonparticipating manufacturer” means any tobacco product manufacturer that is not a participating manufacturer.

(g) “Participating manufacturer” has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments to the agreement.

(h) “Qualified escrow fund” has the same meaning as that term is defined in § 26-57-260(6).

(i) “Tobacco product manufacturer” has the same meaning as that term is defined in § 26-57-260(9).

(j) “Units sold” has the same meaning as that term is defined in § 26-57-260(10)(A).

(k) “Wholesaler” means:

(1) Any person or entity who has been granted and holds a wholesale cigarette license or permit or a wholesale tobacco license or permit pursuant to § 26-57-215; and

(2) Any person or entity who as a retailer purchases tobacco products directly from a manufacturer or an unlicensed wholesaler or distributor and is therefore liable for reporting and paying taxes under § 26-57-211(a)(1)(B).

History. Acts 2003, No. 1073, § 2; 2009, No. 785, § 31.

A.C.R.C. Notes. The reference in subdivision (k)(2) of this section to § 26-57-211(a)(1)(B) appears to be to the version as amended by Acts 1997, No. 1337.

Amendments. The 2009 amendment substituted “Director of Arkansas Tobacco Control” for “Director of the Arkansas Tobacco Control Board” in (c).

26-57-1303. Certifications — Directory — Tax stamps.

(a) Certification.

(1) No later than April 30 each year, every tobacco product manufacturer whose cigarettes are sold in Arkansas, whether directly or through a wholesaler, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the Attorney General a certification to the Attorney General certifying under penalty of perjury that as of the date of the certification the tobacco product manufacturer either:

(A) Is a participating manufacturer; or

(B) Is in full compliance with §§ 26-57-260 and 26-57-261, including all quarterly installment payments that may be required under § 26-57-1305(e).

(2) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty (30) calendar days before any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

(3) A nonparticipating manufacturer shall include in its certification:

(A) An electronic mail address and fax number to which notices from the Attorney General may be sent and a list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year; and

(B) A list of all of its brand families that have been sold in the state at any time during the current calendar year:

(i) Indicating by an asterisk any brand family sold in the state during the preceding calendar year but that is no longer being sold in the state as of the date of the certification; and

(ii) Identifying by name and address any other manufacturer of the brand families in the preceding or current calendar year.

(4) The nonparticipating manufacturer shall update the list thirty (30) calendar days before any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

(5) In the case of a nonparticipating manufacturer, the certification shall further certify:

(A) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice thereof as required by § 26-57-1304;

(B) That the nonparticipating manufacturer:

(i) Has established and continues to maintain a qualified escrow fund; and

(ii) Has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund;

(C) That the nonparticipating manufacturer is in full compliance with §§ 26-57-260 and 26-57-261 and this subchapter and with any regulations promulgated pursuant thereto;

(D) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required under §§ 26-57-260 and 26-57-261 and with all regulations promulgated thereto;

(E) The account number of the qualified escrow fund and any subaccount number for the state;

(F) The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and such evidence or verification as may be deemed necessary by the Attorney General to confirm the requirements of the foregoing; and

(G) The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments under §§ 26-57-260 and 26-57-261 and all regulations promulgated thereto.

(6) A tobacco product manufacturer may not include a brand family in its certification unless:

(A) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year in the volume and shares determined under the Master Settlement Agreement; and

(B) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of §§ 26-57-260 and 26-57-261.

(7) Nothing in subdivision (a)(6) of this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of §§ 26-57-260 and 26-57-261.

(8) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for the certification for a period of five (5) years unless otherwise required by law to maintain them for a greater period of time.

(b) Directory of Cigarettes Approved for Stamping and Sale.

(1) (A) Not later than the last business day of May of each year, the Attorney General shall develop and make available for public inspection and shall publish on the Attorney General's website a directory listing all tobacco product manufacturers that have

provided current and accurate certifications conforming to the requirements of subsection (a) of this section and all brand families that are listed in the certifications except as provided in this section.

(B) The Attorney General shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the Attorney General determines is not in compliance with subsection (a) of this section unless the Attorney General has determined that the violation has been cured to the satisfaction of the Attorney General.

(C) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General concludes in the case of a nonparticipating manufacturer that:

(i) Any escrow payment required under §§ 26-57-260 and 26-57-261 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or

(ii) Any outstanding final judgment, including interest on the judgment, for a violation of §§ 26-57-260 and 26-57-261 has not been fully satisfied for the brand family or the manufacturer.

(D) The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this subchapter.

(E) Every wholesaler shall provide and update as necessary an electronic mail address to the Attorney General for the purpose of receiving any notifications as may be required by this subchapter.

(F) (i) Notwithstanding the provisions of this section, in the case of any nonparticipating manufacturer who has established a qualified escrow account pursuant to §§ 26-57-260 and 26-57-261 that has been approved by the Attorney General, the Attorney General may not remove the nonparticipating manufacturer or its brand families from the directory until at least fifteen (15) days after the nonparticipating manufacturer has been given notice of such an intended action.

(ii) Notice shall be sufficient and be deemed immediately received by a nonparticipating manufacturer if the notice is sent either electronically or by facsimile to an electronic mail address or facsimile number, as the case may be, provided by the nonparticipating manufacturer in its most recent certification filed pursuant to subsection (a) of this section.

(c) Prohibition Against Stamping, Sale, or Import of Cigarettes Not in Directory.

(1) It is unlawful for any person or entity to:

(A) Affix a tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family that the person or entity knows is not included in the directory maintained by the Attorney General pursuant to subsection (b) of this section; or

(B) Sell, offer, or possess in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family that the person or entity knows is not included in the directory maintained by the Attorney General pursuant to subsection (b) of this section.

(2) Persons and entities are deemed to have received notice that cigarettes of a

tobacco product manufacturer or a brand family are not included in the directory maintained by the Attorney General pursuant to subsection (b) of this section at the time the Attorney General's website fails to list any such cigarettes in the directory or at the time the Attorney General removes the cigarettes from the directory.

(3) A person or entity purchasing cigarettes for resale shall not be in violation of this subchapter if:

(A) At the time of purchase the manufacturer and brand families of the cigarettes are included in the directory maintained by the Attorney General pursuant to subsection (b) of this section and the cigarettes are lawfully stamped and sold within twenty-one (21) days of the date the manufacturer and brand families were removed from the directory; or

(B) (i) In the case of a retailer, the cigarettes are sold or delivered to retail customers within twenty-one (21) days after receipt of delivery of such cigarettes from a wholesaler so long as the cigarettes in question were lawfully purchased from the same wholesaler and the twenty-one-day period has not expired.

(ii) Possession of cigarettes after the twenty-one-day day period in subdivision (c)(3)(B)(i) of this section has expired is a violation of subdivision (c)(1) of this section.

(4) No brand families may be purchased by or delivered to a wholesaler once the manufacturer and brand families are removed from the directory.

(5) Any manufacturer, wholesaler, or retailer selling cigarettes for resale of a manufacturer or brand family that has been removed from the directory maintained by the Attorney General pursuant to subsection (b) of this section shall notify the purchaser of such cigarettes of that fact at the time of delivery of the cigarettes.

(6) (A) Unless otherwise provided by contract or purchase agreement, a purchaser shall be entitled to a refund of the purchase price from the manufacturer, wholesaler, or retailer from whom the cigarettes were purchased of any cigarettes that are the product of a manufacturer or a brand family that has been removed from the directory maintained by the Attorney General pursuant to subsection (b) of this section.

(B) The Department of Finance and Administration may by rule provide for a refund of the price of tax stamps that have been lawfully affixed to cigarettes that may not be sold under this subsection.

History. Acts 2003, No. 1073, § 3; 2005, No. 384, § 2; 2009, No. 655, § 98; 2009, No. 785, § 32.

A.C.R.C. Notes. Acts 2005, No. 384, § 3, provided:
"Severability.

(a) If this act or any portion of the amendment to Arkansas Code § 26-57-261(2)(B)(ii) made by this act is held by a court of competent jurisdiction to be unconstitutional, then Arkansas Code § 26-57-261(2)(B)(ii) shall be deemed to be repealed in its entirety.

(b) If Arkansas Code § 26-57-261(2)(B) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this act shall be deemed repealed and Arkansas Code § 26-57-261(2)(B)(ii) be restored as if the amendment made by this act had not been made.

(c) Neither any holding of unconstitutionality nor the repeal of Arkansas Code § 26-57-261(2)(B)(ii) shall affect, impair, or invalidate any other portion of Arkansas Code § 26-57-261 or the application of Arkansas Code § 26-57-261 to any other person or circumstance, and the remaining portions of Arkansas Code § 26-57-261 shall continue in full force and effect."

Amendments. The 2005 amendment substituted "twenty-one (21)" for "fourteen (14)" in (c)(3)(A) and (c)(3)(B); inserted present (c)(4); and redesignated former (c)(4) and (c)(5) as present (c)(5)

and (c)(6).

The 2009 amendment by No. 655, in (a)(3)(A), substituted “fax” for “facsimile” and inserted “and” at the end.

The 2009 amendment by No. 785 deleted “for sale” following “possess” in (c)(1)(B), inserted (c)(3)(B)(ii) and redesignated the remainder of (c)(3)(B) accordingly, inserted “and the twenty-one-day period has not expired” in (c)(3)(B)(i), and substituted “rule” for “regulation” in (c)(6)(B).

Case Notes

Constitutionality.

Federal Preemption.

Constitutionality.

This section and § 26-57-261 did not violate a tobacco importer's First Amendment rights where its only complaint, a loss of competitive advantage, did not unconstitutionally burden speech, whether considered personal or commercial. *Int'l Tobacco Ptnrs., LTD v. Beebe*, 420 F. Supp. 2d 989 (W.D. Ark. 2006).

Federal Preemption.

Tobacco importer's claim that the allocable share amendment set forth in § 26-57-261 and this section violated 15 U.S.C.S. § 1 was dismissed where the amendment did not mandate price-setting or output price fixing by private parties and, as a result, the state statutes were not preempted by the Sherman Act. *Int'l Tobacco Ptnrs., LTD v. Beebe*, 420 F. Supp. 2d 989 (W.D. Ark. 2006).

26-57-1304. Requirement for agent for service of process.

(a) (1) As a condition precedent to having its brand families included or retained in the directory maintained by the Attorney General pursuant to § 26-57-1303(b), any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process and any action or proceeding against it concerning or arising out of the enforcement of this subchapter and §§ 26-57-260 and 26-57-261 may be served in any manner authorized by law.

(2) The service shall constitute legal and valid service of process on the nonparticipating manufacturer.

(3) The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to and to the satisfaction of the Attorney General.

(b) (1) The nonparticipating manufacturer shall provide notice to the Attorney General thirty (30) calendar days before the termination of the authority of an agent and shall provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five (5) calendar days before the termination of an existing agent appointment.

(2) If an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Attorney General of the termination within five (5) calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(c) (1) Any nonparticipating manufacturer whose cigarettes are sold in this state and who has not appointed and engaged an agent as required by this subchapter shall be deemed to have appointed the Secretary of State as the agent and may be proceeded against in courts of this state by service of process upon the Secretary of State.

(2) However, the appointment of the Secretary of State as the agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory maintained by the Attorney General pursuant to § 26-57-1303(b).

History. Acts 2003, No. 1073, § 4.

26-57-1305. Reporting of information — Escrow installments.

(a) Reporting by Wholesalers.

(1) Not later than twenty (20) calendar days after the end of each calendar quarter, each wholesaler shall submit such information as the Attorney General requires to facilitate compliance with this subchapter, including, but not limited to, a list by brand family of the total number of cigarettes or in the case of “roll-your-own”, the equivalent stick count for which the wholesaler affixed tax stamps during the previous calendar quarter or otherwise paid the tax due for the cigarettes.

(2) The wholesaler shall maintain and make available to the Attorney General all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Attorney General for a period of five (5) years.

(b) Disclosure of Information.

(1) The Arkansas Tobacco Control Board and the Department of Finance and Administration may disclose to the Attorney General any information in their possession as requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of this subchapter.

(2) The board, the department, and the Attorney General may share with each other any information received under this subchapter and may share the information with other federal, state, or local agencies only for purposes of enforcement of this subchapter, §§ 26-57-260 and 26-57-261, or corresponding laws of other states.

(c) Verification of Qualified Escrow Fund. The Attorney General may require at any time from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with §§ 26-57-260 and 26-57-261 of:

- (1) The amount of money in the fund, exclusive of interest;
- (2) The amount and date of each deposit into the fund; and
- (3) The amount and date of each withdrawal from the fund.

(d) Requests for Additional Information. In addition to the information required to be submitted under this subchapter, the Attorney General may require a licensee or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this subchapter.

(e) Quarterly Escrow Installments for Tobacco Product Manufacturers.

(1) **(A)** To promote compliance with this subchapter, the Attorney General may require any manufacturer to make escrow deposits required by §§ 26-57-260 and 26-57-261 in quarterly installments.

(B) Quarterly installments of escrow deposits required under subdivision (e)(1)(A) of this section shall be deposited into a qualified escrow account established to

receive escrow deposits required by §§ 26-57-260 and 26-57-261 not later than twenty (20) calendar days after the end of the quarter in which the sales were made.

(2) The Attorney General may require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of each installment deposit.

(3) The failure of any tobacco product manufacturer to make a quarterly installment of an escrow deposit required by the Attorney General under subdivision (e)(1) of this section shall subject the tobacco product manufacturer to any penalty and other remedy provided under §§ 26-57-261 and 26-57-1303 for failure to place funds in escrow.

History. Acts 2003, No. 1073, § 5; 2007, No. 285, § 1.

Amendments. The 2007 amendment, in (e), deleted “New” preceding “Tobacco” in the introductory paragraph, added the (1)(A) designation and added (1)(B), in (1)(A) substituted “any manufacturer” for “any manufacturer added to the directory after the first publication of the directory on the Attorney General’s website” and deleted “through the first two (2) years in which the sales covered by the deposits are made” at the end, and added (3).

26-57-1306. Penalties and other remedies.

(a) License Revocation and Civil Penalty.

(1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a licensee or permittee has violated § 26-57-1303(c) or any rule adopted under this subchapter, the Director of Arkansas Tobacco Control may revoke or suspend the licensee’s licenses or permits pursuant to law and the Arkansas Tobacco Control Board’s rules governing the procedure for revocation or suspension of the licenses or permits.

(2) Each tax stamp affixed to and each sale or offer to sell cigarettes in violation of § 26-57-1303(c) shall constitute a separate violation.

(3) For each violation the board may also impose a civil penalty in an amount not to exceed the greater of five hundred percent (500%) of the retail value of the cigarettes or five thousand dollars (\$5,000) upon a determination of a violation of § 26-57-1303(b) or of any regulations adopted under this subchapter.

(b) Contraband and Seizure. Any cigarettes that have been sold, offered for sale, or possessed for sale in this state or imported for personal consumption in this state in violation of § 26-57-1303(c) shall be deemed contraband, and the cigarettes shall be subject to seizure and forfeiture as provided in § 5-64-505, and all of the cigarettes so seized and forfeited shall be destroyed and not resold.

(c) Injunction.

(1) The Attorney General may seek an injunction to restrain a threatened or actual violation of § 26-57-1303(c), § 26-57-1305(a), or § 26-57-1305(d) by a licensee and to compel the licensee to comply with those provisions.

(2) In any action brought under this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney’s fees.

(d) Unlawful Sale and Distribution.

(1) It is unlawful for a person to sell or distribute cigarettes or to acquire, hold, own, possess, transport, import, or cause to be imported, cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of § 26-57-

1303(c).

(2) A violation of this subsection is a Class A misdemeanor.

(e) Deceptive and Unconscionable Trade Practice. A violation of § 26-57-1303(c) is a deceptive or unconscionable trade practice under § 4-88-101 et seq.

History. Acts 2003, No. 1073, § 6; 2009, No. 785, § 33.

Amendments. The 2009 amendment, (a)(1), inserted "or permittee," substituted "rule" for "regulation," substituted "Director of Arkansas Tobacco Control" for "Director of the Arkansas Tobacco Control Board," and deleted "and regulations" following "rules."

26-57-1307. Miscellaneous provisions.

(a) Notice and Review of Determination.

(1) A determination by the Attorney General to not include or to remove from the directory a brand family or tobacco product manufacturer shall be subject to review by the filing of a civil action for prospective declaratory or injunctive relief.

(2) The Pulaski County Circuit Court shall have exclusive jurisdiction over the civil action.

(3) In authorizing the civil action, the state does not waive its sovereign immunity from claims for monetary relief, costs, or attorney's fees, and no such relief shall be recoverable in any such civil action.

(b) Applicants for Licenses. No person or entity shall be issued a license or permit or granted a renewal of a license or permit by the Director of Arkansas Tobacco Control unless the person or entity has certified in writing under penalty of perjury that the person or entity will comply fully with this subchapter.

(c) Dates. For the year 2003:

(1) The first report of wholesalers required by § 26-57-1305(a) shall be due thirty (30) calendar days after April 3, 2003;

(2) The certifications by a tobacco product manufacturer described in § 26-57-1303(a) shall be due forty-five (45) calendar days after April 3, 2003; and

(3) The directory described in § 26-57-1303(b) shall be published or made available within ninety (90) calendar days after April 3, 2003.

(d) Promulgation of Regulations. The Attorney General, the Arkansas Tobacco Control Board, and the Department of Finance and Administration may promulgate regulations necessary to effect the purposes of this subchapter.

(e) Recovery of Costs and Fees by Attorney General. In an action brought by the Attorney General to enforce this subchapter, the Attorney General shall be entitled to recover the costs of the investigation, expert witness fees, costs of the action, and reasonable attorney's fees.

(f) Disgorgement of Profits for Violations of Subchapter.

(1) If a court determines that a person or entity has violated this subchapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the Treasurer of State for deposit into the State Central Services Fund.

(2) Unless otherwise expressly provided, the remedies or penalties provided by this subchapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

(g) Construction and Severability.

(1) If a court of competent jurisdiction finds that the provisions of this subchapter and of §§ 26-57-260 and 26-57-261 conflict and cannot be harmonized, the provisions of §§ 26-57-260 and 26-57-261 shall control.

(2) If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this subchapter causes §§ 26-57-260 and 26-57-261 to no longer constitute a qualifying or model statute as those terms are defined in the Master Settlement Agreement, that portion of this subchapter shall not be valid.

(3) If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this subchapter is for any reason held to be invalid, unlawful, or unconstitutional, the decision shall not affect the validity of the remaining portions of this subchapter or any part of this subchapter.

History. Acts 2003, No. 1073, § 7; 2009, No. 785, § 34.

A.C.R.C. Notes. As enacted by Acts 2003, No. 1073, § 7, the introductory paragraph of § 26-57-1307(c) contained the following language:

“if the effective date of this act is later than March 16, 2003.”

Amendments. The 2009 amendment substituted “Director of Arkansas Tobacco Control” for “Director of the Arkansas Tobacco Control Board” in (b).

Chapter 58

Severance Taxes

Subchapter 1 — General Provisions

Subchapter 2 — Tax Credits for Certain Oil and Gas Producers

Subchapter 3 — Additional Oil and Brine Taxes

Research References

Am. Jur. 71 Am. Jur. 2d, State Tax., § 614.

C.J.S. 84 C.J.S., Tax., § 68.

Subchapter 1

— General Provisions

26-58-101. Definitions.

26-58-102. Effect of subchapter on other laws.

26-58-103. Liability for other taxes not affected by subchapter.

26-58-104. Arkansas Tax Procedure Act applicable.

26-58-105. Regulations and forms regarding severance taxes on timber.

26-58-106. Permits to engage in business.

26-58-107. Levy of tax.

26-58-108. Exception to imposition of tax.

26-58-109. Tax additional to property tax.

26-58-110. Additional privilege or excise taxes prohibited.

26-58-111. Rate of tax.

26-58-112. Additional tax on coal — Disposition.

26-58-113. Additional tax on stone and crushed stone — Deposit and allocation of funds.

26-58-114. Monthly reports and payment of tax by producers, primary processors — Cancellation of permit upon cessation of business — Penalty for

- noncompliance.
- 26-58-115. Reports and payment due from producer actually severing or from primary processor — Methods of accumulating tax payment — Penalty for noncompliance.
- 26-58-116. Purchasers' reports and payment of tax — Penalties for noncompliance.
- 26-58-117. Responsibility for filing monthly reports.
- 26-58-118. Reports — Transporters.
- 26-58-119. Procedure upon failure to file reports or pay tax, filing inaccurate reports — Penalties — Subpoenas.
- 26-58-120. Arkansas Forestry Commission — Access to information — Investigations.
- 26-58-121. Information provided to Arkansas Forestry Commission.
- 26-58-122. Procedures followed upon failure to pay severance taxes due the Arkansas Forestry Commission.
- 26-58-123. Lien for taxes, penalties, and costs upon natural resources and equipment.
- 26-58-124. Distribution of severance tax generally.
- 26-58-125. Disposition of part of severance tax on salt water.
- 26-58-126. Severance tax rate for lead ore.
- 26-58-127. Cost recovery periods for new discovery gas and high-cost gas.
- 26-58-128. Determination of new discovery gas, high-cost gas, or marginal gas.
- 26-58-129. Natural gas severance tax payment, apportionment of severance tax between royalty owner and producer, and authority for rulemaking.

Cross References. Severance tax on sand and gravel for highways, § 27-67-210.

Preambles. Acts 1977, No. 456 contained a preamble which read:

“WHEREAS, Section 4 of Act 136 of 1947 requires the producer or person severing natural resources to report monthly to the Commissioner of Revenues natural resources severed during the preceding month and pay the taxes thereon and Section 7 of Act 136 of 1947 requires the purchaser of severed natural resources to report monthly natural resources purchased by him and makes the purchaser liable for any unpaid severance taxes thereon; and

“Whereas, the requirement that both the producer and the purchaser file the monthly report causes a great deal of duplication of effort and such dual reporting is not necessary to assure that the proper severance taxes are paid; and

“Whereas, it is in the best interest of the producers and the purchasers that such duplication of effort be removed by providing that either the producer or the purchaser shall file the monthly report and pay the taxes but that both need not do so;

“Now therefore”

Effective Dates. Acts 1947, No. 136, § 15: approved Mar. 3, 1947. Emergency clause provided:

“It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the distribution of state revenues are such that a moderate diminution of certain of the revenues would have the effect of curtailing the activities of certain necessary agencies of the State Government, and that only the provisions of this act will correct a situation which otherwise may deprive the citizens of this state from receiving the benefits which the operation of the State Government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage.”

Acts 1947, No. 299, § 2: approved Mar. 19, 1947. Emergency clause provided: “It has been found and is hereby declared by the General Assembly that a question has arisen as to whether or not Section 11 of Act 136 of 1947 has the effect of repealing certain of the provisions of Act 105 of 1939, thereby jeopardizing the funds otherwise collectible for operation of the Oil and Gas Commission; and in order that the operation of this necessary function of the State Government

may continue without interruption it is necessary that this act take effect immediately. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage.”

Acts 1949, No. 469, § 3: approved Mar. 29, 1949. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the taxing of severance of timber from the soil do not tax the severance of timber upon its proper basis; that great confusion has resulted due to the fact that timber is taxed upon the basis of the finished or manufactured product and not upon the basis of measure used in the severance of timber; therefore, this Act being necessary for the preservation of the public peace, health, safety and for the fair and impartial administration of justice an emergency is hereby declared to exist and this Act shall take full force and effect from and after its passage.”

Acts 1953, No. 42, § 13: approved Feb. 9, 1953. Emergency clause provided: “It has been found and is hereby declared by the General Assembly that the inadequacy of the state's program of fire control with respect to forest trees was graphically demonstrated in the immediate past months when losses, both actual and potential, by forest fires amounted to untold millions of dollars, and threatened the lives of many people living within the fire areas; and that only the provisions of this act will provide funds in amounts sufficient to provide comprehensive protection of forest trees, and reduce the incidence of losses as aforesaid in the future. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage.”

Acts 1955, No. 100, § 4: approved Feb. 23, 1955. Emergency clause provided: “It has been found and is hereby declared by the General Assembly that the inadequacy of the State's program of fire control with respect to forest trees was graphically demonstrated in the immediate past months when losses, both actual and potential, by forest fires amounted to untold millions of dollars, and threatened the lives of many people living within the fire areas; and that only the provisions of this act will provide funds in amounts sufficient to provide comprehensive protection of forest trees, and reduce the incidence of losses as aforesaid in the future. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage.”

Acts 1957, No. 21, § 3: Feb. 7, 1957. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, the University of Arkansas and the other state-supported institutions of higher learning, the Public School System, the Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment to all of the people of this State; and (4) that only the provisions of this act will provide funds in amounts sufficient to alleviate the aforementioned conditions. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after the date of its passage and approval.”

Acts 1957, No. 150, § 2: Mar. 5, 1957. Emergency clause provided: “It is hereby found and determined by the General Assembly that the provisions of Act No. 21 of 1957 are uncertain as to the method of determining the severance tax due on oil produced in this State, and that the immediate passage of this Act is necessary in order to clarify such uncertainty. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1957, No. 263, § 2: Mar. 13, 1957. Emergency clause provided: “It is hereby determined by the General Assembly that this Act is necessary for the immediate preservation of the public economy, peace, health and safety. Therefore, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval.”

Acts 1959, No. 93, § 2: July 1, 1959.

Acts 1967, No. 379, § 3: Mar. 15, 1967. Emergency clause provided: “It is hereby found and

determined by the General Assembly that the five percent (5%) severance tax levied on the market value of such mussel shells is an undue tax burden upon the severers of such shells; that such a tax stifles competition and makes it impossible for the Arkansas mussel shell industry to compete with the mussel shell industries of neighboring states who are not so heavily taxed; and that only by the passage of this act can this burden be lifted and competition restored. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 147, §§ 2, 3: Apr. 1, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that inequity presently exists in the determination of market value, for tax purposes, of salt water for bromine and products derived from the same salt water used in the bromine production so that it is impossible to properly administer and enforce the law pertaining to same. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved Feb. 22, 1971.

Acts 1977, No. 388, § 7: Mar. 10, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State Forestry Commission is in need of additional funds in order to continue and improve its statewide program of forest, pasture and rangeland fire protection and to defray the costs of its programs for the development, protection and preservation of the forest, range and pasturelands in the State and that the immediate passage of this Act is necessary in order to enable the respective County officials to perform their duties under this Act in order that taxes on timberlands and rangelands, but shall not include pasturelands due for the calendar year 1977 may be placed on the tax books for collection in 1978. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 456, § 3: Mar. 17, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law requires both the producer and purchaser of natural resources to file a monthly report with the Commissioner of Revenues; that this requirement causes duplication of effort and is not necessary to the proper enforcement of the severance taxes; that this Act is designed to permit either the producer or the purchaser to file the monthly report and pay the taxes and to provide that both need not do so; that this Act should be given effect at the earliest possible date in order to correct this undesirable situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 617, § 3: Mar. 23, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State Forestry Commission is in urgent need of additional funds to carry out its statutory functions and duties; that the Forestry Commission derives its financial support from the severance taxes on timber and timber products; and that this Act is designed to increase severance taxes on timber and timber products and to thereby provide the funds necessary for the Forestry Commission to effectively and efficiently carry out its functions and duties and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 730, § 18: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1981, No. 938, § 22: July 1, 1981. Emergency clause provided: "It is hereby found and

determined by the Seventy-Third General Assembly that certain amendments to Act 750 of 1973, the Revenue Stabilization Law are essential to the continued financial operation of state government; therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after July 1, 1981.”

Acts 1983, No. 254, § 14: July 1, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present severance tax on timber is difficult to administer efficiently; that the present method of computing, reporting and remitting the severance tax on timber is vague and cumbersome and places an unreasonable burden on various areas of the timber industry; that the revision of the severance tax provided for herein is designed and intended to clarify and simplify the severance tax on timber so as to make it more enforceable and less burdensome; that in order to assure a smooth transition from the current procedure for collecting and remitting the severance tax on timber as prescribed herein and in order to enable the Commissioner to promulgate rules, regulations and forms for the enforcement of this Act, it is necessary that this Act be given effect on a specified date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983.”

Acts 1983, No. 761, § 4: Jan. 1, 1984.

Acts 1995, No. 356, § 5: emergency clause failed. Emergency clause provided: “It is hereby found and determined by the General Assembly that wells used to inject saltwater or other effluents for pressure maintenance or secondary recovery purposes are not included under current law for purposes of calculating a rate of severance tax which is based upon the quantity severed and that this act will include these wells in the calculation for severance tax purposes. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 232, § 6: Feb. 21, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Revenue and Taxation and in its place established the House Interim Committee and Senate Interim Committee on Revenue and Taxation; that various sections of the Arkansas Code refer to the Joint Interim Committee on Revenue and Taxation and should be corrected to refer to the House and Senate Interim Committees on Revenue and Taxation; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 736, § 11: July 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999.”

Acts 2001, No. 283, § 9: July 1, 2001. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2001 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2001 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this

Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001.”

Acts 2007, No. 1229, § 17: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007.”

Acts 2007, No. 1245, § 17: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007.”

Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, § 12: Apr. 2, 2008. Emergency clause provided: “It is found and determined by the General Assembly that state and local roads and highways are in need of substantial expansion, maintenance and repair, and that additional funding is necessary to address this need. It is also found and determined that increasing development and exploitation of natural gas resources in the Fayetteville Shale Play and in other areas of this state has significantly increased the burden and wear and tear on state and local roads and highway, further exacerbating the need for maintenance and repair. It is also found and determined that previous surpluses in state revenue have been largely spent to improve public education and educational facilities in this state, as was required by the Constitution as interpreted by the Arkansas Supreme Court in the Lake View case and additional revenues must be generated from other sources to address the needs of our roads and highways. It is further found and determined that due to recent and dramatic increases in the price of gasoline, and the fact that funds for highways are generated from a flat per-gallon tax, the increasing use of more fuel-efficient vehicles has caused a condition in which revenue for roads and highways has not kept pace with the wear and tear caused by vehicular use. It is further found and determined that immediate enactment of this bill is necessary to provide adequate time for various administrative agencies of state government to prepare the necessary reporting forms and instructions, to educate taxpayers responsible for paying the additional taxes levied herein, and take other steps necessary for the proper implementation and administration of this act. Therefore, the General Assembly hereby finds and declares that an emergency exists, pursuant to Article V, § 38 of the Arkansas Constitution, and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after January 1, 2009.”

Acts 2009, No. 145, § 5: Feb. 12, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that natural gas is a unique resource that cannot be reported accurately under the existing language of the Arkansas Code. This act will alleviate the reporting problems currently burdening the state and provide the state with more accurate information. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Case Notes

In General.

Applicability.

In General.

Acts 1923, No. 118, levying tax on privilege of engaging in business of severing timber from soil, was a privilege tax on the occupation and not a property tax. *Floyd v. Miller Lumber Co.*, 160 Ark. 17, 254 S.W. 450, 32 A.L.R. 811 (1923); *Miller Lumber Co. v. Floyd*, 169 Ark. 473, 275 S.W. 741 (1925), *aff'd*, 273 U.S. 672, 47 S. Ct. 475, 71 L. Ed. 833 (1927) (decisions under prior law).

Applicability.

The tax levied by Acts 1923, No. 118 on the privilege of engaging in the business of severing timber from the soil applied to individuals as well as to corporations engaged in this business. *Floyd v. Miller Lumber Co.*, 160 Ark. 17, 254 S.W. 450, 32 A.L.R. 811 (1923) (decision under prior law).

26-58-101. Definitions.

As used in this subchapter:

(1) “Acquired”, when used in reference to the severance tax on timber, means the time when timber is first weighed or measured by a primary processor after severance;

(2) “Completion” or “completed” means the act of making a well capable of producing gas;

(3) “Conventional gas well” means any gas well that is not classified as a high-cost gas well;

(4) “Date of first production”, when used in reference to a particular gas well, means the first day in the month that the gas well produces natural gas for sale;

(5) “Director” means the Director of the Department of Finance and Administration or any of his or her duly appointed deputies or agents;

(6) “High-cost gas” means natural gas that is:

(A) Produced from any gas well completed within a shale formation, including, but not limited to, the Fayetteville Shale, the Woodford Shale, the Moorefield Shale, and the Chattanooga Shale formations, or their stratigraphic equivalents, as described in published stratigraphic nomenclature recognized by the Arkansas Geological Survey;

(B) Produced from any gas well in which the production is from a completion that is located at a depth of more than twelve thousand five hundred feet (12,500 ft.) below the surface of the earth, where the term “depth” means the length of the maximum continuous drilling string of drill pipe used between the drill bit face and the drilling rig's kelly bushing;

(C) Produced from a tight gas formation;

(D) Produced from geopressured brine; or

(E) Occluded natural gas produced from coal seams;

(7) “High-cost gas well” means any gas well that is completed as a well capable of producing high-cost gas;

(8) (A) “Marginal gas”, when used in reference to a conventional gas well, means all natural gas produced from the conventional gas well beginning on the date the conventional gas well is incapable of producing more than two hundred fifty (250) Mcf (one thousand cubic feet) per day, as determined by the Director of the Oil and Gas Commission using the current wellhead deliverability rate methodology utilized by the Oil and Gas Commission, during the calendar month for which the severance tax report is filed.

