

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

A Bill

HOUSE BILL 2632

5 By: Representative Mahony
6
7

For An Act To Be Entitled

9 AN ACT TO INCREASE THE WHOLESALE VENDING TAX; TO
10 REQUIRE THAT ALL VENDING MACHINE OPERATORS OBTAIN
11 BOTH A SALES TAX PERMIT AND A DECAL; AND FOR
12 OTHER PURPOSES.
13

Subtitle

15 AN ACT TO INCREASE THE WHOLESALE VENDING
16 TAX AND REQUIRE ALL VENDING MACHINE
17 OPERATORS TO OBTAIN BOTH A SALES TAX
18 PERMIT AND A DECAL.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 26-57-1002, pertaining to the wholesale
24 vending tax is amended to read as follows:

25 26-57-1002. Registration - Records - Amount of tax.

26 (a) Any person who sells tangible personal property through vending
27 devices ~~may elect to~~ shall register with the director as a vending device
28 operator and pay the state and local sales and use taxes as provided in this
29 section.

30 (b) ~~Any person who elects to register as a vending device operator~~ All
31 vending device operators shall obtain a gross receipts tax permit from the
32 director as provided in § 26-52-201 et seq.

33 (c)(1) All tangible personal property purchased by a vending device
34 operator for resale through a vending device shall be purchased exempt from
35 the Arkansas gross receipts tax, § 26-52-101 et seq., the Arkansas
36 compensating use tax, § 26-53-101 et seq., and any local sales and use taxes



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1 pursuant to the sale for resale exemption provided for in § 26-52-401(12).

2 (2) The vending device operator shall maintain suitable records
3 reflecting all purchases of tangible personal property during each calendar
4 month for resale through a vending device.

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7 property purchased or withdrawn from inventory during each calendar month by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

9 (ii) The wholesale vending tax rate shall be equal
10 to two (2) times the combined Arkansas gross receipts tax rate levied by §§
11 26-52-301 and 26-52-302, and any act supplemental thereto.

12 (B) This tax shall be in lieu of any state gross receipts
13 tax on the gross receipts or gross proceeds derived from the sale of the
14 property by the vending device operator through a vending device.

15 (2)(A) An additional tax of ~~one percent (1%)~~ one and seventy-
16 five hundredths percent (1.75%) is hereby levied on the purchase price of all
17 tangible personal property purchased or withdrawn from inventory during each
18 calendar month for resale through a vending device.

19 (B) This tax shall be in lieu of any local gross receipts
20 taxes imposed by any city or county of this state on the gross receipts or
21 gross proceeds derived from the sale of the property by the vending device
22 operator through a vending device.

23 (e) The taxes levied by subsection (d) of this section shall be
24 reported and paid in the same manner and at the same time as prescribed by
25 law for the reporting and payment of the Arkansas gross receipts tax, § 26-
26 52-101 et seq.

27 (f) When calculating the taxes due under this section, a vending
28 device operator shall be allowed to deduct any manufacturer's rebates
29 received which lower the final purchase price paid by the vending device
30 operator for property sold through a vending device.

31 (g) Any vending device operator who manufactures the product which is
32 withdrawn from stock for sale through a vending device shall calculate the
33 tax due by multiplying the tax rate set out in subsection (d) of this section
34 by the selling price for which the person would sell the product to another
35 vending device operator for resale through a vending device.

36

1 SECTION 2. Arkansas Code § 26-57-1003, pertaining to a vending machine
2 operator's election not to register is repealed:

3 ~~26-57-1003. Election not to register.~~

4 ~~(a) Any person selling tangible personal property through a vending
5 device, and who elects not to register as a vending device operator, shall:~~

6 ~~(1) Surrender any gross receipts tax permits issued by the
7 director, unless the permit is needed to report taxable sales other than
8 sales through a vending device; and~~

9 ~~(2)(A) Pay the Arkansas gross receipts tax, § 26-52-101 et seq.,
10 the Arkansas compensating use tax, § 26-53-101 et seq., and any applicable
11 local sales and use taxes to their vendor on all purchases of tangible
12 personal property purchased for resale through a vending device.~~

13 ~~(B)(i) The sale for resale exemption provided in § 26-52-
14 401(12) shall not apply to purchases of tangible personal property for resale
15 through vending devices unless the purchaser is registered with the director
16 as a vending device operator.~~

17 ~~(ii) However, any person not registered as a vending
18 device operator who maintains property in inventory for subsequent resale on
19 which the state and local sales and use taxes have not been paid, and who
20 subsequently withdraws that property from inventory for sale through a
21 vending device, shall report and pay the state and local sales and use taxes
22 on their purchase price of such property withdrawn from inventory.~~

23 ~~(b) Any person selling property through vending devices who has paid
24 the state and local sales and use taxes in the manner provided by this
25 section shall not be required to collect and remit state or local sales tax
26 on sales of tangible personal property through the vending device.~~

27 ~~(c) Any person who elects to pay tax on tangible personal property
28 sold through vending devices in accordance with the provisions of this
29 section and who manufactures the product which is withdrawn from stock for
30 resale through a vending device shall pay the taxes due under this section by
31 multiplying the tax rate by the selling price for which the person would sell
32 the product to another for resale through a vending device.~~

33
34 SECTION 3. Arkansas Code § 26-57-1004 is amended to read as follows:
35 26-57-1004. Identification of taxpayer - Presumption of nonpayment.

