

Stricken language would be deleted from and underlined language would be added to present law.
Act 107 of the 2nd Extraordinary Session

1 State of Arkansas

As Engrossed: H12/26/03 H2/2/04

Call Item 6

2 84th General Assembly

A Bill

3 Second Extraordinary Session, 2003

HOUSE BILL 1030

4

5 By: Representative Hickinbotham

6

7

8

For An Act To Be Entitled

9

AN ACT TO PROVIDE ADDITIONAL REVENUE TO FUND THE

10

STATE EDUCATION SYSTEM; TO LEVY AN ADDITIONAL

11

SALES AND USE TAX OF SEVEN-EIGHTHS OF ONE PERCENT

12

(0.875%); TO IMPOSE A GROSS RECEIPTS TAX ON

13

CERTAIN SERVICES; TO INCREASE THE WHOLESALE

14

VENDING TAX; TO CREATE THE EDUCATIONAL ADEQUACY

15

TRUST FUND; AND FOR OTHER PURPOSES.

16

Subtitle

17

TO PROVIDE ADDITIONAL REVENUE TO FUND

18

THE EDUCATIONAL SYSTEM, TO INCREASE

19

SALES AND WHOLESALE VENDING TAX, AND TO

20

IMPOSE SALES TAX ON CERTAIN SERVICES.

21

22

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

24

25 SECTION 1. Arkansas Code § 26-52-302, concerning levying additional
26 sales taxes, is amended to add an additional subsection to read as follows:

27 (d)(1) Beginning March 1, 2004, there is levied an additional excise

28 tax of seven-eighths of one percent (0.875%) upon all taxable sales of

29 property and services subject to the tax levied by the Arkansas Gross

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

31 (2) The tax shall be collected, reported, and paid in the same

32 manner and at the same time as prescribed by the Arkansas Gross Receipts Act

33 of 1941, § 26-52-101 et seq., for the collection, reporting, and payment of

34 Arkansas gross receipts taxes.

35

36 SECTION 2. Effective March 1, 2004, Arkansas Code § 26-52-311(b)(1),



1 pertaining to the rental vehicle tax, is amended to read as follows:

2 (b)(1) In addition to the rate in subsection (c) of this section, the
3 rental vehicle tax shall be levied at the ~~same rate as the combined gross~~
4 ~~receipts taxes levied by §§ 26-52-301 and 26-52-302 and any act supplemental~~
5 ~~thereto~~ rate of five percent (5%) and the rate of any applicable municipal or
6 county taxes.

7
8 SECTION 3. Arkansas Code § 26-53-107, effective until contingency in
9 Acts 2003, No. 1273, § 88 is met, is amended to add an additional subsection
10 to read as follows:

11 (d)(1) Beginning March 1, 2004, there is levied an additional excise
12 tax of seven-eighths of one percent (0.875%) upon all tangible personal
13 property subject to the tax levied by the Arkansas Compensating Tax Act of
14 1949, § 26-53-101 et seq.

15 (2) The tax shall be collected, reported, and paid in the same
16 manner and at the same time as is prescribed by the Arkansas Compensating Tax
17 Act of 1949, § 26-53-101 et seq., for the collection, reporting, and payment
18 of Arkansas compensating taxes.

19
20 SECTION 4. Arkansas Code § 26-53-107, effective when contingency in
21 Acts 2003, No. 1273, § 88 is met, is amended to read as follows:

22 (d)(1) Beginning March 1, 2004, there is levied an additional excise
23 tax of seven-eighths of one percent (0.875%) upon all tangible personal
24 property and taxable services subject to the tax levied by the Arkansas
25 Compensating Tax Act of 1949, § 26-53-101 et seq.

26 (2) The tax shall be collected, reported, and paid in the same
27 manner and at the same time as is prescribed by the Arkansas Compensating Tax
28 Act of 1949, § 26-53-101 et seq., for the collection, reporting, and payment
29 of Arkansas compensating taxes.