(B) “Marginal gas”, when used in reference to a high-cost gas well,

means all natural gas produced from the high-cost gas well beginning on the date the high-cost gas well is incapable of producing more than one hundred (100) Mcf (one thousand cubic feet) per day, as determined by the Director of the Oil and Gas Commission using the current wellhead deliverability rate methodology utilized by the Oil and Gas Commission, during the calendar month for which the severance tax report is filed.

(C) “Marginal gas” includes production from all zones and multilateral branches at a single well without regard to whether the production is separately metered.

(D) “Marginal gas” does not include gas produced from:

(i) A high-cost gas well during the thirty-six-month period provided in § 26-58-127(b)(1);

(ii) A high-cost gas well during any allowed extension provided in § 26-58-127(b)(2); or

(iii) A new discovery gas well during the twenty-four-month period provided in § 26-58-127(a);

(9) “Marginal gas well” means any gas well that produces or is capable of producing marginal gas, as determined by the Director of the Oil and Gas Commission using the current wellhead deliverability rate methodology utilized by the Oil and Gas Commission;

(10) “Market value”, when used in reference to the rate of severance tax on natural gas, means the producer's actual cash receipts from the sale of natural gas to the first purchaser less the actual costs to the producer of dehydrating, treating, compressing, and delivering the gas to the purchaser;

(11) “Natural resources” means all natural products of the soil or water of Arkansas including, but not limited to, asphalt, barite, bauxite, chalk, chert, clay, cinnabar, coal, diamonds, fuller's earth, natural gas, granite, gravel, gypsum, iron, lead ore, lignite, limestone, manganese and manganiferous ores, marble, marl, mussel shells, novaculite, oil, ochre, pearls and other precious stones, phosphate, salt, sand, shale, slate, shells, stone and stone products, sulphur, titanium ore, and zinc ore;

(12) “New discovery gas” means natural gas that is produced from a new discovery gas well;

(13) “New discovery gas well” means any conventional gas well that is completed as a well capable of producing gas;

(14) “Payout” means the date the cumulative working interest revenues from a high-cost gas well equal the sum of:

(A) All drilling and completion costs incurred in connection with the high-cost gas well; and

(B) All operating costs incurred or accrued in connection with the operation of the high-cost gas well during the period of cost recovery;

(15) “Point of severance” means the place at which transportation of timber or natural resources, excluding natural gas, has been or is about to be commenced for use or processing after being severed;

(16) “Primary processor” means any person, firm, corporation, or other entity engaged in business as a sawmill, chipper mill, stud mill, square mill, plywood or veneer mill, whole tree chipping mill, post, pole, or piling plant, charcoal plant, processed board mill, bolt working mill, pulp mill, planing or surfacing mill, or other mill or facility

where timber first undergoes any processing after harvesting;

(17) “Producer” means any person, firm, receiver, or other fiduciary, corporation, or association, who or which engages in the business of severing natural resources or timber;

(18) “Purchaser” means any person, firm, receiver, or other fiduciary, corporation, or association, consignor, agent, or other dealer, by whatever name called, who or which acquires title outright or conditionally to any interest in severed natural resources or timber;

(19) (A) “Sever”, “severed”, or “severing” mean natural resources cut, mined, dredged, or otherwise taken or removed for commercial purposes from the soil or water.

(B) However, “sever”, “severed”, or “severing” as defined in this subdivision (19) do not apply to any natural gas returned to any formation, in recycling, repressuring, pressure maintenance operation, or other operation, for the production of oil or any other liquid hydrocarbon.

(C) Further, “sever”, “severed”, or “severing” as defined in this subdivision (19) do not apply to any hydrocarbons in gaseous or liquid form that are burned, used, consumed, or otherwise employed in oil and gas operations, including, but not limited to, secondary recovery operations and fuel for engines in the same leasehold, drilling, or production unit or unit area of a unitized reservoir from which such hydrocarbons are produced;

(20) “Tight gas formation” means any natural gas bearing formation that:

(A) Has previously been determined by Oil and Gas Commission orders or field rules to be a low permeability formation, including:

(i) Booneville and Chismville-OR# 84-2003-07;

(ii) Gragg-OR# 89-2004-07;

(iii) Waveland-OR# 86-2007-07;

(iv) Rich Mountain-OR# 304-2006-09;

(v) Mansfield-OR# 28-2003-03; and

(vi) Witcherville and Excelsior-OR# 103-2005-07;

(B) Is determined by the Director of the Oil and Gas Commission to have an estimated in situ permeability of one-tenth milliDarcy (0.1 mD) or less; or

(C) Is determined to be a tight gas formation by field rules, general rules, or orders issued by the Director of the Oil and Gas Commission;

(21) “Timber” means either softwood or hardwood species of trees suitable for use as sawlogs, pulpwood, veneer bolts or billets, stave bolts or billets, and splits, handle and other bolts or billets including chemical wood, cross ties, posts, poles, piling, chips, charcoal, or any now known or hereafter discovered use of wood or wood pulp;

(22) “Time of severance” means the date on which transportation of timber or natural resources, excluding natural gas, has been or is about to be commenced for their use or processing after being severed; and

(23) “Transporter” means any person, firm, receiver, or other fiduciary, corporation, or association, who or which transports severed natural resources or timber to any point within, across, or out of the State of Arkansas.

History. Acts 1947, No. 136, § 1; 1949, No. 16, § 1; 1973, No. 493, § 1; 1983, No. 254, § 1; A.S.A. 1947, § 84-2101; Acts 2008 (1st Ex. Sess.), No. 4, § 6; 2008 (1st Ex. Sess.), No. 5, § 6.

A.C.R.C. Notes. The 2008 (1st Ex. Sess.), Nos. 4 and 5, § 1, provided: “Legislative findings and intent.

(a) The General Assembly has determined that the severance tax rate on natural gas should be increased and that there should be different rates of tax for different categories of natural gas.

(b) Amendment 19 of the Arkansas Constitution required this act to be passed by at least three-fourths of the members of the Senate and at least three-fourths of the members of the House of Representatives.

(c) In order to implement the increase in the severance tax rate, the General Assembly has identified the following four categories of natural gas, each as defined in Arkansas Code § 26-58-101:

“(1) High-cost gas;

“(2) Marginal gas;

“(3) New discovery gas; and

“(4) All natural gas that is not defined as high-cost gas, marginal gas, or new discovery gas.

(d) To increase the severance tax rate, the General Assembly used the method of levying a specific tax rate on each category so that any future legislative enactment that would have the effect of increasing the rate of severance tax on any of those categories of natural gas as defined by § 26-58-101 will also be subject to the three-fourths vote requirement of Amendment 19 of the Arkansas Constitution.”

Amendments. The 2008 (1st Ex. Sess.) amendment by identical acts Nos. 4 and 5, effective January 1, 2009, inserted present (2) through (4), (6) through (10), (12) through (14), and (20) and redesignated the remaining subdivisions accordingly; in (15) and (22), inserted “timber or” and substituted “excluding natural gas” for “or timber”; substituted “(19)” for “(8)” in (19)(B) and (C); and, in (23), inserted “severed” and substituted “to any” for “from the point of severance, or other.”

Effective Dates. Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, § 6: Jan. 1, 2009, by their own terms.

Case Notes

Severance.

Severance.

Where crude oil produced was partly sold by the producer and partly used to generate steam for a well injection process to increase the productivity of the producer's wells, that portion of the oil used in the injection process was held to be subject to the severance tax, although it was not, and was not intended to be, sold, traded, or produced for commercial purposes. *Phillips Pet. Co. v. Heath*, 254 Ark. 847, 497 S.W.2d 30 (1973) (decision prior to 1973 amendment).

Where a person had been engaged for many years in the business of cleaning out a substance known as basic sediment and water from oil field storage tanks, he did not have to pay severance taxes when he removed the sediment from the tanks during his cleaning operation, since the oil contained in the sediment was worthless at the time of removal, and also since, for purposes of this subchapter, the time and place of the severance of this substance, which collected at the bottom of the tanks, was the same as for the oil in the upper part of the tanks. *Horton v. Gaddy*, 268 Ark. 183, 594 S.W.2d 848 (1980).

Cited: *Bradley Lumber Co. v. Cheney*, 226 Ark. 857, 295 S.W.2d 765 (1956); *Phillips Pet. Co. v. Heath*, 254 Ark. 847, 497 S.W.2d 30 (1973).

26-58-102. Effect of subchapter on other laws.

Nothing in this subchapter shall be construed to affect, amend, or repeal § 15-71-101 et seq. and § 15-72-101 et seq.

History. Acts 1947, No. 136, § 11; 1947, No. 299, § 1; 1983, No. 254, § 9; A.S.A. 1947, § 84-2111.

26-58-103. Liability for other taxes not affected by subchapter.

Payment of the severance tax shall not affect the liability of the producers for all state, county, municipal, district, and special taxes upon their real and other corporeal property.

History. Acts 1947, No. 136, § 11; 1947, No. 299, § 1; 1983, No. 254, § 9; A.S.A. 1947, § 84-2111.

26-58-104. Arkansas Tax Procedure Act applicable.

(a) The tax levied in this subchapter is a “state tax” as that term is defined in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(b) The provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., shall so far as practicable be applicable to the tax levied by this subchapter and to the reporting, remitting, and enforcement of the tax.

History. Acts 1983, No. 254, § 11; A.S.A. 1947, § 84-2112.1.

26-58-105. Regulations and forms regarding severance taxes on timber.

The Director of the Department of Finance and Administration with the advice and approval of the Arkansas Forestry Commission shall develop and adopt appropriate regulations and forms to carry out the intent and purposes of this subchapter with respect to severance taxes on timber.

History. Acts 1983, No. 254, § 10; A.S.A. 1947, § 84-2111.1.

26-58-106. Permits to engage in business.

(a) (1) Any individual or firm desiring to engage in the business of severing natural resources or timber before entering the business shall make application to the Director of the Department of Finance and Administration for a license or permit.

(2) In a form of application to be prescribed by the director, the applicant shall state under oath his or her name and address, the business in which he or she desires to engage, and the counties in which he or she will carry on the proposed severing.

(b) The applicant shall be deemed by his or her application to have agreed:

(1) To abide by the provisions of this subchapter;

(2) To promptly pay when due the severance tax imposed by this subchapter; and

(3) That the severance tax imposed by this subchapter shall constitute and remain a lien on each unit of production until the severance tax is paid to the director.

(c) Upon the filing of the application, the director shall issue a permit for which no charge shall be made.

(d) Whoever shall engage in the business of severing natural resources or timber without first having made application for and securing the license or permit to engage in the business shall be guilty of a violation and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

History. Acts 1947, No. 136, § 3; 1983, No. 254, § 3; A.S.A. 1947, § 84-2103; Acts 2005, No. 1994, § 178.

Amendments. The 2005 amendment substituted “violation” for “misdemeanor” in (d).

26-58-107. Levy of tax.

(a) There is levied and there shall be collected from each producer of natural resources

and each producer of timber in the State of Arkansas, a privilege or license tax to be known as “severance tax”.

(b) The severance tax is to be paid to the Director of the Department of Finance and Administration.

History. Acts 1947, No. 136, § 2; 1959, No. 93, § 1; 1959, No. 129, § 1; 1967, No. 379, § 1; 1983, No. 254, § 2; A.S.A. 1947, § 84-2102.

26-58-108. Exception to imposition of tax.

The provisions of this subchapter shall not apply to nor shall any severance tax be required of or collected from an individual who occasionally severs natural resources or timber from his or her own premises to be utilized by him or her in the construction, repair, or maintenance of his or her own structures or improvements.

History. Acts 1947, No. 136, § 2; 1967, No. 379, § 1; 1971, No. 147, § 1; 1983, No. 254, § 2; A.S.A. 1947, § 84-2102.

Case Notes

County Highways.

Evidence.

Railroads.

County Highways.

County was not liable to state for severance tax where it removed gravel following purchase for use on highway. *Scurlock v. Greene County*, 223 Ark. 507, 266 S.W.2d 811 (1954).

Evidence.

In suit by state for royalty and severance tax alleged due Arkansas by holder of sand and gravel lease from the state, introduction of evidence as to nonnavigability of stream from whose banks the sand was taken was erroneous and highly prejudicial as tenant of the state could not be heard to dispute state's title. *Scurlock v. Clark*, 224 Ark. 160, 272 S.W.2d 58 (1954).

Railroads.

Railroad severing gravel from its land and using it to ballast and otherwise maintain its tracks was not engaged in business of severing natural resources for commercial purposes and not subject to tax. *McLeod v. Kansas City S. Ry.*, 206 Ark. 281, 175 S.W.2d 391 (1943) (decision under prior law).

Cited: *Bradley Lumber Co. v. Cheney*, 226 Ark. 857, 295 S.W.2d 765 (1956); *Phillips Pet. Co. v. Heath*, 254 Ark. 847, 497 S.W.2d 30 (1973).

26-58-109. Tax additional to property tax.

The severance tax imposed by this subchapter is in addition to the general property tax.

History. Acts 1947, No. 136, § 11; 1947, No. 299, § 1; 1983, No. 254, § 9; A.S.A. 1947, § 84-2111.

26-58-110. Additional privilege or excise taxes prohibited.

No other privilege or excise taxes in addition to the severance tax shall be imposed upon the right to utilize natural resources and timber.

History. Acts 1947, No. 136, § 11; 1947, No. 299, § 1; 1983, No. 254, § 9; A.S.A. 1947, § 84-2111.

26-58-111. Rate of tax.

The severance tax is to be predicated upon the quantity severed and at the following rates:

(1) On barite, bauxite, titanium ore, manganese and manganiferous ores, zinc ore, and cinnabar, fifteen cents (15¢) per ton of two thousand pounds (2,000 lbs.);

(2) On coal, lignite, and iron ore, two cents (2¢) per ton of two thousand pounds (2,000 lbs.);

(3) On gypsum not used for manufacturing within Arkansas into ultimate consumer's goods, or sold for manufacturing within Arkansas into ultimate consumer's goods, and chemical grade limestone, silica sand, and dimension stone, one and one-half cents (1½¢) per ton of two thousand pounds (2,000 lbs.);

(4) On crushed stone including, but not limited to, chert, granite, slate, novaculite, and limestone, and on construction sand, gravel, clay, chalk, shale, and marl, one cent (1¢) per ton of two thousand pounds (2,000 lbs.);

(5) On natural gas, the following percent of the market value of the natural gas severed within the State of Arkansas:

(A) On new discovery gas, as defined in § 26-58-101(12), the severance tax rate shall be one and one-half percent (1.5%) for the time period provided in § 26-58-127(a);

(B) On high-cost gas, as defined in § 26-58-101(6), the severance tax rate shall be one and one-half percent (1.5%) for the time periods provided in § 26-58-127(b);

(C) On marginal gas, as defined in § 26-58-101(8), the severance tax rate shall be one and one-quarter percent (1.25%); and

(D) On all natural gas that is not defined as new discovery gas, high-cost gas, or marginal gas, the severance tax rate shall be five percent (5%);

(6) (A) On oil, five percent (5%) of the market value at time and point of severance.

(B) However, whenever the production of oil from a well which is measured separately or from a group of wells which is measured separately, including any well or wells that are utilized for the injection of salt water or other effluents for pressure maintenance or secondary recovery purposes, averages ten (10) barrels or less per well per day during any calendar month, the privilege or license tax on oil produced from that well or group of wells during that month shall be computed at the rate of four percent (4%) of the market value at time and point of severance.

(C) The Director of the Department of Finance and Administration shall have the power to promulgate such reasonable rules and regulations as shall be necessary to effectively enforce the foregoing provisions;

(7) On timber, the tax shall be collected, reported, and remitted by each primary processor and shall be computed on the weight of such timber as determined at the last time the timber is weighed prior to undergoing the first processing after severance thereof and shall be at the following rates:

(A) On all pine timber, seventeen and eight-tenths cents (17.8¢) per ton of two thousand pounds (2,000 lbs.);

(B) On all other timber, twelve and five-tenths cents (12.5¢) per ton of two thousand pounds (2,000 lbs.); and

(C) (i) If any primary processor of timber is unable to weigh the timber as required herein because an approved weight scale is not available, the primary

processor shall use the following conversion factors to convert other measurements of timber to weight:

<u>PRODUCT</u>	<u>CONVERSION</u>
SAWTIMBER:	
Pine	16,000 Lbs./M
All Other	16,000 Lbs./M
PULPWOOD:	
Pine	5,000 Lbs./Co
All Other	6,000 Lbs./Co
POSTS OR POLES:	
Less than 10' in length	30 Posts/Ton
POSTS OR POLES:	
10'—16' in length	15 Posts/Ton
POLES OR PILING:	
Greater than 16' in length	40 Linear Ft./T
SPLIT CORDS	6,000 Lbs./Co
VENEER CORDS	5,000 Lbs./Co
HANDLE AND OTHER CORDS	6,000 Lbs./Co
CHEMICAL CORDS	6,000 Lbs./Co
WHOLE TREE CHIPS:	
Pine	5,000 Lbs./Co
All Other	6,000 Lbs./Co

(ii) If the above conversion factors are not appropriate for conversion of any particular measurement of timber to weight, the director, with the advice and approval of the Arkansas Forestry Commission, shall develop an appropriate conversion procedure to produce equivalent rates;

(8) On diamonds, fuller's earth, ochre, natural asphalt, native sulphur, salt, pearls and other precious stones, whetstone, novaculite, and on all other natural resources, except gypsum, not otherwise specifically identified under the severance tax laws of this state, except mussel shells, five percent (5%) of the fair market value at the time of severance;

(9) On salt water whose naturally dissolved components, or solutes, are used as source raw materials for bromine and other products derived from the same salt water used in the bromine production, two dollars and forty-five cents (\$2.45) per one thousand (1,000) barrels, forty-two thousand United States gallons (42,000 U.S. gals.); and

(10) (A) Except as provided in subdivision (10)(B) of this section, on all other natural resources not otherwise specifically identified under the severance tax laws of this state, five percent (5%) of the market value at time and point of severance.

(B) (i) Biomass used primarily for the purpose of biofuel production is not subject to a severance tax.

(ii) As used in subdivision (10)(B)(i) of this section, "biomass" means any woody biomass that is grown for use in biofuels and is not grown for the

production of other timber products.

History. Acts 1947, No. 136, § 2; 1949, No. 469, § 1; 1953, No. 42, § 9; 1953, No. 322, § 1; 1957, No. 21, § 1; 1957, No. 150, § 1; 1957, No. 263, § 1; 1959, No. 93, § 1; 1959, No. 129, §§ 1, 2; 1967, No. 379, § 1; 1971, No. 147, § 1; 1977, No. 388, §§ 3, 4; 1981, No. 617, § 1; 1983, No. 254, § 2; 1983, No. 874, § 1; A.S.A. 1947, § 84-2102; Acts 1993, No. 25, § 1; 1993, No. 1156, § 3; 1995, No. 356, § 1; 2008 (1st Ex. Sess.), No. 4, § 7; 2008 (1st Ex. Sess.), No. 5, § 7; 2009, No. 655, §§ 99, 100; 2009, No. 737, § 1.

A.C.R.C. Notes. The 2008 (1st Ex. Sess.), Nos. 4 and 5, § 1, provided: “Legislative findings and intent.

(a) The General Assembly has determined that the severance tax rate on natural gas should be increased and that there should be different rates of tax for different categories of natural gas.

(b) Amendment 19 of the Arkansas Constitution required this act to be passed by at least three-fourths of the members of the Senate and at least three-fourths of the members of the House of Representatives.

(c) In order to implement the increase in the severance tax rate, the General Assembly has identified the following four categories of natural gas, each as defined in Arkansas Code § 26-58-101:

“(1) High-cost gas;

“(2) Marginal gas;

“(3) New discovery gas; and

“(4) All natural gas that is not defined as high-cost gas, marginal gas, or new discovery gas.

(d) To increase the severance tax rate, the General Assembly used the method of levying a specific tax rate on each category so that any future legislative enactment that would have the effect of increasing the rate of severance tax on any of those categories of natural gas as defined by § 26-58-101 will also be subject to the three-fourths vote requirement of Amendment 19 of the Arkansas Constitution.”

Amendments. The 2008 (1st Ex. Sess.) amendment by identical acts Nos. 4 and 5, effective January 1, 2009, rewrote (5).

The 2009 amendment by No. 655 substituted “(12.5¢)” for “(12½¢)” in (7)(B); and inserted “and” at the end of (7)(B) and (9).

The 2009 amendment by No. 737 added (10)(B), redesignated the remaining text of (10) accordingly, inserted “Except as provided in subdivision (10)(B) of this section” in (10)(A), and made related changes.

Effective Dates. Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, § 7: Jan. 1, 2009, by their own terms.

Case Notes

In General.

Credits.

Oil.

In General.

Acts 1923, No. 118, § 5, prescribing special tax rates for bauxite, coal, and timber, were not repealed by amendment by Acts 1923, No. 681, prescribing a special rate for manganese ore. *Arkansas R. Com. v. Stout Lumber Co.*, 161 Ark. 164, 255 S.W. 912 (1923) (decision under prior law).

Credits.

The tax credit allowed against the severance tax by § 15-72-701, et seq. is for the benefit of the oil producer only and is not for the proportionate benefit of the royalty owner. *P & O Falco, Inc. v. Riley*, 271 Ark. 562, 610 S.W.2d 255 (1980).

Oil.

Only wells that produce oil may be counted in calculating the average rate of production per well per month. *Pledger v. Ethyl Corp.*, 299 Ark. 100, 771 S.W.2d 24 (1989).

Cited: Bradley Lumber Co. v. Cheney, 226 Ark. 857, 295 S.W.2d 765 (1956); Phillips Pet. Co. v. Heath, 254 Ark. 847, 497 S.W.2d 30 (1973).

26-58-112. Additional tax on coal — Disposition.

(a) In addition to the tax levied by § 26-58-107, there is levied an additional severance tax on coal in the amount of eight cents (8¢) per ton of two thousand pounds (2,000 lbs.). The additional tax shall be collected in the same manner as prescribed by this subchapter.

(b) The additional tax shall be deposited into the State Treasury to the credit of the Constitutional Officer's Fund and the State Central Services Fund.

History. Acts 1983, No. 560, § 1; A.S.A. 1947, § 84-2102.11.

26-58-113. Additional tax on stone and crushed stone — Deposit and allocation of funds.

(a) There is levied and there shall be collected from each producer of the following natural resources in this state an additional privilege or license tax to be known as an additional severance tax.

(b) The additional severance tax is to be paid to the Director of the Department of Finance and Administration.

(c) The additional severance tax on stone and crushed stone, including but without limitation thereto, chert, granite, slate, novaculite and limestone, excluding limestone used for agricultural purposes, construction sand, gravel, clay, chalk, shale, and marl, is to be predicated upon the quantity severed at the rate of three cents (3¢) per ton.

(d) The tax levied by this section shall be in addition to the severance tax levied by § 26-58-107.

(e) (1) All taxes, penalties, and costs collected by the director under the provisions of this section shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

(2) The Treasurer of State on or before the fifth of the month next following the month during which such funds shall have been received by him or her shall allocate the same in the manner provided in this subdivision (e)(2):

(A) Three percent (3%) of the amount thereof to the General Revenue Fund to be used for defraying the necessary expenses of the state government; and

(B) Ninety-seven percent (97%) of the amount thereof, as follows:

(i) (a) Twenty-five percent (25%) of such amount of the severance taxes, penalties, and costs, except those on timber and timber products, shall be special revenues and shall be allocated to the County Aid Fund.

(b) On or before the tenth of the month following the end of each calendar quarter, the Treasurer of State shall remit by state warrants to the various county treasurers all such funds received by the Treasurer of State during such quarterly period and transferred to the County Aid Fund in the proportions thereof as between the respective counties that, as certified by the director to the Treasurer of State, the total severance tax produced from each such county bears to the total of such taxes produced from all counties.

(c) Upon receipt of any such taxes, each county treasurer shall credit fifty percent (50%) of that amount to the county general school fund and fifty percent (50%) of that amount to the county highway fund, for use for the same purposes

as other moneys credited to the respective said future funds; and

(ii) (a) Seventy-five percent (75%) shall be special revenues and shall be credited to the County Aid Fund.

(b) On or before the tenth of the month following the end of each calendar quarter these special revenues shall be remitted by the Treasurer of State by state warrant to the various county treasurers on the basis of the formula applied in allocating or distributing county aid highway funds from the County Aid Fund.

(c) All such funds so received by each county shall be used exclusively for construction, reconstruction, maintenance, and repair of county roads and bridges in the county.

(f) The additional severance taxes levied by this section shall be collected in the manner prescribed by this subchapter.

(g) The violation of this section shall subject the violator to the penalties prescribed by this subchapter.

History. Acts 1983, No. 761, §§ 1, 2; A.S.A. 1947, §§ 84-2102.12, 84-2102.13.

26-58-114. Monthly reports and payment of tax by producers, primary processors — Cancellation of permit upon cessation of business — Penalty for noncompliance.

(a) Each producer of natural resources, excluding natural gas, and each primary processor of timber, whether or not he or she shall have actually severed natural resources, excluding natural gas, or processed timber during the preceding month, shall file a report within twenty-five (25) days after the end of each month with the Director of the Department of Finance and Administration in a form prescribed by the director that states:

(1) The kind of natural resources or timber, if any, severed by such producer or processed or acquired for processing by the primary processor during the next preceding month;

(2) The point of severance;

(3) The gross quantity severed and the cash value;

(4) The amount of severance tax due; and

(5) Any other information as the director may reasonably require for the enforcement of this subchapter.

(b) (1) A producer of natural gas shall file with the director a report, in a form or forms prescribed by the director, that states:

(A) The natural gas, if any, severed by the producer for each calendar month;

(B) The point of severance;

(C) The gross quantity severed and the market value;

(D) The amount of severance tax due; and

(E) Any other information as the director may reasonably require for the enforcement of this subchapter.

(2) The producer shall file the monthly report required under subdivision (b)(1) of this section on or before the twenty-fifth day of the second month following the month that is covered by the report.

(3) The producer is required to file a report with the director for each month

whether or not the producer has actually severed natural gas during the month.

(c) The report shall be verified by the producer or primary processor himself or herself in the instance of an individual producer or primary processor and by a member or officer or the manager of the producer or primary processor in all other instances.

(d) The payment of the full amount of the severance tax due from the report shall accompany the report.

(e) (1) Within ten (10) days after any producer or primary processor ceases operation with the intention of no longer engaging in the business of severing or processing natural resources or timber, the permit issued shall be returned by him or her to the director for cancellation.

(2) A producer or processor whose permit is cancelled under subdivision (e)(1) of this section may reengage in the business of severing or processing natural resources or timber after filing a new application with the director and receiving a new permit by the director.

(f) (1) Upon conviction, a producer or primary processor who fails to comply with this section is guilty of a violation and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.

(2) Upon conviction, a person knowingly making a false material statement in a report required by this section is guilty of perjury under § 5-53-102.

History. Acts 1947, No. 136, § 4; 1947, No. 336, § 1; 1983, No. 254, § 4; A.S.A. 1947, § 84-2104; Acts 2009, No. 145, § 1; 2009, No. 655, § 101.

Amendments. The 2009 amendment by No. 145, in (a), inserted “excluding natural gas” in two places and inserted “processed” preceding “timber”; inserted (b) and (e)(2) and redesignated the remaining subsections accordingly; and made related and stylistic changes. The 2009 amendment by No. 655 rewrote present (f).

26-58-115. Reports and payment due from producer actually severing or from primary processor — Methods of accumulating tax payment — Penalty for noncompliance.

(a) Except as otherwise provided in this subchapter, the monthly report required by § 26-58-114 shall be filed and the payment of the severance tax shall be made by the producer actually severing the natural resources whether as owner, lessee, concessionaire, or contractor and, in the case of severance taxes on timber, the monthly report required by § 26-58-114 shall be filed and the severance tax shall be paid by the primary processor.

(b) The reporting taxpayer shall collect or withhold out of the proceeds of the sale of the natural resources severed the proportionate parts of the total severance tax due by the respective owners of the natural resources at the time of severance.

(c) Every producer actually operating any oil or gas well, quarry, or other property from which natural resources are severed but under contract or other obligation in which direct payment to the owner of any royalty, excess royalty, or working interest, either in money or in kind is required, is authorized, empowered, and required to deduct the amount of the severance tax in respect thereto from any such royalty or other interest before making the direct payment.

(d) Notwithstanding the sale or delivery, all severed oil or gas sold or delivered to any pipeline company for transportation by it through pipes connected with the oil or gas well of the owner is subject to the severance tax on the severed oil or gas.

(e) A primary processor of timber shall be responsible for the payment of severance taxes on all timber processed or acquired for processing by him or her whether or not the primary processor collects or withholds the tax from the producer.

(f) Any producer or primary processor failing or refusing to comply with any provision of this section shall be guilty of a violation and upon conviction shall be fined in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.

History. Acts 1947, No. 136, § 5; 1983, No. 254, § 5; A.S.A. 1947, § 84-2105; Acts 2005, No. 1994, § 179; 2007, No. 827, §§ 232, 233.

Amendments. The 2005 amendment inserted “or her” in (e); and substituted “violation” for “misdemeanor” in (f).

The 2007 amendment inserted “required by § 26-58-114” in two places in (a); and substituted “is subject to” for “shall be liable for” in (d).

Research References

U. Ark. Little Rock L. Rev.

Well, Now, Ain't That Just Fugacious!: A Basic Primer on Arkansas Oil and Gas Law, 29 U. Ark. Little Rock L. Rev. 211.

Case Notes

Credits.

Liability for Payment.

Credits.

The tax credit allowed against the severance tax by § 15-72-701, et seq. is for the benefit of the oil producer only and is not for the proportionate benefit of the royalty owner. P & O Falco, Inc. v. Riley, 271 Ark. 562, 610 S.W.2d 255 (1980).

Liability for Payment.

The lessor of oil and gas lands is not liable for such a tax. McFarlane v. Giller, 174 Ark. 94, 294 S.W. 3 (1927) (decision under prior law).

Cited: Phillips Pet. Co. v. Heath, 254 Ark. 847, 497 S.W.2d 30 (1973).

26-58-116. Purchasers' reports and payment of tax — Penalties for noncompliance.

(a) (1) Unless a purchaser of natural resources, excluding natural gas, is excused in writing by the Director of the Department of Finance and Administration in advance of the report filing deadline from filing a report, a purchaser of natural resources, excluding natural gas, shall file with the director a verified report within twenty (20) days after the end of each month in a form or forms prescribed by the director that states:

(A) The names and addresses of all producers from whom the purchaser has acquired natural resources during the respective month;

(B) The types and total quantity of each type of the natural resources acquired and the purchase price; and

(C) Any other information as the director reasonably may require for the proper enforcement of this subchapter.

(b) (1) Unless a purchaser of natural gas is excused in writing by the director in advance of the report filing deadline from filing a report, a purchaser of natural gas shall file with the director a report in a form or forms prescribed by the director that states:

(A) The names, addresses, and severance tax permit numbers of all producers from whom the purchaser has purchased natural gas during each calendar

month;

(B) The total quantity of natural gas acquired and the purchase price; and

(C) Any other information as the director may reasonably require for the proper enforcement of this subchapter.

(2) The purchaser of natural gas shall file each monthly report required under this subsection (b) on or before the twenty-fifth day of the second month following the month that is covered by the report.

(c) (1) It is the duty of each purchaser of natural resources, excluding natural gas, to ascertain in advance of permitting the natural resources so purchased to be processed or otherwise changed from the natural state thereof at the time of severance or to be transported for the purpose of such processing or other change that the severance tax upon the natural resources has been paid.

(2) Each purchaser of natural gas shall determine in advance of filing the report under subsection (b) of this section that each producer from whom the purchaser has purchased natural gas has been issued a severance tax permit number and furnish the director the severance tax permit number of each producer under subsection (b) of this section.

(3) (A) The purchaser of natural resources, excluding natural gas, is primarily liable for any unpaid severance tax in the event of failure to make such advance ascertainment.

(B) Each purchaser of natural gas is primarily liable for any unpaid severance tax that is attributable to a producer from whom the purchaser purchased natural gas if the purchaser fails to furnish the director with all of the information required in subsection (b) of this section.

(4) However, the purchaser as a condition to permitting the processing or other change of such natural resources, excluding natural gas, as to which the severance tax shall not have been paid by the producer may himself or herself pay such tax either in advance or, with the advance written approval of the director for cause shown to the director, within twenty (20) days after commencing the processing or other change of the natural resources or the transportation thereof for such purpose.

(d) (1) Unless the director has given advance written approval for the removal under subsection (a) of this section, the removal by the purchaser of natural resources, excluding natural gas, to any point of concentration or assembly, either inside or outside the state, without the severance tax having been previously paid by the producer or the purchaser is a fraudulent concealment of the location of the natural resources with the intent to avoid the payment of the severance tax.

(2) Unless the director has given advance written approval for the removal, the removal by the producer, purchaser, or primary processor of any timber to any point outside the state without the severance tax having been paid on the timber is unlawful.

