

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

*As Engrossed: S1/13/04*  
**A Bill**

Call Item 6

SENATE BILL 60

5 By: Senator Glover  
6  
7

**For An Act To Be Entitled**

9 AN ACT TO LEVY AN ADDITIONAL GROSS RECEIPTS TAX  
10 OF ONE-HALF OF ONE PERCENT (0.5%); TO LEVY AN  
11 ADDITIONAL ONE-HALF OF ONE PERCENT COMPENSATING  
12 USE TAX; TO PHASE OUT THE STATE SALES AND USE TAX  
13 ON FOOD AND FOOD INGREDIENTS; TO CREATE THE  
14 EDUCATIONAL ADEQUACY TRUST FUND; AND FOR OTHER  
15 PURPOSES.  
16

**Subtitle**

17  
18 TO LEVY AN ADDITIONAL GROSS RECEIPTS TAX  
19 OF ONE-HALF OF ONE PERCENT (0.5%); TO  
20 LEVY AN ADDITIONAL ONE-HALF OF ONE  
21 PERCENT COMPENSATING USE TAX; TO PHASE  
22 OUT THE STATE SALES AND USE TAX ON FOOD  
23 AND FOOD INGREDIENTS.  
24  
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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28 SECTION 1. Arkansas Code § 26-52-302 is amended to read as follows:  
29 26-52-302. Additional taxes levied.

30 (a) In addition to the excise tax levied upon the gross proceeds or  
31 gross receipts derived from all sales by the Arkansas Gross Receipts Act, §  
32 26-52-101 et seq., there is levied an excise tax of one percent (1%) upon all  
33 taxable sales of property and services subject to the tax levied in that act.  
34 This tax shall be collected, reported, and paid in the same manner and at the  
35 same time as is prescribed by law for the collection, reporting, and payment  
36 of all other Arkansas gross receipts taxes. In computing gross receipts or



1 gross proceeds as defined in § 26-52-103(a)(4), a deduction shall be allowed  
2 for bad debts resulting from the sale of tangible personal property.

3 (b) In addition to the excise tax levied upon the gross proceeds or  
4 gross receipts derived from all sales by the Arkansas Gross Receipts Act, §  
5 26-52-101 et seq., there is hereby levied an excise tax of one-half of one  
6 percent (0.5%) upon all taxable sales of property and services subject to the  
7 tax levied in that act, and such tax shall be collected, reported, and paid  
8 in the same manner and at the same time as is prescribed by law for the  
9 collection, reporting, and payment of all other Arkansas gross receipts  
10 taxes. Provided that, in computing gross receipts or gross proceeds as  
11 defined in § 26-52-103(a)(4), a deduction shall be allowed for bad debts  
12 resulting from the sale of tangible personal property.

13 (c)(1) Beginning January 1, 2001, there is hereby levied an additional  
14 excise tax of one-half of one percent (0.5%) upon all taxable sales of  
15 property and services subject to the tax levied by the Arkansas Gross  
16 Receipts Act of 1941, § 26-52-101 et seq.

17 (2) The tax shall be collected, reported, and paid in the same  
18 manner and at the same time as is prescribed by the Arkansas Gross Receipts  
19 Act of 1941, § 26-52-101 et seq., for the collection, reporting, and payment  
20 of Arkansas gross receipts taxes.

21 (d)(1) Beginning March 1, 2004, there is levied an additional excise  
22 tax of one-half of one percent (0.5%) upon all taxable sales of property and  
23 services subject to the tax levied by the Arkansas Gross Receipts Act of  
24 1941, § 26-52-101 et seq.

25 (2) The tax shall be collected, reported, and paid in the same  
26 manner and at the same time as is prescribed by the Arkansas Gross Receipts  
27 Act of 1941, § 26-52-101 et seq., for the collection, reporting, and payment  
28 of Arkansas gross receipts taxes.

29  
30 SECTION 2. Arkansas Code § 26-53-107 is amended to read as follows:

31 26-53-107. Additional taxes levied. [Effective until contingency in  
32 Acts 2003, No. 1273, § 88 is met.]

33 (a) In addition to the excise tax levied upon the privilege of  
34 storing, using, distributing, or consuming tangible personal property within  
35 this state by the Arkansas Compensating Tax Act, § 26-53-101 et seq., there  
36 is levied an excise tax of one percent (1%) upon all tangible personal

1 property subject to the tax levied in that act, and the tax shall be  
2 collected, reported, and paid in the same manner and at the same time as is  
3 prescribed by law for the collection, reporting, and payment of state  
4 compensating taxes.

