

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 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/16/05

A Bill

HOUSE BILL 2480

5 By: Representatives Hardwick, Mathis, Abernathy, Adcock, Anderson, Berry, Blair, Bolin, Bond,
6 Borhauer, Bright, Burris, Childers, Cooper, Cowling, D. Creekmore, Davenport, Davis, Dickinson,
7 Dobbins, Dunn, Edwards, D. Evans, L. Evans, Everett, Fite, Flowers, George, Glidewell, R. Green,
8 Harrelson, Harris, J. Hutchinson, T. Hutchinson, Jeffrey, D. Johnson, J. Johnson, Kenney, Key, Kidd,
9 Lamoureux, Mack, Mahony, J. Martin, M. Martin, Matayo, Maxwell, McDaniel, Medley, Norton,
10 Ormond, Overbey, Pace, Petrus, S. Prater, Pritchard, Pyle, Ragland, Rainey, Reep, Roebuck, Rogers,
11 Rosenbaum, Sample, Saunders, Scroggin, L. Smith, Sullivan, Sumpter, Thomason, Thompson, Verkamp,
12 Walters, Wells, Wills, Wood
13 By: Senators Higginbotham, Altes, Bisbee, J. Bookout, Capps, Glover, Hendren, Horn, G. Jeffress, B.
14 Johnson, T. Smith, J. Taylor, Trusty, Wooldridge
15
16

For An Act To Be Entitled

18 AN ACT TO PROVIDE FOR A SALES AND USE TAX
19 EXEMPTION FOR QUALIFIED MUSEUMS; AND FOR OTHER
20 PURPOSES.
21

Subtitle

22 TO PROVIDE FOR A SALES AND USE TAX
23 EXEMPTION FOR QUALIFIED MUSEUMS.
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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29 SECTION 1. Arkansas Code Title 26, Chapter 52, Subchapter 4 is amended
30 to add an additional section to read as follows:

31 26-52-438. Exemption for qualified museums.

32 (a) As used in this section:

33 (1) "Exemption certificate" means an exemption certificate
34 issued by the Director of the Department of Finance and Administration under
35 subdivision (d)(1) of this section;

36 (2) "Nonprofit organization" means any organization described in



1 Section 501(c)(3) of the Internal Revenue Code of 1986, as in effect on
2 January 1, 2005;

3 (3) "Qualified museum" means any nonprofit organization that
4 acquires a collection of artwork for purposes of establishing and operating a
5 qualified museum facility, regardless of whether the nonprofit organization
6 may engage in any other charitable activities, if the:

7 (A) Fair market value of the artwork collection of the
8 nonprofit organization for public viewing and exhibition at the qualified
9 museum facility exceeds one hundred million dollars (\$100,000,000) prior to
10 January 1, 2013; and

11 (B) The Director of the Department of Finance and
12 Administration has issued an exemption certificate to the nonprofit
13 organization; and

14 (4) "Qualified museum facility" means a facility, including the
15 structures, buildings, and any ancillary or related structures or buildings
16 and real property associated with the facility, including auditoriums,
17 parking areas, and educational facilities that house a collection of art or
18 other exhibits for public viewing and exhibition, if the:

19 (A) Principal location and primary operations of the
20 facility will be located within the State of Arkansas;

21 (B) Museum portion of the facility opens to the public
22 after January 1, 2005, and prior to January 1, 2013; and

23 (C) Aggregate total costs of the construction and
24 acquisition of the facility exceeds thirty million dollars (\$30,000,000)
25 prior to January 1, 2013.

26 (b)(1) The gross receipts or gross proceeds derived from the sale of
27 any tangible personal property or services to a qualified museum are exempt
28 from the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

29 (2) The exemption provided in subdivision (b)(1) of this section
30 shall also apply to the gross receipts or gross proceeds derived from the
31 sale of materials to a qualified museum or its contractor or agent used in
32 the construction, repair, expansion, or operation of the qualified museum
33 facility.

34 (c) A nonprofit organization requesting recognition as a qualified
35 museum shall file with the director, on forms prescribed by the director, a
36 written statement under oath:

1 (1) Describing the facts upon which the nonprofit organization
2 claims the exemption under this section. This statement shall be filed prior
3 to first claiming this exemption and shall include facts indicating that the
4 nonprofit organization has a good faith plan and intent to satisfy the
5 conditions under subdivision (c)(2) of this section; and

6 (2) On or before June 30, 2013, stating that the following
7 conditions have been met:

8 (A) The nonprofit organization has established and
9 operated prior to January 1, 2013, a facility that houses a collection of art
10 or other exhibits for public viewing and exhibition;

11 (B) The principal location and primary operations of the
12 facility are located within the State of Arkansas;

13 (C) The museum portion of the facility first opened to the
14 public after January 1, 2005, and prior to January 1, 2013;

15 (D) The aggregate total costs of construction and
16 acquisition of the facility including the structures, buildings, ancillary or
17 related structures or buildings, real property used in connection with the
18 facility, auditoriums, parking areas and educational facilities exceeded
19 thirty million dollars (\$30,000,000) prior to January 1, 2013; and

20 (E) Prior to January 1, 2013, the nonprofit organization
21 acquired a collection of artwork with a fair market value in excess of one
22 hundred million dollars (\$100,000,000) for public viewing and exhibition at
23 the qualified museum facility.