(e) (1) Upon conviction, each removal described in subdivision (d)(1) of this section by the purchaser of natural resources, excluding natural gas, is a violation punishable by a fine of at least fifty dollars (\$50.00) and not more than five hundred dollars (\$500).

(2) Upon conviction, each removal described in subdivision (d)(2) of this section by a producer, purchaser, or primary processor is a violation punishable by a fine of at least fifty dollars (\$50.00) and not more than five hundred dollars (\$500).

(3) Upon conviction, each failure by a producer, purchaser, including a purchaser

of natural gas, or primary processor to file a monthly report required by this section is a violation punishable by a fine of at least fifty dollars (\$50.00) and not more than five hundred dollars (\$500).

(4) Upon conviction, a person knowingly making a false material statement in a monthly report required by this section is guilty of perjury under § 5-53-102.

History. Acts 1947, No. 136, § 7; 1955, No. 100, § 1; 1983, No. 254, § 6; A.S.A. 1947, § 84-2107; Acts 2009, No. 145, § 2; 2009, No. 655, § 102.

Amendments. The 2009 amendment by No. 145 rewrote and redesignated (a); inserted (b), (c)(2), and (c)(3)(B) and redesignated the remaining subsections accordingly; inserted “excluding natural gas” in (c)(1), (c)(3)(A), (c)(4), (d)(1) and (d)(2); inserted “including a purchaser of natural gas” in (d)(2); and made related and stylistic changes.

The 2009 amendment by No. 655 rewrote present (d) and (e).

Case Notes

In General.

Withholding of Tax.

In General.

As to presumption of validity of Acts 1955, No. 160, see *Bradley Lumber Co. v. Cheney*, 226 Ark. 857, 295 S.W.2d 765 (1956).

Withholding of Tax.

This section and the administrative regulations promulgated thereunder are not an attempt to collect a severance tax upon rough lumber as such, but a levy upon the severing of timber and timber products, and supplement statutes require specified processing mills in connection with their purchases of such timber and timber products to withhold from the seller any amount of tax still owed to the state, and it does not require a purchaser of rough lumber to pay a tax thereon even though the severance tax has already been paid upon the timber from which the lumber is made. *Bradley Lumber Co. v. Cheney*, 226 Ark. 857, 295 S.W.2d 765 (1956).

Cited: *Phillips Pet. Co. v. Heath*, 254 Ark. 847, 497 S.W.2d 30 (1973).

26-58-117. Responsibility for filing monthly reports.

(a) (1) Notwithstanding the provisions of §§ 26-58-114 and 26-58-116, either the producer or severer of natural resources, excluding natural gas, or the purchaser of natural resources, excluding natural gas, shall report and pay severance taxes thereon as required in §§ 26-58-114 and 26-58-116.

(2) However, if either the producer or severer of natural resources, excluding natural gas, or the purchaser of natural resources, excluding natural gas, files the report as required in §§ 26-58-114 and 26-58-116 and pays the severance taxes during any month, the other shall be relieved of the responsibility of filing such report.

(b) Both the producer of natural gas and the purchaser of natural gas shall be required to file their monthly reports under §§ 26-58-114 and 26-58-116.

History. Acts 1977, No. 456, § 1; A.S.A. 1947, § 84-2104.1; Acts 2009, No. 145, § 3.

Amendments. The 2009 amendment, in (a), redesignated the text, inserted “excluding natural gas” in four places, and inserted “as required in §§ 26-58-114 and 26-58-116” in (a)(2); added (b); and made related and stylistic changes.

26-58-118. Reports — Transporters.

(a) All transporters of natural resources, save and except only pipeline transporters,

whenever and as often as requested by the Director of the Department of Finance and Administration shall furnish a report under oath and upon forms prescribed by director setting forth:

- (1) The name of the shipper;
- (2) The date of shipment;
- (3) The quantity and type or character of such natural resources stated in units of measurements applicable thereto;
- (4) The point of receipt for shipment and point of destination; and
- (5) All such further information relating to the transportation of the natural resources as the director may reasonably require for the proper enforcement of the provisions of this subchapter.

(b) Any transporter failing to furnish the transporter's report as provided by this section shall be punished by fine of not less than fifty dollars (\$50.00) and not more than five hundred dollars (\$500) for each such offense.

(c) The willful false swearing in any report which may be furnished by the transporter in respect to any matter set forth in the report shall constitute perjury and shall be punishable as such.

History. Acts 1947, No. 136, § 6; A.S.A. 1947, § 84-2106.

26-58-119. Procedure upon failure to file reports or pay tax, filing inaccurate reports — Penalties — Subpoenas.

(a) (1) In the event any producer or purchaser of natural resources or any primary processor of timber fails within the time provided for in this subchapter to file the verified monthly reports required of them respectively, or in the event that the Director of the Department of Finance and Administration is not satisfied of the correctness of the reports as filed with the director, or in the event any such producer or purchaser of natural resources or any primary processor of timber fails to pay all taxes due as provided in §§ 26-58-114 and 26-58-116, it shall be the duty of the director to ascertain the true amount and value of the natural resources or timber severed and to assess the severance tax based thereon.

(2) For the purposes thereof the director is authorized to require either the producer or purchaser or both of them, or the primary processor, to furnish the director with such information, or further information, as the director may deem necessary and to require the production, at such place as the director may designate, of the books, records, and files of the producer and the purchaser or primary processor and to examine them and to take testimony of witnesses.

(3) (A) The director shall assess a penalty equal to fifty percent (50%) of the amount of the severance tax, including the cost and expense of assessing the penalty, and shall make demand for payment of the penalty upon both the producer of natural resources and the purchaser of natural resources to the extent liability for the tax may be imposed on the purchaser under § 26-58-116 or the primary processor of timber, as the case may be.

(B) The penalty assessment under subdivision (a)(3)(A) of this section shall not apply to any estimated severance tax payment that is made in good faith by a producer of natural gas or a purchaser of natural gas.

(b) (1) If the producer, purchaser, or primary processor or any other such witness

willfully fails to appear or to produce such books, records, and files before the director, in obedience to the director's request, the director shall certify the name of the reluctant producer, purchaser, primary processor, or other witness, with a statement of the circumstances to the circuit court of the county having jurisdiction over the person.

(2) The court shall thereupon issue a subpoena commanding the producer, purchaser, primary processor, or other witness to appear before the director, at a place designated, on a day fixed, to be continued as occasion may require, and to give such evidence, and to produce for inspection such books and papers as may be required by the director for a proper determination of the amount of taxes due.

(3) The court may hear and punish any contempt of such subpoena brought to the court's attention by the director.

History. Acts 1947, No. 136, § 8; 1983, No. 254, § 7; A.S.A. 1947, § 84-2108; Acts 2009, No. 145, § 4.

Amendments. The 2009 amendment, in (a)(3), inserted (a)(3)(B), and rewrote and redesignated the remaining text.

26-58-120. Arkansas Forestry Commission — Access to information — Investigations.

(a) (1) The Arkansas Forestry Commission and the authorized representatives of the commission shall have access to all tax returns and other information and records of the Director of the Department of Finance and Administration related to the reporting and payment of taxes levied upon timber by this subchapter.

(2) The commission shall furnish the director in writing the names of the forestry personnel who are authorized to have access to the timber tax records.

(3) The commission and its authorized representatives shall at all times maintain the confidentiality of such information and records.

(b) The commission is authorized to employ such persons as may be authorized by appropriation of the General Assembly to conduct inspections and investigations of primary processors of timber in order to determine whether such processors are properly reporting and paying the taxes levied in this subchapter.

(c) The inspections or investigations to be made by commission personnel shall consist of a physical inspection of the business operation of any primary processor of timber and a request for proof that the processor holds a severance tax collection permit issued under this subchapter but shall not include an in-depth or comprehensive examination of the records of the processor.

(d) If after completion of the inspection or investigation of a timber processor the commission finds that a timber processor is not collecting or remitting all taxes due under the provisions of this subchapter, the commission shall so advise the director and shall furnish the director the information upon which such finding is based.

History. Acts 1947, No. 136, § 8; 1983, No. 254, § 7; A.S.A. 1947, § 84-2108.

26-58-121. Information provided to Arkansas Forestry Commission.

The Director of the Department of Finance and Administration is directed to release any and all information requested by the Arkansas Forestry Commission which is related to the collection of timber severance taxes. This information shall include, but not be

limited to, names, addresses, and amounts paid.

History. Acts 1981, No. 730, § 13; A.S.A. 1947, § 84-2123.

26-58-122. Procedures followed upon failure to pay severance taxes due the Arkansas Forestry Commission.

(a) (1) In the event that the Arkansas Forestry Commission determines that any individual or corporation has failed to pay all severance taxes due to the commission, the commission shall certify the commission's findings to the Revenue Division of the Department of Finance and Administration.

(2) Upon receipt thereof, the Director of the Department of Finance and Administration shall immediately conduct an investigation of such matter.

(3) Within thirty (30) days of receipt of the certification, the director shall report all findings to the commission.

(b) If the director determines that all severance taxes due the commission are not being or have not been paid, the director shall immediately proceed to institute any legal action necessary to collect such tax.

(c) (1) In the event the director fails to report to the commission within the time specified or the commission disagrees with the findings of the director, the State Forester shall file with the Governor, the Legislative Council, and the House Interim Committee on Revenue and Taxation and the Senate Interim Committee on Revenue and Taxation a report of the matter.

(2) The Governor shall then conduct an investigation into such failure to report by the director or disagreement as to tax liability with the commission, take whatever measures the Governor deems necessary to rectify the situation, and shall notify the Legislative Council and the House Interim Committee on Revenue and Taxation and the Senate Interim Committee on Revenue and Taxation of the Governor's decision.

History. Acts 1981, No. 730, § 12; A.S.A. 1947, § 84-2122; Acts 1997, No. 232, § 2.

26-58-123. Lien for taxes, penalties, and costs upon natural resources and equipment.

The State of Arkansas shall have a lien for the taxes, penalties, and costs imposed by this subchapter upon any and all natural resources and timber severed from the soil or water and also upon any wells, machinery, tools, and implements used in severing such resources, and upon the tract of land from which the natural resources were severed.

History. Acts 1947, No. 136, § 10; 1983, No. 254, § 8; A.S.A. 1947, § 84-2110.

26-58-124. Distribution of severance tax generally.

(a) All taxes, penalties, and costs collected by the Director of the Department of Finance and Administration under the provisions of this subchapter, except for the taxes, penalties, and costs collected on natural gas, shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

(b) On or before the fifth of the month next following the month during which funds under subsection (a) of this section shall have been received by the Treasurer of State, the Treasurer of State shall allocate the funds in the following manner:

(1) Three percent (3%) of the amount of the funds to the General Revenue Fund Account of the State Apportionment Fund to be used for defraying the necessary

expenses of the state government; and

(2) Ninety-seven percent (97%) of the amount of the funds, as follows:

(A) (i) All of such amount of severance taxes, penalties, and costs on timber and timber products shall be credited to the State Forestry Fund until there has been distributed to the State Forestry Fund an amount not less than the total amount of severance taxes, penalties, and costs on timber and timber products distributed to the State Forestry Fund during the fiscal year ending June 30, 1980, plus an additional amount of two million dollars (\$2,000,000) of the funds, to be used exclusively for the purpose of carrying out the functions and duties of the Arkansas Forestry Commission.

(ii) (a) The next three hundred fifty thousand dollars (\$350,000) or so much of the funds as may be collected in severance taxes, penalties, and costs on timber and timber products, over and above the amount distributed to the State Forestry Fund during each fiscal year as provided in subdivision (b)(2)(A)(i) of this section, shall be distributed and credited to the University of Arkansas at Monticello Fund.

(b) The University of Arkansas at Monticello shall transfer from general revenue to cash funds any timber severance tax funds as provided in this subdivision (b)(2)(A)(ii), to be set aside therein to be used solely and exclusively for providing additional support for the School of Forest Resources of the University of Arkansas at Monticello, as per the intent of this subdivision (b)(2)(A)(ii).

(iii) All of such amount of severance taxes, penalties, and costs on timber and timber products collected during each fiscal year in excess of the amounts required to be distributed for each fiscal year as provided in subdivisions (b)(2)(A)(i) and (ii) of this section shall be distributed to the State Forestry Fund to be used exclusively for the support of carrying out the functions and duties of the Arkansas Forestry Commission;

(B) Seventy-five percent (75%) of the amount of the severance taxes and penalties on diamonds shall be credited to the Arkansas State Parks Trust Fund to be used by the State Parks, Recreation, and Travel Commission for the preservation and protection of the natural resources of this state;

(C) Seventy-five percent (75%) of the amount of the severance taxes and penalties, except those on timber and timber products and except those on diamonds, shall be general revenues and shall be allocated to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.; and

(D) (i) Twenty-five percent (25%) of such amount of the severance taxes and penalties, and costs, except those on timber and timber products, shall be special revenues and shall be allocated to the County Aid Fund.

(ii) On or before the tenth of the month following the end of each calendar quarter, the Treasurer of State shall remit by state warrants to the various county treasurers all funds under subdivision (b)(2)(D)(i) of this section then received by him or her during the quarterly period and transferred to the County Aid Fund in the proportions of the funds as between the respective counties that, as certified by the director to the Treasurer of State, the total severance tax produced from each respective county bears to the total of the taxes produced from all counties.

(iii) Upon receipt of any taxes under this subdivision (b)(2)(D),

each county treasurer shall credit fifty percent (50%) of the amount to the county public school fund and fifty percent (50%) of the amount to the county highway fund for use for the same purposes as other moneys credited to the respective future funds.

(c) All taxes, penalties, and costs collected by the director on natural gas shall be deposited into the State Treasury as follows:

(1) Five percent (5%) of the funds shall be deposited as general revenues; and

(2) Ninety-five percent (95%) of the funds shall be classified as special revenues and shall be distributed as set forth in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

History. Acts 1947, No. 136, § 12; 1953, No. 42, § 9; 1955, No. 100, § 2; 1981, No. 938, § 13; A.S.A. 1947, § 84-2112; Acts 1993, No. 1156, § 2; 1999, No. 736, § 5; 2007, No. 1245, § 13; 2008 (1st Ex. Sess.), No. 4, §§ 8, 9; 2008 (1st Ex. Sess.), No. 5, §§ 8, 9.

A.C.R.C. Notes. The 2008 (1st Ex. Sess.), Nos. 4 and 5, § 1, provided: "Legislative findings and intent.

(a) The General Assembly has determined that the severance tax rate on natural gas should be increased and that there should be different rates of tax for different categories of natural gas.

(b) Amendment 19 of the Arkansas Constitution required this act to be passed by at least three-fourths of the members of the Senate and at least three-fourths of the members of the House of Representatives.

(c) In order to implement the increase in the severance tax rate, the General Assembly has identified the following four categories of natural gas, each as defined in Arkansas Code § 26-58-101:

(1) High-cost gas;

(2) Marginal gas;

(3) New discovery gas; and

(4) All natural gas that is not defined as high-cost gas, marginal gas, or new discovery gas.

(d) To increase the severance tax rate, the General Assembly used the method of levying a specific tax rate on each category so that any future legislative enactment that would have the effect of increasing the rate of severance tax on any of those categories of natural gas as defined by § 26-58-101 will also be subject to the three-fourths vote requirement of Amendment 19 of the Arkansas Constitution."

Acts 2009, No. 662, § 11, provided:

(a) The next three hundred fifty thousand dollars (\$350,000) or so much thereof as may be collected in severance taxes, penalties, and costs on timber and timber products, over and above the amount distributed to the State Forestry Fund during each fiscal year as provided in subdivision (b)(2)(A)(i) of this section, shall be distributed and credited to the University of Arkansas at Monticello Fund.

(b) The University of Arkansas at Monticello shall transfer from General Revenue to cash funds any timber severance tax funds as provided in Arkansas Code 26-58-124 subdivision (b)(2)(A)(ii), to be set aside therein to be used solely and exclusively for providing additional support for the School of Forestry of the University of Arkansas at Monticello, as per the intent of Arkansas Code 26-58-124 subdivision (b)(2)(A)(ii)."

Amendments. The 2007 amendment substituted "shall transfer" for "may transfer" in (b)(2)(A)(ii)(b).

The 2008 (1st Ex. Sess.) amendment by identical acts Nos. 4 and 5, effective January 1, 2009, inserted "except for the taxes, penalties, and costs collected on natural gas" in (a); and added (c).

Effective Dates. Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, §§ 8, 9: Jan. 1, 2009, by their own terms.

26-58-125. Disposition of part of severance tax on salt water.

Of the fee levied per one thousand (1,000) barrels in § 26-58-111(9), forty-five cents (45¢) shall be deposited into the State Treasury as special revenues, and the Treasurer of State shall credit the amount thereof to the Oil and Gas Commission Fund.

History. Acts 1983, No. 874, § 2; A.S.A. 1947, § 84-2102a.

26-58-126. Severance tax rate for lead ore.

(a) The rate of the severance tax on lead ore shall be fifteen cents (15¢) per ton of two thousand pounds (2,000 lbs.) or at ten percent (10%) of market value, whichever rate is the greater.

(b) The severance tax rate for lead ore under this section shall be in lieu of any rate which would otherwise be applicable under § 26-58-111.

(c) The severance tax on lead ore shall be distributed in the same manner as the severance tax on other ores, as provided by § 26-58-124.

History. Acts 1993, No. 25, § 2.

26-58-127. Cost recovery periods for new discovery gas and high-cost gas.

(a) (1) The one-and-one-half-percent severance tax rate on new discovery gas shall apply to the first twenty-four (24) consecutive calendar months beginning on the date of first production from the new discovery gas well, regardless of whether production commenced prior to January 1, 2009; provided, however, that all production attributable to the period prior to January 1, 2009, shall be taxed at the rate in effect prior to January 1, 2009.

(2) At the end of the twenty-four-month period, the severance tax rate under § 26-58-111(5)(C) or § 26-58-111(5)(D), as applicable, shall apply.

(b) (1) The one-and-one-half-percent severance tax rate on high-cost gas shall apply to the first thirty-six (36) consecutive calendar months beginning on the date of first production from the high-cost gas well, regardless of whether production commenced prior to January 1, 2009; provided, however, that all production attributable to the period prior to January 1, 2009, shall be taxed at the rate in effect prior to January 1, 2009.

(2) If a high-cost gas well has not achieved payout by the end of the thirty-six-month period, the one-and-one-half-percent severance tax rate shall be extended until the earlier to occur of:

(A) Payout of the high-cost gas well; or

(B) Twelve (12) months following the expiration of the original thirty-six-month period.

(3) The severance tax rate under § 26-58-111(5)(C) or § 26-58-111(5)(D), as applicable, shall apply to high-cost gas at the later of the expiration of the thirty-six-month period or any allowed extension.

History. Acts 2008 (1st Ex. Sess.), No. 4, § 10; 2008 (1st Ex. Sess.), No. 5, § 10.

A.C.R.C. Notes. The 2008 (1st Ex. Sess.), Nos. 4 and 5, § 1, provided: "Legislative findings and intent.

(a) The General Assembly has determined that the severance tax rate on natural gas should be increased and that there should be different rates of tax for different categories of natural gas.

"(b) Amendment 19 of the Arkansas Constitution required this act to be passed by at least three-fourths of the members of the Senate and at least three-fourths of the members of the House of Representatives.

“(c) In order to implement the increase in the severance tax rate, the General Assembly has identified the following four categories of natural gas, each as defined in Arkansas Code § 26-58-101:

- “(1) High-cost gas;
- “(2) Marginal gas;
- “(3) New discovery gas; and
- “(4) All natural gas that is not defined as high-cost gas, marginal gas, or new discovery gas.

“(d) To increase the severance tax rate, the General Assembly used the method of levying a specific tax rate on each category so that any future legislative enactment that would have the effect of increasing the rate of severance tax on any of those categories of natural gas as defined by § 26-58-101 will also be subject to the three-fourths vote requirement of Amendment 19 of the Arkansas Constitution.”

Effective Dates. Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, § 10: Jan. 1, 2009, by their own terms.

26-58-128. Determination of new discovery gas, high-cost gas, or marginal gas.

(a) The producer of a proposed or existing gas well may apply at any time to the Director of the Oil and Gas Commission for a determination that the well qualifies as a new discovery gas well, a high-cost gas well, or a marginal gas well.

(b) The director may require an applicant to provide any information required to administer this section.

(c) The director shall make the determination within fifteen (15) calendar days of the application by the producer, and the producer shall attach the determination to its severance tax form next due.

History. Acts 2008 (1st Ex. Sess.), No. 4, § 10; 2008 (1st Ex. Sess.), No. 5, § 10.

A.C.R.C. Notes. The 2008 (1st Ex. Sess.), Nos. 4 and 5, § 1, provided: “Legislative findings and intent.

(a) The General Assembly has determined that the severance tax rate on natural gas should be increased and that there should be different rates of tax for different categories of natural gas.

“(b) Amendment 19 of the Arkansas Constitution required this act to be passed by at least three-fourths of the members of the Senate and at least three-fourths of the members of the House of Representatives.

“(c) In order to implement the increase in the severance tax rate, the General Assembly has identified the following four categories of natural gas, each as defined in Arkansas Code § 26-58-101:

- “(1) High-cost gas;
- “(2) Marginal gas;
- “(3) New discovery gas; and
- “(4) All natural gas that is not defined as high-cost gas, marginal gas, or new discovery gas.

“(d) To increase the severance tax rate, the General Assembly used the method of levying a specific tax rate on each category so that any future legislative enactment that would have the effect of increasing the rate of severance tax on any of those categories of natural gas as defined by § 26-58-101 will also be subject to the three-fourths vote requirement of Amendment 19 of the Arkansas Constitution.”

Effective Dates. Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, § 10: Jan. 1, 2009, by their own terms.

26-58-129. Natural gas severance tax payment, apportionment of severance tax between royalty owner and producer, and authority for rulemaking.

(a) The severance tax on natural gas shall be paid in the manner provided in this chapter.

(b) The portion of the severance tax that is required to be deducted from the royalty

owner or other interest shall be calculated in the same manner as the portion of the severance tax borne by the producer.

(c) The Department of Finance and Administration may promulgate the rules necessary to enforce the provisions of this act.

History. Acts 2008 (1st Ex. Sess.), No. 4, § 10; 2008 (1st Ex. Sess.), No. 5, § 10.

A.C.R.C. Notes. The 2008 (1st Ex. Sess.), Nos. 4 and 5, § 1, provided: "Legislative findings and intent.

(a) The General Assembly has determined that the severance tax rate on natural gas should be increased and that there should be different rates of tax for different categories of natural gas.

(b) Amendment 19 of the Arkansas Constitution required this act to be passed by at least three-fourths of the members of the Senate and at least three-fourths of the members of the House of Representatives.

(c) In order to implement the increase in the severance tax rate, the General Assembly has identified the following four categories of natural gas, each as defined in Arkansas Code § 26-58-101:

(1) High-cost gas;

(2) Marginal gas;

(3) New discovery gas; and

(4) All natural gas that is not defined as high-cost gas, marginal gas, or new discovery gas.

(d) To increase the severance tax rate, the General Assembly used the method of levying a specific tax rate on each category so that any future legislative enactment that would have the effect of increasing the rate of severance tax on any of those categories of natural gas as defined by § 26-58-101 will also be subject to the three-fourths vote requirement of Amendment 19 of the Arkansas Constitution."

Meaning of "this act". Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, codified as §§ 19-6-201, 19-6-301, 26-58-101, 26-58-111, 26-58-124, 26-58-127 — 26-58-129 and 27-70-202.

Effective Dates. Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, § 10: Jan. 1, 2009, by their own terms.

Subchapter 2

— Tax Credits for Certain Oil and Gas Producers

26-58-201. Definitions.

26-58-202. Applicability.

26-58-203. Penalty.

26-58-204. Credit on severance tax of oil producer.

26-58-205. Credit on severance tax of gas producer.

26-58-206. Permit for credit.

26-58-207. Reports of tax due on oil produced.

26-58-208. Amounts of credits or tax — Maximum annual credits allowed.

26-58-209. Cost of maintaining salt water disposal system.

26-58-210. Records.

26-58-211. [Repealed.]

Cross References. Credit against severance tax, oil wells, § 15-72-706.

Preambles. Acts 1959, No. 57 contained a preamble which read:

"Whereas, the production of oil is an important industry of this State and is vital to the continued growth of our economy; and

"Whereas, it is important to the general welfare of the people that every effort be made to conserve and recover the oil resources of this State; and

"Whereas, thousands of barrels of recoverable oil in this State are obtainable only by the

production of considerable quantities of salt water; and
“Whereas, disposal of such salt water into our lakes and streams poses a pollution problem that endangers the public health and welfare; and
“Whereas, pollution of our lakes and streams may be avoided only by reinjection of salt water derived from oil production back into underground sands; and
“Whereas, such reinjection of salt water into the underground results in considerable expense which renders the production of oil uneconomical in many instances; and
“Whereas, it is in the public interest that every effort to be made to render the production of such oil economical, and
“Whereas, it is hereby declared to be the public policy of this State to encourage and promote the conservation and recovery of vital oil resources in the manner provided in this Act;
“Now, therefore”

Effective Dates. Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

26-58-201. Definitions.

As used in this subchapter:

(1) (A) “Approved underground salt water disposal system” means a system or systems of reinjection of salt water produced as a result of oil production into an underground level or stratum, as approved by the Arkansas Pollution Control and Ecology Commission or the Arkansas Oil and Gas Commission, whereby the salt water disposed of and the method of disposing of the same shall pose no menace to a fresh water supply or to the lakes and streams of this state.

(B) “Approved underground salt water disposal system” does not include any:

(i) Reinjection system which is designed primarily for the purpose of secondary recovery and pressure maintenance; or

(ii) Pool that has been unitized for secondary recovery or pressure maintenance by order of the Arkansas Oil and Gas Commission;

(2) “Director” means the Director of the Department of Finance and Administration or any of his or her duly appointed deputies or agents;

(3) “Oil producer” means the producer of oil who is charged with the responsibility of reporting and paying the severance tax on oil as required by the laws of this state;

(4) “Person” means any individual, firm, association, partnership, limited liability company, or corporation; and

(5) “Severance tax” means the severance tax on oil produced in this state as levied by § 26-58-107.

History. Acts 1959, No. 57, § 1; A.S.A. 1947, § 84-2113; Acts 1995, No. 1160, § 39.

Case Notes

Cited: Hervey v. MacFarlane Co., 256 Ark. 488, 510 S.W.2d 303 (1974).

26-58-202. Applicability.

(a) In no instance shall the benefits of the provisions of this subchapter apply to the severance tax due or payable on oil produced from nonsalt water producing oil wells in this state.

(b) The benefits of the provisions of this subchapter shall not apply to any underground salt water disposal system that may have been established prior to June 11, 1959, it being the intent of this subchapter that the provisions hereof shall apply only to approved underground salt water disposal systems established from and after June 11, 1959.

History. Acts 1959, No. 57, § 2; 1959, No. 138, § 1; A.S.A. 1947, § 84-2114.

26-58-203. Penalty.

Any person violating the provisions of this subchapter shall be guilty of a misdemeanor. A convicted offender shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or be imprisoned not less than thirty (30) days nor more than one (1) year, or be both so fined and imprisoned.

History. Acts 1959, No. 57, § 8; A.S.A. 1947, § 84-2120.

Publisher's Notes. Acts 1959, No. 57, § 8, is also codified as § 8-5-502.

26-58-204. Credit on severance tax of oil producer.

Any oil producer in this state who provides for the disposition of salt water produced in the production of oil from oil wells of such oil producer in this state by the means of an approved underground salt water disposal system shall be allowed a credit on severance taxes due and payable to the State of Arkansas on all oil so produced by such salt water producing oil wells in the amount and in the method provided in this subchapter.

History. Acts 1959, No. 57, § 2; 1959, No. 138, § 1; A.S.A. 1947, § 84-2114.

26-58-205. Credit on severance tax of gas producer.

A natural gas producer charged with the responsibility of reporting and paying the severance tax on natural gas who provides for the disposal of salt water produced in the production thereof by means of an approved underground salt water disposal system shall be allowed a credit on severance taxes due thereon in the same manner, to the same extent, and on the same conditions as the credit on severance taxes authorized in the case of oil production under this subchapter.

History. Acts 1961, No. 138, § 1; A.S.A. 1947, § 84-2121.

26-58-206. Permit for credit.

(a) Any oil producer in this state wishing to obtain the benefits of the provisions for this subchapter shall make application to the Director of the Department of Finance and Administration for a permit to obtain credit on severance taxes due on all oil produced in salt water producing oil wells of such oil producer as provided in this subchapter.

(b) The application shall list:

- (1) The name and address of the oil producer;
- (2) The number and location of all salt water producing oil wells of such oil producer; and
- (3) A certified copy of a certificate from the Arkansas Pollution Control and

Ecology Commission and the Arkansas Oil and Gas Commission certifying that all salt water produced in the production of oil in such oil wells is being disposed of in an approved underground salt water disposal system.

(c) If the director determines that the oil producer has complied with the provisions of this subchapter and the rules and regulations established by the director, the director shall issue a permit to such oil producer.

(d) The permit shall entitle the oil producer to obtain credit on severance taxes due the State of Arkansas on all oil produced in salt water producing oil wells in the amount provided in this subchapter.

History. Acts 1959, No. 57, § 3; A.S.A. 1947, § 84-2115.

26-58-207. Reports of tax due on oil produced.

(a) Each oil producer having a permit from the Director of the Department of Finance and Administration authorizing such oil producer to obtain the benefits of this subchapter upon forms prescribed by the director and under such rules and regulations as may be prescribed by the director shall report during each tax reporting period the total barrels of oil produced by oil wells producing salt water during such reporting period and shall compute the total severance tax due on such oil production.

(b) In addition, the oil producer shall report any additional or supporting information as may be required by the director during each tax reporting period as may be necessary to support the credit claimed by the oil producer.

History. Acts 1959, No. 57, § 5; 1959, No. 138, § 2; A.S.A. 1947, § 84-2117.

26-58-208. Amounts of credits or tax — Maximum annual credits allowed.

(a) The oil producer shall be entitled to a credit on the severance tax due during the reporting period in the amount of the cost, as defined in § 26-58-209, of the oil producer in maintaining, during such reporting period, an approved underground salt water disposal system.

(b) (1) If the cost of maintaining such approved underground salt water disposal system during the reporting period is less than the total severance tax due for the reporting period, the oil producer shall pay to the Director of the Department of Finance and Administration the amount that the total tax exceeds the cost.

(2) (A) In the event the cost of maintaining the approved underground salt water disposal system during the tax reporting period exceeds the total severance tax due during such period, the oil producer shall be given a credit for the total severance tax due for such reporting period.

(B) However, in no event shall such oil producer be permitted to credit such excess of cost over the total severance tax due for such reporting period to any oil severance tax that may have been paid, or that may become due, during any previous or subsequent tax reporting period.

(c) (1) The total severance tax credits allowed all oil producers during any calendar year by the director shall not exceed three hundred seventy thousand dollars (\$370,000).

(2) If during any calendar year the total severance tax credits of all oil producers operating approved underground salt water disposal systems exceed the total maximum allowable severance tax credits mentioned above, the director shall prorate the allowable credits among the respective oil producers in the proportion that the credits due each

producer bear to the total of all severance tax credits due all oil producers.

History. Acts 1959, No. 57, § 5; 1959, No. 138, § 2; A.S.A. 1947, § 84-2117.

26-58-209. Cost of maintaining salt water disposal system.

The cost of an oil producer in maintaining an approved underground salt water disposal system for the purposes of this subchapter shall include the following:

(1) An allowance, to be spread equally over each tax reporting period, for depreciation of the actual cash investment of the oil producer in the constructing, equipping, and improving of an approved underground salt water disposal system which depreciation period shall not be less than five (5) years nor more than ten (10) years as may be approved by the Director of the Department of Finance and Administration;

(2) The actual cash outlay of the oil producer in purchasing stock in a business or corporation organized exclusively for the purpose of constructing and operating an approved underground salt water disposal system; and

(3) (A) The actual expenses of the oil producer in operating and maintaining an approved underground salt water disposal system.

(B) These expenses shall include the cost of labor, supplies, materials, utilities, and other necessary operating expenses.

(C) In the case of an oil producer who purchases the services of an approved underground salt water disposal business or corporation for disposing of salt water produced in the production of oil by such oil producer, the actual cost of such service shall be deemed to be the cost of such oil producer within the meaning of this section.

History. Acts 1959, No. 57, § 6; A.S.A. 1947, § 84-2118; Acts 2009, No. 655, § 103.

Amendments. The 2009 amendment inserted “and” at the end of (2).

26-58-210. Records.

The oil producer obtaining the benefits of the provisions of this subchapter shall maintain for a period of not less than three (3) years such records as may be required by the Director of the Department of Finance and Administration that may be necessary to justify the cost credits allowed by this subchapter.

History. Acts 1959, No. 57, § 5; 1959, No. 138, § 2; A.S.A. 1947, § 84-2117.

26-58-211. [Repealed.]

Publisher's Notes. This section, concerning fees, was repealed by Acts 1993, No. 344, § 2. The section was derived from Acts 1959, No. 57, § 7; A.S.A. 1947, § 84-2119. Acts 1959, No. 57, § 7, was also codified as § 8-5-505, and appears to have been impliedly repealed.