5 (b) In addition to the excise tax levied upon the privilege of  
6 storing, using, distributing, or consuming tangible personal property within  
7 the state by the Arkansas Compensating Tax Act, § 26-53-101 et seq., there is  
8 hereby levied an excise tax of one-half of one percent (0.5%) upon all  
9 tangible personal property subject to the tax levied in that act, and such  
10 tax shall be collected, reported, and paid in the same manner and at the same  
11 time as is prescribed by law for the collection, reporting, and payment of  
12 Arkansas compensating taxes.

13 (c)(1) Beginning January 1, 2001, there is hereby levied an additional  
14 excise tax of one-half of one percent (0.5%) upon all tangible personal  
15 property subject to the tax levied by the Arkansas Compensating Tax Act of  
16 1949, § 26-53-101 et seq.

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

21 (d)(1) Beginning March 1, 2004, there is levied an additional excise  
22 tax of one-half of one percent (0.5%) upon all tangible personal property  
23 subject to the tax levied by the Arkansas Compensating Tax Act of 1949, § 26-  
24 53-101 et seq.

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

29

30 SECTION 3. Arkansas Code § 26-53-107 is amended to read as follows:

31 26-53-107. Additional taxes levied. [Effective when contingency in  
32 Acts 2003, No. 1273, § 88 is met.]

33 (a) In addition to the excise tax levied upon the privilege of  
34 storing, using, distributing, or consuming tangible personal property and  
35 taxable services within this state by the Arkansas Compensating Tax Act of  
36 1949, § 26-53-101 et seq., there is levied an excise tax of one percent (1%)

1 upon all tangible personal property and taxable services subject to the tax  
2 levied in that act, and the tax shall be collected, reported, and paid in the  
3 same manner and at the same time as is prescribed by law for the collection,  
4 reporting, and payment of state compensating taxes.

5 (b) In addition to the excise tax levied upon the privilege of  
6 storing, using, distributing, or consuming tangible personal property and  
7 taxable services within the state by the Arkansas Compensating Tax Act of  
8 1949, § 26-53-101 et seq., there is hereby levied an excise tax of one-half  
9 of one percent (0.5%) upon all tangible personal property and taxable  
10 services subject to the tax levied in that act, and the tax shall be  
11 collected, reported, and paid in the same manner and at the same time as is  
12 prescribed by law for the collection, reporting, and payment of Arkansas  
13 compensating taxes.

14 (c)(1) Beginning January 1, 2001, there is hereby levied an additional  
15 excise tax of one-half of one percent (0.5%) upon all tangible personal  
16 property and taxable services subject to the tax levied by the Arkansas  
17 Compensating Tax Act of 1949, § 26-53-101 et seq.

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

22 (d)(1) Beginning March 1, 2004, there is levied an additional excise  
23 tax of one-half of one percent (0.5%) upon all tangible personal property and  
24 taxable services subject to the tax levied by the Arkansas Compensating Tax  
25 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.

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31 SECTION 4. Arkansas Code § 26-52-311(b)(1), pertaining to the rental  
32 vehicle tax, is amended to read as follows:

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

1 county taxes.

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3 SECTION 5. Arkansas Code Title 26, Chapter 52, Subchapter 4 is amended  
4 to add an additional section to read as follows:

5 26-52-437. Food and food ingredients.

6 (a) As used in this section:

7 (1) "Alcoholic beverages" means beverages that are suitable for  
8 human consumption and contain one-half of one percent or more of alcohol by  
9 volume;

10 (2) "Dietary supplement" means any product, other than tobacco,  
11 intended to supplement the diet that:

12 (A) Contains one or more of the following dietary  
13 ingredients:

14 (i) A vitamin;

15 (ii) A mineral;

16 (iii) An herb or other botanical;

17 (iv) An amino acid;

18 (v) A dietary substance for use by humans to  
19 supplement the diet by increasing the total dietary intake; or

20 (vi) A concentrate, metabolite, constituent,  
21 extract, or combination of any ingredient as described in this subdivision  
22 (a)(2)(A);

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

27 (C) Is required to be labeled as a dietary supplement,  
28 identifiable by the "Supplemental Facts" box found on the label and as  
29 required under 21 C.F.R. § 101.36 as in effect on January 1, 2004;

30 (3)(A) "Food and food ingredients" mean:

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

34 (ii) Food sold in an unheated state by weight or  
35 volume as a single item; and

36 (iii) Bakery items, including bread, rolls, buns,

1 biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,  
2 tarts, muffins, bars, cookies, and tortillas.

