

INTERIM STUDY PROPOSAL 2023-060

1 State of Arkansas
2
3 94th General Assembly
4 Regular Session, 2023

A Bill

SENATE BILL 394

5
6 By: Senator J. Boyd
7 By: Representative L. Johnson

8 Filed with: Senate Committee on Revenue and Taxation
9 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

10
11 AN ACT TO AMEND THE LAW CONCERNING SALES AND USE TAX
12 ON MOTORBOATS; TO AMEND THE LAW CONCERNING THE
13 COLLECTION OF SALES AND USE TAX ON MOTORBOATS; TO
14 SUBJECT CERTAIN USED MOTORBOATS TO A SPECIAL RATE OF
15 TAX; AND FOR OTHER PURPOSES.

Subtitle

16
17
18 TO AMEND THE LAW CONCERNING THE
19 COLLECTION OF SALES AND USE TAX ON
20 MOTORBOATS; AND TO SUBJECT CERTAIN USED
21 MOTORBOATS TO A SPECIAL RATE OF TAX.
22

23
24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26
27 SECTION 1. Arkansas Code § 26-52-324 is amended to read as follows:
28 26-52-324. Special tax rate for certain used motor vehicles,
29 motorboats, trailers, and semitrailers.

30 (a) In lieu of the gross receipts or gross proceeds taxes levied under
31 §§ 26-52-301 and 26-52-302, there is levied an excise tax on the gross
32 receipts or gross proceeds derived from the sale of a used motor vehicle,
33 motorboat, trailer, or semitrailer that has a sales price of at least four
34 thousand dollars (\$4,000) but less than ten thousand dollars (\$10,000) at the
35 rate of two and eight hundred seventy-five thousandths percent (2.875%).

36 (b) The tax levied in this section shall be in addition to:

1 (1) Any gross receipts or gross proceeds tax levied in the
2 Arkansas Constitution;

3 (2) Any gross receipts or gross proceeds tax levied by a
4 municipality or county; and

5 (3) Any additional gross receipts or gross proceeds tax levied
6 in an Arkansas city and resulting from an election within that city conducted
7 in accordance with §§ 26-52-601 – 26-52-606.

8 (c) For the purpose of determining whether the tax levied by this
9 section applies to the sale of a used motor vehicle, motorboat, trailer, or
10 semitrailer, the sales price for the used motor vehicle, motorboat, trailer,
11 or semitrailer shall not be reduced by:

12 (1) The value of a motor vehicle, motorboat, trailer or
13 semitrailer traded in as part payment on the purchase price of the newly
14 acquired motor vehicle, trailer, or semitrailer; or

15 (2) The amount received by the purchaser for the sale of another
16 motor vehicle, motorboat, trailer, or semitrailer.

17 (d) The revenues generated by the tax levied under this section shall
18 be distributed as follows:

19 (1) Seventy-six and six-tenths percent (76.6%) of the taxes,
20 interest, penalties, and costs received by the Secretary of the Department of
21 Finance and Administration under this section shall be deposited as general
22 revenues;

23 (2) Eight and five-tenths percent (8.5%) of the taxes, interest,
24 penalties, and costs received by the secretary under this section shall be
25 deposited into the Property Tax Relief Trust Fund; and

26 (3) Fourteen and nine-tenths percent (14.9%) of the taxes,
27 interest, penalties, and costs received by the secretary under this section
28 shall be deposited into the Educational Adequacy Fund.

29 (e) The excise tax levied under this section shall be collected and
30 paid in the same manner and at the same time as is prescribed in § 26-52-510
31 for the collection and payment of gross receipts taxes on motor vehicles,
32 motorboats, trailers, and semitrailers.

33 (f) As used in this section, "motorboat" means the same as defined in
34 § 27-101-103.

35

1 SECTION 2. Arkansas Code Title 26, Chapter 52, Subchapter 5, is
2 amended to add an additional section to read as follows:

3 26-52-524. Direct payment of tax by consumer-user – New and used
4 motorboats – Definition.

5 (a) As used in this section, "motorboat" means the same as defined in
6 § 27-101-103.

7 (b)(1) On or before the time for applying for a certificate of number
8 as prescribed by § 27-101-304, a consumer shall pay to the Secretary of the
9 Department of Finance and Administration the tax levied by this chapter and
10 all other gross receipts taxes levied by the state with respect to the sale
11 of a new or used motorboat required to be numbered in this state, instead of
12 the taxes being collected by the dealer or seller.

13 (2) The secretary shall require the payment of the taxes at the
14 time of registration before issuing a certificate of number for the new or
15 used motorboat.