Subchapter 3 — Additional Oil and Brine Taxes

26-58-301. Levy for benefit of Oil Museum Fund.

26-58-302. Additional levy for benefit of Arkansas Museum of Natural Resources Fund.

26-58-303. Levy for benefit of Arkansas Museum of Natural Resources Bond

Redemption Fund.

Preambles. Acts 1979, No. 832 contained a preamble which read:

"Whereas, museums preserve our heritage for the benefit, enjoyment, and education of the citizens of all ages and from every community in Arkansas; and

"Whereas, museums are unique cultural resources through the preservation, exhibition, and documentation of historically, scientifically, and artistically significant facts and artifacts; and

"Whereas, museums provide a unique educational tool which can directly supplement the state's educational system through demonstrating the use and significance of said artifacts;

"Now Therefore"

Effective Dates. Acts 1977, No. 310, § 6: Feb. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that Arkansas is a major oil producing state and was in the center of the oil boom shortly after World War I; that the oil resources of the State and the country are declining and may become a thing of the past; that there is a treasure of sites and equipment of the type used for oil and gas production in the early oil boom days; that such equipment and sites should be preserved and properly displayed for future generations, as part of the developing history of Arkansas; and that this Act is designed to provide for preserving such equipment and sites and should be given effect as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 759, § 6: Apr. 6, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the immediate transfer of the responsibilities relating to the Arkansas Oil and Brine Museum to the Arkansas State Parks, Recreation and Travel Commission is necessary for the efficient and effective operation of the Museum. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 832, § 15: Jul. 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an immediate need to establish Arkansas Museum Services and transfer the Des Arc Archeological Center, the Museum and Cultural Commission and the Arkansas Oil Museum to the Museum Services Division of the Department of Parks and Tourism so as to ensure the preservation of, the State's heritage and to assist, promote, and advance the purposes of the Museums throughout Arkansas. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from July 1, 1979."

Acts 1980 (1st Ex. Sess.), No. 71, § 7: Feb. 12, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 310 of 1977, as amended, provides for the establishment of the Arkansas Oil and Brine Museum but that funds are not currently available for the construction of the Museum; that this Act is designed to authorize the Parks, Recreation and Travel Commission to issue bonds for the construction of the Museum, and to pledge funds derived from a fee of twenty (20) mills per barrel levied by this Act on oil produced in the State and ten (10) cents per 1,000 barrels of brine produced in this State for the purpose of bromine extraction; that it is urgent that this Act be given effect at the earliest possible date to enable the Commission to proceed with the issuance of bonds and the construction of the Museum. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981 (1st Ex. Sess.), No. 22, § 6: Nov. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly, meeting in Extraordinary Session, that sufficient funds are not currently available for the maintenance, operation, and construction of the Oil and Brine Museum. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

26-58-301. Levy for benefit of Oil Museum Fund.

(a) (1) In addition to the severance tax on oil produced in the State of Arkansas and levied in § 26-58-111(5) and (6), there is levied an additional tax of five (5) mills per barrel of oil produced in this state.

(2) All taxes, interest, and penalties collected by the Revenue Division of the Department of Finance and Administration under the provisions of this subsection shall be deposited into the State Treasury as special revenues, and the Treasurer of State after deducting therefrom the three percent (3%) provided by law for credit to the Constitutional Officer's Fund and the State Central Services Fund shall credit the net amount to the Oil Museum Fund to be used for the construction, maintenance, operation, and improvement of the Arkansas Museum of Natural Resources.

(b) (1) There is levied upon all brine produced in the state for the purpose of bromine extraction a tax of twenty cents (20¢) per one thousand (1,000) barrels.

(2) The taxes levied in this subsection shall be reported and remitted monthly to the Director of the Department of Finance and Administration on such forms and in such manner as the director shall prescribe by regulations.

(3) All revenues collected by the director pursuant to the tax levied in this section shall be deposited into the State Treasury as special revenues, and the Treasurer of State after deducting therefrom the three percent (3%) provided by law for credit to the Constitutional Officer's Fund and the State Central Services Fund shall credit the net amount to the Oil Museum Fund to be used for the construction, maintenance, operation, and improvement of the Arkansas Museum of Natural Resources.

History. Acts 1977, No. 310, § 4; 1979, No. 759, § 5; 1979, No. 832, § 13; A.S.A. 1947, §§ 84-2102.1, 84-2102.2.

26-58-302. Additional levy for benefit of Arkansas Museum of Natural Resources Fund.

(a) (1) There is levied a tax of two cents (2¢) per barrel of oil produced in this state.

(2) The taxes shall be reported and paid monthly to the Director of the Department of Finance and Administration by each producer of oil in such manner and upon such forms as the director shall prescribe.

(b) (1) There is levied a tax of ten cents (10¢) per one thousand (1,000) barrels on all brine produced in this state for the purpose of bromine extraction.

(2) The tax shall be reported and paid monthly to the director by each producer of brine and oil in such manner and upon such forms as the director may prescribe.

(c) (1) Funds collected by the director under this section are classified as cash fund receipts, and the full amount of the funds shall be deposited into one (1) or more accounts in one (1) or more banks in this state, which account or accounts shall be designated "Arkansas Museum of Natural Resources Fund".

(2) All funds in such accounts shall be used exclusively for the maintenance, operation, and construction of the Arkansas Museum of Natural Resources.

(d) The taxes levied by this section shall be in addition to any and all other fees and taxes levied on oil and brine produced in this state.

History. Acts 1981 (1st Ex. Sess.), No. 22, §§ 1-4; A.S.A. 1947, §§ 84-2102.7 — 84-2102.10; Acts 2009, No. 655, § 104.

Amendments. The 2009 amendment substituted “Arkansas Museum of Natural Resources Fund” for “Oil and Brine Museum Funds” in (c)(1), and made minor stylistic changes.

26-58-303. Levy for benefit of Arkansas Museum of Natural Resources Bond Redemption Fund.

(a) (1) There is levied a fee of twenty (20) mills on each barrel of oil produced in this state.

(2) The fee shall be reported and paid monthly to the Director of the Department of Finance and Administration by each producer of oil in such manner and upon such forms as the director shall prescribe.

(b) (1) There is levied a fee of ten cents (10¢) per one thousand (1,000) barrels on all brine produced in this state for the purpose of bromine extraction.

(2) The fee shall be reported and paid monthly to the director by each producer of brine and oil in such manner and upon such forms as the director shall prescribe.

(c) (1) Funds collected by the director under this section are classified as cash fund receipts, and the full amount of the funds shall be deposited into one (1) or more accounts in one (1) or more banks in this state, to be designated by the Department of Finance and Administration, which account or accounts shall be designated “Arkansas Museum of Natural Resources Bond Redemption Fund”.

(2) All funds in the fund shall be used exclusively for the payment of principal and interest on bonds issued by the Oil and Gas Commission or the Arkansas Pollution Control and Ecology Commission pursuant to the authority granted herein, and for paying agent's fees and other expenses of the issuance and sale of such bonds.

(d) The fees levied by this section shall be in addition to any and all other fees levied on oil and brine produced in this state.

History. Acts 1980 (1st Ex. Sess.), No. 71, §§ 2-5; A.S.A. 1947, §§ 84-2102.3 — 84-2102.6; Acts 2009, No. 655, § 105.

Publisher's Notes. Acts 1985, No. 1062, § 24, provided in part that the authority of the Arkansas State Parks, Recreation, and Travel Commission to issue revenue bonds pursuant to this section was transferred to the Arkansas Development Finance Authority and that from May 1, 1985, the issuer of revenue bonds pursuant to this section means the Authority.

Amendments. The 2009 amendment substituted “Arkansas Museum of Natural Resources Fund” for “Oil and Brine Museum Funds” in (c)(1), and made minor stylistic changes.

Chapter 59

Estate Taxes

26-59-101. Title.

26-59-102. Definitions.

26-59-103. Chapter to remain in effect while federal government imposes estate tax.

26-59-104. Federal rules of interpretation applicable.

26-59-105. Administration and enforcement of chapter.

26-59-106. Amount of tax imposed — Resident estates.

26-59-107. Tax imposed — Nonresident estates.

26-59-108. Exemptions.

26-59-109. Estate tax returns generally.

26-59-110. Estate tax returns — Contents.

- 26-59-111. Estate tax return — Extension of filing time.
- 26-59-112. Director to make return when no return filed.
- 26-59-113. Payment — Time limitations — Federal election.
- 26-59-114. Payment of tax — Discharge of executor.
- 26-59-115. [Repealed.]
- 26-59-116. Payment of tax — Reimbursement to person paying tax.
- 26-59-117. Payment of tax — Executor's liability.
- 26-59-118. Payment of tax — Executor's right to sell real estate.
- 26-59-119. Executor — Notice of appointment.
- 26-59-120. Duties of probate clerks — Information required.
- 26-59-121. Corporate executors of nonresident decedents — Restrictions.
- 26-59-122. Disposition and allocation of funds.

Effective Dates. Acts 1941, No. 136, § 50: Mar. 17, 1941. Emergency clause provided: "It appearing that many persons of wealth are leaving the State of Arkansas on account of the high inheritance taxes of this State and other people of wealth are refusing to move into the State of Arkansas on account of such high inheritance taxes, the Legislature hereby declares that an emergency exists and this act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1943, No. 19, § 2: effective on passage and approval.

Acts 1943, No. 99, § 2: effective on passage.

Acts 1943, No. 142, § 4: Mar. 4, 1943. Emergency clause provided: "There being many estates in Arkansas now pending in litigation and which litigation will extend for more than a period of one year as heretofore provided by this Act, and if such interest be collected from said estates the collection thereof will be an imposition upon the estate and over which the executor or administrator has no control. An emergency is therefore declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall become in full force and effect from and after its passage and approval."

Acts 1945, No. 156, § 5: approved Mar. 2, 1945. Emergency clause provided: "It is ascertained and found, by the General Assembly, that there are many instances in this State where no effort has been made during a period of many years to collect inheritance taxes chiefly because the collecting authorities had no knowledge that such a tax was due, and that in such cases the property belonging to the estates involved is subject to the tax liens which constitute a cloud upon the title to such estates, seriously hamper transfers and conveyances of such property and may be costly, to innocent purchasers. Therefore, the passage of this act being necessary for the public peace, health and safety, it shall take effect and be in force from and after its passage."

Acts 1947, No. 388, § 2: Mar. 28, 1947. Emergency clause provided: "There being confusion under the provisions of existing estate tax laws as to the proper determination and computation of the exact amount of such tax due this state, it is declared to be the intention of this Act to authorize the collection of estate taxes due this state the amount of the Federal credit allowable under the Federal Estate Tax Laws, from and after the passage and approval of this Act, as to all estates of decedents dying after June 7, 1945, and to clarify such uncertainty, an emergency is hereby declared to exist, and this Act shall take effect and be in full force from and after its passage and approval."

Acts 1949, No. 284, § 3: Mar. 19, 1949. Emergency clause provided: "This Act is being passed for the purpose of correcting the collection of taxes against the estates of nonresidents which estates are now inadvertently exempt from the payment of estate taxes on intangible personal property located in this State. Whereas such tax is collectible against residents of this State, and because of the inequality of such provisions, an emergency is declared to exist and this Act shall be in full force and effect upon and after its passage and approval."

Acts 1953, No. 188, § 3: Mar. 2, 1953. Emergency clause provided: "Since confusion and misunderstanding exists in the collection of Estate Taxes of residents and nonresidents owning

property in this State and other states and there being no harmony between the imposition of taxes in such estates, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public health, peace and safety, the same shall be in full force and effect from and after its passage and approval.”

Acts 1955, No. 122, § 3: Mar. 2, 1955. Emergency clause provided: “Whereas, Act 99 of 1943 was passed prior to the amendments to the Internal Revenue Code allowing the so-called marital deduction; and whereas said Act 99 has been construed as imposing a tax burden on the surviving spouse even though the property received by such spouse is deductible for Federal Estate Tax purposes; and whereas this has had the effect of reducing the amount of the marital deduction and thereby increasing the amount of Federal Estate Tax paid by estates of Arkansas decedents; and whereas it was not the intention of said Act 99 to increase the tax burden and reduce the total value of the estates of Arkansas decedents; and whereas this situation should be promptly corrected; now, therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of public peace, health and safety, shall take effect and be in full force from and after its passage and approval.”

Acts 1963, No. 25, § 3: Feb. 8, 1963. Emergency clause provided: “It is hereby found and determined by the general assembly that the laws of this state applicable to estate taxes, inheritance taxes or transfer taxes do not contain exemptions for bequests to nonprofit educational institutions; that such laws are working an undue hardship upon non-profit educational institutions of this state and are depriving such institutions of the benefits of bequests to such institutions made by residents of other states; and that clarification of the present law is needed to correct such situation. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1965, No. 169, § 3: Mar. 9, 1965. Emergency clause provided: “It is hereby found and determined by the General Assembly that the laws of this State applicable to estate taxes, inheritance taxes or transfer taxes do not contain exemptions for bequests to non-profit religious, educational or charitable institutions, organizations or foundations; that such laws are working an undue hardship upon such institutions, organizations or foundations in this State and are depriving them of the benefits of bequests to them that might be made by residents of other states, and this act will greatly benefit deserving religious, charitable and educational institutions, organizations and foundations and thus promote the general welfare. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety, it shall be in full force and effect from and after its passage and approval.”

Acts 1979, No. 401, § 50: Jan. 1, 1980.

Acts 1983, No. 379, § 27: Dec. 31, 1982. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain provisions of the State's income and estate tax laws that have counterparts in the Federal tax laws do not coincide with recent amendments and changes to the Federal tax laws; and that this Act is immediately necessary to make the Arkansas tax laws conform with the Federal tax laws to clarify any possible question of confusion caused by such differences. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.”

Acts 1989, No. 910, § 6: Mar. 23, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that the estates of certain Arkansas citizens are in urgent need of being able to elect to defer the payment of their state estate tax for the same period of time and in the same manner now provided by 26 U.S.C. § 6166, for up to a fifteen (15) year period at a four percent (4%) interest rate; that the adoption of this act is designed to alleviate the need for forced sale of family farms and closely held family businesses for the purpose of paying state estate tax; and that there should be conformity on this issue between federal and state estate tax law, which conformity does not now exist. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval, and that the estates of any Arkansas citizens which are entitled to file a deferral election, pursuant to the provisions of 26 U.S.C. § 6166 of the federal tax laws, shall be entitled to have such federal

election treated as a timely election to defer the payment of the proportionate part of the Arkansas state estate taxes for the same period of time.”

Acts 1995, No. 270, § 19: July 1, 1995. Emergency clause provided: “It is hereby found and determined by the Eightieth General Assembly, that various laws have been enacted since the passage of the Revenue Classification Law which have changed or created various revenues collected by the State, and that this amendment to the Revenue Classification Law is necessary in order to reflect the various taxes, licenses, fees and other revenues levied and collected for the support of and use by State Government as they currently exist and from which appropriations which become effective July 1, 1995 have been made by the Eightieth General Assembly. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995.”

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after Jan. 1, 1999.

Acts 2001, No. 1681, § 5: Apr. 16, 2001 and July 1, 2001. Emergency clause provided: “It is hereby found and determined by the General Assembly that this act transfers to the General Improvement Fund those revenues that formerly went to the Economic Development of Arkansas Fund; that those monies transferred to the General Improvement Fund have been appropriated effective July 1, 2001, and that Section 4 of this act must go into effect on July 1, 2001, in order to fund those appropriations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety, Section 4 of this act shall become effective on July 1, 2001, and the remaining sections of this act shall become effective on the date of approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 1, 2, and 3 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 1, 2, and 3 shall become effective on the date the last house overrides the veto.”

Research References

Am. Jur. 42 Am. Jur. 2d, Inher. Tax, § 1 et seq.

Ark. L. Rev.

Release of Powers of Appointment for Federal Estate Tax Purposes, 4 Ark. L. Rev. 66.

Federal Tax Aspects of Partnership “Survival Insurance” Arrangements, 4 Ark. L. Rev. 187.

Comments — Relevancy of the Federal Estates Tax to Joint Tenancy and Tenancy by the Entirety, 4 Ark. L. Rev. 458.

Estate Planning with Disclaimers in Arkansas, 27 Ark. L. Rev. 411.

Haught, 1988 Update to the Arkansas Probate System: An Overview of Recent Developments in Arkansas Probate Practice, 42 Ark. L. Rev. 631.

C.J.S. 85 C.J.S., Tax., § 1111 et seq.

26-59-101. Title.

This chapter may be cited as the “Estate Tax Law of Arkansas”.

History. Acts 1941, No. 136, § 1; A.S.A. 1947, § 63-101.

26-59-102. Definitions.

As used in this chapter:

(1) “Decedent” includes the testator, intestate, grantor, bargainor, vendor, or donor;

(2) "Director" means the Director of the Department of Finance and Administration;

(3) "Executor" means the executor, administrator, curator, fiduciary, or custodian of property of a decedent, or if there is no executor, administrator, curator, fiduciary, or custodian appointed, qualified, and acting, then any person who is in the actual or constructive possession of any property included in the gross estate of the decedent;

(4) "Gross estate" means the gross estate as determined under the provisions of the applicable federal revenue act;

(5) "Net estate" means the net estate as determined under the provisions of the applicable federal revenue act;

(6) "Nonresident" means an individual or natural person domiciled without the State of Arkansas;

(7) "Person" means an individual, natural person, corporation, association, partnership, limited liability company, joint-stock company, business trust, and inter vivos trust;

(8) "Resident" means an individual or natural person domiciled in the State of Arkansas as provided by statute or otherwise;

(9) "Tangible personal property" means corporeal personal property, including money; and

(10) "Transfer" shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner described in this chapter.

History. Acts 1941, No. 136, § 2; 1945, No. 294, § 1; A.S.A. 1947, § 63-102; Acts 1995, No. 1160, § 40.

Case Notes

Construction.

Applicable Federal Revenue Act.

Construction.

When construing estate tax law, the court may consider administrative construction and practice. *Moses v. McLeod*, 207 Ark. 252, 180 S.W.2d 110 (1944).

Applicable Federal Revenue Act.

The provisions of the federal revenue act referred to are the federal revenue law in force when this chapter was adopted and not the provisions of federal law as subsequently amended.

McLeod v. Commercial Nat'l Bank, 206 Ark. 1086, 178 S.W.2d 496 (1944); *State ex rel.*

Commissioner of Revenues v. Carney, 208 Ark. 943, 188 S.W.2d 310 (1945).

This chapter, having made the gross estate and the net estate depend on the applicable federal revenue act, life insurance up to the value of \$40,000 payable to beneficiaries was excluded from the gross estate. *State ex rel. Commissioner of Revenues v. Carney*, 208 Ark. 943, 188 S.W.2d 310 (1945).

Where the federal estate tax law allowed an exemption for property received within five years from an estate on which the estate tax had been paid, this state was required to permit the same exemption. *Cook v. Taylor*, 210 Ark. 803, 197 S.W.2d 738 (1946).

26-59-103. Chapter to remain in effect while federal government imposes estate tax.

This chapter shall remain in force and effect so long as the United States Government

retains in full force and effect, as a part of the revenue laws of the United States, the present federal estate tax, and this chapter shall cease to be operative when the federal credit for state death taxes set forth in 26 U.S.C. § 2011 is repealed completely for the estates of decedents dying on or after January 1, 2005.

History. Acts 1941, No. 136, § 46; A.S.A. 1947, § 63-145; Acts 2003, No. 645, § 1.

Amendments. The 2003 amendment substituted “federal credit for state death taxes January 1, 2005” for “United States Government ceases to impose any estate tax of the United States.”

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Estate Tax, 26 U. Ark. Little Rock L. Rev. 495.

26-59-104. Federal rules of interpretation applicable.

When not otherwise provided for in this chapter, the rules of interpretation and construction applicable to the estate tax laws of the United States shall apply to and be followed in the interpretation of this chapter.

History. Acts 1941, No. 136, § 49; A.S.A. 1947, § 63-146.

26-59-105. Administration and enforcement of chapter.

Except as otherwise provided in this chapter, the Director of the Department of Finance and Administration shall have jurisdiction and be charged with the administration and enforcement of the provisions of this chapter.

History. Acts 1941, No. 136, § 6; A.S.A. 1947, § 63-105.

26-59-106. Amount of tax imposed — Resident estates.

(a) A tax is imposed upon the transfer of real estate and personal property of every kind owned by every person who at the time of death was a resident of the State of Arkansas, the amount of which shall be a sum equal to the federal credit allowable under the federal estate tax laws, 26 U.S.C. § 2001 et seq., as in effect on January 1, 2002.

(b) Ownership of property shall include a share or certificate of indebtedness or other evidence of stock ownership in a foreign company or corporation, which share or certificate is present in this state.

(c) (1) (A) If any portion of the property of the estate is located in another state and the other state participates in the federal credit allowable, then the Arkansas tax shall be the proportional part of the credit allowable as the Arkansas property bears to the entire estate.

(B) However, if the other state shall have a reciprocal provision as to the nontaxability of property of a nonresident, then all of the federal credit allowable shall be paid to this state.

(2) However, if no federal estate tax is imposed upon the transfer of property, no Arkansas estate tax shall be imposed on the transfer of property.

History. Acts 1941, No. 136, § 3; 1945, No. 294, § 2; 1953, No. 188, § 1; 1983, No. 379, § 17; A.S.A. 1947, § 63-103; Acts 1999, No. 1126, § 40; 2003, No. 645, § 2.

Publisher's Notes. The 1983 amendment to this section took effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.

Amendments. The 2003 amendment substituted “January 1, 2002” for “January 1, 1999” in (a).
Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after Jan. 1, 1999.

Research References

U. Ark. Little Rock L.J.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Estate Tax, 26 U. Ark. Little Rock L. Rev. 495.

Case Notes

Computation of Tax.

Wills and Estates.

Computation of Tax.

Where net estate exceeded \$100,000, the tax on the excess was 80% of the basic federal estate tax, which was the credit allowable under the federal law. *Moses v. McLeod*, 207 Ark. 252, 180 S.W.2d 110 (1944); *Cook v. Taylor*, 210 Ark. 803, 197 S.W.2d 738 (1946) (decisions prior to 1945 amendment).

Wills and Estates.

Neither the parties or the Supreme Court were bound by a decision of the Internal Revenue Service as to the construction of a will and codicil under Arkansas law, nor did subsection (a) of this section mandate that interpretation. *Pledger v. Worthen Bank & Trust Co.*, 319 Ark. 155, 889 S.W.2d 732 (1994).

26-59-107. Tax imposed — Nonresident estates.

(a) A tax is imposed upon the transfer of all real, tangible, and intangible personal property located in the State of Arkansas of any nonresident of this state in a sum equal to the proportion of the federal credit allowable under the federal estate tax laws, 26 U.S.C. § 2001 et seq., as in effect on January 1, 2002, for estate, inheritance, legacy, and succession taxes that the Arkansas property of such a deceased person bears to the property of the entire estate, wherever located.

(b) “Arkansas property” shall be construed to include, without limiting its generality by this specification, the following items of intangible personal property:

(1) Debts including bank deposits owed to the decedent by any individual resident in this state, or by any bank or other corporation organized under the laws of this state, or by any national bank doing business in this state without regard to the physical location of any written evidence of indebtedness; and

(2) Shares of the capital stock of any corporation organized under the laws of this state without regard to the physical location of the stock certificate.

(c) However, if the decedent at the time of death was a resident of a state or territory of the United States that, at the time of his or her death, provides an exemption to a resident of this state from transfer or death taxes, then the nonresident of the other state or territory shall be exempt from the payment of the estate or inheritance tax in this state.

(d) However, if no federal estate tax is imposed upon the transfer of property, no Arkansas estate tax shall be imposed on the transfer of property.

History. Acts 1941, No. 136, § 4; 1945, No. 294, § 3; 1949, No. 284, § 1; 1983, No. 379, § 18; A.S.A. 1947, § 63-104; Acts 1999, No. 1126, § 41; 2003, No. 645, § 3.

Publisher's Notes. The 1983 amendment to this section took effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.

Amendments. The 2003 amendment, in (a), substituted "January 1, 2002" for "January 1, 1999" and inserted "a" preceding "deceased."

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after Jan. 1, 1999.

Research References

Ark. L. Rev.

Acts 1949 General Assembly — Act 284 Estate Tax on Intangibles of Nonresidents, 3 Ark. L. Rev. 396.

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Estate Tax, 26 U. Ark. Little Rock L. Rev. 495.

26-59-108. Exemptions.

(a) There shall not be imposed any estate taxes, inheritance taxes, or transfer taxes upon the succession of title to any property from any person, association, company, or corporation, whether resident or nonresident of this state, passing to or for the use of:

(1) The State of Arkansas or to or for the use of municipal corporations or other political subdivisions thereof for exclusively public purposes;

(2) Public institutions of learning; or

(3) Any public hospital not for profit within this state.

(b) No estate taxes, inheritance taxes, or transfer taxes levied by this state shall be imposed upon any bequest made by a resident of this state to any religious, charitable, or educational institution, organization, or foundation, whether incorporated or unincorporated, no part of the net earnings of which inures to the benefit of any private stockholder or other individual or corporation, even though the institution, organization, or foundation is located in another state, if the law of such other state provides an equal and like exemption for bequests made by residents of that state to such institutions, organizations, or foundations located in this state.

History. Acts 1943, No. 19, § 1; 1963, No. 25, § 1; 1965, No. 169, § 1; A.S.A. 1947, § 63-151.

Research References

Ark. L. Rev.

Estate Tax Amendment, 9 Ark. L. Rev. 411.

26-59-109. Estate tax returns generally.

(a) (1) **Returns by Executor.** In all cases in which the gross estate at the death of a citizen or resident of the United States exceeds one million dollars (\$1,000,000) and a portion of the property comprising the gross estate is located in Arkansas, then the executor shall make a return with respect to the estate tax imposed by this chapter.

(2) **Citizens or Residents of the United States.** In all cases when the gross estate at the death of a citizen or resident of the United States exceeds three million five hundred thousand dollars (\$3,500,000) and a portion of the property composing the gross estate is located in Arkansas, then the executor shall make a return with respect to the estate tax imposed by this chapter.

(3) **Nonresidents Not Citizens of the United States.** In the case of the estate of every nonresident not a citizen of the United States, if that part of the gross estate that is situated in the United States exceeds three million five hundred thousand dollars

(\$3,500,000) and a portion of the property composing the gross estate is located in Arkansas, then the executor shall make a return with respect to the estate tax imposed by this chapter.

(4) Phase-in of Filing Requirement Amount.

In the case of decedents
dying in:

2002 and 2003	\$1,000,000
2004	1,500,000
2005	1,500,000
2006, 2007, and 2008	2,000,000
2009 and thereafter	2,500,000

(b) Returns by Beneficiaries. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he or she shall include in his or her return a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the Director of the Department of Finance and Administration, such person shall in like manner make a return as to such part of the gross estate.

(c) Returns Due. Returns made under subsection (a) of this section shall be filed within nine (9) months after the date of the decedent's death.

(d) Place of Filing. Estate tax returns shall be filed with the director at his or her office in Little Rock, Arkansas.

History. Acts 1941, No. 136, § 21; 1947, No. 388, § 1; 1983, No. 379, § 19; A.S.A. 1947, § 63-120; Acts 1999, No. 1126, § 10; 2003, No. 645, § 4.

Publisher's Notes. Acts 1983, No. 379, § 19, purported to amend "Section 1 of Act 388 of 1947 and Section 21 of Act 136 of 1941, as amended, the same having been Arkansas Statute 63-120." Acts 1941, No. 136, § 21, was formerly compiled as A.S.A. 1947, § 63-120; Acts 1947, No. 388, § 1, repealed Acts 1941, No. 136, § 21, as to estates of decedents dying after March 28, 1947. The general rule of statutory construction is that a repealed statute cannot be amended. However, in order to give effect to the apparent intent of the legislature pending either a subsequent legislative action or a judicial construction of this provision, Acts 1983, No. 379, § 19, has been codified in this section as an amendment to the 1941 and 1947 provisions, carrying references to all three acts in the historical citation of the section.

Amendments. The 2003 amendment, in (a)(1) and (a)(2), substituted "three million five hundred thousand dollars (\$3,500,000)" for "one million dollars (\$1,000,000)" and "composing" for "comprising"; in (a)(3), substituted "Subdivisions (a)(1) and (a)(2)" for "Subdivision (a)(1)," "\$3,500,000" for "\$1,000,000," deleted information for 1999 through 2001 in the table, substituted

"1,000,000" for "700,000" for 2002 and 2003, "1,500,000" for "850,000" for 2004, "1,500,000" for "950,000" for 2005, "2,000,000" for "1,000,000" for 2006, substituted "2007, and 2008" for "or thereafter" and added "2009 and thereafter ... 3,500,000."

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after Jan. 1, 1999.

Research References

U. Ark. Little Rock L.J.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Estate Tax, 26 U. Ark. Little Rock L. Rev. 495.

26-59-110. Estate tax returns — Contents.

The executor at such times and in such manner as may be required by regulations made pursuant to law shall also file with the Director of the Department of Finance and Administration a return under oath, setting forth:

(1) A description and the value of the gross estate of the decedent at the time of the decedent's death, as defined in the applicable federal revenue act, or in case of the estate of a decedent who at the time of death was not domiciled in the United States, of that part of the decedent's gross estate situated in the United States;

(2) The deductions allowable under this chapter;

(3) The value of the net estate of the decedent as defined in this chapter;

(4) A description and the value of such part of the real property and tangible personal property of the gross estate of a decedent who at the time of the decedent's death was a resident of the State of Arkansas as shall be located or situate, at the time of the decedent's death, without the State of Arkansas;

(5) A description and the value of such part of the real property and tangible personal property of the gross estate of a decedent who at the time of the decedent's death was a nonresident of the State of Arkansas but a resident of the United States as shall be located or situate, at the time of the decedent's death, within the State of Arkansas;

(6) A description and the value of real property situate and personal property having an actual situs in this state and intangible personal property physically present within this state of the estate of a decedent who at the time of the decedent's death was not a resident of the United States; and

(7) The tax paid or payable thereon and the manner of computing the tax, or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to determine and establish the correct tax.

History. Acts 1941, No. 136, § 20; A.S.A. 1947, § 63-119.

26-59-111. Estate tax return — Extension of filing time.

(a) Any person who requests and receives an extension of time in which to file a federal estate tax return, as provided by 26 U.S.C. § 6081, as amended and in effect on January 1, 2002, shall be granted an extension of time in which to file the Arkansas estate tax return for the same period of time as granted for the filing of the federal estate tax return.

(b) This request for extension of time in which to file shall be granted by the timely filing of a copy of the federal application form with the Director of the Department of Finance and Administration and then attaching to the Arkansas estate tax return, when actually filed with the director, a copy of the document granting such federal extension.

(c) The director shall assess interest at the rate of ten percent (10%) per annum on the amount of estate tax finally determined to be due from the date the estate tax return was originally due to be filed.

History. Acts 1941, No. 136, § 22; 1979, No. 401, § 48; 1983, No. 379, § 20; A.S.A. 1947, § 63-121; Acts 1999, No. 1126, § 42; 2003, No. 645, § 5.

Publisher's Notes. Acts 1983, No. 379, § 20, purported to amend "Section 22 of Act 136 of 1941, as amended, by a repealing clause of Subsection (a) of Section 48 of Act 401 of 1979." Acts 1941, No. 136, § 22, was formerly compiled as A.S.A. 1947, § 63-121, but was repealed by Acts 1979, No. 401, § 48, effective January 1, 1980. The general rule of statutory construction is that a repealed statute cannot be amended. However, in order to give effect to the apparent intent of the legislature pending either a subsequent legislative action or a judicial construction of this provision, Acts 1983, No. 379, § 20, has been codified in this section as an amendment to the 1941 and 1979 provisions, carrying references to all three acts in the historical citation of the section.

Amendments. The 2003 amendment substituted "January 1, 2002" for "January 1, 1999" in (a).

Cross References. Extension of time for filing return generally, § 26-18-505.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after Jan. 1, 1999.

Research References

U. Ark. Little Rock L.J.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Estate Tax, 26 U. Ark. Little Rock L. Rev. 495.

26-59-112. Director to make return when no return filed.

If any executor, administrator, fiduciary, trustee, person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the Director of the Department of Finance and Administration shall make the return or list from the director's own knowledge and from such information as the director can obtain through testimony or otherwise. Any return or list so made by the director shall be prima facie good and sufficient for all legal purposes.

History. Acts 1941, No. 136, § 23; A.S.A. 1947, § 63-122.

26-59-113. Payment — Time limitations — Federal election.

(a) The tax imposed by this chapter shall be due and payable nine (9) months after a decedent's death and shall be paid by the executor to the Director of the Department of Finance and Administration.

(b) (1) (A) When the director finds that the payment on the due date of the tax or any part of the tax would impose undue hardship upon the estate, the director may extend the time for any payment of any such part.

(B) However, no extension shall be for more than eighteen (18) months, and the aggregate of the extension with respect to any estate shall not exceed five (5) years from the due date, except as provided in subsection (c) of this section.

(2) In such case, the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension unless further extension is granted.