30
31 SECTION 5. Effective July 1, 2004, Arkansas Code § 26-52-
32 301(3)(C), effective until contingency in Acts 2003, No. 1273, § 88 is met,
33 is amended to read as follows:

34 (C)(i) Service of initial installation, alteration,
35 addition, cleaning, refinishing, replacement, and repair of motor vehicles,
36 aircraft, farm machinery and implements, motors of all kinds, tires and

1 batteries, boats, electrical appliances and devices, furniture, rugs,
2 flooring, upholstery, household appliances, televisions and radios, jewelry,
3 watches and clocks, engineering instruments, medical and surgical
4 instruments, machinery of all kinds, bicycles, office machines and equipment,
5 shoes, tin and sheetmetal, mechanical tools, and shop equipment.

6 (ii) However, the provisions of this section shall
7 not apply to coin-operated car washes. For the purposes of this section, a
8 coin-operated car wash shall be defined as one wherein the car washing
9 equipment is activated by the insertion of coins into a slot or receptacle
10 and where the labor of washing the exterior of the car or motor vehicle is
11 performed solely by the customer or by mechanical equipment.

12 (iii) Additionally, the gross receipts tax levied in
13 this section shall not apply to the repair or maintenance of railroad parts,
14 railroad cars, and equipment brought into the State of Arkansas solely and
15 exclusively for the purpose of being repaired, refurbished, modified, or
16 converted within this state.

17 (iv) The General Assembly determines and affirms
18 that the original intent of subdivision (3) of this section which provides
19 that gross receipts derived from certain services would be subject to the
20 gross receipts tax was not intended to be applicable, nor shall Arkansas
21 gross receipts taxes be collected, with respect to services performed on
22 watches and clocks which are received by mail or common carrier from outside
23 this state and which, after the service is performed, are returned by mail or
24 common carrier or in the repairman's own conveyance to points outside this
25 state.

26 (v) Additionally, the gross receipts tax levied in
27 this section shall not apply to the repair or remanufacture of industrial
28 metal rollers or platens that have a remanufactured, nonmetallic material
29 covering on all or part of the roller or platen surface which are brought
30 into the State of Arkansas solely and exclusively for the purpose of being
31 repaired or remanufactured in this state and are then shipped back to the
32 state of origin.

33 (vi) The gross receipts tax levied in this section
34 shall not apply to the service of alteration, addition, cleaning,
35 refinishing, replacement, or repair of commercial jet aircraft, commercial
36 jet aircraft components, or commercial jet aircraft subcomponents. The term

1 "commercial jet aircraft" shall mean any commercial, military, private, or
 2 other turbine or turbo jet aircraft having a certified maximum take-off
 3 weight of more than twelve thousand five hundred (12,500) pounds;

4 (vii) The provisions of subdivision (3)(C)(i) of
 5 this section shall not apply to the services performed by a temporary or
 6 leased employee or other contract laborer on items owned or leased by the
 7 employer. The following criteria must be met for a person to be a temporary
 8 or leased employee:

9 (a) There must be a written contract with the
 10 temporary employment agency, employee leasing company, or other contractor
 11 providing the services;

12 (b) The employee, temporary employment agency,
 13 employee leasing company, or other contractor must not bear the risk of loss
 14 for damages caused during the performance of the contract. The person for
 15 whom the services are performed must bear the risk of loss; and

16 (c) The temporary or leased employee or
 17 contract laborer is controlled by the employer as if he were a full-time
 18 permanent employee. "Control" includes, but is not limited to, scheduling
 19 work hours, designating work duties, and directing work performance.

20 (viii)(a) Additionally, the gross receipts tax
 21 levied in this section shall not apply to the initial installation,
 22 alteration, addition, cleaning, refinishing, replacement, or repair of
 23 nonmechanical, passive, or manually operated components of buildings or other
 24 improvements or structures affixed to real estate, including, but not limited
 25 to, the following:

26 (1) Walls;

27 ~~(2) Floors;~~

28 ~~(3)~~(2) Ceilings;

29 ~~(4)~~(3) Doors;

30 ~~(5)~~(4) Locks;

31 ~~(6)~~(5) Windows;

32 ~~(7)~~(6) Glass;