24 (d)(1) After filing the statement required under subdivision (c)(1) of
25 this section, if the director finds that the nonprofit organization has a
26 good faith plan and intent to satisfy the conditions of subdivision (c)(2) of
27 this subsection prior to January 1, 2013, the director shall issue an
28 exemption certificate to the nonprofit organization within sixty (60) days
29 after the filing of the statement.

30 (2) The director may revoke the exemption certificate at any
31 time after it is issued if the director determines that the nonprofit
32 organization is unable to satisfy the conditions under subdivision (c)(2) of
33 this subsection prior to January 1, 2013.

34 (3) After filing the statement required under subdivision (c)(2)
35 of this section, if the director determines that the nonprofit organization
36 has not met the conditions under subdivision (c)(2) of this section, the

1 director shall revoke the exemption certificate of the nonprofit
2 organization.

3 (4) If the nonprofit organization fails to file the statement
4 described in subdivision (c)(2) of this section on or prior to June 30, 2013,
5 the director shall revoke the exemption certificate.

6 (5) Revocation by the director of an exemption certificate shall
7 be retroactive to the date of its issuance subject to subsection (e) of this
8 section.

9 (e)(1) If the director revokes the exemption certificate, any tax
10 deficiency, related interest, and applicable penalties due under the Arkansas
11 Gross Receipts Act of 1941, § 26-52-101 et seq., Arkansas Compensating Tax
12 Act of 1949, § 26-53-101 et seq., or the Arkansas Tax Procedure Act, § 26-18-
13 101 et seq., may be assessed against the nonprofit organization but may not
14 be assessed against a third party that has relied in good faith on the
15 exemption certificate prior to its revocation.

16 (2) If the director revokes the exemption certificate, any tax
17 deficiency, related interest, and applicable penalties assessed against the
18 nonprofit organization shall also include any tax deficiency, related
19 interest, and applicable penalties assessed on purchases made by the
20 nonprofit organization's contractors and agents for the benefit of the
21 nonprofit organization in reliance on the exemption certificate.

22 (3) Any assessment by the director under subdivisions (e)(1) or
23 (2) of this section shall be made in accordance with the Arkansas Tax
24 Procedure Act, § 26-18-101 et seq. However, the time period for the director
25 to make the assessment is extended to whichever of the following occurs
26 first:

27 (A) Three (3) years from the date the nonprofit
28 organization files the statement under subdivision (c)(2) of this section; or

29 (B) July 1, 2016.

30 (4) The nonprofit organization may contest any assessment or
31 other determination by the director in accordance with the Arkansas Tax
32 Procedure Act, § 26-18-101 et seq.

33
34 SECTION 2. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended
35 to add an additional section to read as follows:

36 26-53-145. Exemption for qualified museums.

1 (a) As used in this section:

2 (1) "Exemption certificate" means an exemption certificate
3 issued by the Director of the Department of Finance and Administration under
4 subdivision (d)(1) of this section;

5 (2) "Nonprofit organization" means any organization described in
6 Section 501(c)(3) of the Internal Revenue Code of 1986, as in effect on
7 January 1, 2005;

8 (3) "Qualified museum" means any nonprofit organization that
9 acquires a collection of artwork for purposes of establishing and operating a
10 qualified museum facility, regardless of whether the nonprofit organization
11 may engage in any other charitable activities, if the:

12 (A) Fair market value of the artwork collection of the
13 nonprofit organization for public viewing and exhibition at the qualified
14 museum facility exceeds one hundred million dollars (\$100,000,000) prior to
15 January 1, 2013; and

16 (B) The Director of the Department of Finance and
17 Administration has issued an exemption certificate to the nonprofit
18 organization; and

19 (4) "Qualified museum facility" means a facility, including the
20 structures, buildings, and any ancillary or related structures or buildings
21 and real property associated with the facility, including auditoriums,
22 parking areas and educational facilities that house a collection of art or
23 other exhibits for public viewing and exhibition, if the:

24 (A) Principal location and primary operations of the
25 facility will be located within the State of Arkansas;

26 (B) Museum portion of the facility opens to the public
27 after January 1, 2005, and prior to January 1, 2013; and

28 (C) Aggregate total costs of the construction and
29 acquisition of the facility exceeds thirty million dollars (\$30,000,000)
30 prior to January 1, 2013.