(c) (1) The provisions of 26 U.S.C. § 6166, as amended and in effect on January 1, 2002, which provide for an election by the representative of a decedent's estate to pay the federal estate tax due on certain qualifying assets of the estate in deferred installments for a period of up to fifteen (15) years at a two percent (2%) interest rate regarding either the estate original shown due on the estate tax return or as later determined to be due following audit shall be adopted as a state estate tax law.

(2) (A) However, the two percent (2%) interest rate shall only apply to the “2-percent portion” as that term is defined in 26 U.S.C. § 6601(j)(2), as amended and in effect on January 1, 2002.

(B) The interest rate on the estate tax exceeding the “2-percent portion” shall be at the rate specified in § 26-18-508 concerning tax deficiencies.

(3) Any timely filed election by the representative of the decedent's estate for deferral of the payment of federal estate taxes shall be deemed to also defer the payment of the applicable portion of Arkansas estate tax for the same periods of time for the Arkansas assets qualifying for this special federal election.

History. Acts 1941, No. 136, §§ 24, 25; 1943, No. 142, §§ 1, 2; 1975, No. 472, § 1; A.S.A. 1947, §§ 63-123, 63-124; Acts 1989, No. 910, § 2; 1999, No. 1126, § 11; 2003, No. 645, § 6.

A.C.R.C. Notes. Acts 1989, No. 910, § 1, provided:

“It is hereby found and determined that it has been the policy of the General Assembly to attempt to conform federal and Arkansas tax laws, as much as possible, so as to eliminate confusion and complexity in the administration of Arkansas state tax laws, and to provide Arkansas citizens with the same treatment for state taxes as they receive for federal taxes. Federal tax law now provides a special installment deferral for the payment of federal estate taxes for certain qualifying assets (generally family farms and closely held businesses) of a decedent's estate that are inherited by the members of the decedent's family. This special installment deferral provision, of up to fifteen (15) years at a four percent (4%) interest rate, has been enacted by Congress to encourage the continued ownership of family farms and closely held family businesses, rather than forcing the sale or heavy mortgaging of the assets of such businesses to immediately pay estate taxes. Arkansas estate tax law does not now contain similar provisions. Arkansas law now requires a much quicker payment of Arkansas estate taxes on assets of a decedent's estate comprising family farms and closely held family businesses. The General Assembly finds and determines that the estates of Arkansas decedents that are entitled to claim the special deferral payment of federal estate taxes, at a four percent (4%) interest rate, should also be entitled to those same privileges for the payment of Arkansas Estate Tax.”

Amendments. The 2003 amendment, in (c)(1) and (c)(2), substituted “January 1, 2002” for “January 1, 1999.”

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after Jan. 1, 1999.

Research References

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Estate Tax, 26 U. Ark. Little Rock L. Rev. 495.

26-59-114. Payment of tax — Discharge of executor.

(a) The Director of the Department of Finance and Administration shall issue to the executor upon payment of the tax imposed by this chapter receipts in triplicate any of which shall be sufficient evidence of the payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle

the executor's accounts.

(b) If the executor files a complete return and makes written application to the director for determination of the amount of the tax and discharge from personal liability, the director as soon as possible, and in any event within one (1) year after receipt of such application, shall notify the executor of the amount of the tax and, upon payment thereof, the executor shall be discharged from personal liability for any additional tax thereafter found to be due and shall be entitled to receive from the director a receipt in writing showing such discharge.

(c) The discharge shall not operate to release the gross estate of the lien of any additional tax that may thereafter be found to be due while the title to such gross estate remains in the executor or in the heirs, devisees, or distributees thereof. However, after the discharge is given no part of the gross estate shall be subject to the lien or to any claim or demand for any such tax after the title thereto has passed to a bona fide purchaser for value.

History. Acts 1941, No. 136, § 30; A.S.A. 1947, § 63-129.

26-59-115. [Repealed.]

Publisher's Notes. This section, concerning payment of tax spread proportionately among distributees and beneficiaries, was repealed by Acts 2007, No. 276, § 2. The section was derived from Acts 1943, No. 99, § 1; 1955, No. 122, § 1; A.S.A. 1947, § 63-150.

26-59-116. Payment of tax — Reimbursement to person paying tax.

(a) If the tax or any part thereof is paid or collected out of that part of the estate passing to or in possession of any person other than the executor in his or her capacity as such, the person shall be entitled to a reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest in the estate is subject to an equal or prior liability for the payment of tax, debts, or other charges against the estate.

(b) It is the purpose and intent of this section that insofar as is practical and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution. However, the Director of the Department of Finance and Administration shall not be charged with enforcing contribution from any person.

History. Acts 1941, No. 136, § 32; A.S.A. 1947, § 63-131.

26-59-117. Payment of tax — Executor's liability.

If any executor makes distribution either in whole or in part of any of the property of an estate to the heirs, next of kin, distributees, legatees, or devisees without having paid or secured the tax due the State of Arkansas under this chapter or obtained the release of the property from the lien of such tax, the executor shall become personally liable for the tax so due the state, or so much of the tax as may remain due and unpaid, to the full extent of the full value of any property belonging to such person or estate which may come into the executor's hands, custody, or control.

History. Acts 1941, No. 136, § 34; A.S.A. 1947, § 63-133.

26-59-118. Payment of tax — Executor's right to sell real estate.

Every executor shall have the same right and power to take possession of or sell, convey, and dispose of real estate as assets of the estate for payment of the tax imposed by this chapter as the executor may have for the payment of the debts of the decedent.

History. Acts 1941, No. 136, § 35; A.S.A. 1947, § 63-134.

Cross References. Sale of real property for payment of debts, § 28-51-301 et seq.

26-59-119. Executor — Notice of appointment.

The executor within two (2) months after the decedent's death or within a like period after qualifying as executor, shall give written notice of his or her qualification as executor to the Director of the Department of Finance and Administration.

History. Acts 1941, No. 136, § 20; A.S.A. 1947, § 63-119.

26-59-120. Duties of probate clerks — Information required.

(a) When letters of administration or letters testamentary are issued by any probate clerk of a county of the State of Arkansas, the probate clerk shall immediately advise the Revenue Division of the Department of Finance and Administration that such letters were granted, giving the name of the executor or administrator and an estimate of the value of the estate of the deceased person so far as the probate clerk is able to ascertain from information obtained, and the number of heirs of the deceased person.

(b) The probate clerk of the county shall also furnish the division a certified copy of the appraisal of the real and personal property of each estate when the appraisal of the property of each of the estates is filed with the probate clerk.

History. Acts 1945, No. 156, § 3; A.S.A. 1947, § 63-149.

26-59-121. Corporate executors of nonresident decedents — Restrictions.

(a) If the executor of the estate of a nonresident is a corporation authorized, qualified, and acting as executor in the jurisdiction of the domicile of the decedent, it shall be under the same duties and obligations as to the giving of notices and filing of returns required by this chapter and may bring and defend actions and suits as may be authorized or permitted by this chapter, to the same extent as an individual executor, notwithstanding that the corporation may be prohibited from exercising in this state any powers as executor.

(b) Nothing contained in this section shall be taken or construed as authorizing corporations not authorized to do business in this state to qualify or act as executor, administrator, or in any other fiduciary capacity if otherwise prohibited by the laws of this state except to the extent herein expressly provided.

History. Acts 1941, No. 136, § 40; A.S.A. 1947, § 63-139.

26-59-122. Disposition and allocation of funds.

(a) All taxes, fees, penalties, and costs received by the Director of the Department of Finance and Administration under the provisions of this chapter shall be general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund, except that the amount of estate taxes collected in a calendar year that exceeds ten percent (10%) of the average annual estate taxes collected for a five-year period

immediately preceding the calendar year or fifteen million dollars (\$15,000,000), whichever is greater, shall be deposited into the State Treasury as special revenues and credited to the General Improvement Fund.

(b) The Treasurer of State shall allocate and transfer the funds to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1941, No. 136, § 45 as added by Acts 1953, No. 118, § 32(J); A.S.A. 1947, § 63-144; Acts 1993, No. 590, § 1; 1995, No. 270, § 8; 1999, No. 1568, § 1; 2001, No. 1681, § 4.

Case Notes

Allocation of Funds.

Allocation of Funds.

In a misappropriation of "public funds" case, where taxpayer challenged the constitutionality of two appropriation bills, Acts 1997, Nos. 413 and 672, and alleged that all appropriations made under the bills constituted illegal exactions in violation of Ark. Const. Art. V, § 29, the trial court did not err in applying the defense of good faith because the Acts were presumed valid and penalties should not be imposed on state officials or citizens for doing likewise; further, in the five-year span between the filing of the lawsuit and the trial court's order, the Economic Development of Arkansas Fund Commission had been abolished and all monies appropriated through the Commission were spent, thus, neither injunctive relief nor restitution were proper remedies and the taxpayer's claims were moot. *White v. Ark. Capital Corporation/Diamond State Ventures*, 365 Ark. 200, 226 S.W.3d 825 (2006).

Chapter 60

Real Property Transfer Tax

26-60-101. Definition.

26-60-102. Transfers to which chapter inapplicable.

26-60-103. Enforcement and regulations by Director of the Department of Finance and Administration.

26-60-104. Rules and regulations.

26-60-105. Tax on transfer instruments — Additional tax.

26-60-106. Payment of tax.

26-60-107. Real Property Transfer Tax Affidavit of Compliance Form.

26-60-108. Real Property Transfer Tax Affidavit of Compliance and Receipt — Completion, storage, audit, etc.

26-60-109. Documentary stamps.

26-60-110. Recordation of deed.

26-60-111. Filing deed in violation — False information — Penalties.

26-60-112. Disposition of funds collected.

Effective Dates. Acts 1971, No. 275, § 12: Mar. 15, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 239 of 1969 provided revenues for the State Parks, Recreation and Travel Commission and the Arkansas Children's Colony Board; that a decision of the Arkansas Supreme Court has delayed these agencies in utilizing said funds; that there is immediate need for these funds particularly in the construction, repair and improvements of the public parks system and the Arkansas Children's Colonies; and that only by

the immediate passage of this Act may said funds be immediately available to be appropriated by the Sixty-Eighth General Assembly. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1971, No. 398, § 3: Mar. 26, 1971. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 275 of 1971, the Real Estate Transfer Tax Act, provides for the sale of documentary stamps to evidence the payment of the tax by the County Recorder rather than by the local offices of the State Revenue Department; that this additional duty placed upon the Recorder will increase the work load of the Recorder's office significantly and places a severe hardship on the various County Recorders throughout the State and should be revised immediately so as to provide for the sale of documentary stamps by the various local offices of the State Revenue Department. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1975, No. 992, § 3: Apr. 11, 1975. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the present law levying the real estate transfer tax has been interpreted to include timber deeds which convey or grant the right to sever and remove timber from lands; that the application of the real estate transfer tax to such timber deeds create an unusual and unreasonable tax burden on timber land owners in this State and that it is in the best interest of the continued growth and development of the wood products industry in the State that timber deeds conveying the right to remove timber from lands for periods of not more than eighteen (18) months be exempt from the real estate transfer tax, that this Act is designed to accomplish this purpose and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1981, No. 287, § 3: Mar. 3, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the present law levying a real estate transfer tax has been the subject of conflicting interpretations as to whether the tax includes deeds, instruments or other writings by which any lands, tenements, or other realty sold or otherwise transferred from the United States, the State of Arkansas or any of the instrumentalities, agencies or political subdivisions thereof; that the confusion which has existed with respect to such conflicting interpretations is not in the public interest as it has impaired the ability of the State of Arkansas and its instrumentalities, agencies, and political subdivisions to transfer ownership of lands, tenements and other realty; and that this Act is designed to resolve such confusion and should be given effect at the earliest possible date. Therefore, an emergency is declared to exist and the Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 754, § 9: July 1, 1983.

Acts 1985, No. 926, § 7: Apr. 15, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Real Property Transfer law has been interpreted by many in a manner inconsistent with the intent of the General Assembly thereby unduly burdening Arkansas taxpayers and landowners both financially and in time consuming paperwork therefore an emergency is declared to exist and, this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its date of passage and approval.”

Acts 1993, No. 1181, § 5: emergency failed to pass. Emergency clause provided: “It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state's ability to continue the duties, responsibilities, and functions of the Arkansas Natural and Cultural Resources Council. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 270, § 19: July 1, 1995. Emergency clause provided: “It is hereby found and determined by the Eightieth General Assembly, that various laws have been enacted since the passage of the Revenue Classification Law which have changed or created various revenues collected by the State, and that this amendment to the Revenue Classification Law is necessary

in order to reflect the various taxes, licenses, fees and other revenues levied and collected for the support of and use by State Government as they currently exist and from which appropriations which become effective July 1, 1995 have been made by the Eightieth General Assembly. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995.”

Acts 1997, No. 385, § 9: Mar. 6, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the original ten subject matter joint interim committees of the General Assembly and in their place established House interim committees and Senate interim committees; that as a result, various sections of the Arkansas Code that refer to the joint interim committees should now refer to the House and Senate interim committees; that this act so provides; and that this act should go into effect as soon as possible in order to make those sections of the Arkansas Code compatible. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1997, No. 788, § 36: became law without the Governor's signature. Noted Mar. 11, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the effectiveness of this act on July 1, 1997 is essential to the operation of the state court system, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental progress. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997.”

Acts 1997, No. 1341, § 35: became law without the Governor's signature. Noted Apr. 11, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the effectiveness of this act on July 1, 1997 is essential to the operation of the state court system, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental progress. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997.”

Acts 1999, No. 361, § 8: July 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly, that the authorized transfer from the real estate transfer tax to support county and circuit clerks continuing education is insufficient and when the amount of transfer is increased, the appropriation level must also be adjusted. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999.”

26-60-101. Definition.

As used in this chapter, “consideration” means the amount of full actual consideration paid or to be paid for the property conveyed, including the amount of any purchase-money encumbrance executed by the purchaser.

History. Acts 1971, No. 275, § 9; A.S.A. 1947, § 84-4308.

26-60-102. Transfers to which chapter inapplicable.

The real property transfer tax imposed by this chapter shall not apply to a transfer of the following:

- (1) A transfer to or from the United States, the State of Arkansas, or any of the

instrumentalities, agencies, or political subdivisions of the United States or the State of Arkansas;

- (2) Any instrument or writing given solely to secure a debt;
- (3) Any instrument solely for the purpose of correcting or replacing an instrument that has been previously recorded with full payment of the tax having been paid at the time of the previous recordation;
- (4) An instrument conveying land sold for delinquent taxes;
- (5) An instrument conveying a leasehold interest in land only;
- (6) An instrument, including a timber deed, that conveys or grants the right to remove timber from land if the instrument grants or conveys the right to remove the timber for a period of not to exceed twenty-four (24) months;
- (7) An instrument given by one (1) party in a divorce action to the other party to the divorce action as a division of marital property whether by agreement or order of the court;
- (8) An instrument given in any judicial proceeding to enforce any security interest in real estate when the instrument transfers the property to the same person who is seeking to enforce the security interest;
- (9) An instrument given to a secured party in lieu of or to avoid a judicial proceeding to enforce a security interest in real estate;
- (10) An instrument conveying a home financed by the Federal Housing Administration, the United States Department of Veterans Affairs, or the United States Department of Agriculture Rural Development, if the sale price of the home is sixty thousand dollars (\$60,000) or less and the seller files with the county recorder of deeds a sworn statement by the buyer stating that neither the buyer nor the spouse of the buyer has owned a home within three (3) years of the date of closing and also stating the sale price of the home;
- (11) An instrument conveying land between corporations, partnerships, limited liability companies, or other business entities or between a business entity and its shareholder, partner, or member incident to the organization, reorganization, merger, consolidation, capitalization, asset distribution, or liquidation of a corporation, partnership, limited liability company, or other business entity; and
- (12) A beneficiary deed under § 18-12-608.

History. Acts 1971, No. 275, § 2; 1975, No. 992, § 1; 1981, No. 287, § 1; 1983, No. 413, § 1; 1983, No. 754, § 1; 1985, No. 926, § 1; 1985, No. 1063, § 4; 1985, No. 1081, § 4; A.S.A. 1947, § 84-4302; Acts 1987, No. 642, § 1; 1993, No. 1046, § 1; 1997, No. 833, § 1; 2003, No. 1086, § 1; 2007, No. 243, § 3.

Amendments. The 2003 amendment, in (11), inserted “partnerships ... business entities,” substituted “business entity” for “corporation,” inserted “partners, or members,” “capitalization, asset distribution” and “partnership ... other business entity.”
The 2007 amendment added (12).

26-60-103. Enforcement and regulations by Director of the Department of Finance and Administration.

The enforcement of the provisions of this chapter shall be the responsibility of the Director of the Department of Finance and Administration under regulations to be promulgated by the director.

History. Acts 1971, No. 275, § 8; A.S.A. 1947, § 84-4307.

26-60-104. Rules and regulations.

The Director of the Department of Finance and Administration is authorized to promulgate rules and regulations to carry out the purposes of this chapter which shall be submitted to the:

(1) House Interim Committee on City, County, and Local Affairs and the Senate Interim Committee on City, County, and Local Affairs; or

(2) House Committee on City, County, and Local Affairs and the Senate Committee on City, County, and Local Affairs.

History. Acts 1983, No. 754, § 7; A.S.A. 1947, § 84-4309; Acts 1997, No. 385, § 4.

26-60-105. Tax on transfer instruments — Additional tax.

(a) There is levied on each deed, instrument, or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser, or any other person by the purchaser's direction, when the consideration for the interest or property conveyed exceeds one hundred dollars (\$100), a tax at the rate of one dollar and ten cents (\$1.10) for each one thousand dollars (\$1,000) or fractional part thereof.

(b) In addition to the tax levied in subsection (a) of this section on each deed, instrument, or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons by his or her or their direction when the consideration for the interest or property conveyed exceeds one hundred dollars (\$100), as levied under the provisions of this chapter, there is levied an additional tax of two dollars and twenty cents (\$2.20) for each one thousand dollars (\$1,000), or fractional part thereof, to be paid by the purchaser and to be allocated and used for the purposes as provided in § 15-12-103.

History. Acts 1971, No. 275, § 1; A.S.A. 1947, § 84-4301; Acts 1987, No. 729, § 4; 1993, No. 1181, § 1.

A.C.R.C. Notes. Acts 2007, No. 793, § 38, provided:

“SPECIAL FUNDING PROVISION - REAL ESTATE TRANSFER TAX. For the biennium ending June 30, 2009, revenues derived from the tax levied by Arkansas Code § 26-60-105(b) shall be credited by the Treasurer of State each fiscal year of the biennium in the order and percentage and amounts as follows:

“(1) Three percent (3%) for distribution to the Constitutional Officers Fund and the State Central Services Fund;

“(2) Of the eighty percent (80%) of the net amount to be credited to the Arkansas Natural and Cultural Resources Grants and Trust Fund, the first four million five hundred thousand dollars (\$4,500,000) shall be distributed to the General Revenue Fund Account of the State Apportionment Fund; and

“(3) The remainder as provided in Arkansas Code § 15-12-103(b)(1) — (3).”

26-60-106. Payment of tax.

The tax levied by this chapter:

(1) Applies at the time of transfer;

(2) Shall be computed on the basis of the full consideration for the real estate transferred; and

(3) Unless agreed upon otherwise, shall be paid one-half (½) by the grantor or seller and one-half (½) by the grantee or purchaser.

History. Acts 1971, No. 275, § 3; 1983, No. 754, § 2; 1985, No. 926, § 2; 1985, No. 1081, § 1; 1985, No. 1063, § 1; A.S.A. 1947, § 84-4303; Acts 1995, No. 383, § 1.

26-60-107. Real Property Transfer Tax Affidavit of Compliance Form.

(a) (1) The Director of the Department of Finance and Administration shall design a “Real Property Transfer Tax Affidavit of Compliance” form which shall be in triplicate.

(2) (A) The form shall contain essentially the information prescribed in this section.

(B) The affidavit portion shall provide space for:

(i) The name and address of the grantor or seller;

(ii) The name and address of the grantee or buyer;

(iii) The date of the real property transfer as reflected on the transfer instrument;

(iv) The name of the county where the property is located;

(v) The amount of the full consideration for the transaction or a statement giving the reason the real property transfer tax does not apply to the transaction unless it is clearly evident from the contents of the document to be recorded without reference to any other writing or extrinsic evidence that the instrument is exempt from the real property transfer tax under one (1) of the provisions in § 26-60-102, in which case the county recorder may record the instrument without such an affidavit. In any case when the county recorder doubts the entitlement to the exemption, the county recorder shall require the affidavit or a certification, setting out the reasons for the exemption in full to be submitted with the instrument prior to recording the instrument; and

(vi) The value of the documentary stamps attached to the face of the instrument.

(b) (1) If the real property transfer instrument is for a transfer upon which no tax is due but is not clearly exempt under § 26-60-102, the same affidavit shall provide for stating this fact and shall be signed by the grantee or his or her agent, whose address shall be included in a space provided on the affidavit and be presented with the transfer instrument to the county recorder.

(2) The director shall furnish a supply of the “Real Property Transfer Tax Affidavit of Compliance” forms to each revenue office in each county of this state and may make these forms available to the county recorder or any other interested persons in each county upon request to the director.

(3) (A) The grantee or his or her agent shall complete the affidavit, including a statement of the full consideration for such transaction and the amount of tax to be reflected by documentary stamps on the face of the instrument.

(B) The grantee or his or her agent shall attach the proper number of documentary stamps to the face of the instrument in such manner that all such stamps will be fully visible in the records of the county recorder where the county recorder maintains records by reproducing the document by photographic, photocopy, or other reproductive method.

(c) (1) When it is clearly evident from the contents of the instrument without reference to any other writing or extrinsic evidence that the instrument is exempt from the real

property transfer tax under one (1) of the provisions in § 26-60-102, the county recorder may record the instrument without requiring the certification allowed as an alternative to the affidavit.

(2) If the county recorder doubts the entitlement to the exemption, the county recorder shall require a certification or affidavit setting out the reasons for the exemption in full to be submitted with the instrument prior to recording the instrument.

(d) (1) (A) On receipt and recordation of the instrument, the county recorder will retain two (2) copies of the affidavit.

(B) (i) One (1) copy will be held for the director who will pick up the copies at reasonable intervals.

(ii) The second copy will be held for the county assessor who will pick up the copies at reasonable intervals.

(iii) The third copy shall be returned to the party filing the instrument for record.

(2) (A) The affidavits in the files of the director will be public records governed by the same rules and regulations as are applied to the disclosure of motor vehicle titling and registration information.

(B) The copies of the affidavit in the hands of the county assessor shall be public records subject to the same laws regarding disclosure as all other taxpayer records of the county assessor.

(e) (1) Upon receipt of the instrument, the county recorder shall cancel the documentary stamps or shall note that the instrument is exempt or that no tax is due on the face of the instrument.

(2) The county recorder shall place on the face of the affidavit a file stamp and the book and page or instrument number of the recorded instrument.

History. Acts 1971, No. 275, § 5; 1983, No. 754, § 4; 1985, No. 926, § 4; 1985, No. 1063, § 3; 1985, No. 1081, § 3; A.S.A. 1947, § 84-4305.

26-60-108. Real Property Transfer Tax Affidavit of Compliance and Receipt — Completion, storage, audit, etc.

(a) The Director of the Department of Finance and Administration or his or her agent before accepting payment of the real property transfer tax shall require that the affidavit portion of the Real Property Transfer Tax Affidavit of Compliance form and receipt be completed, including the statement of the full amount of the consideration for the transaction and the amount of tax to be reflected on the receipt portion thereof in evidence that such information was furnished by the person signing the affidavit before the director shall receive payment of the tax, and sign the receipt. The director shall attach the stamps to the face of the instrument.

(b) (1) The original copy of the affidavit and receipt shall be retained by the director or his or her agent and shall be treated as a confidential tax record in the same manner as required by law for confidentiality of state income tax returns.

(2) The information shall be released to duly elected county assessors and become a public document.

(c) (1) The clerk's copy of the affidavit and receipt shall be delivered to the person paying the tax and the receipt portion may be detached and retained by the taxpayer.

(2) The clerk's copy of the affidavit shall be presented to the county recorder of

deeds, who shall review and determine that the same is in compliance with this chapter before the instrument of real property transfer may be accepted for recordation and record the receipt number evidencing payment of the tax on the real property transfer instrument.

(3) In the case of instruments exempt from the tax, the county recorder shall record a notation to this effect on the transfer instruments.

(4) The county recorder shall place on the face of the affidavit a file stamp and the book and page numbers or instrument number.

(d) (1) The copies of the affidavit stamped as required above and as required in § 26-60-107(b)(3)(A) shall be placed by the county recorder in a box or file kept for such purpose.

(2) At least weekly, the Revenue Division of the Department of Finance and Administration shall pick up the affidavits and shall attach those upon which tax is paid to the original copy thereof retained in the Revenue Division of the Department of Finance and Administration's files.

(e) Copies of the affidavits shall be kept for audit for compliance with this chapter and for audit by the Division of Legislative Audit.

(f) The triplicate copy shall be made available to the county assessor.

History. Acts 1971, No. 275, § 5; 1983, No. 754, § 4; 1985, No. 926, § 4; 1985, No. 1063, § 3; 1985, No. 1081, § 3; A.S.A. 1947, § 84-4305n.

26-60-109. Documentary stamps.

The Director of the Department of Finance and Administration shall design documentary stamps in appropriate denominations and shall make the stamps available for purchase at offices of the Revenue Division of the Department of Finance and Administration and by consignment arrangement with title companies, banks, and savings and loans associations throughout the state.

History. Acts 1971, No. 275, § 5; 1971, No. 398, § 1; 1985, No. 926, § 4; 1985, No. 1063, §§ 1, 3; 1985, No. 1081, § 3; A.S.A. 1947, § 84-4305; Acts 1989, No. 513, § 1; 2005, No. 260, § 1.

Amendments. The 2005 amendment substituted "title companies, banks, and" for "banks and."

26-60-110. Recordation of deed.

(a) It shall be the duty of the grantee or buyer or his or her agent to furnish proof of payment of tax as provided in this chapter before the real estate transfer instrument may be accepted by the county recorder of deeds for recordation.

(b) The county recorder of deeds shall not record any instrument evidencing a transfer of title subject to this chapter unless:

(1) The instrument at the time it is presented for recording shall have attached thereto or be accompanied by an affidavit in the form provided in this chapter, containing the information required in this chapter, and have documentary stamps attached to the face of the instrument evidencing full payment of the real property transfer tax on the transaction. The instrument shall contain a notation on its face which shall be recorded as part of the instrument that the affidavit was completed; or

(2) (A) In the alternative, the instrument has stamped thereon or attached thereto in a manner which will cause it to be recorded as a part of the instrument the following

statement:

“I certify under penalty of false swearing that the legally correct amount of documentary stamps have been placed on this instrument”.

(B) This statement shall be signed by the grantee or his or her agent, and the grantee's address shall be clearly shown on the instrument.

(c) The county recorder of deeds shall not record any instrument whereon documentary stamps are attached in such manner that the amount printed on each stamp is not visible.

History. Acts 1971, No. 275, §§ 3, 4; 1983, No. 754, §§ 2, 3; 1985, No. 926, §§ 2, 3; 1985, No. 1063, §§ 1, 2; 1985, No. 1081, §§ 1, 2; A.S.A. 1947, §§ 84-4303, 84-4304; Acts 1995, No. 1299, §§ 1, 2.

Case Notes

Revenue Stamps.

Revenue Stamps.

Trial court did not err in awarding an individual punitive damages and attorney fees under § 5-37-226(c), and although the trial court did not make a finding that the instrument was filed with knowledge that it was not genuine or authentic, such a finding was implicit when the court awarded punitive damages under the statute, and the findings were supported by the evidence that the company prepared quitclaim deeds to the entire 40 acres, despite one acre having been carved out, the company was a shell company, and there were no revenue stamps on the deeds under subsection (b) of this section, and the letter attached to the individual's complaint implied that the company was seeking money from the individual in order to clear his title; because the award was based on a statutory remedy, the trial court could have awarded punitive damages without first having awarded compensatory damages. *J. Michael Enters. v. Oliver*, 101 Ark. App. 48, 270 S.W.3d 388 (2007), review denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 272 (Apr. 24, 2008).

26-60-111. Filing deed in violation — False information — Penalties.

(a) (1) Any person filing a deed for record who knowingly, willfully, and fraudulently files the deed in violation of this chapter upon conviction thereof in addition to other penalties provided by law shall be subject to a fine of five hundred dollars (\$500) or one percent (1%) of the amount of the transaction, whichever is greater.

(2) In addition to such fine and penalties, the affidavit and certification provided for by this chapter is declared to be a return within the meaning of the Arkansas Tax Procedure Act, § 26-18-101 et seq., and the purchase of stamps is the payment of the tax due on the return, and the person required to furnish proof of payment shall be a taxpayer within the meaning of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(b) Any person guilty of providing false information on the affidavit or making a false certification or who shall fail to disclose the full amount of the consideration of the transaction on the affidavit and pay the tax due thereon or who makes a false certification and fails to pay the correct amount of tax due as required by this chapter, shall be subject to the penalties provided for in §§ 26-18-201 — 26-18-204.

History. Acts 1971, No. 275, § 8; 1983, No. 754, § 6; 1985, No. 926, § 5; 1985, No. 1063, § 5; 1985, No. 1081, § 5; A.S.A. 1947, § 84-4307.

26-60-112. Disposition of funds collected.

(a) The revenues from the additional tax levied by § 26-60-105(b) shall be deemed

special revenues and shall be deposited and distributed according to § 15-12-103.

(b) The revenues derived from the tax levied by § 26-60-105(a) shall be deposited by the Director of the Department of Finance and Administration into the State Treasury, and the Treasurer of State after deducting three percent (3%) of the revenues for distribution to the Constitutional Officers Fund and the State Central Services Fund to be used for the purposes as provided by law shall distribute the net amount of the revenues as follows:

(1) Ten percent (10%) of the remainder shall be distributed as special revenues, as follows:

(A) The first ninety thousand dollars (\$90,000) of the remainder during each fiscal year shall be credited to the County and Circuit Clerks Continuing Education Fund, which is established in the State Treasury, to be used for defraying the expenses of training seminars and other educational projects benefiting county and circuit clerks in this state, as provided by appropriations enacted by the General Assembly and shall be used as follows:

(i) (a) Forty-five thousand dollars (\$45,000) for county clerks' continuing education.

(b) Any unexpended balances of moneys designated for county clerks' continuing education shall be retained exclusively for the purpose of county clerks' continuing education; and

(ii) (a) Forty-five thousand dollars (\$45,000) for circuit clerks' continuing education.

(b) Any unexpended balances of moneys designated for circuit clerks' continuing education shall be retained exclusively for the purpose of circuit clerks' continuing education; and

(B) The remainder of the ten percent (10%) of the remainder available for distribution during each fiscal year shall be credited as special revenues to the County Aid Fund, to be distributed in the manner provided by law to the circuit clerk in the county where the property upon which the tax is paid is situated, to be paid over by the circuit clerk to the county general fund; and

(2) Ninety percent (90%) of the remainder of the revenues shall be distributed as follows:

(A) The entire amount collected during each fiscal year until there has been collected an amount of such tax equaling the amount of tax collected under this chapter during fiscal year 1982-1983 shall be credited as general revenues to be allocated to the various funds participating in the distribution of general revenues in the amount of each such fund as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.; and

(B) (i) After making the distribution of the revenues as provided in subdivision (b)(2)(A) of this section, the remainder available each fiscal year shall be credited as special revenues to the State Administration of Justice Fund to be used for supplementing moneys in the State Administration of Justice Fund for court reporter salaries and expenses in the event that the moneys available in the Court Reporter's Fund are inadequate during any fiscal year to make the necessary payments for salary and related expenses of the various court reporters of the state.

(ii) Any amount received over and above this amount shall be credited as special revenues to the County Aid Fund.

History. Acts 1971, No. 275, § 6; 1983, No. 754, § 5; A.S.A. 1947, § 84-4306; Acts 1987, No. 729, § 6; 1993, No. 1054, § 1; 1995, No. 270, § 13; 1995, No. 383, § 2; 1997, No. 788, § 28; 1997, No. 1341, § 27; 1999, No. 361, § 1; 2001, No. 348, § 6; 2007, No. 246, § 3.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1995, No. 383. This section was also amended by Acts 1995, No. 270, § 13, to read as follows:

“(a) Those revenues derived from the additional tax levied by § 26-60-105(b) shall be deposited by the Director of the Department of Finance and Administration in the State Treasury as special revenues and distributed according to § 15-12-103.