16 (3)(A) The taxes apply regardless of whether the motorboat is
17 sold by a motorboat dealer or an individual, corporation, or partnership not
18 licensed as a motorboat dealer.

19 (B) The exemption in § 26-52-401(17) for isolated sales
20 does not apply to the sale of a motorboat.

21 (4) If the consumer fails to pay the taxes when due:

22 (A) There is assessed a penalty equal to ten percent (10%)
23 of the amount of taxes due; and

24 (B) The consumer shall pay to the secretary the penalty
25 under subdivision (b)(4)(A) of this section and the taxes due before the
26 secretary issues a certificate of number for the motorboat.

27 (c)(1)(A) Except as provided in this section, when a used motorboat is
28 taken in trade as a credit or part payment on the sale of a new or used
29 motorboat, the tax levied by this chapter and all other gross receipts taxes
30 levied by the state shall be paid on the net difference between the total
31 consideration for the new or used motorboat sold and the credit for the used
32 motorboat taken in trade.

33 (B)(i)(a) If the total consideration for the sale of the
34 new or used motorboat is less than four thousand dollars (\$4,000), no tax is
35 due.

1 (b) If the total consideration for the sale of
2 a new motorboat is four thousand dollars (\$4,000) or more, the full gross
3 receipts tax rate levied under this chapter shall be levied and collected.

4 (ii) If the total consideration for the sale of a
5 used motorboat is at least four thousand dollars (\$4,000) but less than ten
6 thousand dollars (\$10,000), the gross receipts tax due shall be determined
7 under § 26-52-324.

8 (iii) If the total consideration for the sale of a
9 used motorboat is ten thousand dollars (\$10,000) or more:

10 (a) The exemption under subdivision
11 (c)(1)(B)(i)(a) of this section does not apply;

12 (b) The special tax rate provided in § 26-52-
13 324 does not apply; and

14 (c) The full gross receipts tax rate levied
15 under this chapter shall be levied and collected.

16 (C)(i) When a used motorboat is sold by a consumer, rather
17 than traded-in as a credit or part payment on the sale of a new or used
18 motorboat, and the consumer subsequently purchases a new or used motorboat of
19 greater value within sixty (60) days of the sale, the tax levied by this
20 chapter and all other gross receipts taxes levied by the state shall be paid
21 on the net difference between the total consideration for the new or used
22 motorboat purchased subsequently and the amount received from the sale of the
23 used motorboat sold in lieu of a trade-in.

24 (ii)(a) Upon applying for a certificate of
25 number for the new or used motorboat, a consumer claiming the deduction
26 provided by subdivision (c)(1)(C)(i) of this section shall provide a bill of
27 sale signed by all parties to the transaction which reflects the total
28 consideration paid to the seller for the motorboat.

29 (b) A copy of the bill of sale shall be
30 deposited with the revenue office at the time of applying for a certificate
31 of number for the new or used motorboat.

32 (c) The deduction provided by this section
33 shall not be allowed unless the taxpayer claiming the deduction provides a
34 copy of a bill of sale signed by all parties to the transaction which
35 reflects the total consideration paid to the seller for the motorboat.

1 (iii) If the taxpayer claiming the deduction provided
2 in this section fails to provide a bill of sale signed by all parties to the
3 transaction that reflects the total consideration paid to the seller for the
4 motorboat, tax shall be due on the total consideration paid for the new or
5 motorboat without any deduction for the value of the item sold.

6 (2)(A)(i) When a motorboat dealer removes a motorboat from its
7 inventory and the motorboat is used by the dealership as a service motorboat,
8 the dealer shall obtain a certificate of number, register and obtain a
9 certificate of title, and pay sales tax on the listed retail price of the new
10 motorboat.

11 (ii)(a) When the motorboat dealer returns the
12 service motorboat to inventory as a used motorboat and replaces it with a new
13 motorboat for dealership use as a service motorboat, the dealer shall pay
14 sales tax on the difference between the listed retail price of the new
15 service motorboat to be used by the dealership and the value of the used
16 service motorboat being returned to inventory.

17 (b) The value of the used service motorboat
18 shall be the highest listed wholesale price reflected in the most current
19 edition of a publication that is generally accepted by the industry as
20 providing an accurate valuation of used motorboats.

21 (B)(i) As used in this subsection, "service motorboat"
22 means a motorboat driven exclusively by an employee of the dealership and
23 used either to transport dealership customers or dealership parts and
24 equipment.

25 (ii) "Service motorboat" does not include motorboats
26 that are rented by the dealership, used as demonstration motorboats, or used
27 by dealership employees for personal use.