33 ~~(8)~~(7) Heat and air ducts;

34 ~~(9)~~(8) Roofs;

35 ~~(10)~~(9) Wiring;

36 ~~(11)~~(10) Breakers;

1 ~~(12)~~(11) Breaker boxes;
 2 ~~(13)~~(12) Electrical switches and
 3 receptacles;
 4 ~~(14)~~(13) Light fixtures;
 5 ~~(15)~~(14) Pipes;
 6 ~~(16)~~(15) Plumbing fixtures;
 7 ~~(17)~~(16) Fire and security alarms;
 8 ~~(18)~~(17) Intercoms;
 9 ~~(19)~~(18) Sprinkler systems;
 10 ~~(20)~~(19) Parking lots;
 11 ~~(21)~~(20) Fences;
 12 ~~(22)~~(21) Gates;
 13 ~~(23)~~(22) Fireplaces; and
 14 ~~(24)~~(23) Similar components which become
 15 a part of real estate after, installation, except flooring.

16 (b) Contractors are deemed to be consumers or users
 17 of all tangible personal property used or consumed by them in providing such
 18 nontaxable services, in the same manner as when performing any other
 19 contract.

20 (c) Subdivision (3)(C)(viii) of this section shall
 21 not apply to any services subject to tax pursuant to terms of subdivision
 22 3(E) of this section.

23 (ix) The gross receipts tax levied in subdivision (3)(C)(i) of
 24 this section shall not apply to the service of initial installation of any
 25 property that is specifically exempted from the tax imposed by the Arkansas
 26 Gross Receipts Act of 1941, § 26-52-101 et seq.

27
 28 SECTION 6. Effective July 1, 2004, Arkansas Code § 26-52-301(3)(C),
 29 effective when contingency in Acts 2003, No. 1273, § 88 is met, is amended to
 30 read as follows:

31 (C)(i) Service of initial installation, alteration,
 32 addition, cleaning, refinishing, replacement, and repair of motor vehicles,
 33 aircraft, farm machinery and implements, motors of all kinds, tires and
 34 batteries, boats, electrical appliances and devices, furniture, rugs,
 35 flooring, upholstery, household appliances, televisions and radios, jewelry,
 36 watches and clocks, engineering instruments, medical and surgical

1 *instruments, machinery of all kinds, bicycles, office machines and equipment,*
2 *shoes, tin and sheetmetal, mechanical tools, and shop equipment.*

3 *(ii) However, the provisions of this section shall*
4 *not apply to coin-operated car washes. For the purposes of this section, a*
5 *coin-operated car wash shall be defined as one wherein the car washing*
6 *equipment is activated by the insertion of coins into a slot or receptacle*
7 *and where the labor of washing the exterior of the car or motor vehicle is*
8 *performed solely by the customer or by mechanical equipment.*

9 *(iii) Additionally, the gross receipts tax levied in*
10 *this section shall not apply to the repair or maintenance of railroad parts,*
11 *railroad cars, and equipment brought into the State of Arkansas solely and*
12 *exclusively for the purpose of being repaired, refurbished, modified, or*
13 *converted within this state.*

14 *(iv) The General Assembly determines and affirms*
15 *that the original intent of subdivision (3) of this section which provides*
16 *that gross receipts derived from certain services would be subject to the*
17 *gross receipts tax was not intended to be applicable, nor shall Arkansas*
18 *gross receipts taxes be collected, with respect to services performed on*
19 *watches and clocks which are received by mail or common carrier from outside*
20 *this state and which, after the service is performed, are returned by mail or*
21 *common carrier or in the repairman's own conveyance to points outside this*
22 *state.*

23 *(v) Additionally, the gross receipts tax levied in*
24 *this section shall not apply to the repair or remanufacture of industrial*
25 *metal rollers or platens that have a remanufactured, nonmetallic material*
26 *covering on all or part of the roller or platen surface which are brought*
27 *into the State of Arkansas solely and exclusively for the purpose of being*
28 *repaired or remanufactured in this state and are then shipped back to the*
29 *state of origin.*