“(b) Those revenues derived from the tax levied in § 26-60-105(a) shall be deposited by the Director of the Department of Finance and Administration in the State Treasury, and the Treasurer of State shall, after deducting three percent (3%) thereof for distribution to the Constitutional Officers Fund and the State Central Services Fund to be used for the purposes as provided by law, distribute the net amount thereof as follows:

“(1) Ten percent (10%) of the remainder shall be distributed as special revenues, as follows:

“(A) The first forty thousand dollars (\$40,000) thereof during each fiscal year shall be credited to the County and Circuit Clerks Continuing Education Fund, which is established in the State Treasury, to be used for defraying the expenses of training seminars and other educational projects benefiting county and circuit clerks in this state, as provided by appropriations enacted by the General Assembly; and

“(B) The remainder of the ten percent (10%) thereof available for distribution during each fiscal year shall be credited as special revenues to the County Aid Fund, to be distributed in the manner provided by law to the circuit clerk in the county in which the property upon which the tax is paid is situated, to be paid over by the circuit clerk to the county general fund;

“(2) Ninety percent (90%) of the remainder thereof shall be distributed as follows:

“(A) The entire amount collected during each fiscal year until there has been collected an amount of such tax equaling the amount of tax collected under this chapter during fiscal year 1982-83 shall be credited as general revenues to be allocated to the various funds participating in the distribution of general revenues in the amount of each such fund as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.; and

“(B) After making the distribution thereof as provided in subdivision (2)(A) of this subsection, the remainder available each fiscal year shall be credited as special revenues to the County Aid Fund to be used for supplementing moneys therein for court reporter salaries and expenses as provided by law. Any amount received over and above this amount shall be deposited into the State Treasury as general revenues.”

Acts 2007, No. 793, § 38, provided:

“SPECIAL FUNDING PROVISION - REAL ESTATE TRANSFER TAX. For the biennium ending June 30, 2009, revenues derived from the tax levied by Arkansas Code § 26-60-105(b) shall be credited by the Treasurer of State each fiscal year of the biennium in the order and percentage and amounts as follows:

“(1) Three percent (3%) for distribution to the Constitutional Officers Fund and the State Central Services Fund;

“(2) Of the eighty percent (80%) of the net amount to be credited to the Arkansas Natural and Cultural Resources Grants and Trust Fund, the first four million five hundred thousand dollars (\$4,500,000) shall be distributed to the General Revenue Fund Account of the State Apportionment Fund; and

“(3) The remainder as provided in Arkansas Code § 15-12-103(b)(1) - (3).”

Publisher's Notes. As to the disposition of moneys collected under the provisions of Acts 1969, No. 239, see Acts 1971, No. 275, § 7.

Amendments. The 2007 amendment, in the introductory paragraph of (b)(1)(A), substituted “ninety thousand dollars (\$90,000)” for “sixty thousand dollars (\$60,000),” and added “shall be

used as follows” at the end; and added (b)(1)(A)(i) and (b)(1)(A)(ii).

Cross References. Legislative intent of Acts 1997, Nos. 788 and 1341, § 16-10-601. Transition to state funding, § 16-87-301.

Case Notes

Constitutionality.

Constitutionality.

The provisions of Acts 1969, No. 239, § 6, authorizing state agencies to pledge portions of the tax collected for the payment of “revenue bonds,” violated Ark. Const. Amend. 20. *Borchert v. Scott*, 248 Ark. 1041, 460 S.W.2d 28 (1970) (decision under prior law).

Chapter 61

Tax on Timberlands and Rangelands

26-61-101. Title.

26-61-102. Definition.

26-61-103. Levy of tax.

26-61-104. Nature of tax.

26-61-105. Lien on property.

26-61-106. [Repealed.]

26-61-107. Classification of lands.

26-61-108. Time for payment.

26-61-109. Penalty and delinquency.

26-61-110. Disposition of taxes collected.

26-61-111. Failure of county officials to collect taxes.

26-61-112. Exemption from tax.

Cross References. Severance tax, § 26-58-101 et seq.

Preambles. Acts 1969, No. 354 contained a preamble which read:

“Whereas, the State Forestry Commission provides a statewide program for the prevention and suppression of forest fires; and

“Whereas, the timber resources of this State constitute one of the major sources of income in this State, and the preservation and protection of such timber resources are essential to the public welfare; and

“Whereas, the forest fire protection services and programs of the State Forestry Commission are of benefit to each owner of timberland in this State, and it is appropriate that the owners of timberlands participate in defraying the cost of such services,

“Now Therefore”

Effective Dates. Acts 1969, No. 354, § 8: Apr. 7, 1969. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State Forestry Commission is in need of additional funds in order to continue and improve its statewide program of forest fire protection and that the immediate passage of this Act is necessary in order that appropriate standards may be established for the enforcement of the tax on timberlands imposed herein and in order to enable the respective county officials to perform their duties under the provisions of this Act in order that taxes on timberlands due for the calendar year 1969 may be placed on the tax books for collection in 1970. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1971, No. 668, § 4: Apr. 7, 1971. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 354 of 1969 provided for the levy of a special Forest Fire Protection Tax to assist the State Forestry Commission in defraying the cost of providing a Statewide program for the prevention and suppression of forest fires; that said Act

354 of 1969 provided for annual remittance of the taxes collected to the State Treasurer; that the State Forestry Commission vitally needs the moneys collected under the Forest Fire Protection Tax Act of 1969 to defray salaries and other expenses incurred by the Commission throughout each fiscal year; and that only by the immediate passage of this Act that provisions can be made whereby quarterly remittance of the Forest Fire Protection Tax would be made to the State Treasurer, thereby providing a more even flow of the revenues derived from said tax for the support of the State Forestry Commission. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1977, No. 388, § 7: Mar. 10, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State Forestry Commission is in need of additional funds in order to continue and improve its statewide program of forest, pasture and rangeland fire protection and to defray the costs of its programs for the development, protection and preservation of the forest, range and pasturelands in the State and that the immediate passage of this Act is necessary in order to enable the respective County officials to perform their duties under this Act in order that taxes on timberlands and rangelands, but shall not include pasturelands due for the calendar year 1977 may be placed on the tax books for collection in 1978. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1981, No. 730, § 18: July 1, 1981. Emergency clause provided: “It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981.”

Acts 1993, Nos. 865 and 1112, § 7: Apr. 2, 1993 and Apr. 13, 1993, respectively. Emergency clause provided: “It is hereby found and determined by the General Assembly that the State Forestry Commission is in need of additional funds in order to continue and improve its statewide program of forest fire protection and to defray the costs of its programs for the development, protection, and preservation of the forest lands in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

26-61-101. Title.

This chapter shall be known and cited as the “Forest Fire Protection Tax Act of 1969”.

History. Acts 1969, No. 354, § 5; A.S.A. 1947, § 84-314.

26-61-102. Definition.

As used in this chapter, “timberlands” shall be defined in the manner prescribed in Arkansas Constitution, Amendment 59, and legislation enacted to implement the provisions of Arkansas Constitution, Amendment 59.

History. Acts 1977, No. 388, § 1; 1981, No. 426, § 2; 1985, No. 1010, § 2; A.S.A. 1947, § 84-310.1.

Publisher's Notes. Acts 1985, No. 1010, § 4, provided that the provisions of this act shall be applicable with respect to taxes levied on timber lands in 1985 for collection in 1986.

Ark. Const. Amend. 59, referred to in this section, repealed Ark. Const., Art. 16, § 5, and substituted a new section therefor, and added Ark. Const., Art. 16, §§ 14-16.

26-61-103. Levy of tax.

There is levied on all timberlands in this state an annual tax of fifteen cents (15¢) per acre to be collected in the manner provided in this chapter for deposit into the State Treasury for credit to the State Forestry Fund as special revenues to be used for the maintenance, operation, and improvement of the Arkansas Forestry Commission in its statewide program for the detection, prevention, and suppression of forest fires.

History. Acts 1969, No. 354, § 1; 1977, No. 388, § 2; 1981, No. 426, § 1; 1985, No. 1010, § 1; A.S.A. 1947, § 84-310; Acts 1993, No. 865, § 1; 1993, No. 1112, § 1.

Publisher's Notes. As to applicability of 1985 amendment see Publisher's Notes to § 26-61-102. Acts 1993, Nos. 865 and 1112, § 3, provided:

"The Arkansas Forestry Commission is hereby authorized to promulgate such rules and regulations necessary to administer the fees, rates, tolls, or charges for services established by this act and is directed to prescribe and collect such fees, rates, tolls, or charges for the services delivered by the Arkansas Forestry Commission in such manner as may be necessary to support the programs of the commission as directed by the Governor and Legislature."

26-61-104. Nature of tax.

The tax levied in this chapter shall not be construed as an ad valorem tax but shall constitute a special tax upon each acre of timberland to assist in defraying the cost of a statewide program of forest fire protection.

History. Acts 1969, No. 354, § 3; A.S.A. 1947, § 84-312.

26-61-105. Lien on property.

The tax if not paid in the manner provided in this chapter shall constitute a lien upon and bind the property on which the tax is imposed until paid.

History. Acts 1969, No. 354, § 3; A.S.A. 1947, § 84-312.

26-61-106. [Repealed.]

Publisher's Notes. This section, concerning the timberland tax due date, was repealed by Acts 1993, No. 1039, § 6. The section was derived from the following sources: Acts 1969, No. 354, § 4; A.S.A. 1947, § 84-313.

26-61-107. Classification of lands.

(a) The Assessment Coordination Department shall establish standards for the classification of lands in this state which are deemed as timberlands and shall certify these standards to the respective county assessors of the various counties in this state.

(b) (1) It shall be the duty of the several county assessors in the respective counties of this state to identify upon the assessment records of all taxable real property in their respective counties the number of acres of property which are classified as timberlands.

(2) This information shall be extended on the assessment records submitted to the respective county clerks and shall be extended on the tax books, at the rate of tax per acre of timberlands as provided in this chapter, as a separate item of taxes to be collected by the respective county collectors at the same time that real property taxes are paid.

(c) The county clerk shall be entitled to a fee of two percent (2%) of the taxes collected

under this chapter to defray the costs incurred by the county clerk in performing his or her duties in connection with the taxes levied in this chapter.

History. Acts 1969, No. 354, § 2; 1971, No. 668, § 1; A.S.A. 1947, § 84-311.

26-61-108. Time for payment.

The special taxes levied under the provisions of this chapter shall be paid by the respective owners of timberlands at the time real property taxes are paid but in no event later than October 10 of the year next following the year in which the taxes were extended on the tax records.

History. Acts 1969, No. 354, § 2; 1971, No. 668, § 1; A.S.A. 1947, § 84-311; Acts 1993, No. 1039, § 1.

26-61-109. Penalty and delinquency.

(a) If the tax is not paid within the time provided in this chapter, a penalty of up to twenty-five percent (25%) as determined by ordinance of the county quorum court of the amount shall be added thereto and shall be collected at the time delinquent real property taxes thereon are paid.

(b) Any delinquent taxes under the provisions of this chapter shall be collected in the same procedures as provided by law for the collection and payment of taxes on real estate. These taxes shall be transmitted monthly by the county collector to the county treasurer for deposit with the Arkansas Forestry Commission as provided in this chapter.

History. Acts 1969, No. 354, § 3; A.S.A. 1947, § 84-312; Acts 1993, No. 1039, § 2.

26-61-110. Disposition of taxes collected.

(a) The county treasurer on or before the twentieth day following the end of each calendar quarter shall transmit to the Arkansas Forestry Commission all taxes collected under the provisions of this chapter during the preceding calendar quarter.

(b) The county collector shall be allowed a fee of two percent (2%) as a fee of his or her office to defray the cost of collection, and the county treasurer shall be allowed a two percent (2%) commission in accordance with § 21-6-302.

(c) The commission upon receipt thereof shall deposit the same with the Treasurer of State, who shall deposit the moneys as special revenues into the State Forestry Fund as provided in § 26-61-103.

History. Acts 1969, No. 354, § 2; 1971, No. 668, § 1; A.S.A. 1947, § 84-311; Acts 1993, No. 1039, § 3.

26-61-111. Failure of county officials to collect taxes.

(a) It is found and determined by the General Assembly that the Arkansas Forestry Commission is in need of additional funds for the protection of the forestlands of this state from forest fires and for the performance of the various duties required to be performed by the commission, and it is further determined by the General Assembly that the commission derives its support from:

- (1) The allocation of general revenue funds to partially defray its operating costs;
- (2) The allocation of timber and timber products severance taxes; and
- (3) The income derived from the taxes levied on timberland under the provisions

of this chapter.

(b) The General Assembly further determines that county officials in certain counties of this state are not enforcing the duties imposed upon their respective offices with respect to the levy and collection of the forest fire protection tax as intended by law and that, in order to recover moneys lost for the commission due to the failure of these officials to levy and collect these taxes and to assure equity in the enforcement of tax collections in this state, those counties in which the officials fail to levy and collect the forest fire protection tax shall be penalized by withholding the amount of general revenues intended to be distributed as county aid to those counties, with the amount withheld to be equal to the amount of the forest fire protection tax that should have been collected.

(c) (1) (A) Each county assessor shall report to the State Forester the number of acres of timberland as reflected in the reappraisal of real property in his or her county under Arkansas Constitution, Amendment 59.

(B) The State Forester may examine the books of the county assessor in order to verify the report.

(2) (A) (i) If the State Forester certifies to the Treasurer of State that the taxable timberland acreage within a county under this chapter has decreased in any year to less than ninety-five percent (95%) of the taxable timber land acreage as determined by the reassessment of property under Arkansas Constitution, Amendment 59, the Treasurer of State shall withhold from general revenues within the County Aid Fund an amount calculated by multiplying five cents (5¢) by the number of taxable timberland acres which the State Forester certifies as having not been taxed that year under this chapter.

(ii) The Treasurer of State shall place in escrow the funds withheld pending further instructions by the State Forester.

(B) (i) Within six (6) months after certification, the State Forester shall examine the records of the county assessor and certify to the Treasurer of State the amount of forest fire protection tax revenues which were not collected as a result of errors or omissions, and that amount shall be transferred by the Treasurer of State from the escrow account to the State Forestry Fund to be used for the maintenance, operation, and support of the commission.

(ii) The remainder of the county's escrowed funds shall be distributed as county aid to the county.

History. Acts 1981, No. 730, § 17; 1985, No. 1010, § 3; A.S.A. 1947, § 84-314.1.

Publisher's Notes. As to applicability of 1985 amendment see Publisher's Notes to § 26-61-102.

26-61-112. Exemption from tax.

Disabled veterans, surviving spouses of disabled veterans, and surviving minor dependent children of disabled veterans who are eligible for the exemption from the payment of all state taxes on the homestead and personal property owned by them, as provided for in § 26-3-306, shall be exempt from the payment of the tax levied in this chapter if the amount of tax owed is less than five dollars (\$5.00).

History. Acts 1993, No. 1082, § 1; 1995, No. 1296, § 88.

Chapter 62 Alternative Fuels Tax

Subchapter 1 — General Provisions
Subchapter 2 — Rates, Licenses, and Records

Cross References. Arkansas Alternative Fuels Development Act, § 15-13-101 et seq.

Effective Dates. Acts 1993, No. 1119, § 28: July 1, 1993. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly that no provisions currently exist in the Arkansas Code regarding the taxation of certain alternative fuels utilized in propelling motor vehicles in this state; that such vehicles are currently being operated on the highways, roads and streets of this state without the payment of any fuel taxes thus creating an inequity among the various classes of road-users in this state. It is further found that only by the effectiveness of this act as soon as practicable may such inequity be corrected. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1993.”

Research References

Am. Jur. 7A Am. Jur. 2d Autom. & High. Traff. § 184.

27A Am. Jur. 2d Energy § 1, § 60 et seq.

64 Am. Jur. 2d Pub. Util. § 15.5.

Subchapter 1
— General Provisions

26-62-101. Title.

26-62-102. Definitions.

26-62-103. Penalties.

26-62-104. Rules and regulations.

26-62-105. Failure, refusal, etc., to make report or pay tax — Penalties, interest — Attorney's fees.

26-62-106. False or fraudulent reports — Fraudulent avoidance of tax — Penalty.

26-62-107. Assessment of delinquent tax — Time limitations.

26-62-108. Conflicts with Arkansas Tax Procedure Act.

26-62-109. Disposition of revenue.

26-62-110. Conflicts with other laws.

26-62-111. Audits.

Effective Dates. Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

26-62-101. Title.

This chapter may be known and cited as the “Alternative Fuels Tax Law”.

History. Acts 1993, No. 1119, § 1.

26-62-102. Definitions.

As used in this chapter:

(1) (A) “Alternative fuels” means and includes all liquids or combustion gases

used or suitable for use in an internal combustion engine or motor for the generation of power for motor vehicles, including, but not limited to, natural gas fuels as defined in subdivision (9) of this section.

(B) “Alternative fuels” also means and includes:

(i) Methanol, denatured ethanol, and other alcohols;

(ii) Mixtures containing eighty-five percent (85%) or more or such percentage, but not less than seventy percent (70%), as determined by the United States Secretary of Energy by rule to provide for requirements relating to cold start, safety, or vehicle functions, by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels;

(iii) Hydrogen;

(iv) Coal-derived liquid fuels;

(v) Fuels, other than alcohol, derived from biological materials;

(vi) Electricity, including electricity from solar energy; and

(vii) Any other fuel the United States Secretary of Energy

determines by rule is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

(C) “Alternative fuels” does not include fuels subject to the:

(i) Taxes levied by the Motor Fuel Tax Law, § 26-55-201 et seq.;

or

(ii) Taxes or fees levied by the Special Motor Fuels Tax Law, § 26-56-101 et seq.;

(2) “Alternative fuels supplier” means and includes every person who:

(A) Sells alternative fuels for the purpose of delivering alternative fuels or delivers alternative fuels into the fuel tanks of motor vehicles; or

(B) Sells alternative fuels to any user or dealer, including an interstate user, or an IFTA carrier user, which user or dealer delivers alternative fuels into the fuel tanks of motor vehicles;

(3) “Dealer” means and includes every person who sells or delivers alternative fuels to a user at retail for use in motor vehicles;

(4) “Director” means the Director of the Department of Finance and Administration or his or her duly authorized agents;

(5) “Gallon equivalent” or “equivalent gallon” means a quantity of alternative fuels which is the equivalent of one United States gallon (1 U.S. gal.) of gasoline as determined by the director based on United States standards or industry standards, provided that one United States gallon (1 U.S. gal.) of gasoline shall be the equivalent of one hundred cubic feet (100 c.f.) of natural gas fuels;

(6) “Interstate user” means any person, except an IFTA carrier user as defined in subdivision (7) of this section, who imports or exports alternative fuels into or out of this state in the fuel supply tanks of motor vehicles owned or operated by that person;

(7) “IFTA carrier” or “IFTA carrier user” means any person who operates a motor vehicle licensed pursuant to the International Fuel Tax Agreement and imports or exports alternative fuels into or out of this state in the fuel supply tanks of motor vehicles owned or operated by that carrier;

(8) “Motor vehicles” or “vehicles” means and includes any automobile, truck, truck-tractor, tractor, bus, vehicle, or other conveyance which is propelled by an internal

combustion engine or motor and is licensed or required to be licensed for highway use;

(9) “Natural gas fuels” means and includes all mixtures of hydrocarbon gases and vapors consisting principally of methane in gaseous form;

(10) “Person” means every natural person, fiduciary, partnership, limited liability company, firm, association, corporation, business trust combination acting as a unit, any receiver appointed by any state or federal court, or any municipality, county, or any subdivision, department, agency, board, commission, or other instrumentality of this state;

(11) “Purchase” shall include any acquisition of ownership.

(12) “Sale” shall include any exchange, gift, or other disposition; and

(13) “Use” or “used” means:

(A) Keeping alternative fuels in storage and selling, using, or otherwise disposing of the same for the operation of motor vehicles;

(B) Selling alternative fuels in this state to be used for operating motor vehicles; or

(C) Operating a motor vehicle in this state with alternative fuels;

(14) “User” means and includes every person who delivers or causes to be delivered any alternative fuels into the supply tank of a motor vehicle or motor vehicles used or operated by that person;

History. Acts 1993, No. 1119, § 2; 1995, No. 1160, § 41.

26-62-103. Penalties.

Any person who violates or fails or refuses to comply with any provision of this chapter for which a specific penalty is not otherwise prescribed shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned not less than ten (10) days nor more than sixty (60) days, or both so fined and imprisoned.

History. Acts 1993, No. 1119, § 3.

26-62-104. Rules and regulations.

The Director of the Department of Finance and Administration is authorized and empowered in consultation with the Director of Highways and Transportation of the Arkansas State Highway and Transportation Department to make and promulgate such rules and regulations not inconsistent with this chapter as they shall deem necessary and desirable to facilitate the collection of the taxes levied in this chapter and to otherwise effectuate the purposes of this chapter, and these rules and regulations shall have the same effect as if specifically set forth in this chapter.

History. Acts 1993, No. 1119, § 4.

26-62-105. Failure, refusal, etc., to make report or pay tax — Penalties, interest — Attorney's fees.

(a) Once an alternative fuels supplier, user, interstate user, or IFTA carrier user of alternative fuels has become liable to file a report with the Director of the Department of Finance and Administration, he or she must continue to file a report, even though no tax is due, until such time as he or she notifies the director in writing that he or she is no longer liable for those reports.

(b) (1) Any alternative fuels supplier, user, interstate user, or IFTA carrier user of alternative fuels who fails, neglects, or refuses to make any report required by this chapter or to pay any tax levied at the time and in the manner required in this chapter in addition to any other penalty provided in this chapter shall be liable for the amount of the tax due, together with a penalty of twenty percent (20%) or a minimum of five dollars (\$5.00), whichever is greater, plus interest at the rate of ten percent (10%) per annum from the date due until paid.

(2) If the tax, penalty, and interest are collected by proceedings in court, an additional penalty of twenty percent (20%) of the tax shall be imposed and collected as attorney's fees.

History. Acts 1993, No. 1119, § 5.

26-62-106. False or fraudulent reports — Fraudulent avoidance of tax — Penalty.

Any person who makes a false or fraudulent report hereunder or who fraudulently attempts to avoid the payment of the tax herein levied on any alternative fuels shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) or by imprisonment for not less than thirty (30) days nor more than six (6) months, or both so fined and imprisoned.

History. Acts 1993, No. 1119, § 6.

26-62-107. Assessment of delinquent tax — Time limitations.

No assessment of delinquent alternative fuels tax or penalties or interest shall be made for any month after the expiration of three (3) years from the date set for the filing of such monthly return. However, in case of a false or fraudulent report with intent to evade tax or of failure to file a report, assessment may be made at any time.

History. Acts 1993, No. 1119, § 7.

26-62-108. Conflicts with Arkansas Tax Procedure Act.

The provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., shall be read in pari materia with this chapter, and in the event of any conflict with that chapter and this chapter, the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., shall control.

History. Acts 1993, No. 1119, § 24.

26-62-109. Disposition of revenue.

(a) All of the taxes, fees, penalties, and interest collected under the provisions of this chapter shall be classified as special revenues and shall be deposited into the State Treasury. After deducting therefrom the three percent (3%) for credit to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

- (1)** Fifteen percent (15%) of the amount thereof to the County Aid Fund;
- (2)** Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and
- (3)** Seventy percent (70%) of the amount thereof to the State Highway and

Transportation Department Fund.

(b) The funds shall be further disbursed in the same manner and used for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

History. Acts 1993, No. 1119, § 8.

26-62-110. Conflicts with other laws.

All laws and parts of laws in conflict with this chapter are hereby repealed, provided that nothing in this chapter is intended to nor shall it abrogate any of the provisions of the Motor Fuel Tax Law, § 26-55-201 et seq., nor shall it abrogate any of the provisions of the Special Motor Fuels Tax Law, § 26-56-101 et seq., which provisions apply to the taxation of motor fuels, distillate special fuel, and liquefied gas special fuels, it being the intent of this chapter that such fuels continue to be taxed in accordance with those tax laws and not in accordance with this chapter.

History. Acts 1993, No. 1119, § 25.

26-62-111. Audits.

In all audits conducted by the Arkansas State Highway and Transportation Department pursuant to this chapter, the Arkansas State Highway and Transportation Department may call upon the Director of the Department of Finance and Administration for assistance.

History. Acts 1993, No. 1119, § 23.

Subchapter 2 **— Rates, Licenses, and Records**

26-62-201. Imposition of tax — Exemptions.

26-62-202. Collection and payment of tax.

26-62-203. Separate meters for taxable natural gas fuels and residential or other tax-free natural gas.

26-62-204. Licenses and bonds for alternative fuels suppliers and interstate users, IFTA carrier users, etc. — Generally.

26-62-205. Sales tickets.

26-62-206. Alternative fuels suppliers' and users' reports — Computation and remittance of tax.

26-62-207. Records required — Invoices — Falsification of records.

26-62-208. Prima facie presumptions — Failure to keep records, issue invoices, or file reports — Tax, penalties, and interest.

26-62-209. Interstate users and IFTA carrier users — Reports — Computation of tax and refunds.

26-62-210. Interstate users and IFTA carrier users — Tax refund procedure.

26-62-211. Entry slips — Tax on out-of-state motor vehicle use — Penalties.

26-62-212. Power to stop, investigate, and impound vehicles — Assessment of tax.

26-62-213. Unlawful activities regarding operation of motor vehicles.

26-62-214. Conversion of vehicles for use of alternative fuels.

26-62-201. Imposition of tax — Exemptions.

(a) (1) There is hereby levied and imposed an excise tax per gallon equivalent at the rate set forth in subsection (b) of this section on each type of alternative fuels sold or used in this state for the purpose of propelling a motor vehicle or motor vehicles in this state or purchased for sale or use in this state for the purpose of propelling a motor vehicle or motor vehicles in this state.

(2) The Director of the Department of Finance and Administration shall determine the various types of alternative fuels being utilized in this state and the applicable rates to be imposed for each type fuel in accordance with the following provisions of this section, provided that the Director of the Department of Finance and Administration in his or her initial determination at a minimum shall find at least one (1) type of alternative fuels, specifically, natural gas fuels.

(b) The tax rate for each equivalent gallon for each type of alternative fuels shall be in accordance with the following table:

Number of Motor Vehicles Licensed in Arkansas Utilizing Alternative Fuels (for each <u>type of alternative fuels</u>)
0 — 999
1,000 — 1,499
1,500 — 1,999
2,000 — 2,499
2,500 — 2,999
3,000 & over

(c) (1) (A) (i) The tax rate set forth in subsection (b) of this section for each type of alternative fuels from July 1, 1993, through March 31, 1994, shall be determined and published by the Director of the Department of Finance and Administration prior to June 1, 1993, and such rates shall be effective for each type of alternative fuels through March 31, 1994.

(ii) The tax rate set forth in subsection (b) of this section for each type of alternative fuels shall be adjusted if necessary by the Director of the Department of Finance and Administration to be effective on April 1, 1994, and on April 1 of each year thereafter based upon the number of vehicles utilizing alternative fuels, by each type of alternative fuels, licensed in this state, as determined by the Director of the Department of Finance and Administration, as of December 31 of the preceding calendar year.

(B) If a change in the tax rate in accordance with subsection (b) of this section for any type of alternative fuels is required, the Director of the Department of

Finance and Administration shall include this in the report required by this section, and the Director of the Department of Finance and Administration shall also notify each alternative fuels supplier of the new tax rate not later than thirty (30) days prior to the effective date of such change.

(2) Notwithstanding any other provision of this chapter, in determining the number of alternative fuels vehicles licensed in this state by each type of alternative fuels in order to determine the tax rate per equivalent gallon, there shall not be taken into account any alternative fuels vehicles owned, licensed, or used by the United States Government, or any agency or instrumentality thereof.

(d) It is the intent of the tax levy set forth in this section to tax each particular type of alternative fuels depending upon the number of alternative fuels vehicles using the particular type of alternative fuels licensed in Arkansas.

(e) (1) The Director of the Department of Finance and Administration may develop a procedure in which the type of alternative fuels or other type of fuel is noted on the certificate of title or certificate of registration of an alternative fuels vehicle.

(2) It is the intention of this subsection to develop a system for the Director of the Department of Finance and Administration and other officials of the State of Arkansas to know the precise number of vehicles using alternative fuels and other fuels licensed in this state, both in the aggregate and by the type of fuel propelling the vehicles.

(f) Not later than February 15 each year, the Director of the Department of Finance and Administration shall file a written report with the Director of State Highways and Transportation setting forth the number of vehicles using alternative fuels and other types of fuels licensed in this state as of the end of the preceding calendar year, both in the aggregate and by each type of fuel, and the amount of tax revenue received by the State of Arkansas on the tax levied by this chapter. The Director of the Department of Finance and Administration shall also state the tax rate for the next twelve (12) months, beginning as of the first day of April of each year for each type of alternative fuel.

(g) Sales to the United States Government are exempt from the tax levied by subsection (a) of this section.

(h) The tax levied herein shall not apply to alternative fuels imported into this state in the fuel supply tanks, including any additional containers, of motor vehicles being used solely for noncommercial purposes if the aggregate capacity of the fuel supply tanks, including any additional containers, does not exceed thirty (30) equivalent gallons.

History. Acts 1993, No. 1119, § 9; 2009, No. 655, § 106.

A.C.R.C. Notes. The Alternative Fuels Commission referred to in subdivision (e)(1) of this section and subsection (f) of this section was abolished by Acts 2007, No. 873, § 3. Acts 2007, No. 873, § 1, created the Arkansas Alternative Fuels Development Program to be administered by the Arkansas Agricultural Department. See § 15-13-301.

Amendments. The 2009 amendment deleted "the Alternative Fuels Commission [abolished]" following "Administration" in (e)(2); in (f), substituted "February 15 each year" for "June 1, 1993, February 15, 1994, and the fifteenth day of February each year thereafter," deleted "and the Director of the Alternative Fuels Commission [abolished]" following "Transportation," and deleted "for the report due February 15, 1994, and the fifteenth day of February for each year thereafter" preceding "the amount of tax revenue"; and made related and minor stylistic changes.

26-62-202. Collection and payment of tax.

(a) The tax levied by this chapter shall be collected and paid by alternative fuels

suppliers on all alternative fuels sold or delivered by such suppliers when:

- (1) Delivered into the fuel supply tanks of a motor vehicle;
- (2) Sold to a dealer or user; or
- (3) Used in any motor vehicle owned or operated by that alternative fuels

supplier. The Director of the Department of Finance and Administration shall make and promulgate rules and regulations for a system for recordkeeping requirements to be kept by such suppliers in fulfilling this subdivision (a)(3).

(b) The tax levied by this chapter shall be paid by an interstate user who uses alternative fuels in this state as provided by §§ 26-62-209 and 26-62-211.

(c) The tax levied by this chapter shall be paid by any person who uses alternative fuels in this state on which the tax levied in this chapter has not been paid in accordance with the provisions of § 26-62-209 or § 26-62-211.

(d) The tax levied by this chapter shall be paid by an IFTA carrier user who uses alternative fuels in this state as provided by § 26-62-209.

History. Acts 1993, No. 1119, § 10.

26-62-203. Separate meters for taxable natural gas fuels and residential or other tax-free natural gas.

(a) No user, including an alternative fuels supplier of natural gas fuels, who utilizes natural gas for residential or other tax-free purposes, shall use such natural gas fuels in motor vehicles unless such natural gas fuels are removed through a separate meter installed by the alternative fuels supplier for such purposes.

(b) All alternative fuels suppliers shall monitor such separate meters for billing and taxation purposes.

(c) (1) Such users shall be licensed and bonded only if required by § 26-62-204 but shall remit all taxes to the alternative fuels supplier upon billing by that supplier, which supplier shall further remit such taxes to the Director of the Department of Finance and Administration as provided in § 26-62-206.

(2) Such user, however, at the time of the installation of the separate meter shall report to the director the:

- (A) Number of vehicles;
- (B) Models and makes;
- (C) License numbers;
- (D) Vehicle identification numbers; and
- (E) Any other information required by the director pursuant to rules and

regulations of the director.

History. Acts 1993, No. 1119, § 11.

26-62-204. Licenses and bonds for alternative fuels suppliers and interstate users, IFTA carrier users, etc. — Generally.

(a) No person shall commence operations as an alternative fuels supplier, interstate user, or IFTA carrier user of alternative fuels without first procuring a license for that purpose from the Director of the Department of Finance and Administration. This license shall be issued and remain in effect until revoked as provided in this section.

(b) (1) Each application for a license as an alternative fuels supplier, interstate user, or IFTA carrier user of alternative fuels, and each license, shall have as a condition that the

applicant and holder shall comply with the provisions of this chapter.

(2) (A) Each application for a license as an alternative fuels supplier, interstate user, or IFTA carrier user, and each such license, shall have as a further condition that the applicant and holder shall not deliver or permit delivery into the fuel supply tanks of motor vehicles any alternative fuels on which the tax levied by this chapter is not collected or will be remitted pursuant to § 26-62-209.

(B) A taxable use of alternative fuels on which the tax is not collected by an applicant for, or a holder of, an alternative fuels supplier license or on a licensed interstate user or IFTA carrier user on which the tax is not remitted pursuant to § 26-62-209, in addition to the penal provisions prescribed in this chapter, shall cause immediate cancellation of the applicant or holder's license.

(c) (1) (A) Every alternative fuels supplier shall file with the director a surety bond of not less than one and one-half (1½) times or one hundred fifty percent (150%) of the prior six-months' average alternative fuels tax due which is based upon the gallon equivalent of alternative fuels to be sold or distributed:

(i) As shown by the application for a license if the applicant has not previously been engaged in the business of an alternative fuels supplier; or

(ii) As shown by sales for the previous year if the applicant previously has been engaged in such business in this state.

