

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

Call Item 6

A Bill

SENATE BILL 78

5 By: Senators Hill, Malone, B. Johnson, Faris, Higginbothom, Broadway
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7

For An Act To Be Entitled

9 AN ACT TO INCREASE THE SALES AND USE TAX RATE BY
10 ONE PERCENT (1%); TO REDUCE THE SALES AND USE TAX
11 RATE ON FOOD AND FOOD INGREDIENTS WHEN SALES AND
12 USE TAX REVENUES FROM OUT-OF-STATE SALES BY
13 VENDORS THAT DO NOT HAVE A PHYSICAL PRESENCE IN
14 ARKANSAS HAVE SUFFICIENTLY INCREASED; AND FOR
15 OTHER PURPOSES.
16

Subtitle

17 AN ACT TO INCREASE THE STATE SALES AND
18 USE TAX RATE BY ONE PERCENT (1%) AND TO
19 REDUCE THE SALES AND USE TAX RATE ON
20 FOOD AND FOOD INGREDIENTS.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. Arkansas Code § 26-52-302, pertaining to additional gross
27 receipts tax, is amended to add a new subsection to read as follows:

28 (d)(1) Beginning July 1, 2004, there is levied an additional excise
29 tax of one percent (1%) upon all taxable sales of property and services
30 subject to the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-
31 52-101 et seq.

32 (2) The tax shall be collected, reported, and paid in the same
33 manner and at the same time as is prescribed by the Arkansas Gross Receipts
34 Act of 1941, § 26-52-101 et seq., for the collection, reporting, and payment
35 of Arkansas gross receipts taxes.
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1 SECTION 2. Title 26, Chapter 52, Subchapter 3, is amended to add a new
2 section to read as follows:

3 26-52-316. Food and food ingredients.

4 (a) As used in this section:

5 (1) "Alcoholic beverages" means beverages that are suitable for
6 human consumption and contain one-half of one percent (0.5%) or more of
7 alcohol by volume;

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

10 (A) Contains one (1) or more of the following dietary
11 ingredients:

12 (i) A vitamin;

13 (ii) A mineral;

14 (iii) An herb or other botanical;

15 (iv) An amino acid;

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

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

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

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

28 (3)(A) "Food and food ingredients" means substances, whether in
29 liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold
30 for ingestion or chewing by humans and are consumed for their taste or
31 nutritional value.

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

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

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

2 (i) Food sold in a heated state or heated by the
3 seller;

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

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

9 (b) As used in subdivision (a)(5)(A)(iii)(a)
10 of this section, "plate" does not include a container or packaging used to
11 transport the food.

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

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

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

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

21 (b)(1) If the Director of the Department of Finance and Administration
22 determines that:

23 (A) Federal law authorizes the state to collect sales and
24 use tax from some or all of the sellers who have no physical presence in the
25 State of Arkansas and who make sales of taxable goods and services to
26 Arkansas purchasers;

27 (B) Initiating the collection of sales and use tax from
28 these sellers would increase the net available general revenues needed to
29 fund state agencies, services, and programs; and

30 (C)(i) During a six (6) month consecutive period, the
31 amount of net available general revenues attributable to the collection of
32 sales and use tax from sellers who have no physical presence in the State of
33 Arkansas is equal to or greater than two hundred percent (200%) of sales and
34 use tax collected under §§ 26-52-301, 26-52-302(a), (b), and (d), 26-53-106,
35 and 26-53-107 (a), (b), and (d) on food and food ingredients.

36 (ii) The director will make the determination under

1 subdivision (b)(1)(C)(i) of this section on a monthly basis following the
 2 determination that the conditions under subdivision (b)(1)(A) of this section
 3 have been met.

4 (2) When the director finds that all of the conditions in
 5 subdivision (b)(1) of this section have been met, then the gross receipts or
 6 gross proceeds levied under §§ 26-52-301 and 26-52-302(a), (b), and (d) upon
 7 the gross receipts or gross proceeds derived from the sale of food and food
 8 ingredients shall be levied at the rate of zero percent (0%) beginning on the
 9 first day of the second calendar month following the determination of the
 10 director.

11 (c) The gross receipts or gross proceeds derived from the sale of food
 12 and food ingredients shall continue to be subject to the taxes levied under §
 13 26-52-302(c).

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

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

20
 21 SECTION 3. Arkansas Code § 26-53-107, pertaining to additional use
 22 taxes and is effective until contingency in Acts 2003, No. 1273, § 88 is met,
 23 is amended to add a new subsection to read as follows:

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

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

31
 32 SECTION 4. Arkansas Code § 26-53-107, pertaining to additional use
 33 taxes and becomes effective when contingency in Acts 2003, No. 1273, § 88 is
 34 met, is amended to add a new subsection to read as follows:

35 (d)(1) Beginning July 1, 2004, there is levied an additional excise
 36 tax of one percent (1%) upon all tangible personal property and taxable

1 services subject to the tax levied by the Arkansas Compensating Tax Act of
 2 1949, § 26-53-101 et seq.

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

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

10 26-53-145. Food and food ingredients.

11 (a)(1) If the Director of the Department of Finance and Administration
 12 determines that:

13 (A) Federal law authorizes the state to collect sales and
 14 use tax from some or all of the sellers who have no physical presence in the
 15 State of Arkansas and who make sales of taxable goods and services to
 16 Arkansas purchasers;

17 (B) Initiating the collection of sales and use tax from
 18 these sellers would increase the net available general revenues needed to
 19 fund state agencies, services, and programs; and

20 (C)(i) During a six (6) month consecutive period, the
 21 amount of net available general revenues attributable to the collection of
 22 sales and use tax from sellers who have no physical presence in the State of
 23 Arkansas is equal to or greater than two hundred percent (200%) of sales and
 24 use tax collected under §§ 26-52-301, 26-52-302(a), (b), and (d), 26-53-106
 25 and 26-53-107 (a), (b), and (d) on food and food ingredients.

26 (ii) The director will make the determination under
 27 subdivision (a)(1)(C)(i) of this section on a monthly basis following the
 28 determination that the conditions under subdivision (a)(1)(A) of this section
 29 have been met.

30 (2) When the director finds that all of the conditions in
 31 subdivision (a)(1) of this section have been met, then the compensating use
 32 taxes levied under §§ 26-53-106 and 26-53-107(a), (b), and (d) shall be
 33 levied at the rate of zero percent (0%) on the sales price of food and food
 34 ingredients beginning on the first day of the second calendar month following
 35 the determination of the director.

36 (b) The compensating use tax levied under § 26-53-107(c) shall

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

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

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

7 (e) "Food and food ingredients" has the same meaning as provided in §
8 26-52-316(a).

9
10 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
11 General Assembly that the provision of an equal opportunity for an adequate
12 education to all the citizens of the state is imperative; that additional
13 funds are immediately needed to provide an equal opportunity for an adequate
14 education; that this act is designed to provide the additional revenues
15 needed to provide this equal opportunity to all citizens; that it is
16 anticipated that Congress will enact legislation requiring certain vendors to
17 collect Arkansas sales and use taxes that are currently not required to
18 collect these taxes; and that a delay in the effective date of this act will
19 cause irreparable harm upon the provision of essential education
20 opportunities and the proper administration of educational programs.
21 Therefore, an emergency is declared to exist and this act being immediately
22 necessary for the preservation of the public peace, health, and safety shall
23 be in full force and effect on July 1, 2004.

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