30 *(vi) The gross receipts tax levied in this section*
31 *shall not apply to the service of alteration, addition, cleaning,*
32 *refinishing, replacement, or repair of commercial jet aircraft, commercial*
33 *jet aircraft components, or commercial jet aircraft subcomponents. The term*
34 *"commercial jet aircraft" shall mean any commercial, military, private, or*
35 *other turbine or turbo jet aircraft having a certified maximum take-off*
36 *weight of more than twelve thousand five hundred (12,500) pounds;*

1 (vii) The provisions of subdivision (3)(C)(i) of
2 this section shall not apply to the services performed by a temporary or
3 leased employee or other contract laborer on items owned or leased by the
4 employer. The following criteria must be met for a person to be a temporary
5 or leased employee:

6 (a) There must be a written contract with the
7 temporary employment agency, employee leasing company, or other contractor
8 providing the services;

9 (b) The employee, temporary employment agency,
10 employee leasing company, or other contractor must not bear the risk of loss
11 for damages caused during the performance of the contract. The person for
12 whom the services are performed must bear the risk of loss; and

13 (c) The temporary or leased employee or
14 contract laborer is controlled by the employer as if he were a full-time
15 permanent employee. "Control" includes, but is not limited to, scheduling
16 work hours, designating work duties, and directing work performance.

17 (viii)(a) Additionally, the gross receipts tax
18 levied in this section shall not apply to the initial installation,
19 alteration, addition, cleaning, refinishing, replacement, or repair of
20 nonmechanical, passive, or manually operated components of buildings or other
21 improvements or structures affixed to real estate, including, but not limited
22 to, the following:

- 23 (1) Walls;
- 24 ~~(2) Floors;~~
- 25 ~~(3)~~(2) Ceilings;
- 26 ~~(4)~~(3) Doors;
- 27 ~~(5)~~(4) Locks;
- 28 ~~(6)~~(5) Windows;
- 29 ~~(7)~~(6) Glass;
- 30 ~~(8)~~(7) Heat and air ducts;
- 31 ~~(9)~~(8) Roofs;
- 32 ~~(10)~~(9) Wiring;
- 33 ~~(11)~~(10) Breakers;
- 34 ~~(12)~~(11) Breaker boxes;
- 35 ~~(13)~~(12) Electrical switches and

36 receptacles;

1 ~~(14)~~(13) Light fixtures;
 2 ~~(15)~~(14) Pipes;
 3 ~~(16)~~(15) Plumbing fixtures;
 4 ~~(17)~~(16) Fire and security alarms;
 5 ~~(18)~~(17) Intercoms;
 6 ~~(19)~~(18) Sprinkler systems;
 7 ~~(20)~~(19) Parking lots;
 8 ~~(21)~~(20) Fences;
 9 ~~(22)~~(21) Gates;
 10 ~~(23)~~(22) Fireplaces; and
 11 ~~(24)~~(23) Similar components which become
 12 a part of real estate after installation, except flooring.

13 (b) Contractors are deemed to be consumers or
 14 users of all tangible personal property used or consumed by them in providing
 15 such nontaxable services, in the same manner as when performing any other
 16 contract.

17 (c) Subdivision (3)(C)(viii) of this section
 18 shall not apply to any services subject to tax pursuant to the terms of
 19 subdivision (3)(E) of this section.

20 (ix) The gross receipts tax levied in subdivision (3)(C)(i) of
 21 this section shall not apply to the service of initial installation of any
 22 property that is specifically exempted from the tax imposed by the Arkansas
 23 Gross Receipts Act of 1941, § 26-52-101 et seq.

24
 25 SECTION 7. Effective July 1, 2004, Arkansas Code Title 26, Chapter 52,
 26 Subchapter 3 is amended to add an additional section to read as follows:

27 26-52-316. Services subject to tax.