36 (a) All persons who sell tangible personal property through vending

1 devices shall affix the name and identification number, if any, of the person
 2 responsible for the payment of the taxes imposed by ~~§§ 26-57-1002 and 26-57-~~
 3 ~~1003~~ § 26-57-1002.

4 (b)(1)(A) If any vending device does not have the information required
 5 by subsection (a) of this section affixed thereto, there shall be a
 6 presumption that the taxes imposed by this subchapter have not been paid.

7 (B) The director shall seal any vending device subject to
 8 this presumption in such a manner as to prevent any further sales through the
 9 device and shall assess and collect a penalty of fifty dollars (\$50.00) per
 10 vending device against the person selling tangible personal property through
 11 the device.

12 (2) The presumption in subdivision (b)(1) of this section shall
 13 be overcome if the person selling property through the vending device affixes
 14 the information required by this section to the device and proves that the
 15 taxes imposed by ~~§§ 26-57-1002 and 26-57-1003~~ § 26-57-1002 have been paid.

16
 17 SECTION 4. Arkansas Code § 26-57-1204, pertaining to the issuance and
 18 display of decals, is amended to read as follows:

19 (a) Any person who is the operator of a vending device in this state
 20 that is made available for use and operation by the general public (whether
 21 the operator is the owner of such vending device, or a lessee, renter,
 22 bailee, etc. of the owner of such vending device) ~~may, in lieu of paying~~
 23 ~~sales taxes under the provisions of § 26-52-101, et seq., or under the~~
 24 ~~provisions of § 26-57-1001, et seq., elect to~~ shall obtain a decal and pay the
 25 decal fees provided by § 26-57-1206. ~~If such election is not made by the~~
 26 ~~operator, then the general or special sales taxes that are otherwise~~
 27 ~~applicable to the operation of these vending devices shall be imposed upon~~
 28 ~~the sale of tangible personal property from such vending devices.~~

29 (b) ~~The~~ An operator of vending devices, ~~who makes the election to pay~~
 30 ~~the decal fees provided by this subchapter,~~ shall be responsible for applying
 31 to the Director of the Department of Finance and Administration for the
 32 issuance of an annual or short term special vending device decal for such
 33 vending device and shall, at the same time, pay to the Director of the
 34 Department of Finance and Administration the annual or short term special
 35 vending device decal fee provided for by this subchapter, before such vending
 36 device is made available for use and operation by the general public.

1 (c) The Director of the Department of Finance and Administration, upon
 2 receipt of full payment of the applicable decal fee, and upon approval of
 3 such application, shall issue to the person making such application an annual
 4 or short term special vending device decal for the type of vending device or
 5 devices covered by such application and payment.

6 (d)(1) The annual or short term special vending device decals, and the
 7 application provided for herein shall be in such form as prescribed by the
 8 Director of the Department of Finance and Administration. These decals and
 9 applications shall contain on their faces such information and descriptions
 10 as shall be required by regulations adopted by the Director of the Department
 11 of Finance and Administration to properly and reasonably implement the
 12 provisions of this subchapter.

13 (2) Any number of vending devices may be included in one (1)
 14 application, but all vending devices operated by the applying operator must
 15 be made subject to this ~~alternative~~ decal fee. ~~Such operator may not choose~~
 16 ~~to have part of his or her vending devices covered by the decal fee provided~~
 17 ~~by this subchapter, while other vending devices operated by the same operator~~
 18 ~~during the decal registration year would be subject to the general or special~~
 19 ~~sales taxes that would be otherwise applicable to the sale of tangible~~
 20 ~~personal property from such vending devices.~~

21 (e) Before any vending device is put into operation or placed where
 22 the same may be used or operated by any member of the general public, and at
 23 all times when the vending device is being used or operated or made available
 24 to members of the general public for use or operation, an annual or short
 25 term special vending device decal shall be firmly affixed to the vending
 26 device covered thereby by the person who is the operator of the vending
 27 device, so that such decal shall be plainly visible to, and readable by, the
 28 members of the general public.