28 (d) All parts and accessories purchased by motorboat sellers for
29 resale or used by them for the reconditioning or rebuilding of used
30 motorboats intended for resale are exempt from gross receipts tax, provided
31 that the motorboat seller meets the requirements of § 26-52-401(12)(A) and
32 applicable rules promulgated by the secretary.

33 (e) This section does not repeal any exemption from this chapter.

34 (f) A credit is not allowed for sales or use taxes paid to another
35 state with respect to the purchase of a motorboat that first obtained a
36 certificate of number or title by the purchaser in Arkansas.

1 (g)(1)(A) A motorboat dealer with a permit under § 27-101-302(5) who
2 has purchased a used motorboat upon payment of all applicable fees may apply
3 for a certificate of number for the motorboat for the sole purpose of
4 obtaining a certificate of title to the motorboat without payment of gross
5 receipts tax, except as provided in subdivision (g)(1)(B) of this section.

6 (B)(i) The sale of a motorboat from the original franchise
7 dealer to any other dealer, person, corporation, or other entity other than a
8 franchise dealer of the same make of motorboat and which sale is reflected on
9 the statement of origin shall be subject to gross receipts tax.

10 (ii) The motorboat shall be considered a used
11 motorboat that shall have a registered certificate of number and be titled,
12 and tax shall be paid at the time of application for a certificate of number.

13 (iii) Subdivision (g)(1)(A) of this section does not
14 apply in those instances.

15 (2) If a certificate of number is issued for a motorboat under §
16 27-101-302(5)(C), the used motorboat titled by a dealer under this subsection
17 shall not be operated on the waters of this state unless there is displayed
18 on the used motorboat the identifying certificate of number issued under §
19 27-101-302(5)(C).

20 (h)(1) For purposes of this section, the total consideration for a
21 used motorboat shall be presumed to be the greater of the actual sales price
22 as provided on the bill of sale, invoice or financing agreement, or the
23 average loan value price of the motorboat as listed in the most current
24 edition of a publication that is generally accepted by the industry as
25 providing an accurate valuation of used motorboats.

26 (2) If the published loan value exceeds the invoiced price, then
27 the taxpayer shall establish to the secretary's satisfaction that the price
28 reflected on the invoice or other document is true and correct.

29 (3) If the secretary determines that the invoiced price is not
30 the actual selling price of the motorboat, then the total consideration will
31 be deemed to be the published loan value.

32
33 SECTION 3. Arkansas Code § 26-53-150 is amended to read as follows:

34 26-53-150. Special tax rate for certain used motor vehicles,
35 motorboats, trailers, and semitrailers.

1 (a)(1) In lieu of the compensating use taxes levied under §§ 26-53-106
2 and 26-53-107, there is levied an excise tax for the privilege of storing,
3 using, distributing, or consuming a used motor vehicle, motorboat, trailer,
4 or semitrailer within this state if the sales price of the used motor
5 vehicle, motorboat, trailer, or semitrailer is at least four thousand dollars
6 (\$4,000) but less than ten thousand dollars (\$10,000).

7 (2) The excise tax levied under subdivision (a)(1) of this
8 section is levied at the rate of two and eight hundred seventy-five
9 thousandths percent (2.875%) of the sales price of the used motor vehicle,
10 motorboat, trailer, or semitrailer.

11 (b) The tax levied in this section shall be in addition to:

12 (1) Any compensating use tax levied in the Arkansas
13 Constitution;

14 (2) Any compensating use tax levied by a municipality or county;
15 and

16 (3) Any additional compensating use tax levied in an Arkansas
17 city under § 26-52-607.

18 (c) For the purpose of determining whether the tax levied by this
19 section applies to the sale of a used motor vehicle, motorboat, trailer, or
20 semitrailer, the sales price for the used motor vehicle, motorboat, trailer,
21 or semitrailer shall not be reduced by:

22 (1) The value of a motor vehicle, motorboat, trailer, or
23 semitrailer traded in as part payment on the purchase price of the newly
24 acquired motor vehicle, motorboat, trailer, or semitrailer; or

25 (2) The amount received by the purchaser for the sale of another
26 motor vehicle, motorboat, trailer, or semitrailer.

27 (d) The revenues generated by the tax levied under this section shall
28 be distributed as follows:

29 (1) Seventy-six and six-tenths percent (76.6%) of the taxes,
30 interest, penalties, and costs received by the Secretary of the Department of
31 Finance and Administration under this section shall be deposited as general
32 revenues;

33 (2) Eight and five-tenths percent (8.5%) of the taxes, interest,
34 penalties, and costs received by the secretary under this section shall be
35 deposited into the Property Tax Relief Trust Fund; and

1 (3) Fourteen and nine-tenths percent (14.9%) of the taxes,
2 interest, penalties, and costs received by the secretary under this section
3 shall be deposited into the Educational Adequacy Fund.

