

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

As Engrossed: S1/12/04
A Bill

Call Item 6

SENATE BILL 59

5 By: Senators T. Smith, Baker
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8 **For An Act To Be Entitled**

9 AN ACT TO INCREASE THE STATE SALES AND USE TAX
10 RATE BY ONE AND ONE-EIGHTH OF ONE PERCENT
11 (1 1/8%) TO BENEFIT THE PUBLIC SCHOOL FUND; TO
12 REDUCE THE STATE SALES TAX ON FOOD TO ZERO
13 PERCENT (0%); AND FOR OTHER PURPOSES.
14

15 **Subtitle**

16 AN ACT TO INCREASE THE STATE SALES AND
17 USE TAX BY ONE AND ONE-EIGHTH OF ONE
18 PERCENT (1 1/8%) TO BENEFIT THE PUBLIC
19 SCHOOL FUND AND TO REDUCE THE STATE
20 SALES TAX ON FOOD TO ZERO PERCENT (0%).
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 26-52-302, pertaining to additional gross
26 receipts tax, is amended to add a new subsection to read as follows:

27 (d)(1) There is levied an additional excise tax of one and one-eighth
28 of one percent (1 1/8%) upon all taxable sales of property and services
29 subject to the tax levied by the Arkansas Gross Receipts Act of 1941, as
30 amended, § 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 is prescribed by the Arkansas Gross Receipts
33 Act of 1941, as amended, § 26-52-101 et seq., for the collection, reporting,
34 and payment of Arkansas gross receipts taxes.

35 (3) All tax, penalty, and interest collected under this
36 subsection (d) shall be distributed as follows:



1 (A) Fifty percent (50%) of the collections shall be
2 special revenues and shall be deposited in the State Treasury to the credit
3 of the Public School Fund; and

4 (B) The remaining fifty percent (50%) of the collections
5 shall be deposited in the State Treasury to the credit of the General Revenue
6 Fund Account of the State Apportionment Fund.

7
8 SECTION 2. Arkansas Code Title 26, Chapter 52, Subchapter 3 is amended
9 to add a new section as follows:

10 26-52-316. Food and food ingredients.

11 (a) As used in this section:

12 (1) "Dietary supplement" means any product, other than tobacco,
13 intended to supplement the diet that:

14 (A) Contains one (1) or more of the following dietary
15 ingredients:

16 (i) A vitamin;

17 (ii) A mineral;

18 (iii) An herb or other botanical;

19 (iv) An amino acid;

20 (v) A dietary substance for use by humans to
21 supplement the diet by increasing the total dietary intake; and

22 (vi) A concentrate, metabolite, constituent,
23 extract, or combination of any ingredient described in this subdivision
24 (a)(1)(A);

25 (B) Is intended for ingestion in tablet, capsule, powder,
26 softgel, gelcap, or liquid form, or if not intended for ingestion in such a
27 form, is not represented as conventional food and is not represented for use
28 as a sole item of a meal or of the diet; and

29 (C) Is required to be labeled as a dietary supplement,
30 identifiable by the "Supplemental Facts" box found on the label and as
31 required pursuant to 21 C.F.R § 101.36;

32 (2)(A) "Food and food ingredients" means:

33 (i) Substances, whether in liquid, concentrated,
34 solid, frozen, dried, or dehydrated form, that are sold for ingestion or
35 chewing by humans and are consumed for their taste or nutritional value;
36 and

1 (ii) Bakery items, including bread, rolls, buns,
2 biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,
3 tarts, muffins, bars, cookies, or tortillas.

4 (B) "Food and food ingredients" does not include alcoholic
5 beverages, dietary supplements, prepared foods, food sold through vending
6 machines, or tobacco;

7 (3) "Food sold through vending machines" means food dispensed
8 from a machine or other mechanical device that accepts payment;

9 (4)(A) "Prepared food" means:

10 (i) Food sold in a heated state or heated by the
11 seller;

12 (ii) Two (2) or more food ingredients mixed or
13 combined by the seller for sale as a single item; or

14 (iii)(a) Food sold with eating utensils provided by
15 the seller, including plates, knives, forks, spoons, glasses, cups, napkins,
16 or straws.

17 (b) A plate does not include a container or
18 packaging used to transport the food.