29
 30 SECTION 5. Arkansas Code § 26-57-1206, pertaining to annual decal
 31 fees, is amended to read as follows:

32 26-57-1206. Annual decal fee - ~~Special decal---In lieu of sales tax.~~
 33 Special short term decal.

34 (a)(1) Every person who is the operator of a vending device, ~~who~~
 35 ~~elects to have the operation of such vending device covered by the provisions~~
 36 ~~of this subchapter,~~ and who makes available to the general public for use and

1 operation vending devices described in this subchapter, shall pay to the
 2 Director of the Department of Finance and Administration (for the benefit of
 3 the state and its municipalities and counties) the following annual vending
 4 device decal fee for each vending device before such vending device may be
 5 placed in service within the state for use by members of the public:

6 (A) For each coin-operated vending device requiring a coin
 7 or thing of value ~~of twenty five cents (25¢) or more~~ for a sale, ~~seventy~~
 8 ~~dollars (\$70.00)~~ twenty dollars (\$20.00);

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

12 ~~(C)(B)~~ For each coin-operated bulk vending device requiring
 13 a coin or thing of value ~~of more than twenty five cents (25¢)~~ for a sale,
 14 ~~seven dollars and fifty cents (\$7.50)~~ five dollars (\$5.00); and

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

18 ~~(E)(C)~~ For each coin-operated manually powered vending
 19 devices, coin-operated tabletop snack vending device, or other manually
 20 powered coin-operated vending device requiring a coin or thing of value ~~of~~
 21 ~~twenty five cents (25¢) or more~~ for a sale, ~~thirty dollars (\$30.00)~~ twenty
 22 dollars (\$20.00).

23 (2) The annual vending device decal issued by the Director of
 24 the Department of Finance and Administration, after payment of the
 25 appropriate annual vending device decal fee, shall bear on its face the year
 26 of its issue, and such annual decal must be affixed to each vending device in
 27 a place that is clearly visible to the user of such device before each such
 28 vending device may be placed for public use or operation in this state by the
 29 operator.

30 (3) Such annual vending device decal shall not be transferred
 31 from one (1) vending device to another, unless the person who is the operator
 32 of such vending device shall establish to the satisfaction of the Director of
 33 the Department of Finance and Administration that the vending device to which
 34 the annual vending device decal is to be transferred is a vending device that
 35 is replacing the vending device to which such annual decal was originally
 36 affixed.

1 (b) In those instances where it is shown to the satisfaction of the
 2 Director of the Department of Finance and Administration that a vending
 3 device upon which an annual vending device decal fee is otherwise due will be
 4 placed in service for use by members of the general public for a definite,
 5 but limited, period of time that is less than one (1) year, such as where the
 6 vending device shall be placed for public use in connection with fairs,
 7 carnivals, and places of amusement that operate only during certain seasons
 8 of the year, the Director of the Department of Finance and Administration
 9 shall issue a short term special vending device decal and collect a short
 10 term special vending device decal fee for such vending devices as hereinafter
 11 computed:

12 (1) Such short term special decal may be issued for any number
 13 of thirty-day periods, less than a full year, and such short term special
 14 decal shall indicate on its face that it is a short term special decal, not
 15 an annual decal, and such short term special decal shall be for one (1) or
 16 more thirty-day periods, but such special short term decal shall state on its
 17 face the precise dates for which it has been issued and such short term
 18 special decal shall not be transferred from one (1) vending device to
 19 another.

20 (2) The short term special vending device decal fee shall be
 21 computed and paid by the person who is the operator of such vending device ~~on~~
 22 ~~the basis of one fifth (1/5) of the annual vending device decal fee charged~~
 23 ~~by this subchapter for the type of vending device operated, for each thirty-~~
 24 ~~day period for which such special decal is issue, on the following basis:~~

25 (A) For each coin-operated or manually powered vending
 26 device, the fee shall be five dollars (\$5.00) for each thirty-day period for
 27 which the short term decal is issued, up to the annual rate of twenty dollars
 28 (\$20); and

29 (B) For each coin-operated bulk vending device, the fee
 30 shall be one dollar (\$1.00) for each thirty-day period for which the short
 31 term decal is issued, up to the annual rate of five dollars (\$5.00).

32 (3) In the event the vending device is made available to the
 33 public for a period beyond that for which the special decal is issued, then a
 34 full year's fee and penalty, as set out in § 26-57-1206, shall be due on such
 35 vending device from the person who is the operator of such vending device.