28 (a) The gross proceeds or gross receipts derived from the following
 29 services are subject to the gross receipts tax:

30 (1) Wrecker and towing services;

31 (2) Collection and disposal of solid wastes;

32 (3) Cleaning parking lots and gutters;

33 (4) Dry cleaning and laundry services;

34 (5) Industrial laundry services;

35 (6) Mini warehouse and self storage rental services;

36 (7) Body piercing, tattooing, and electrolysis services;

1 (8) Pest control services;

2 (9) Security and alarm monitoring services;

3 (10) Boat storage and docking fees;

4 (11) Furnishing camping spaces or trailer spaces at public or
 5 privately-owned campgrounds, except for federal campgrounds, on less than a
 6 month-to-month basis;

7 (12) Locksmith services; and

8 (13) Pet grooming and kennel services.

9 (b)(1) For purposes of this section "locksmith services" means
 10 repairing, servicing, or installing locks and locking devices, whether the
 11 locks and locking devices are:

12 (A) Incorporated into real property;

13 (B) Incorporated into tangible personal property; or

14 (C) Locks separate and apart from other property.

15 (2) "Locksmith services" also includes unlocking locks or
 16 locking devices for another person; and

17 (3) "Locksmith services" shall not include the initial
 18 installation of locks by a contractor in new construction.

19
 20
 21 SECTION 8. Effective July 1, 2004, Arkansas Code § 26-57-1002(d)(1),
 22 concerning the rate of wholesale vending tax, is amended to read as follows:

23 (d)(1)(A)(i) A tax of four and one-half percent (4.5%) is hereby
 24 levied on the purchase price of all tangible personal property purchased or
 25 withdrawn from inventory during each calendar month by a vending device
 26 operator for resale through a vending device.

27 (ii)(a) An additional tax of one and one-half
 28 percent (1.5%) is levied on the purchase price of all tangible personal
 29 property purchased or withdrawn from inventory during each calendar month by
 30 a vending device operator for resale through a vending device.

31 (b) The additional tax levied under
 32 subdivision (d)(1)(A)(ii)(a) of this section shall be special revenue and
 33 credited to the Educational Adequacy Trust Fund.

34 (B) ~~This tax~~ The taxes levied in subdivision (d)(1)(A) of
 35 this section shall be in lieu of any state gross receipts tax on the gross
 36 receipts or gross proceeds derived from the sale of the property by the

1 vending device operator through a vending device.

2
3 SECTION 9. Effective July 1, 2004, Arkansas Code § 26-57-1206(a)(1),
4 concerning vending device decals, is amended to read as follows:

5 (a)(1) Every person who is the operator of a vending device, who
6 elects to have the operation of such vending device covered by the provisions
7 of this subchapter, and who makes available to the general public for use and
8 operation vending devices described in this subchapter, shall pay to the
9 Director of the Department of Finance and Administration (for the benefit of
10 the state and its municipalities and counties) the following annual vending
11 device decal fee for each vending device before such vending device may be
12 placed in service within the state for use by members of the public:

13 (A) For each coin-operated vending device requiring a coin
14 or thing of value of twenty-five cents (25¢) or more for a sale, ~~seventy~~
15 ~~dollars (\$70.00)~~ ninety-three dollars (\$93);

16 (B) For each coin-operated vending device requiring a coin
17 or thing of value of less than twenty-five cents (25¢) for a sale, fifteen
18 dollars (\$15.00);

19 (C) For each coin-operated bulk vending device requiring a
20 coin or thing of value of more than twenty-five cents (25¢) for a sale, seven
21 dollars and fifty cents (\$7.50);

22 (D) For each coin-operated bulk vending device requiring a
23 coin or thing of value of twenty-five cents (25¢) or less for a sale, two
24 dollars and fifty cents (\$2.50); and

25 (E) For each coin-operated manually powered vending
26 devices, coin-operated tabletop snack vending device, or other manually
27 powered coin-operated vending device requiring a coin or thing of value of
28 twenty-five cents (25¢) or more for a sale, thirty dollars (\$30.00).