(B) However, no bond shall be filed for less than one thousand dollars (\$1,000).

(2) If the director deems it necessary to protect the state in the collection of alternative fuels taxes, the director may require any alternative fuels supplier to post a bond in an amount up to three (3) times or three hundred percent (300%) of the prior six (6) months' average alternative fuels tax due.

(3) (A) However, the director is authorized to waive the posting of bond by any licensed alternative fuels supplier organized and operating under the laws of Arkansas and wholly owned by residents of this state who has been licensed for a period of at least three (3) years and who has not been delinquent in remitting alternative fuels taxes during the three-year period immediately preceding application by the alternative fuels supplier for waiver of bond.

(B) If any alternative fuels supplier whose bond has been waived by the director as authorized in subdivision (c)(3)(A) of this section subsequently becomes delinquent in remitting alternative fuels taxes to the director, the director may require that the alternative fuels supplier post a bond in the amount required in this section, and the alternative fuels supplier shall not be eligible to petition for a waiver of bond for a period of three (3) years thereafter.

(d) (1) Each application of an interstate user or IFTA carrier user for a license shall be accompanied by a surety bond of a surety company authorized to do business in this state, in favor of the director, satisfactory to the director, and in an amount to be fixed by the director of not less than one thousand dollars (\$1,000) nor more than fifty thousand dollars (\$50,000), guaranteeing the payment of any and all taxes, penalties, interest, attorney's fees, and costs levied by, accrued, or accruing under this chapter.

(2) Any violation of this chapter shall be cause for revocation of any license issued under this chapter.

(e) (1) The bond or bonds shall be issued by a surety company qualified to do business

in Arkansas, which shall be executed by the alternative fuels supplier, interstate user, or IFTA carrier user as the principal obligor and shall be made payable to the State of Arkansas as the obligee.

(2) The bond shall be conditioned upon the prompt filing of true reports and the payment by the alternative fuels supplier, interstate user, or IFTA carrier user to the director of any and all alternative fuels taxes which are levied or imposed by the State of Arkansas, together with any and all penalties and interest thereon, and generally, upon faithful compliance with the provisions of this chapter.

(f) (1) In the event that liability upon the bond filed pursuant to this section by the alternative fuels supplier, interstate user, or IFTA carrier user with the director shall be discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if, in the opinion of the director, any surety on the bond shall have become unsatisfactory or unacceptable, then the director may require the filing of a new bond with a satisfactory surety in the same form and amount; failing which, the director shall immediately cancel the license of the alternative fuels supplier, interstate user, or IFTA carrier user.

(2) If a new bond shall be furnished, the director shall cancel the bonds for which the new bond shall be substituted.

(g) In the event that upon hearing of which the alternative fuels supplier, interstate user, or IFTA carrier user shall be given five (5) days' notice in writing, the director shall decide that the amount of the existing bond is insufficient to ensure payment to the State of Arkansas of the amount of the tax and any penalties and interest for which said alternative fuels supplier, interstate user, or IFTA carrier user is or may at any time become liable, then the alternative fuels supplier, interstate user, or IFTA carrier user upon written demand of the director shall immediately file an additional bond in the same manner and form and with a surety company thereon approved by the director in any amount determined by the director to be necessary to secure at all times the payment to the State of Arkansas of all taxes, penalties, and interest due under the provisions of this chapter; failing which, the director shall immediately cancel the license of the alternative fuels supplier, interstate user, or IFTA carrier user.

(h) (1) (A) Any surety on any bond furnished as provided in this section shall be released and discharged from any and all liability to the State of Arkansas accruing on the bond after the expiration of sixty (60) days from the date upon which a surety shall have lodged with the director a written request to be released and discharged.

(B) However, the request shall not operate to relieve, release, or discharge the surety from any liability already accrued, or which shall accrue, before the expiration of the sixty-day period.

(2) Upon receipt of notice of such request, the director shall promptly notify the alternative fuels supplier, interstate user, or IFTA carrier user who furnished the bond, and unless the alternative fuels supplier, interstate user, or IFTA carrier user, on or before the expiration of the sixty-day period, files with the director a new bond with a surety company satisfactory to the director in the amount and form as provided in this section, the director shall immediately cancel the license of that alternative fuels supplier, interstate user, or IFTA carrier user.

(3) If a new bond shall be furnished as provided in this section, the director shall cancel the bond for which the new bond shall be substituted.

(i) In lieu of furnishing a bond or bonds executed by a surety company as provided in

this section, any alternative fuels supplier, interstate user, or IFTA carrier user may furnish a bond or other instrument, in form prescribed by the director, equal to the amount of the bond or bonds required by this section which will provide security or payment of all amounts as described in this section and in compliance with all provisions of this chapter.

(j) (1) Any violation of this chapter shall be cause for revocation of any license issued pursuant to this chapter.

(2) (A) Should his or her license be revoked, any alternative fuels supplier, interstate user, or IFTA carrier user may bring an action against the director in the Pulaski County Circuit Court within fifteen (15) days of the date of revocation to determine whether or not the alternative fuels supplier, interstate user, or IFTA carrier user has in fact violated any of the provisions of this chapter.

(B) If the court determines that the provisions of the law have been violated by the alternative fuels supplier, interstate user, or IFTA carrier user, it shall affirm the director's action in revoking the license.

(k) If any of the provisions of this chapter regarding IFTA carrier users conflicts with the International Fuel Tax Agreement, § 26-55-1101 et seq., entered into by this state, the provisions of the International Fuel Tax Agreement, § 26-55- 1101 et seq., shall govern.

History. Acts 1993, No. 1119, § 12.

26-62-205. Sales tickets.

(a) (1) Each alternative fuels supplier shall have available a sufficient number of sales tickets prepared in triplicate to cover sales of alternative fuels under the provisions of this chapter.

(2) The forms for sales tickets shall be numbered and prepared with blank spaces for:

(A) The name and address of the alternative fuels supplier;

(B) The name and address of the purchaser;

(C) The date of the purchase;

(D) The number of gallons equivalent purchased;

(E) The total cost of alternative fuels purchased including taxes; and

(F) Such other information as the Director of the Department of Finance

and Administration may require.

(b) (1) The sales tickets shall be issued in triplicate by the alternative fuels supplier and shall be signed by the alternative fuels supplier or his or her authorized agent, and the original and one (1) copy shall be given to the purchaser.

(2) The remaining copy shall be retained by the alternative fuels supplier as a record for a period of at least three (3) years, during which period it shall be subject to inspection by the Director of the Department of Finance and Administration or his or her representative at all reasonable times.

(c) The sales tickets as described in subsections (a) and (b) of this section shall be the only evidence accepted for tax credit by the Director of the Department of Finance and Administration under the provisions of § 26-62-209.

(d) Any licensed alternative fuels supplier or agent or employee of the alternative fuels supplier who issues any sales ticket or invoice to any user showing that the user has purchased a quantity of alternative fuels from the alternative fuels supplier, agent, or

employee when, in fact, the user has not purchased alternative fuels or has purchased less alternative fuels than the sales ticket or invoice shows shall be guilty of a violation and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(e) (1) The Director of the Department of Finance and Administration, in consultation with the Director of State Highways and Transportation shall promulgate rules and regulations regarding an alternative to the required usage of sales tickets for all sales of natural gas fuels made by alternative fuels suppliers by separate meter as provided in § 26-62-203.

(2) It is the intent of this directive that if a user, other than an interstate user or IFTA carrier user, receives natural gas fuels through a separate meter, there shall be no sales ticket requirement.

History. Acts 1993, No. 1119, § 13; 2005, No. 1994, § 180; 2007, No. 827, § 234.

Amendments. The 2005 amendment inserted “or her” in (b)(1) and (2); and substituted “violation” for “misdemeanor” in (d).

The 2007 amendment substituted “shall promulgate” for “is authorized and directed to promulgate” in (e)(1).

26-62-206. Alternative fuels suppliers' and users' reports — Computation and remittance of tax.

(a) (1) Every alternative fuels supplier on or before the twenty-fifth day of each calendar month shall file with the Director of the Department of Finance and Administration on forms prescribed by the director a report accounting for the alternative fuels taxable under this chapter during the preceding month and shall remit all taxes as reflected by the report to the director at the time of filing such report.

(2) The alternative fuels supplier shall file supporting documents necessary to assure accurate reporting. The reports shall include the following:

(A) An itemized statement of the number of equivalent gallons of alternative fuels sold and delivered into the fuel supply tanks of motor vehicles during the next preceding calendar month by the alternative fuels supplier;

(B) An itemized statement of the number of gallons equivalent of alternative fuels delivered into the fuel supply tanks of motor vehicles owned, leased, or operated by the alternative fuels supplier during the next preceding calendar month by the alternative fuels supplier;

(C) An itemized statement of the number of gallons equivalent of alternative fuels sold through separate meter to a user for the fueling of motor vehicles during the next preceding calendar month by the supplier; and

(D) Such other documents as the director requires.

(b) Every interstate user and IFTA carrier user, on or before the twenty-fifth day of the month following the end of each calendar quarter, shall file with the director on forms prescribed by the director an itemized report showing the quantities of alternative fuels purchased and used in this state during the preceding calendar quarter, together with payments of the tax due thereon.

History. Acts 1993, No. 1119, § 14.

26-62-207. Records required — Invoices — Falsification of records.

(a) Every person required by law to secure a license under this chapter shall keep records in the time and manner and subject to inspection and audit as required by the Arkansas Tax Procedure Act, § 26-18-101 et seq., including a complete record of all alternative fuels taxable under this chapter and sold, delivered, or used by the person, showing for each purchase, receipt, sale, delivery, or use:

(1) The date;

(2) The name and address of the seller from whom the user, interstate user, or IFTA carrier user purchased the fuels and that interstate user or IFTA carrier user's license number; and

(3) An accurate record of the number of gallons equivalent of alternative fuels sold or used for taxable purposes with quantities measured by a meter.

(b) (1) For each delivery of alternative fuels directly into the fuel supply tank of a motor vehicle, the required record shall include a serially-numbered invoice issued in not less than triplicate counterparts on which shall be printed or stamped with a rubber stamp the name and address of the alternative fuels supplier making such delivery and on which shall be shown, in spaces to be provided on that invoice, the:

(A) Date of delivery;

(B) Number of equivalent gallons and kind of alternative fuels so delivered;

(C) Total mileage recorded on the odometer or hub meter of the motor vehicle into which delivered; and

(D) Motor vehicle registration number of the motor vehicle, or the interstate user, or IFTA carrier user's license number, if applicable.

(2) The invoice shall reflect that the tax has been paid or accounted for on each of the products delivered.

(3) (A) One (1) counterpart of the invoice required by this subsection shall be kept by the alternative fuels supplier making such delivery as a part of his or her record and for the period of time and purposes provided in this chapter.

(B) Another counterpart shall be delivered to the operator of the motor vehicle and carried in the cab compartment of the motor vehicle for inspection by the Director of the Department of Finance and Administration or his or her representatives until the fuel it covers has been consumed.

(c) (1) Every person who operates a motor vehicle that is equipped to use motor fuels taxable under the Motor Fuel Tax Law, § 26-55-201 et seq., or equipped to use distillate special fuels taxable under the Special Motor Fuels Tax Law, § 26-56-101 et seq., and alternative fuels interchangeably in the propulsion of the motor vehicle shall carry in the cab compartment of the motor vehicle for inspection by the director or his or her representative not only the counterpart of the serially-numbered invoice required under subsection (b) of this section for the delivery of alternative fuels into the fuel supply tanks of the motor vehicle but also an invoice or receipt from the seller for each delivery into the fuel supply tanks of the motor vehicle of motor fuels taxable under the Motor Fuel Tax Law, § 26-55-201 et seq., or of distillate special fuels taxable under the Special Motor Fuels Tax Law, § 26-56-101 et seq., which latter invoices or receipts shall show the same information as to date of delivery, quantity, odometer or hub meter mileage, and motor vehicle registration number as is required for the invoice covering alternative fuels.

(2) These invoices shall be carried with the motor vehicle until the types of fuels

covered thereby have been consumed.

(d) The willful issuance of any invoice required by this chapter, bill of sale, or receipt which is false, untrue, or incorrect in any material particular, or the alteration or changing except for errors, or forging any such invoice, bill of sale, or receipt, or any duplicate of any such receipt pertaining to alternative fuels, shall constitute a violation of this chapter.

(e) All sales to users made pursuant to § 26-62-203 shall not require the carriage of an invoice by the user, provided that the director shall provide by regulation another means of providing an indication that the tax on the fuel being utilized to propel the motor vehicle will ultimately be paid by the user to the alternative fuels supplier, who is required to remit such tax to the director.

History. Acts 1993, No. 1119, § 15.

26-62-208. Prima facie presumptions — Failure to keep records, issue invoices, or file reports — Tax, penalties, and interest.

(a) Any alternative fuels supplier, user, interstate user, or IFTA carrier user who fails to keep the records, issue the invoices, or file the reports required by this chapter shall be prima facie presumed to have sold, delivered, or used for taxable purposes all alternative fuels shown by a verified audit by the Arkansas State Highway and Transportation Department, the Director of the Department of Finance and Administration, or any authorized representative.

(b) (1) The director is authorized to fix or establish the amount of taxes, penalties, and interest due the State of Arkansas from any record or information available to the director, or to the Arkansas State Highway and Transportation Department, and if the tax claim as developed from that procedure is not paid, the claim and any audit made by the Arkansas State Highway and Transportation Department, the director, or an authorized representative, or any report filed by such alternative fuels supplier, user, interstate user, or IFTA carrier user shall be admissible in evidence in any suit or judicial proceedings filed by the director and shall be prima facie evidence of the correctness of said claim or audit.

(2) However, the prima facie presumption of the correctness of the claim may be overcome by evidence adduced by the alternative fuels supplier, user, interstate user, or IFTA carrier user.

History. Acts 1993, No. 1119, § 16.

26-62-209. Interstate users and IFTA carrier users — Reports — Computation of tax and refunds.

(a) For the purpose of determining whether an interstate user or IFTA carrier user owes alternative fuels tax or is entitled to a credit or refund, the licensed interstate user or licensed IFTA carrier user shall file a quarterly report on or before the twenty-fifth day of the month following the end of each calendar quarter, which shall be made on forms prescribed by the Director of the Department of Finance and Administration, which forms shall include such information as the director may require.

(b) If it shall be determined by the quarterly report that the licensed interstate user or licensed IFTA carrier user has used alternative fuels in this state in excess of the number of equivalent gallons of the fuel upon which the Arkansas tax had been paid, the interstate user or IFTA carrier user shall remit to the director at the time of filing the

report an excise tax at the rate as previously determined in accordance with § 26-62-201 per equivalent gallon for the taxable quarter multiplied by the number of equivalent gallons used on which the tax has not been paid.

(c) If it shall be determined that the licensed interstate user or licensed IFTA carrier user has purchased more equivalent gallons of alternative fuels in this state than he or she has used in this state, then the licensed interstate user or licensed IFTA carrier user shall be entitled to a credit or refund at the rate as previously determined in accordance with § 26-62-201 per equivalent gallon for the taxable quarter for the number of excess equivalent gallons upon which the tax has been paid.

(d) Licensed interstate users or licensed IFTA carrier users may not take credit on reports at a tax rate in excess of that actually paid.

(e) (1) (A) For the purpose of determining whether such a licensed interstate user or licensed IFTA carrier user owes tax or is entitled to a credit or refund, such licensed user shall determine the average miles per equivalent gallon of alternative fuels used.

(B) The average miles per equivalent gallon shall be determined by dividing total miles traveled in all jurisdictions by the total equivalent gallons of alternative fuels used in all jurisdictions.

(C) Such licensed user shall then determine the total amount of alternative fuels used within the State of Arkansas by dividing the total number of miles traveled within the State of Arkansas by the average miles per equivalent gallon.

(2) The taxpayer's tax liability shall be calculated by multiplying the number of equivalent gallons of alternative fuels used within the State of Arkansas by the applicable tax rate for that calendar quarter per equivalent gallon.

(3) A taxpayer shall be entitled to credits against his or her tax liability for tax-paid alternative fuels purchased within the State of Arkansas.

(f) (1) Whenever any licensed interstate user or licensed IFTA carrier user who fails to maintain adequate mileage or fuel records, then for the purpose of determining the amount the licensed user owes the State of Arkansas for tax on alternative fuels used in this state as provided in this section, the number of equivalent gallons of alternative fuels used in this state shall be determined by an assessment based on the following mileage factors per equivalent gallon of alternative fuels, regardless of the type of alternative fuels, as compared to the appropriate class of vehicle set out in subdivision (f)(2) of this section.

(2) For the purposes of this section:

(A) All automobiles, except buses, with a capacity of fewer than eight (8) passengers shall be deemed to be Class A vehicles;

(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class B vehicles;

(C) All other vehicles, except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class C vehicles; and

(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

(3) The mileage factor per equivalent gallon of alternative fuels for:

- (A) Class A vehicles shall be twelve (12) miles;
- (B) Class B vehicles shall be eight (8) miles;
- (C) Class C vehicles shall be five (5) miles; and
- (D) Class D vehicles shall be six (6) miles.

(4) These mileage factors shall be utilized in conjunction with the Arkansas mileage as determined through an audit and based upon the best records available regardless of source.

(g) For the purpose of determining the amount any unlicensed or unbonded user owes the State of Arkansas for tax on alternative fuels used in this state, only the above mileage factors per equivalent gallon of alternative fuels for the applicable vehicles shall be utilized.

(h) (1) (A) If a quarterly report of a licensed interstate user or licensed IFTA carrier user results in a net credit, such user may elect to have the credit carried forward and applied against the alternative fuels tax due for the succeeding eight (8) quarters or until the credit is completely used, whichever occurs first.

(B) In the alternative, a taxpayer who is entitled to a net credit on his or her quarterly fuel tax report may elect to have the amount of credit refunded to him or her.

(2) A licensed interstate user or licensed IFTA carrier user who has a total tax liability for alternative fuels tax during the previous calendar year of less than one hundred dollars (\$100) upon application to the director may obtain permission to report his or her alternative fuels tax liability on an annual basis. The annual report shall be due on or before the twenty-fifth day of the month following the end of each fiscal year.

(i) The director shall prescribe the appropriate forms necessary for the administration of this chapter. The director may make appropriate rules and regulations necessary to ensure the accurate reporting of the alternative fuels tax.

History. Acts 1993, No. 1119, § 17.

26-62-210. Interstate users and IFTA carrier users — Tax refund procedure.

(a) (1) The Director of the Department of Finance and Administration shall quarterly estimate the amount necessary to pay refunds to licensed interstate users and licensed IFTA carrier users of alternative fuels who are entitled to refunds with respect to alternative fuels taxes paid in this state as authorized in § 26-62-209, and upon certification by the Director of the Department of Finance and Administration, the Treasurer of State shall transfer from the gross amount of alternative fuels taxes collected each month the amount to the Interstate Alternative Fuels Refund Fund, which is established on the books of the State Treasury, from which the Department of Finance and Administration shall make refunds as provided by law.

(2) The transfers from the gross alternative fuels taxes collected each month shall be after deducting allowances for bad checks or claims but before making any other distribution as provided by law.

(b) All warrants drawn against the fund which are not presented for payment within one (1) year of issuance shall be void.

(c) Neither the Director of the Department of Finance and Administration nor any member or employee of the Department of Finance and Administration shall be held personally liable for making any refund by reason of a fraudulent claim's being filed as a

basis for such refund.

(d) The Director of the Department of Finance and Administration in consultation with the Director of State Highways and Transportation is authorized to promulgate rules and regulations and to prescribe the necessary forms required for the administration of claims for tax refunds from licensed interstate users or licensed IFTA carrier users of alternative fuels in this state as authorized by law, which rules and regulations shall be in conformance with the following requirements:

(1) The Director of the Department of Finance and Administration shall first determine with respect to each refund claim filed that the bond of the interstate user or IFTA carrier user is adequate to compensate the State of Arkansas for any losses with respect to the recovery of any refunds illegally claimed by such user, and the Director of the Department of Finance and Administration may require the increase of the bond if the Director of the Department of Finance and Administration determines it to be inadequate before approving any such claim for refund;

(2) Each licensed interstate user or licensed IFTA carrier user of alternative fuels claiming refunds shall maintain adequate records to substantiate each claim for refund, and the Director of the Department of Finance and Administration may reject any claim for refund if the Director of the Department of Finance and Administration determines the applicant has not maintained adequate records or has not conformed to the rules and regulations of the Department of Finance and Administration in filing the claim therefor;

(3) Each claim for refund must be upon the request of the licensed interstate user or licensed IFTA carrier user, which shall be verified by such user as to its accuracy and validity;

(4) (A) Each quarterly report filed by a licensed interstate user or licensed IFTA carrier user of alternative fuels with the Department of Finance and Administration shall reflect thereon the amount of alternative fuels purchased for use in Arkansas during the quarter, the number of equivalent gallons of alternative fuels upon which taxes are due the State of Arkansas for the quarter, and the excess equivalent gallons upon which such user is entitled to refunds.

(B) At the end of each calendar quarter, the licensed interstate user or licensed IFTA carrier user may apply for a refund with respect to the number of equivalent gallons of alternative fuels upon which the alternative fuels taxes have been paid during the calendar quarter for which the licensed interstate user or licensed IFTA carrier user is entitled to a refund; and

(5) The Director of the Department of Finance and Administration is authorized to promulgate any such rules or regulations the Director of the Department of Finance and Administration deems desirable in consultation with the Director of State Highways and Transportation regarding refunds to licensed interstate users and IFTA carrier users.

History. Acts 1993, No. 1119, § 18; 2009, No. 655, § 107.

Amendments. The 2009 amendment inserted “and” at the end of (d)(4)(B), and made minor stylistic changes.

26-62-211. Entry slips — Tax on out-of-state motor vehicle use — Penalties.

(a) Any unlicensed alternative fuels user, unless exempt from the tax levied herein, operating an out-of-state motor vehicle, upon entering the State of Arkansas, at the point

of entry shall secure a copy of an entry slip from the Director of the Department of Finance and Administration or his or her authorized agent or employee.

(b) The entry slip shall be signed by the director or his or her authorized agent or employee, and the entry slip shall also be signed by the driver of the vehicle.

(c) The entry slip shall contain the following information:

- (1)** Name and address of the owner or the operator of the vehicle;
- (2)** State of registration;
- (3)** License number;
- (4)** Odometer reading;
- (5)** Destination and point of leaving state; and
- (6)** Description of vehicle.

(d) The entry slip shall remain in the vehicle for the remainder of the trip over the highways of this state and shall be produced for the inspection of the director or his or her authorized employee or representative, at any point within the state and shall also be produced at the port of exit to the director or his or her authorized agent or employee, for determination of any alternative fuels taxes due the state.

(e) For the purpose of determining the amount the interstate user owes the State of Arkansas for tax on alternative fuels used in this state as provided in this section, the number of equivalent gallons of alternative fuels used in this state shall be determined by an assessment based on the mileage factors per equivalent gallon of alternative fuels set out in § 26-62-209(f) compared to the appropriate class of vehicle set out in § 26-62-209(f).

(f) The alternative fuels tax levied by this chapter shall be paid upon all such fuels used to propel out-of-state motor vehicles upon the highways of this state.

(g) The tax shall be paid by the owner or operator of the motor vehicle in either of the following ways, at the option of the owner or operator:

(1) (A) By the purchase of a sufficient amount or quantity, as determined above, of alternative fuels from an alternative fuels supplier within the State of Arkansas to propel the vehicle the number of miles which the vehicle travels upon the highways of this state.

(B) At the time of the purchase of the fuels, the owner or operator of such vehicle shall obtain from the alternative fuels supplier from whom purchased an invoice or sales ticket, on forms approved by the director, which shall contain the:

- (i)** Name and address of the seller of the alternative fuels;
- (ii)** Name and address of the purchaser;
- (iii)** Date of purchase; and
- (iv)** Amount or quantity and type of alternative fuels purchased.

(C) The invoice or sales ticket shall remain in the vehicle for the remainder of the trip over the highways of this state. The invoice or sales ticket shall be preserved and retained by the owner or operator for a period of not less than three (3) years and shall be produced for the inspection and examination of the director or his or her authorized agent or employee, at any reasonable time and place, either within or without this state, upon proper demand therefor;

(2) (A) By the payment to the director or to his or her agent, representative, or employee of the amount of tax which would be due upon a sufficient quantity, as determined above, of alternative fuels to propel the vehicle over the highways of this

state.

(B) At the time of payment of the tax, the director or his or her employee or representative shall issue to the person paying the tax a receipt showing:

- (i) The amount of tax paid;
- (ii) The name and address of the owner or operator of the vehicle;
- (iii) A description of the vehicle, including license number and state of registration;
- (iv) The point at which the vehicle entered upon the highways of this state;
- (v) The destination and the place where the vehicle is to leave the highways of this state; and
- (vi) Any other information which the director may require, which receipt shall be signed by the director or his or her agent or representative.

(C) The receipt shall remain in the vehicle for the remainder of the trip over the highways of this state and thereafter shall be preserved and retained by the owner or operator for a period of not less than three (3) years and shall be produced for the inspection of the director or his or her authorized agent or representative, at any reasonable time and place, either within or without this state, upon proper demand.

(h) (1) If a person who has not obtained an alternative fuels license from this state, and who is nevertheless determined an alternative fuels user, leaves the State of Arkansas by a state highway or other road not equipped with a permanent port of entry or exit and has not paid the alternative fuels tax or has not purchased tax-paid alternative fuels from a licensed alternative fuels supplier in an amount equal to the number of equivalent gallons used upon the highways of the State of Arkansas, the person shall be liable for the payment of the tax due as determined above together with the penalties as set out in § 26-62-105.

(2) If an unlicensed alternative fuels user is within one (1) mile of the state line on the way out of the state and does not have in his or her possession a form issued by a licensed alternative fuels supplier showing the number of equivalent gallons purchased equal to the amount used in traveling upon the highways of the State of Arkansas, it shall be prima facie evidence of his or her failure to comply with the requirements of this chapter, and he or she shall be liable for the payment of the tax due, plus the fine as set out in § 26-62-106.

(3) In the event an unlicensed alternative fuels user enters the State of Arkansas via a state highway not equipped with a permanent port of entry, and the driver of the vehicle does not receive an entry form, then the burden of proof of the point of entry and time of entry for the purpose of determining the miles traveled and the tax due shall be upon the driver or owner of the vehicle.

History. Acts 1993, No. 1119, § 19; 1995, No. 1296, § 89.

26-62-212. Power to stop, investigate, and impound vehicles — Assessment of tax.

(a) In order to enforce the provisions of this chapter, the Director of the Department of Finance and Administration or his or her authorized representative is empowered to stop any motor vehicle which appears to be operating with alternative fuels for the purpose of examining the invoices or other documents required by this chapter, or by regulation, and

for such other investigative purposes reasonably necessary to determine whether the taxes imposed by this chapter have been paid or whether the vehicle is being operated in compliance with the provisions of this chapter.

(b) If after examination or investigation it is determined by the director or his or her authorized representative that the tax imposed by this chapter has not been paid with respect to the alternative fuels being used in the vehicle, the director or his or her representative shall immediately assess the tax due, together with the penalty hereinafter provided, to the owner of the vehicle and give the owner written notice of the assessment by handing it to the driver of the vehicle.

(c) The director or his or her representative is empowered to impound any vehicle found to be operating in violation of this chapter by a person other than a person who has furnished the bond required of users by § 26-62-204 until such time as any tax assessed as provided herein has been paid.

History. Acts 1993, No. 1119, § 20.

26-62-213. Unlawful activities regarding operation of motor vehicles.

(a) It is unlawful and a violation of this chapter to operate with alternative fuels any motor vehicle licensed for highway operation on which an odometer or hub meter is not kept at all times in good operating condition to correctly measure and register the miles traveled by the motor vehicle.

(b) It shall be unlawful for any person to operate with alternative fuels any vehicle of Arkansas domestic registry unless he or she has in his or her possession an invoice, if required, for the alternative fuels and the invoice meets the requirements of § 26-62-207, or, if the user has purchased such alternative fuels pursuant to § 26-62-203, he or she has in his or her possession the required documents mandated by the provisions of § 26-62-207(e).

(c) (1) In addition to any other penalties which may be incurred, there is levied a specific penalty of twenty-five dollars (\$25.00) for each violation of the provisions of this section.

(2) This penalty shall be assessed by the Director of the Department of Finance and Administration or his or her representative and shall be collected in the same manner as is provided for the collection of tax in § 26-62-212.

History. Acts 1993, No. 1119, § 21.

26-62-214. Conversion of vehicles for use of alternative fuels.

(a) Any alternative fuels supplier, garage, mechanic, owner, or operator of a motor vehicle who converts or causes a vehicle to be converted to enable the vehicle to be operated on any type of alternative fuels shall report the conversion to the Director of the Department of Finance and Administration on forms prescribed by the director, which shall include, but not be limited to, the model, make, license number, and vehicle identification number of the converted vehicle within ten (10) days after the conversion.

(b) The converting or equipping of a vehicle for natural gas propulsion shall be in compliance with rules and regulations to be made and promulgated by the director.

(c) (1) It shall be unlawful for any person to operate any motor vehicle which has been converted or equipped to use alternative fuels unless the vehicle has been reported to the director and any permit, if required by this chapter of that person, has been obtained.

(2) If any owner or operator fails to report a conversion of a vehicle to the director within the time prescribed above, such person shall be assessed a penalty of two hundred fifty dollars (\$250) which shall be in addition to any criminal penalty in this chapter.

History. Acts 1993, No. 1119, § 22.

Chapter 63 **Arkansas Special Excise Taxes**

Subchapter 1 — General Provisions

Subchapter 2 — Registration — Discount — Exemption — Procedures

Subchapter 3 — Rental Taxes

Subchapter 4 — Tourism Tax

Subchapter 1 **— General Provisions**

26-63-101. Title.

26-63-102. Definitions.

26-63-103. Tax additional to other taxes.

26-63-104. Administration — Rules and regulations.

26-63-105. Cost of administration of chapter — Distribution of surplus annually.

26-63-106. Disposition of taxes, interest, and penalties.

26-63-107. Changes in law — Notice.

Cross References. Arkansas Tourism Development Act, § 15-11-501 et seq.

Tax levy in cities adjacent to city one mile from state line, § 26-25-104.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-101. Title.

This chapter shall be known and may be cited as “Arkansas Special Excise Taxes”.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-102. Definitions.

As used in this chapter:

(1) “Consumer” means a person to which the taxable sale is made or to which a taxable service is furnished;

(2) “Director” means the Director of the Department of Finance and Administration or any of his or her authorized agents;

(3) “Engage in business” means any local activity regularly and persistently pursued by any seller or vendor through agents, employees, or representatives with the object of gain, profit, or advantage and that results in a sale, delivery, or the transfer of the physical position of any tangible personal property by the vendor to the vendee at or from any point within Arkansas, whether from warehouse, store, office, storage point, rolling store, motor vehicle, delivery conveyance, or by any method or device under the

control of the seller effecting such a local delivery without regard to the terms of sale with respect to point of acceptance of the order, point of payment, or any other condition;

(4) (A) “Gross receipts” or “gross proceeds” means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or a taxable service is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the tangible personal property sold;
(ii) The cost of materials used, labor or service cost, interest, any loss, any cost of transportation to the seller, any tax imposed on the seller, or any other expense of the seller;

(iii) Any charge by the seller for any service necessary to complete the sale;

(iv) Delivery charge;

(v) (a) Installation charge.

(b) However, an installation charge will not be included in the “gross receipts” or “gross proceeds” if it is not a specifically taxable service under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and the installation charge has been separately stated on the invoice, billing, or similar document given to the purchaser;

(vi) The value of exempt tangible personal property given to the purchaser if taxable and exempt tangible personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) Credit for any trade-in.

(B) “Gross receipts” or “gross proceeds” does not include:

(i) A discount, including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, or a carrying charge from credit extended on the sale of tangible personal property or a taxable service, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(5) (A) (i) “Lease” or “rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.

(ii) A lease or rental may include future options to purchase or extend.

(B) “Lease” or “rental” does not include:

(i) A transfer of possession or control of tangible personal property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of tangible personal property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or

(iii) (a) Providing tangible personal property along with an operator for a fixed or indeterminate period of time.

(b) A condition of this exclusion in this subdivision (5)(B)(iii) is that the operator is necessary for the equipment to perform as designed.

(c) For the purpose of this subdivision (5)(B)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(C) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(2), as in effect on January 1, 2007.

(D) This definition of "lease" or "rental" in this subdivision (5) shall:

(i) Be used for excise tax purposes under this chapter regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, as in effect on January 1, 2007, the Uniform Commercial Code, § 4-1-101 et seq., or another provision of federal, state, or local law;

(ii) Be applied only prospectively from January 1, 2008, and shall have no retroactive impact on existing leases or rentals; and

(iii) Impact neither any existing sale-leaseback exemption nor exclusion;

(6) "Long-term rental" means a lease of thirty (30) days or more to a single consumer;

(7) "Motor vehicle" means a vehicle that is self-propelled and is required to be registered for use on the highway;

(8) "Person" includes any individual, partnership, limited liability company, limited liability partnership, corporation, estate, trust, fiduciary, or any other legal entity;

(9) (A) "Sale" means the transfer of either the title or possession, except in the case of a lease or rental for a valuable consideration of tangible personal property regardless of the manner, method, instrumentality, or device by which the transfer is accomplished.