36 (c) The annual or short term special vending device decal fees

1 required to be paid by subsections (a) and (b) of this section shall be paid
 2 by the person who is the operator of such vending device ~~in lieu of the~~
 3 ~~requirement that such person collect and remit: (1) the state and local gross~~
 4 ~~receipts (sales) taxes levied pursuant to the provisions of the Arkansas~~
 5 ~~Gross Receipts Act of 1941, as amended, § 26-52-101 et. seq., or any~~
 6 ~~provision of Chapters 74 and 75 of Title 26, or any other provision of this~~
 7 ~~Code which provides for the levy of a local sales tax; or (2) in addition to~~
 8 the special sales taxes levied pursuant to the provisions of the Vending
 9 Devices Sales Tax Act of 1995, § 26-57-1001, et seq. ~~Where gross receipts or~~
 10 ~~gross proceeds are received by a person who is the operator of a vending~~
 11 ~~device from the sale of any item of tangible personal property, through the~~
 12 ~~vending device, where the annual or special vending device decal fee has been~~
 13 ~~paid and such decal is affixed to the vending device, then it is the intent~~
 14 ~~of the General Assembly that such gross proceeds or gross receipts shall not~~
 15 ~~be subject to any state or local gross receipts (sales) taxes imposed in this~~
 16 ~~state.~~

17 (d) Any sales made by the operator of a coin-operated vending device
 18 that is made without the use of a vending device, e.g., office coffee
 19 service, manual hot foods lines, catering events, etc., shall be subject to
 20 the state and local gross (sales) taxes levied pursuant to the provisions of
 21 the Arkansas Gross Receipts Act of 1941, as amended, § 26-52-101, et seq, or
 22 any provision of Chapters 74 and 75 of Title 26, or any other provision of
 23 the Code that provides for the levy of a local sales tax.

24 ~~(e) For all vending devices that the operator does not elect to have~~
 25 ~~covered by the decal fee provided by this section, the operator of that~~
 26 ~~vending device shall acquire from the Director of the Department of Finance~~
 27 ~~and Administration an identifying decal that the operator shall affix to the~~
 28 ~~vending device in a prominent place so as to establish to the consuming~~
 29 ~~public that such vending device is not covered by the provisions of this~~
 30 ~~subchapter. The Director of the Department of Finance and Administration~~
 31 ~~shall establish, by reasonable regulations, the amount to be charged for such~~
 32 ~~identifying decal, which amount shall not exceed the cost of producing such~~
 33 ~~decal.~~

34 ~~(f) Operators who elect to pay tax at the wholesale level and which~~
 35 ~~have been issued an identification number by the Department of Finance and~~
 36 ~~Administration as of March 31, 1997, shall be entitled to utilize that~~

1 ~~identification number for all vending devices owned by that operator.~~

2
3 SECTION 6. Arkansas Code § 26-57-1217 is repealed.

4 ~~26-57-1217. Purpose.~~

5 ~~The purpose for the enactment of this "Vending Devices Decal Act of~~
6 ~~1997" is to provide a simplified method for the operators of such vending~~
7 ~~devices to be able to pay their proportionate amount of state and local~~
8 ~~taxes, without being required to maintain complex financial records that~~
9 ~~would otherwise be required of such operators (who are in the unique position~~
10 ~~among retailers in this state of not being able to pass the cost of sales~~
11 ~~taxes directly on to their customers), and to assure that the State of~~
12 ~~Arkansas and its cities and counties collect their fair share of taxes from~~
13 ~~what is almost entirely a cash business.~~

14
15 SECTION 7. Arkansas Code Title 26, Chapter 57, Subchapter 12 is amended
16 to add an additional section to read as follows:

17 26-57-1218. Renewal.

18 (a) All annual vending device decals issued by the Director of the
19 Department of Finance and Administration authorizing the use and operation of
20 vending devices are renewable on or before June 30 of each calendar year for
21 the fiscal year beginning July 1.

22 (b) Any person holding an annual vending device decal who desires to
23 renew the decal after June 30 shall be required to pay a late renewal penalty
24 in the amount of one-half (1/2) of the required yearly renewal fee for the
25 decal for each sixty-day period, or any portion thereof, after June 30,
26 wherein the renewal is tendered, in addition to the amount of the yearly fee.

27 (c) No annual vending device decal shall be renewed by the Department
28 for a vending device decal holder who has failed to pay any wholesale vending
29 tax, excise tax, or any other state and local taxes.

30
31 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the General
32 Assembly of the State of Arkansas that due to a nationwide economic slowdown
33 the State of Arkansas is experiencing an extreme shortfall in revenues; that
34 these revenues are necessary to provide adequate funding for schools and
35 essential services needed by the citizens of this state; that if additional
36 revenues are not generated the State of Arkansas will be forced to reduce or

1 eliminate some state services; that some Arkansans will suffer as a result of
2 service reductions or cuts; and that this bill will provide the necessary
3 revenue to avoid state service reductions or cuts. Therefore, an emergency
4 is declared to exist and this act being immediately necessary for the
5 preservation of the public peace, health and safety shall become effective on
6 July 1, 2003.

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