19 (B) "Prepared food" does not include:

20 (i) Food that is only cut, repackaged, or
21 pasteurized by the seller; and

22 (ii) Eggs, fish, meat, poultry, and foods containing
23 these raw animal foods requiring cooking by the consumer as recommended by
24 the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code
25 so as to prevent food-borne illnesses;

26 (5) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco,
27 or any other item that contains tobacco.

28 (b) The gross receipts taxes levied under §§ 26-52-301 and 26-52-302
29 upon the gross receipts or gross proceeds derived from the sale of food and
30 food ingredients shall be levied at the rate of zero percent (0%).

31 (c) The gross receipts or gross proceeds derived from the sale of food
32 and food ingredients shall continue to be subject to all municipal and county
33 gross receipts taxes.

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35 SECTION 3. Arkansas Code § 26-53-107, pertaining to additional use
36 taxes and which is effective until contingency in Acts 2003, No. 1273, § 88

1 is met, is amended to add a new subsection to read as follows:

2 (d)(1) There is levied an additional excise tax of one and one-eighth
3 of one percent (1 1/8%) upon all tangible personal property subject to the
4 tax levied by the Arkansas Compensating Tax Act of 1949, as amended, § 26-53-
5 101 et seq.

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

10 (3) All tax, penalty, and interest collected under this
11 subsection (d) shall be distributed as follows:

12 (A) Fifty percent (50%) of the collections shall be
13 special revenues and shall be deposited in the State Treasury to the credit
14 of the Public School Fund; and

15 (B) The remaining fifty percent (50%) of the collections
16 shall be deposited in the State Treasury to the credit of the General Revenue
17 Fund Account of the State Apportionment Fund.

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19 SECTION 4. Arkansas Code § 26-53-107, pertaining to additional use
20 taxes and which is effective when contingency in Acts 2003, No. 1273, § 88 is
21 met, is amended to add a new subsection to read as follows:

22 (d)(1) There is levied an additional excise tax of one and one-eighth
23 of one percent (1 1/8%) upon all tangible personal property and taxable
24 services subject to the tax levied by the Arkansas Compensating Tax Act of
25 1949, as amended, § 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, as amended, § 26-53-101 et seq., for the collection, reporting,
29 and payment of Arkansas compensating taxes.

30 (3) All tax, penalty, and interest collected under this
31 subsection (d) shall be distributed as follows:

32 (A) Fifty percent (50%) of the collections shall be
33 special revenues and shall be deposited in the State Treasury to the credit
34 of the Public School Fund; and

35 (B) The remaining fifty percent (50%) of the collections
36 shall be deposited in the State Treasury to the credit of the General Revenue

1 Fund Account of the State Apportionment Fund.

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3 SECTION 5. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended
4 to add a new section to read as follows:

5 26-53-145. Food and food ingredients.

6 (a) The compensating taxes levied under §§ 26-53-106 and 26-53-107
7 shall be levied at the rate of zero percent (0%) on the sales price of food
8 and food ingredients.

9 (b) All municipal and county use taxes shall continue to apply to the
10 sales price of food and food ingredients.

11 (c) "Food and food ingredients" has the same meaning as provided in
12 § 26-52-316(a).

13
14 SECTION 6. Arkansas Code § 26-52-311(b)(1), concerning rental vehicle
15 tax, is amended to read as follows:

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

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22 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
23 General Assembly of the State of Arkansas that as a result of the Arkansas
24 Supreme Court decision, Lake View Sch. Dist. No. 25 v. Huckabee, 351 Ark. 31,
25 91 S.W.3d 472 (2002), additional revenue is necessary for the improvement of
26 public schools, to provide all Arkansas children an adequate education, and
27 to equalize funding for schools and teachers; that without additional
28 revenue, the state will be unable to fulfill its constitutional duty to
29 provide an adequate and equitable education to Arkansas children; and that
30 this act is immediately necessary as it will provide needed revenue for the
31 support and improvement of public schools. Therefore, an emergency is
32 declared to exist and this act being necessary for the preservation of the
33 public peace, health, and safety shall become effective on the first day of
34 the second calendar month following:

35 (1) The date of its approval by the Governor;

36 (2) If the bill is neither approved nor vetoed by the Governor,

1 the expiration of the period of time during which the Governor may veto the
2 bill; or

3 (3) If the bill is vetoed by the Governor and the veto is
4 overridden, the date the last house overrides the veto.

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/s/ T. Smith