(B) "Sale" includes the:

(i) Exchange, barter, lease, or rental of tangible personal property;

or

(ii) Sale, giving away, exchanging, or other disposition of admissions, dues, or fees to clubs, to places of amusement, to recreational or athletic events, or for the privilege of having access to or the use of amusement, athletic, or entertainment facilities.

(C) "Sale" does not include the:

(i) Furnishing or rendering of a service except as otherwise provided in this section; or

(ii) Transfer of title to a vehicle by the vehicle owner to an insurance company as a result of the settlement of a claim for damages to the vehicle.

(D) (i) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for less than thirty (30) days, any tax levied by this chapter shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental regardless of whether Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property.

(ii) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for thirty (30) days or more, the tax shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental unless Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property;

(10) “Short-term rental” means a rental or lease of tangible personal property for a period of less than thirty (30) days to a single consumer;

(11) “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses; and

(12) “Taxpayer” means any person liable to remit a tax levied by this chapter or to make a report for the purpose of claiming any exemption from payment of a tax levied by this chapter.

History. Acts 2007, No. 182, § 1; 2009, No. 655, § 109.

Amendments. The 2009 amendment redesignated (5)(B)(iv) as (5)(C), redesignated the subsequent subdivision accordingly, inserted “‘Lease’ or ‘rental’ includes” in (5)(C), and made related changes.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-103. Tax additional to other taxes.

The tax levied by this chapter shall be in addition to any other tax except as otherwise provided in this chapter.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-104. Administration — Rules and regulations.

(a) The Director of the Department of Finance and Administration shall administer this chapter.

(b) The director shall prescribe forms and promulgate rules for the proper enforcement of this chapter, including without limitation the manner and time the taxes levied by this chapter shall be collected, reported, and paid and how a sale will be sourced.

(c) Except as otherwise provided in this chapter, any law, rule, or regulation relating to the administration, enforcement, or collection of a tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., applies to this chapter if it is applicable.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-105. Cost of administration of chapter — Distribution of surplus annually.

(a) The administration cost of this chapter shall not exceed three percent (3%) of the actual revenues collected under this chapter.

(b) If any funds appropriated for the administration of this chapter remain in the possession of the Director of the Department of Finance and Administration at the end of each fiscal year that have not been actually used in the administration of this chapter, then

the funds shall be remitted by the director to the Treasurer of State for distribution in the same manner and for the same purposes provided for in § 26-63-106.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-106. Disposition of taxes, interest, and penalties.

(a) Except as otherwise provided in this chapter, all taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration under this chapter are general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

(b) The Treasurer of State shall allocate and transfer the general revenues described in subsection (a) of this section to the various State Treasury funds participating in general revenues in the respective proportions to those funds as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-107. Changes in law — Notice.

The Director of the Department of Finance and Administration shall give each special excise tax registrant under § 26-63-201 written notice of any change in the state law pertaining to the taxes levied by this chapter within thirty (30) days after the adjournment of the General Assembly.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

Subchapter 2 — Registration — Discount — Exemption — Procedures

26-63-201. Registration required.

26-63-202. Discount for prompt payment.

26-63-203. Exemptions generally.

26-63-204. Discontinuance of business — Unpaid taxes.

26-63-205. Applicability of tax procedure provisions.

Cross References. Arkansas Tourism Development Act, § 15-11-501 et seq.

Tax levy in cities adjacent to city one mile from state line, § 26-25-104.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-201. Registration required.

(a) It is unlawful for any taxpayer to transact business within this state prior to registering with the Director of the Department of Finance and Administration.

(b) The director may promulgate rules to implement this section.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-202. Discount for prompt payment.

A taxpayer filing a report for a tax due under this chapter is eligible for the discount for prompt payment pursuant to § 26-52-503.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-203. Exemptions generally.

With the exception of the tourism tax levied in § 26-63-401 et seq., a tax levied by this chapter is exempted from taxation in the same manner as the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-204. Discontinuance of business — Unpaid taxes.

(a) (1) Upon discontinuance of a business by sale or otherwise, any taxpayer registered to operate under this chapter shall notify the Director of the Department of Finance and Administration in writing and remit any unpaid or accrued taxes due under this chapter.

(2) Failure to pay any unpaid or accrued taxes due under this chapter is sufficient cause for the director to refuse to allow the taxpayer to engage in or transact any other business in this state.

(3) In the case of a sale of any business, the tax levied by this chapter is due at the time of the sale of the fixtures and equipment incident to the business, and any tax due under this chapter constitutes a lien against the stock and the fixtures and equipment in the possession of the purchaser of the fixtures and equipment or any other third party until the tax due under this chapter is paid.

(b) The director shall not register a taxpayer to continue to conduct a business until all tax due under this chapter has been settled and paid.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-205. Applicability of tax procedure provisions.

Any proceeding related to the registration, collection, reporting, or payment under this chapter is governed by the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

Subchapter 3
— Rental Taxes

26-63-301. Short-term rentals of tangible personal property.

- 26-63-302. Rental vehicle tax.
- 26-63-303. Residential moving tax.
- 26-63-304. Long-term rental vehicle tax.

Cross References. Arkansas Tourism Development Act, § 15-11-501 et seq.

Tax levy in cities adjacent to city one mile from state line, § 26-25-104.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-301. Short-term rentals of tangible personal property.

(a) As used in this section:

(1) “Motor vehicle” means any vehicle required to be licensed for highway use under Arkansas law; and

(2) “Short-term rental” means a rental or lease of tangible personal property for a period of less than thirty (30) days, except rentals or leases of motor vehicles, trailers, or farm machinery and equipment.

(b) (1) In addition to the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., there is levied a short-term rental tax of one percent (1%) on the gross receipts received from the short-term rental of tangible personal property.

(2) The tax levied by this section is applicable to a short-term rental regardless of whether the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., was paid on the rented tangible personal property at the time of purchase.

(c) The tax levied by this section does not apply to the lease or rental of:

(1) A diesel truck leased or rented for commercial shipping; and

(2) Farm machinery or farm equipment leased or rented for a commercial purpose.

(d) The tax levied by this section does not apply to a short-term rental of tangible personal property that is subject to the tourism tax levied in § 26-63-401 et seq.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-302. Rental vehicle tax.

(a) (1) (A) In addition to the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., there is levied a rental vehicle tax.

(B) The rental vehicle tax is levied on the gross receipts or gross proceeds derived from the rental of a motor vehicle required to be licensed that is leased for a period of less than thirty (30) days.

(C) The gross receipts or gross proceeds derived from a rental described in subdivision (a)(1)(B) of this section is taxable whether or not the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., was paid at the time of registration.

(2) The gross receipts or gross proceeds derived from the sale of a motor vehicle to a person engaged in the business of renting a motor vehicle required to be licensed is exempt from taxation under the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and any municipal or county sales taxes if the motor vehicle is used exclusively for the purpose of rentals for periods of less than thirty (30) days.

(b) (1) In addition to the rate in subsection (c) of this section, the rental vehicle tax is levied at the rate of five percent (5%) and the rate of any applicable municipal or county taxes.

(2) Except as provided otherwise in this section, the rental vehicle tax shall be collected, reported, and paid in the same manner and at the same time as prescribed by this chapter.

(3) (A) The rental vehicle tax shall be remitted to the Director of the Department of Finance and Administration and, except for the amount equal to any municipal or county taxes, shall be deposited into the State Treasury as general revenues.

(B) The amount of the rental vehicle tax which is based on the municipal and county sales taxes shall be remitted to the city or county in the same manner as for municipal and county sales taxes.

(c) (1) There is also imposed an additional rental vehicle tax at the rate of five percent (5%) on the gross receipts or gross proceeds derived from the rental of a motor vehicle required to be licensed that is leased for a period of less than thirty (30) days.

(2) (A) (i) The additional rental vehicle tax shall be remitted to the director, who shall deposit seventy-five percent (75%) of the net revenues derived from the additional rental vehicle tax into the Arkansas Public Transit Trust Fund.

(ii) The moneys in the fund resulting from a deposit described in subdivision (c)(2)(A)(i) of this section shall be used by the Arkansas State Highway and Transportation Department for the purpose of acquiring federal matching funds for the purchase of public transportation vehicles, for public transit equipment or facilities, and for the operation of the United States Department of Transportation Federal Transit Administration assistance programs.

(B) The remaining twenty-five percent (25%) of the revenues shall be deposited into the Department of Education Public School Fund Account to be used exclusively for teacher salaries.

(d) Both the rental vehicle tax and the additional rental vehicle tax levied by this section do not apply to the lease or rental of:

(1) A diesel truck leased or rented for commercial shipping;

(2) Farm machinery or farm equipment leased or rented for a commercial purpose; and

(3) A gasoline-powered or diesel-powered truck leased or rented for residential moving or shipping.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-303. Residential moving tax.

In addition to the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., there is levied a residential moving tax at the rate of four and five-tenths percent (4.5%) on the gross receipts received from:

(1) The short-term rental of a gasoline-powered or diesel-powered truck rented or leased for residential moving or shipping; and

(2) Any tangible personal property sold in conjunction with the rental or lease of a gasoline-powered or diesel-powered truck rented or leased for residential moving or shipping.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-304. Long-term rental vehicle tax.

(a) (1) In addition to the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., there is levied a long-term rental vehicle tax at the rate of one and five-tenths percent (1.5%) on the gross receipts or gross proceeds derived from a rental of a motor vehicle required to be licensed and that is leased for a period of thirty (30) days or more.

(2) The gross receipts or gross proceeds derived from the rental described in subdivision (a)(1) of this section is taxable only if the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., was not paid at the time of registration.

(b) If the Chief Fiscal Officer of the State certifies that ten percent (10%) or more of all new motor vehicles registered in Arkansas during a calendar year are leased vehicles based on information and statistics from a reliable source, such as R.L. Polk & Co., then the long-term rental vehicle tax shall expire on June 30 of the fiscal year following the calendar year for which the certification is made.

(c) The long-term rental vehicle tax shall be remitted to the Director of the Department of Finance and Administration and shall be deposited into the State Treasury as general revenues.

(d) The long-term rental vehicle tax does not apply to:

(1) A diesel truck rented or leased for commercial shipping;

(2) Farm machinery or farm equipment rented or leased for a commercial purpose; or

(3) A gasoline-powered or diesel-powered truck rented or leased for residential moving or shipping.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

Subchapter 4 — Tourism Tax

26-63-401. Definitions.

- 26-63-402. Tourism tax.
26-63-403. Applicability — Political subdivisions — Churches and charitable organizations.
26-63-404. Exemptions.
26-63-405. Tourism Development Trust Fund.

Cross References. Arkansas Tourism Development Act, § 15-11-501 et seq.
Tax levy in cities adjacent to city one mile from state line, § 26-25-104.
Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-401. Definitions.

As used in this subchapter:

(1) “Camping fee” means a fee for furnishing a camping space or trailer space on less than a month-to-month basis;

(2) “Special event” means any attraction, festival, or other event of not more than fourteen (14) days' duration;

(3) (A) “Tourist attraction” means a theme park, a water park, a water slide, a river boat or lake boat cruise or excursion, a local sightseeing or excursion tour, a helicopter tour, an excursion railroad, a carriage ride, horse racing, dog racing, car racing, an indoor or outdoor play or music show, folk center, observation tower, a privately owned or operated museum, a privately owned historic site or building, or a natural formation such as a spring, bridge, rock formation, cave, or cavern.

(B) “Tourist attraction” does not include:

(i) A special event;

(ii) An event of a school, college, or university; or

(iii) An event of a restaurant, coffee shop, dinner theater which admits dinner guests only, cafe, cafeteria, or any other public eating establishment that is open for business every month of the year; and

(4) (A) “Watercraft” means a boat, canoe, kayak, sailboat, party barge, raft, jet ski, houseboat, or amphibious vehicle.

(B) “Watercraft” does not include a tug boat or barge.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-402. Tourism tax.

In addition to the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., there is levied a tourism tax at the rate of two percent (2%) on the gross proceeds or gross receipts derived from the following:

(1) (A) The service of furnishing a:

(i) Condominium, townhouse, or rental house to a transient guest;

and

(ii) Guest room, suite, or other accommodation by a hotel, motel, lodging house, tourist camp, tourist court, property management company, or any other provider of an accommodation to a transient guest.

(B) As used in this subdivision (1), “transient guest” means a person that

rents an accommodation, other than the person's regular place of abode, on less than a month-to-month basis;

(2) A camping fee at a public or privately owned campground, except at a federal campground;

(3) The following items offered for rent by a boat dock, marina, canoe or raft rental business, or other business engaged in the rental of watercraft:

(A) Watercraft;

(B) Boat motor and related boat motor equipment;

(C) Life jacket or cushion;

(D) Water skis; or

(E) Oar or paddle; and

(4) The admission price to a tourist attraction.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-403. Applicability — Political subdivisions — Churches and charitable organizations.

(a) The gross receipts or gross proceeds derived from the rental or sale of tangible personal property or a taxable service subject to the tourism tax levied by this subchapter by the State of Arkansas, any county, any municipality, or any other political subdivision of the state are not exempt from the tax.

(b) (1) The gross receipts or gross proceeds derived by a church or charitable organization from the admission price to a tourist attraction shall not be exempt from the tax levied by this subchapter.

(2) However, the gross receipts or gross proceeds derived from the sale or rental of other tangible personal property or a taxable service by a church or charitable organization shall be exempt from the tourism tax imposed by this subchapter, except when the organization is engaged in business for a profit.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-404. Exemptions.

There is exempted from the tourism tax levied by this subchapter the following:

(1) Gross receipts or gross proceeds derived from the sale or rental of tangible personal property or taxable services to the Boy Scouts of America, chartered by the United States Congress in 1916, or the Girl Scouts of the United States of America, chartered by the United States Congress in 1950, or any of the scout councils in this state;

(2) Gross receipts or gross proceeds derived from the sale or rental of tangible personal property or taxable services to the Boys Clubs of America, chartered by the United States Congress in 1956, or any local councils or organizations of the Boys Clubs of America;

(3) Gross receipts or gross proceeds derived from the sale or rental of tangible personal property or taxable services to the Girls Clubs of America or any local council or organization of the Girls Clubs of America; or

(4) Gross receipts or gross proceeds derived from the sale or rental of tangible personal property or taxable services to 4-H Clubs and FFA Clubs in this state, to the Arkansas 4-H Foundation, the Arkansas Future Farmers of America Foundation, and the Arkansas Future Farmers of America Association.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-405. Tourism Development Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the “Tourism Development Trust Fund”.

(b) The revenues derived from the tourism tax levied by this subchapter shall be remitted to the Treasurer of State who shall deposit the revenues into the State Treasury as special revenues and shall credit the revenues to the fund.

(c) All revenues collected under this subchapter and credited to the fund shall be used by the Department of Parks and Tourism exclusively for the promotion of tourism in Arkansas.

History. Acts 2007, No. 182, § 1.

Cross References. Tourism Development Trust Fund, § 19-5-956.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

Chapters 64-71 [RESERVED.]

[Reserved]

Subtitle 6. Local Taxes

Chapter 72 General Provisions
Chapter 73 Taxation Generally
Chapter 74 County Sales and Use Taxes
Chapter 75 Municipal Sales and Use Taxes
Chapter 76 County Privilege and License Taxes
Chapter 77 Municipal Occupational Taxes and Licenses
Chapter 78 County And Municipal Motor Vehicle Tax
Chapter 79 County Road Tax
Chapter 80 School District Taxes
Chapter 81 Multicounty Airport and Riverport Financing Act

Chapter 72 General Provisions

[Reserved]

Chapter 73

Taxation Generally

- Subchapter 1 — General Provisions
- Subchapter 2 — Municipal Corporations
- Subchapter 3 — Counties

Effective Dates. Acts 1994 (1st Ex. Sess.), Nos. 6 and 7, § 10: Mar. 4, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that the decision of the Arkansas Court of Appeals in *AT&T Communications of the Southwest, Inc. v. City of Little Rock* [44 Ark. App. 30, 866 S.W.2d 414 (1993)] has created uncertainty and confusion concerning the ability of municipalities to assess franchise fees as a term or condition for the use of public rights-of-way; that the immediate implementation of this Act is necessary to eliminate this uncertainty and confusion and to reconfirm the authority of municipalities to levy franchise fees. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Research References

A.L.R.

- Estoppel of state or local government in tax matters. 21 A.L.R.4th 573.
- Recovery of tax paid on exempt property. 25 A.L.R.4th 186.
- Exemption of public golf courses from local property taxes. 41 A.L.R.4th 963.
- Exemption of nonprofit theater or concert hall from local property taxation. 42 A.L.R.4th 614.
- Validity of state or local gross receipts tax on gambling. 21 A.L.R.5th 812.

Subchapter 1 — General Provisions

- 26-73-101. Savings provision.
- 26-73-102. Definitions.
- 26-73-103. Levy of new taxes permitted — Exceptions.
- 26-73-104. Levy of income and other taxes.
- 26-73-105. Collection of taxes.
- 26-73-106. Revenue Local Tax Revolving Fund — Revenue Local Tax Operating Fund.
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- 26-73-110. Special local sales and use tax — Levying ordinance.
- 26-73-111. Special local sales and use tax — Election.
- 26-73-112. Special local sales and use tax — Additional tax — Levy collection and enforcement — Proceeds.
- 26-73-113. Alternative local sales and use tax.
- 26-73-114. Dedication of sales and use tax to school district.
- 26-73-115. Sales and use tax reports.

A.C.R.C. Notes. References to "this subchapter" in §§ 26-73-101 — 26-73-113 may not apply to §§ 26-73-114 and 26-73-115 which was enacted subsequently.

Cross References. Taxing power of quorum court, limitations, § 14-14-806.

Effective Dates. Acts 1977, No. 942, § 12: Apr. 1, 1977. Emergency clause provided: "It is hereby found that providing local taxing powers to county and city governments is essential to the well-being of the populace of the State of Arkansas and is necessary to provide the ability to raise

local revenues for local projects and services; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, welfare and safety shall be in full force and effect from and after its passage and approval.” Acts 1991, No. 200, § 6: Feb. 20, 1991. Emergency clause provided: “It has been found, and is hereby declared by the General Assembly of the State of Arkansas, that certain counties and municipalities within the State of Arkansas, as a result of foreseen elimination of federal funds heretofore made available to them and used for a variety of vital public purposes, will not be able to and cannot provide the funds necessary to provide such vital public service and purpose to their inhabitants without additional funding authority from the State of Arkansas; that the most appropriate way for such counties or municipalities to provide funds for this purpose is by the levy of a sales and use tax on the gross receipts derived from certain businesses within the counties and municipalities, and that this Act is needed and should be given effect at the earliest possible date; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, welfare and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 777, § 6: Mar. 26, 1991. Emergency clause provided: “It is hereby determined by the General Assembly that cities and counties are faced with financial crises with reference to having sufficient tax resources to maintain and finance capital improvements of a public nature and to provide services to their inhabitants; that under current law the cities and counties are restricted to a one percent (1%) sales and use tax levy; that the ability to levy a sales and use tax computed on any fraction of one percent (1%) would be a feasible alternative for some cities and counties in financial crisis; and that such financial crises constitute such an emergency that the immediate passage of this act is necessary in order to provide financial relief to the cities and counties. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval.”

Acts 1992 (1st Ex. Sess.), No. 40, § 5: Mar. 11, 1992. Emergency clause provided: “It is hereby found and determined by the General Assembly that the existing taxing authority for counties to fund vital county services is inadequate; and that this act will provide authority for the counties to raise additional revenues to provide for vital county services for the residents of the county. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 565, § 25: July 1, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that there are in excess of 300 different local sales and use taxes in effect; that many of these taxes are for specified duration; that notification of affected taxpayers of the beginning and ending of these taxes is time consuming and costly; that requiring local sales and use taxes to begin and end on a calendar quarter basis will ease the administrative burden of taxpayers and the cost to the State of Arkansas; and that an effective date of July 1, 1995 is necessary to achieve the purpose of this legislation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995.”

Acts 1997, No. 947, § 5: Mar. 31, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that the existing taxing authority for counties to fund vital county services is inadequate; and that this act will provide authority for the counties to raise additional revenues to provide for vital county services for the residents of the county by renting capital improvements. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2007, No. 181, § 45: Jan. 1, 2008.

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act makes various

revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

26-73-101. Savings provision.

Nothing in this subchapter shall be construed to modify or repeal §§ 26-75-303 and 26-75-307 — 26-75-316.

History. Acts 1977, No. 942, § 10; A.S.A. 1947, § 17-2009.

26-73-102. Definitions.

As used in this subchapter:

(1) “Calendar quarter” means the three-month period beginning on January 1, April 1, July 1, or October 1;

(2) “County” means each of the counties of this state;

(3) “Director” means the Director of the Department of Finance and Administration in the exercise of those powers, functions, and duties formerly vested in the Commissioner of Revenues of the State of Arkansas which were merged into the Department of Finance and Administration under the provisions of § 25-8-101 et seq., or any of his or her authorized agents;

(4) “Local government” means a city or county; and

(5) “Municipality” and “city” mean any city of the first class, city of the second class, or incorporated town in this state.

History. Acts 1977, No. 942, § 2; A.S.A. 1947, § 17-2001; Acts 1995, No. 565, § 14.

Research References

U. Ark. Little Rock L.J.

Survey of Arkansas Law, Public Law, 1 U. Ark. Little Rock L.J. 230.

26-73-103. Levy of new taxes permitted — Exceptions.

(a) (1) In addition to all other authority of local governments to levy taxes provided by law, any county acting through its quorum court or any municipality acting through its governing body may levy any tax not otherwise prohibited by law.

(2) However, no ordinance levying an income tax authorized by this subchapter or any other tax not authorized shall be valid until adopted at a special or general election by the qualified electors of the city or in the area of the county where the tax is to be imposed, as the case may be.

(b) A local government shall not levy a tax on fuel, tobacco, or alcoholic beverages except as authorized by law.

(c) (1) The provisions of this subchapter shall not apply to lands, buildings, facilities, and equipment, also known as licensed facilities, located in this state used by a franchise holder at any time for licensed horse or dog racing in this state nor to any income of the franchise holder derived from the use of such licensed facilities from every source

whatever except the sale of food and beverages at such licensed facilities.

(2) Nor shall this subchapter apply to any moneys derived by the franchise holder from pari-mutuel wagering at such licensed facilities, but this provision shall not exempt a franchise holder from a general income tax levied against all taxpayers in the taxing county or municipality.

(d) Nothing in this subchapter shall be construed to diminish the existing powers of county governments or city governments.

(e) Any taxes proposed by ordinance at the quorum court of the county shall be designed to benefit not only the county but also the municipalities located wholly or partially within the county.

(f) Nothing in this subchapter shall terminate, repeal, or otherwise affect a gross receipts tax on the receipts derived from hotels, motels, and restaurants located within any city levied under the provisions of § 26-75-601 et seq.

(g) Until otherwise authorized by the General Assembly, cities and counties shall have no authority to levy any new sales or use taxes after April 1, 1977.

(h) Nothing in this subchapter shall limit the authority of municipalities to assess or contract for franchise fees pursuant to §§ 14-54-704 and 14-200-101 or any other enabling legislation related to franchise fees.

History. Acts 1977, No. 942, § 3; A.S.A. 1947, § 17-2002; Acts 1994 (1st Ex. Sess.), No. 6, § 4; 1994 (1st Ex. Sess.), No. 7, § 4.

Publisher's Notes. Identical Acts 1994 (1st Ex. Sess.) Nos. 6 and 7, § 1, provided:
"LEGISLATIVE FINDINGS.

(a) In the State of Arkansas, municipalities are granted jurisdiction and authority over the use and control of the public rights-of-way within the corporate limits of the municipality, to the extent that such jurisdiction does not conflict with state or federal statutes or regulations.

(b) This historic authority has included the right to assess franchise fees for the privilege of the use of such rights-of-way and of providing utility service to the public.

(c) On numerous occasions, the courts of the State of Arkansas have referred to this right to assess franchise fees against public utilities. For example, in *Hot Springs Electric Light Co. v. Hot Springs*, 70 Ark. 300 (1902), the Arkansas Supreme Court expressly stated that cities may assess a franchise fee as a condition for the use of public rights-of-way."

Identical Acts 1994 (1st Ex. Sess.) Nos. 6 and 7, § 2, provided:

"STATEMENT OF POLICY. It is, and historically has been, the policy of the State of Arkansas to permit municipalities, as one means of raising revenues, to assess municipal franchise fees against public utilities for the privilege of providing utility services to the public and of using public rights-of-way, including streets, highways, or other public places of any kind whatsoever within municipal boundaries and such franchise fees have not been considered to be within the scope of A.C.A. § 26-73-103 so as to require a vote of the electorate.

"It is also the policy of the State that nothing in this Act shall amend or adversely impact the terms and provisions of an existing franchise agreement between a municipality and a public utility entered into pursuant to A.C.A. § 14-54-704, A.C.A. § 14-200-101, or any other enabling legislation relating to franchise fees in effect at the time of the agreement."

Research References

U. Ark. Little Rock L.J.

Survey of Arkansas Law, Public Law, 1 U. Ark. Little Rock L.J. 230.

Goldner, A Call for Reform of Arkansas Municipal Law, 15 U. Ark. Little Rock L.J. 175.

Case Notes

Approval of Voters.

Fees.

Illegal Exactions.
Utility Expansion Capital.

Approval of Voters.

Because voters did not approve the surcharge, it constituted an illegal tax. *Barnhart v. City of Fayetteville*, 321 Ark. 197, 900 S.W.2d 539 (1995).

Fees.

A series of ordinances that placed "tapping fees" on builders or lot owners connecting onto city's existing water and sewer systems and required "access fees" from any person or entity connecting to city's transmission lines, placing the funds collected from these respective fees in separate accounts designed as the "water expansion account" and "sewer expansion account" and used solely to expand the city's water and sewer systems, were valid because they assessed fees and not taxes. *City of Marion v. Baioni*, 312 Ark. 423, 850 S.W.2d 1 (1993).

The distinction between a tax and a fee is that government imposes a tax for general revenue purposes, but a fee is imposed in the government's exercise of its police powers. *City of Marion v. Baioni*, 312 Ark. 423, 850 S.W.2d 1 (1993).

The court, in determining whether a governmental charge, assessment or fee is a tax, is not bound by how the enactment or levy labels it. *City of Marion v. Baioni*, 312 Ark. 423, 850 S.W.2d 1 (1993).

The holding in *City of Marion v. Baioni*, 312 Ark. 423, 850 S.W.2d 1 (1993), is simply inapplicable to situations where cities are statutorily authorized to assess public utilities franchise fees for the use or occupancy of the cities' rights-of-way. *City of Little Rock v. AT&T Communications*, 318 Ark. 616, 888 S.W.2d 290 (1994).

Illegal Exactions.

Charge that was imposed by ordinance and used to pay for a salary increase for city policemen and firemen was a payment exacted by the municipality as a contribution toward the cost of maintaining the traditional governmental functions of police and fire protection and was not for a specific, special service, but was a means of raising revenue to pay additional money for services already in effect; therefore, the charge was a tax and not a fee, and the ordinance imposing it, which was never voted on by the electors as required by this section, was void as an illegal exaction. *North Little Rock v. Graham*, 278 Ark. 547, 647 S.W.2d 452 (1983).

City ordinance imposing charge for police and fire protection and street lighting was not a property tax within the meaning of Ark. Const., Art. 12, § 4 or §§ 26-25-102 and 26-25-103, where ordinance placed tax on the "resident" or "occupant" of the property as opposed to a tax on the "residence" or upon the "real property," and such tax was not otherwise prohibited by subsection (a) of this section. *Holt v. City of Maumelle*, 302 Ark. 51, 786 S.W.2d 581 (1990).

Utility Expansion Capital.

Raising expansion capital to pay for the extension of existing water and sewer systems to developments where new users reside by setting connection charges, which do not exceed a pro rata share of reasonably anticipated costs of expansion, is permissible where expansion is reasonably required if the use of the money is limited to meeting the cost of that extension. *City of Marion v. Baioni*, 312 Ark. 423, 850 S.W.2d 1 (1993).

26-73-104. Levy of income and other taxes.

(a) (1) A local government may levy a tax upon the income of its individual residents and corporations and individuals owning a business within the boundaries of the local government levying the tax, but no tax shall be levied on the income of corporations or other business entities in any local governmental unit unless a like tax is levied on the income of individual residents of such governmental unit.

(2) However, in the event a municipality levies an income tax or other tax authorized by this subchapter, with the exception of the sales and use tax, the county within which such municipality is located may not levy or collect that tax being levied by the municipality within the corporate limits of such municipality.

(b) (1) For individual taxpayers, the rate of tax on income authorized by this section

shall be a single percentage of the income tax payable to the State of Arkansas.

(2) (A) For all domestic or foreign corporations, the rate of tax on income authorized by this section shall be a percentage of the income tax payable to the State of Arkansas, calculated on an apportionment formula which shall consist of a fraction, the numerator of which is the property factor, plus the payroll factor, plus the sales factor and the denominator of which is three (3).

(B) The sales factor is a fraction, the numerator of which is the total sales of the corporation within the local government during the tax period and the denominator of which is the total sales of the corporation within the state for the same tax period.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid in the local government during the tax period by the corporation for compensation and the denominator of which is the total compensation paid within the state for the same tax period.

(D) The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in the local government during the tax period and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used within the state during the same tax period.

(c) However, a corporation located within the boundaries of a local government and subject to the tax under this section, having no sales, payroll, and property in another local government, shall be permitted the election of being taxed in the same manner as an individual taxpayer under this section.

History. Acts 1977, No. 942, § 4; A.S.A. 1947, § 17-2003.

26-73-105. Collection of taxes.

(a) The Director of the Department of Finance and Administration shall collect the tax levied under this subchapter and shall perform all functions incident to the administration, collection, enforcement, and operation of the taxes in the manner and following the procedures that are prescribed for the corresponding state taxes.

(b) The director shall deduct from all revenues collected pursuant to this subchapter up to three percent (3%) as a cost of collection.

History. Acts 1977, No. 942, §§ 5, 8; A.S.A. 1947, §§ 17-2004, 17-2007; Acts 2007, No. 181, § 40.

Amendments. The 2007 amendment rewrote (a).

Effective Dates. Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

26-73-106. Revenue Local Tax Revolving Fund — Revenue Local Tax Operating Fund.

(a) There are created on the books of the Treasurer of State, the Auditor of State, and the Director of the Department of Finance and Administration a Revenue Local Tax Revolving Fund and a Revenue Local Tax Operating Fund.

(b) All taxes collected by the director under this subchapter shall be deposited into the State Treasury and credited to the Revenue Local Tax Revolving Fund and transmitted at least quarterly in each state fiscal year to the local government levying the tax.

History. Acts 1977, No. 942, § 6; A.S.A. 1947, § 17-2005; Acts 2009, No. 655, § 108.

Amendments. The 2009 amendment inserted “under this subchapter” in (b).

26-73-107. Rules and regulations.

The Director of the Department of Finance and Administration shall promulgate reasonable rules and regulations not inconsistent with the provisions of this subchapter to implement the enforcement, administration, and collection of the taxes authorized in this subchapter.

History. Acts 1977, No. 942, § 8; A.S.A. 1947, § 17-2007.

26-73-108. Discrimination in use of tax funds prohibited.

(a) (1) No citizen in the State of Arkansas in a county, city, or local community on the grounds of race, color, religion, or national origin shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination of services or participation under any program or activity receiving Arkansas tax funds.

(2) Each county, city, local community, or agency within the State of Arkansas which is empowered to extend financial assistance to any program or activity, by the way of Arkansas state, county, or city tax funds shall not engage in any practice of discrimination in participation, employment, services, or in any other human involvement.

(b) Violation of this section shall result in the impoundment of the state, county, or city tax funds so allotted.

History. Acts 1977, No. 942, § 7; A.S.A. 1947, § 17-2006.

26-73-109. Tax information exchange agreements.

(a) (1) (A) In order to promote the expeditious and effective collection of any tax levied under authority of this subchapter, a local government may enter into exchange of tax information agreements with the:

- (i) Internal Revenue Service,
- (ii) Director of the Department of Finance and Administration; or
- (iii) Tax administrator of another state or political subdivision.

(B) Any such information exchanged shall be utilized solely for the purpose of enforcing tax laws.

(2) In all other matters concerning the release of tax information, including its release to law enforcement agencies, the local government shall be governed by state law in the same manner as is the director.

(b) Any person who sells or unlawfully divulges to another person or organization any information acquired through the collection of a tax levied under authority of this subchapter is guilty of a Class A misdemeanor and subject to the penalties therefor as defined in the Arkansas Criminal Code.

History. Acts 1977, No. 942, § 9; A.S.A. 1947, § 17-2008.

Meaning of “Arkansas Criminal Code”. See note to § 5-1-101.

26-73-110. Special local sales and use tax — Levying ordinance.

