

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

A Bill

HOUSE BILL 2832

4
5 By: Representative King
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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

14 TO INCREASE THE WHOLESALE VENDING TAX;
15 TO REQUIRE THAT ALL VENDING MACHINE
16 OPERATORS OBTAIN BOTH A SALES TAX PERMIT
17 AND A DECAL.
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20

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

23 SECTION 1. Arkansas Code § 26-57-1002 is amended to read as follows:
24 26-57-1002. Registration - Records - Amount of tax.

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

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

32 (c)(1) All tangible personal property purchased by a vending device
33 operator for resale through a vending device shall be purchased exempt from
34 the Arkansas gross receipts tax, § 26-52-101 et seq., the Arkansas
35 compensating use tax, § 26-53-101 et seq., and any local sales and use taxes
36 pursuant to the sale for resale exemption provided for in § 26-52-401(12).



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

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 6 property purchased or withdrawn from inventory during each calendar month by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

8 (ii) The wholesale vending tax rate shall be equal
 9 to two (2) times the combined Arkansas gross receipts tax rate levied by §§
 10 26-52-301 and 26-52-302, and any supplemental act, plus the gross receipts
 11 tax rate levied by Amendment 75 to the Arkansas Constitution.

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 one half
 16 percent (1 1/2%) is hereby levied on the purchase price of all tangible
 17 personal property purchased or withdrawn from inventory during each calendar
 18 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

SECTION 2. Arkansas Code § 26-57-1003 is repealed.

~~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, 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, § 26-52-101 et seq., the Arkansas compensating use tax, § 26-53-101 et seq., and any applicable local sales and use taxes to their 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 their 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.~~

SECTION 3. Arkansas Code § 26-57-1004 is amended to read as follows:

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

1 responsible for the payment of the taxes imposed by ~~§§ 26-57-1002 and 26-57-~~
 2 ~~1003~~ § 26-57-1002.

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

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

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

15
 16 SECTION 4. Arkansas Code § 26-57-1204 is amended to read as follows:
 17 26-57-1204. Application, issuance and display of decal.

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

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

36 (c) The Director of the Department of Finance and Administration, upon

1 receipt of full payment of the applicable decal fee, and upon approval of
 2 such application, shall issue to the person making such application an annual
 3 or special vending device decal for the type of vending device or devices
 4 covered by such application and payment.

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

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

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

28
 29 SECTION 5. Arkansas Code § 26-57-1206 is amended to read as follows:
 30 26-57-1206. Annual decal fee - Special decal ~~—In lieu of sales tax.~~

31 (a)(1) Every person who is the operator of a vending device, ~~who~~
 32 ~~elects to have the operation of such vending device covered by the provisions~~
 33 ~~of this subchapter,~~ and who makes available to the general public for use and
 34 operation vending devices described in this subchapter, shall pay to the
 35 Director of the Department of Finance and Administration (for the benefit of
 36 the state and its municipalities and counties) the following annual vending

1 device decal fee for each vending device before such vending device may be
 2 placed in service within the state for use by members of the public:

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

6 (B) For each coin-operated vending device requiring a coin
 7 or thing of value of less than twenty-five cents (25¢) for a sale, ~~fifteen~~
 8 ~~dollars (\$15.00)~~ twenty dollars (\$20.00);

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

12 (D) For each coin-operated bulk vending device requiring a
 13 coin or thing of value of twenty-five cents (25¢) or less for a sale, ~~two~~
 14 ~~dollars and fifty cents (\$2.50)~~ five dollars (\$5.00); and

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

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

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

34 (b) In those instances where it is shown to the satisfaction of the
 35 Director of the Department of Finance and Administration that a vending
 36 device upon which an annual vending device decal fee is otherwise due will be

1 placed in service for use by members of the general public for a definite,
 2 but limited, period of time that is less than one (1) year, such as where the
 3 vending device shall be placed for public use in connection with fairs,
 4 carnivals, and places of amusement that operate only during certain seasons
 5 of the year, the Director of the Department of Finance and Administration
 6 shall issue a special vending device decal and collect a special vending
 7 device decal fee for such vending devices as hereinafter computed:

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

15 (2) The special vending device decal fee shall be computed and
 16 paid by the person who is the operator of such vending device on the basis of
 17 one-fifth (1/5) of the annual vending device decal fee charged by this
 18 subchapter for the type of vending device operated, for each thirty-day
 19 period for which such special decal is issue.

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

24 (c) The annual or special vending device decal fees required to be
 25 paid by subsections (a) and (b) of this section shall be paid by the person
 26 who is the operator of such vending device ~~in lieu of the requirement that~~
 27 ~~such person collect and remit; in addition to (1) the state and local gross~~
 28 ~~receipts (sales) taxes levied pursuant to the provisions of the Arkansas~~
 29 ~~Gross Receipts Act of 1941, as amended, § 26-52-101 et. seq., or any~~
 30 ~~provision of Chapters 74 and 75 of Title 26, or any other provision of this~~
 31 ~~Code which provides for the levy of a local sales tax; or (2) the special~~
 32 ~~sales taxes levied pursuant to the provisions under the Vending Devices Sales~~
 33 ~~Tax Act of 1995, § 26-57-1001, et seq. ~~Where gross receipts or gross~~~~
 34 ~~proceeds are received by a person who is the operator of a vending device~~
 35 ~~from the sale of any item of tangible personal property, through the vending~~
 36 ~~device, where the annual or special vending device decal fee has been paid~~

1 ~~and such decal is affixed to the vending device, then it is the intent of the~~
 2 ~~General Assembly that such gross proceeds or gross receipts shall not be~~
 3 ~~subject to any state or local gross receipts (sales) taxes imposed in this~~
 4 ~~state.~~

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

12 ~~(e) For all vending devices that the operator does not elect to have~~
 13 ~~covered by the decal fee provided by this section, the operator of that~~
 14 ~~vending device shall acquire from the Director of the Department of Finance~~
 15 ~~and Administration an identifying decal that the operator shall affix to the~~
 16 ~~vending device in a prominent place so as to establish to the consuming~~
 17 ~~public that such vending device is not covered by the provisions of this~~
 18 ~~subchapter. The Director of the Department of Finance and Administration~~
 19 ~~shall establish, by reasonable regulations, the amount to be charged for such~~
 20 ~~identifying decal, which amount shall not exceed the cost of producing such~~
 21 ~~decal.~~

22 ~~(f) Operators who elect to pay tax at the wholesale level and which~~
 23 ~~have been issued an identification number by the Department of Finance and~~
 24 ~~Administration as of March 31, 1997, shall be entitled to utilize that~~
 25 ~~identification number for all vending devices owned by that operator.~~

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

28 ~~26-57-1217. Purpose.~~

29 ~~The purpose for the enactment of this "Vending Devices Decal Act of~~
 30 ~~1997" is to provide a simplified method for the operators of such vending~~
 31 ~~devices to be able to pay their proportionate amount of state and local~~
 32 ~~taxes, without being required to maintain complex financial records that~~
 33 ~~would otherwise be required of such operators (who are in the unique position~~
 34 ~~among retailers in this state of not being able to pass the cost of sales~~
 35 ~~taxes directly on to their customers), and to assure that the State of~~
 36 ~~Arkansas and its cities and counties collect their fair share of taxes from~~

1 ~~what is almost entirely a cash business.~~

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SECTION 7. 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.