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

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

8 (5)(A) "Prepared food" means:

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

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

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

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

18 (B) "Prepared food" under subdivision (5)(A)(ii) of this  
19 section does not include:

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

22 (ii) Eggs, fish, meat, poultry, and foods containing  
23 these raw animal foods that require cooking by the consumer as recommended by  
24 the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code,  
25 as in effect on January 1, 2004, so as to prevent food borne illnesses;

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

28 (b)(1) Beginning July 1, 2005, the gross receipts taxes levied under  
29  §§ 26-52-301 and 26-52-302(a) and (b) upon the gross receipts or gross  
30 proceeds derived from the sale of food and food ingredients shall be levied  
31 at the rate of three and three-eighths percent (3.375%).

32 (2) Beginning July 1, 2006, the gross receipts taxes levied  
33 under §§ 26-52-301 and 26-52-302(a) and (b) upon the gross receipts or gross  
34 proceeds derived from the sale of food and food ingredients shall be levied  
35 at the rate of two and one-fourth percent (2.25%).

36 (3) Beginning July 1, 2007, the gross receipts taxes levied

1 under §§ 26-52-301 and 26-52-302(a) and (b) upon the gross receipts or gross  
2 proceeds derived from the sale of food and food ingredients shall be levied  
3 at the rate of one and one-eighth percent (1.125%).

4 (4) Beginning July 1, 2008, the gross receipts taxes levied  
5 under §§ 26-52-301 and 26-52-302(a) and (b) upon the gross receipts or gross  
6 proceeds derived from the sale of food and food ingredients shall be levied  
7 at the rate of zero percent (0%).

8 (c) The gross receipts or gross proceeds derived from the sale of food  
9 and food ingredients shall continue to be subject to the taxes levied under §  
10 26-52-302(c) and (d).

11 (d) The gross receipts or gross proceeds derived from the sale of food  
12 and food ingredients shall continue to be subject to the tax levied under  
13 Arkansas Constitution, Amendment 75, § 2.

14 (e) The gross receipts or gross proceeds derived from the sale of food  
15 and food ingredients shall continue to be subject to all municipal and county  
16 gross receipts taxes.

17  
18 SECTION 6. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended  
19 to add an additional section to read as follows:

20 26-53-145. Food and Food Ingredients.

21 (a)(1) Beginning July 1, 2005, the compensating use taxes levied under  
22 §§ 26-53-106 and 26-53-107(a) and (b) shall be levied at the rate of three  
23 and three-eighths percent (3.375%) on the sales price of food and food  
24 ingredients.

25 (2) Beginning July 1, 2006, the compensating use taxes levied  
26 under §§ 26-53-106 and 26-53-107(a) and (b) shall be levied at the rate of  
27 two and one-fourth percent (2.25%) on the sales price of food and food  
28 ingredients.

29 (3) Beginning July 1, 2007, the compensating use taxes levied  
30 under §§ 26-53-106 and 26-53-107(a) and (b) shall be levied at the rate of  
31 one and one-eighth percent (1.125%) on the sales price of food and food  
32 ingredients.

33 (4) Beginning July 1, 2008, the compensating use taxes levied  
34 under §§ 26-53-106 and 26-53-107(a) and (b) shall be levied at the rate of  
35 zero percent (0%) on the sales price of food and food ingredients.

36 (b) The use taxes levied under § 26-53-107(c) and (d) shall continue

1 to apply to the sales price of food and food ingredients.

2 (c) The use tax levied under Arkansas Constitution, Amendment 75, § 2  
3 shall continue to apply to the sales price of food and food ingredients.

4 (d) All municipal and county use taxes shall continue to apply to the  
5 sales price of food and food ingredients.

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7 SECTION 7. Educational Adequacy Trust Fund.

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

11 (b) The fund shall consist of the revenues generated by Arkansas Code  
12 §§ 26-52-302(d) and 26-53-107(d).

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

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21 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the  
22 General Assembly that the provision of an equal opportunity for an adequate  
23 education to all the citizens of the state is imperative; that additional  
24 funds are immediately needed to provide an equal opportunity for an adequate  
25 education; that this act is designed to provide the additional revenues  
26 needed to provide this equal opportunity to all citizens; and that a delay in  
27 the effective date of this act will cause irreparable harm upon the provision  
28 of essential education opportunities and the proper administration of  
29 educational programs. Therefore, an emergency is declared to exist and this  
30 act being immediately necessary for the preservation of the public peace,  
31 health, and safety shall be in full force and effect on March 1, 2004.

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33 /s/ Glover  
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