

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

As Engrossed: S1/28/04  
**A Bill**

Call Item 6

SENATE BILL 78

5 By: Senators Hill, Malone, B. Johnson, Faris, Higginbothom, Broadway  
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8 **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

17 **Subtitle**

18 AN ACT TO INCREASE THE STATE SALES AND  
19 USE TAX RATE BY ONE PERCENT (1%) AND TO  
20 REDUCE THE SALES AND USE TAX RATE ON  
21 FOOD AND FOOD INGREDIENTS.  
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23

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

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

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9           SECTION 3. Title 26, Chapter 52, Subchapter 3, is amended to add a new  
10 section to read as follows:

11           26-52-316. Food and food ingredients.

12           (a) As used in this section:

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

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

18                           (A) Contains one (1) or more of the following dietary  
19 ingredients:

20                                   (i) A vitamin;

21                                   (ii) A mineral;

22                                   (iii) An herb or other botanical;

23                                   (iv) An amino acid;

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

26                                   (vi) A concentrate, metabolite, constituent,  
27 extract, or combination of any ingredient described in this subdivision

28 (a)(2)(A);

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

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

36                   (3)(A) "Food and food ingredients" means substances, whether in

1 liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold  
2 for ingestion or chewing by humans and are consumed for their taste or  
3 nutritional value.

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

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

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

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

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

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

29 (b)(1) If the Director of the Department of Finance and Administration  
30 determines that:

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

35 (B) Initiating the collection of sales and use tax from  
36 these sellers would increase the net available general revenues needed to

1 fund state agencies, services, and programs; and

2 (C)(i) During a six (6) month consecutive period, the  
3 amount of net available general revenues attributable to the collection of  
4 sales and use tax from sellers who have no physical presence in the State of  
5 Arkansas is equal to or greater than one hundred and fifty percent (150%) of  
6 sales and use tax collected under §§ 26-52-301, 26-52-302(a), (b), and (d),  
7 26-53-106, and 26-53-107 (a), (b), and (d) on food and food ingredients.

8 (ii) The director will make the determination under  
9 subdivision (b)(1)(C)(i) of this section on a monthly basis following the  
10 determination that the conditions under subdivision (b)(1)(A) of this section  
11 have been met.

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

19 (c) The gross receipts or gross proceeds derived from the sale of food  
20 and food ingredients shall continue to be subject to the taxes levied under §  
21 26-52-302(c).

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

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

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

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

35 (2) The tax shall be collected, reported, and paid in the same  
36 manner and at the same time as is prescribed by the Arkansas Compensating Tax

1 Act of 1949, § 26-53-101 et seq., for the collection, reporting, and payment  
2 of Arkansas compensating taxes.

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4 SECTION 5. Arkansas Code § 26-53-107, pertaining to additional use  
5 taxes and becomes effective when contingency in Acts 2003, No. 1273, § 88 is  
6 met, is amended to add a new subsection to read as follows:

7 (d)(1) Beginning April 1, 2004, there is levied an additional excise  
8 tax of one percent (1%) upon all tangible personal property and taxable  
9 services subject to the tax levied by the Arkansas Compensating Tax Act of  
10 1949, § 26-53-101 et seq.

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

15  
16 SECTION 6. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended  
17 to add a new section to read as follows:

18 26-53-145. Food and food ingredients.

19 (a)(1) If the Director of the Department of Finance and Administration  
20 determines that:

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

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

28 (C)(i) During a six (6) month consecutive period, the  
29 amount of net available general revenues attributable to the collection of  
30 sales and use tax from sellers who have no physical presence in the State of  
31 Arkansas is equal to or greater than one hundred and fifty percent (150%) of  
32 sales and use tax collected under §§ 26-52-301, 26-52-302(a), (b), and (d),  
33 26-53-106 and 26-53-107 (a), (b), and (d) on food and food ingredients.

34 (ii) The director will make the determination under  
35 subdivision (a)(1)(C)(i) of this section on a monthly basis following the  
36 determination that the conditions under subdivision (a)(1)(A) of this section

1 have been met.

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

8 (b) The compensating use tax levied under § 26-53-107(c) shall  
9 continue to apply to the sales price of food and food ingredients.

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

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

15 (e) "Food and food ingredients" has the same meaning as provided in §  
16 26-52-316(a).

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18 SECTION 7. Educational Adequacy Trust Fund.

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

22 (b) The fund shall consist of the revenues generated by Arkansas Code  
23 §§ 26-52-302(d) and 26-53-107(d).

24 (c) On the last day of the month, the Treasurer of State shall  
25 transfer amounts available in the Educational Adequacy Trust Fund to the  
26 Department of Education Public School Fund Account established in Arkansas  
27 Code § 19-5-305, to be used for the purposes as provided by law. The  
28 Treasurer of State shall make the transfer after making the deductions  
29 required from the net special revenues as set out in Arkansas Code § 19-5-  
30 203(b)(2)(A).

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32 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the  
33 General Assembly that the provision of an equal opportunity for an adequate  
34 education to all the citizens of the state is imperative; that additional  
35 funds are immediately needed to provide an equal opportunity for an adequate  
36 education; that this act is designed to provide the additional revenues

1 needed to provide this equal opportunity to all citizens; that it is  
2 anticipated that Congress will enact legislation requiring certain vendors to  
3 collect Arkansas sales and use taxes that are currently not required to  
4 collect these taxes; and that a delay in the effective date of this act will  
5 cause irreparable harm upon the provision of essential education  
6 opportunities and the proper administration of educational programs.  
7 Therefore, an emergency is declared to exist and this act being immediately  
8 necessary for the preservation of the public peace, health, and safety shall  
9 be in full force and effect on April 1, 2004.

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11 */s/ Hill*  
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