29
30 SECTION 10. Effective July 1, 2004, Arkansas Code § 26-57-1208(b) is
31 amended to read as follows:

32 (b) The vending device decal fees imposed by § 26-57-1206, or any
33 proportionate amount thereof, shall be divided as follows:

34 (1) ~~With eighty~~ Eighty percent (80%) of ~~such amount being the~~
35 fees collected under § 26-57-1206(a)(1)(B) through (E) and sixty percent
36 (60%) of the fees collected under §26-57-1206(a)(1)(A) shall be deposited to

1 the credit of the General Revenue Fund Account of the State Apportionment
2 Fund provided by § 19-5-202; ~~and~~

3 (2) ~~With twenty~~ Twenty percent (20%) of ~~such amount being the~~
4 fees collected under § 26-57-1206(a)(1)(B) through (E) and fifteen percent
5 (15%) of the fees collected under § 26-57-1206(a)(1)(A) shall be deposited by
6 the Treasurer of the State in the Identification Pending Trust Fund for Local
7 Sales and Use Taxes in accordance with the provisions of §§ 26-74-221 and 26-
8 75-223, and all revenues deposited into that fund shall be distributed to the
9 cities and counties of this state in accordance with the provisions of §§ 26-
10 74-221(a)(2)(C)(ii) and 26-75-223(a)(2)(C)(ii); and

11 (3) Twenty-five percent (25%) of the fees collected under § 26-
12 57-1206(a)(1)(A) shall be special revenues deposited by the Treasurer of the
13 State to the credit of the Educational Adequacy Trust Fund."

14
15
16 SECTION 11. Educational Adequacy Trust Fund.

17 (a) There is created on the books of the Treasurer of State, the
18 Auditor of State, and Chief Fiscal Officer of the State a special revenue
19 fund to be known as the Educational Adequacy Trust Fund.

20 (b) The Educational Adequacy Trust Fund shall consist of the revenues
21 generated by Arkansas Code §§ 26-52-302(d), 26-53-107(d), 26-52-316, 26-57-
22 1002(d)(1)(A)(ii), and other revenues as provided by law.

23 (c) On the last day of the month, the Treasurer of State shall
24 transfer amounts available in the Educational Adequacy Trust Fund to the
25 Department of Education Public School Fund Account established in Arkansas
26 Code § 19-5-305, to be used for the purposes provided by law. The Treasurer
27 of State shall make the transfer after making the deductions required from
28 the net special revenues as set out in Arkansas Code § 19-5-203(b)(2)(A).

29 (d)(1) Additionally, for each of the state's fiscal years beginning
30 July 1, 2004, the Chief Fiscal Officer of the State shall determine as an
31 annual allocation amount for the Educational Adequacy Trust Fund an amount
32 equivalent to the revenues generated by Arkansas Code § 26-52-316 which shall
33 be equal to total net general revenues as enumerated in § 19-6-201(1) and
34 (2), which were collected in the immediate past year, times a factor of
35 0.0125.

36 (2) On the last day of each month of the fiscal year, the

1 Chief Fiscal Officer of the State shall certify to the Treasurer of State an
2 amount equal to one-twelfth (1/12) of the annual allocation amount determined
3 in subdivision (d)(1) of this section for transfer to the Educational
4 Adequacy Trust Fund.

5 (3) The Treasurer of State shall make the transfer of the
6 amount certified in subdivision (d)(2) of this section from general revenues
7 after making the deductions required from the net general revenues under
8 Arkansas Code § 19-5-202(b)(2)(B)(i).

9
10
11 SECTION 12. EMERGENCY CLAUSE. It is found and determined by the
12 General Assembly, that the provision of an equal opportunity for an adequate
13 education to all the citizens of the state is imperative; that additional
14 funds are immediately needed to provide an equal opportunity for an adequate
15 education; that this act is designed to provide the additional revenues
16 needed to provide this equal opportunity to all citizens; and that a delay in
17 the effective date of this act will cause irreparable harm upon the provision
18 of essential education opportunities and the proper administration of
19 educational programs. Therefore, an emergency is hereby declared to exist
20 and this act being necessary for the immediate preservation of the public
21 peace, health, and safety shall be in full force and effect from and after
22 the date of March 1, 2004.

23
24 /s/ Hickinbotham

25
26
27 **APPROVED: BECAME LAW ON 2/12/2004, WITHOUT SIGNATURE**
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