31 (b)(1) The storage, use, distribution, or consumption of any tangible
32 personal property by a qualified museum is exempt from the Arkansas
33 Compensating Tax Act of 1949, § 26-53-101 et seq.

34 (2) The exemption provided in subdivision (b)(1) of this section
35 shall also apply to the storage, use, distribution, or consumption of
36 materials by a qualified museum, or its contractor or agent used in the

1 construction, repair, expansion, or operation of the qualified museum
2 facility.

3 (c) A nonprofit organization requesting recognition as a qualified
4 museum shall file with the director, on forms prescribed by the director, a
5 written statement under oath:

6 (1) Describing the facts upon which the nonprofit organization
7 claims the exemption under this section. This statement shall be filed prior
8 to first claiming this exemption and shall include facts indicating that the
9 nonprofit organization has a good faith plan and intent to satisfy the
10 conditions under subdivision (c)(2) of this section; and

11 (2) On or before June 30, 2013, stating that the following
12 conditions have been met:

13 (A) The nonprofit organization has established and
14 operated prior to January 1, 2013, a facility that houses a collection of art
15 or other exhibits for public viewing and exhibition;

16 (B) The principal location and primary operations of the
17 facility are located within the State of Arkansas;

18 (C) The museum portion of the facility first opened to the
19 public after January 1, 2005, and prior to January 1, 2013;

20 (D) The aggregate total costs of construction and
21 acquisition of the facility including the structures, buildings, ancillary or
22 related structures or buildings, real property used in connection with the
23 facility, auditoriums, parking areas and educational facilities exceeded
24 thirty million dollars (\$30,000,000) prior to January 1, 2013; and

25 (E) Prior to January 1, 2013, the nonprofit organization
26 acquired a collection of artwork with a fair market value in excess of one
27 hundred million dollars (\$100,000,000) for public viewing and exhibition at
28 the qualified museum facility.

29 (d)(1) After filing the statement required under subdivision (c)(1) of
30 this section, if the director finds that the nonprofit organization has a
31 good faith plan and intent to satisfy the conditions of subdivision (c)(2) of
32 this section prior to January 1, 2013, the director shall issue an exemption
33 certificate to the nonprofit organization within sixty (60) days after the
34 filing of the statement.

35 (2) The director may revoke the exemption certificate at any
36 time after it is issued if the director determines that the nonprofit

1 organization is unable to satisfy the conditions under subdivision (c)(2) of
2 this section prior to January 1, 2013.

3 (3) After filing the statement required under subdivision (c)(2)
4 of this section, if the director determines that the nonprofit organization
5 has not met the conditions under subdivision (c)(2) of this section, the
6 director shall revoke the exemption certificate of the nonprofit
7 organization.

8 (4) If the nonprofit organization fails to file the statement
9 described in subdivision (c)(2) of this section on or prior to June 30, 2013,
10 the director shall revoke the exemption certificate.

11 (5) Revocation by the director of an exemption certificate shall
12 be retroactive to the date of its issuance subject to subsection (e) of this
13 section.

14 (e)(1) If the director revokes the exemption certificate, any tax
15 deficiency, related interest, and applicable penalties due under the Arkansas
16 Gross Receipts Act of 1941, § 26-52-101 et seq., the Arkansas Compensating
17 Tax Act of 1949, § 26-53-101 et seq., or the Arkansas Tax Procedure Act, §
18 26-18-101 et seq., may be assessed against the nonprofit organization but may
19 not be assessed against a third party that has relied in good faith on the
20 exemption certificate prior to its revocation.

21 (2) If the director revokes the exemption certificate, any tax
22 deficiency, related interest, and applicable penalties assessed against the
23 nonprofit organization shall also include any tax deficiency, related
24 interest, and applicable penalties assessed on purchases made by the
25 nonprofit organization's contractors and agents for the benefit of the
26 nonprofit organization in reliance on the exemption certificate.

27 (3) Any assessment by the director under subdivisions (e)(1) or
28 (2) of this section shall be made in accordance with the Arkansas Tax
29 Procedure Act, § 26-18-101 et seq. However, the time period for the director
30 to make the assessment is extended to whichever of the following occurs
31 first:

32 (A) Three (3) years from the date the nonprofit
33 organization files the statement under subdivision (c)(2) of this section; or

34 (B) July 1, 2016.

35 (4) The nonprofit organization may contest any assessment or
36 other determination by the director in accordance with the Arkansas Tax

1 Procedure Act, § 26-18-101 et seq.

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/s/ Hardwick, et al

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