4 (e) The excise tax levied under this section shall be collected and
5 paid in the same manner and at the same time as is prescribed in § 26-53-126
6 for the collection and payment of compensating use taxes on motor vehicles,
7 motorboats, trailers, and semitrailers.

8 (f) As used in this section, "motorboat" means the same as defined in
9 § 27-101-103.

10
11 SECTION 4. Arkansas Code Title 26, Chapter 53, Subchapter 1, is
12 amended to add an additional section to read as follows:

13 26-53-151. Tax on new and used motorboats – Payment and collection –
14 Definition.

15 (a) As used in this section, "motorboat" means the same as defined in
16 § 27-101-103.

17 (b)(1) Upon applying for a certificate of number in this state, a new
18 or used motorboat required to be registered with a certificate of number in
19 this state is subject to the tax levied in this subchapter and all other use
20 taxes levied by the state regardless of whether the motorboat was purchased
21 from a dealer or an individual.

22 (2)(A) On or before the time for applying for a certificate of
23 number as prescribed by § 27-101-304, the person making application for a
24 certificate of number for the motorboat shall pay the taxes to the Secretary
25 of the Department of Finance and Administration instead of the taxes being
26 collected by the dealer or individual seller.

27 (B) The secretary shall collect the taxes before issuing a
28 certificate of number for the motorboat.

29 (3) The exemption in § 26-52-401(17) for isolated sales does not
30 apply to the sale of a motorboat.

31 (4) If the person making application for a certificate of number
32 for a motorboat fails to pay the taxes when due:

33 (A) There is assessed a penalty equal to ten percent (10%)
34 of the amount of taxes due; and

35 (B) The person making application for a certificate of
36 number for a motorboat shall pay to the secretary the penalty under

1 subdivision (a)(4)(A) of this section and the taxes due before the secretary
2 issues a certificate of number for the motorboat.

3 (c)(1) When a used motorboat is taken in trade as a credit or part
4 payment on the sale of a new or used motorboat, the tax levied in this
5 subchapter and all other use taxes levied by the state shall be paid on the
6 net difference between the total consideration for the new or used motorboat
7 sold and the credit for the used motorboat taken in trade.

8 (2)(A)(i) If the total consideration for the sale of the new or
9 used motorboat is less than four thousand dollars (\$4,000), no tax is due.

10 (ii) If the total consideration for the sale of a new
11 motorboat is four thousand dollars (\$4,000) or more, the full compensating
12 use tax rate levied under this chapter shall be levied and collected.

13 (B) If the total consideration for the sale of a used
14 motorboat is at least four thousand dollars (\$4,000) but less than ten
15 thousand dollars (\$10,000), the compensating use tax due shall be determined
16 under § 26-53-150.

17 (C) If the total consideration for the sale of a used
18 motorboat is ten thousand dollars (\$10,000) or more:

19 (i) The exemption under subdivision (c)(2)(A)(i) of
20 this section does not apply;

21 (ii) The special tax rate provided in § 26-53-150
22 does not apply; and

23 (iii) The full compensating use tax rate levied under
24 this chapter shall be levied and collected.

25 (3)(A) When a used motorboat is sold by a consumer, rather than
26 traded in as a credit or part payment on the sale of a new or used motorboat,
27 and the consumer subsequently purchases a new or used motorboat of greater
28 value within sixty (60) days of the sale, the tax levied by this chapter and
29 all other gross receipts taxes levied by the state shall be paid on the net
30 difference between the total consideration for the new or used motorboat
31 purchased subsequently and the amount received from the sale of the used
32 motorboat sold in lieu of a trade-in.

33 (B)(i) Upon applying for a certificate of number for the
34 new or used motorboat, a consumer claiming the deduction provided by
35 subdivision (c)(3)(A) of this section shall provide a bill of sale signed by

1 all parties to the transaction which reflects the total consideration paid to
2 the seller for the motorboat.

3 (ii) A copy of the bill of sale shall be deposited
4 with the revenue office at the time of registration of the new or used
5 motorboat.

6 (iii) The deduction provided by this subdivision
7 (c)(3) shall not be allowed unless the taxpayer claiming the deduction
8 provides a copy of a bill of sale signed by all parties to the transaction
9 that reflects the total consideration paid to the seller for the motorboat.

10 (C) If the taxpayer claiming the deduction provided in
11 this subdivision (c)(3) fails to provide a bill of sale signed by all parties
12 to the transaction that reflects the total consideration paid to the seller
13 for the motorboat, tax shall be due on the total consideration paid for the
14 new or used motorboat without any deduction for the value of the item sold.

15 (d) The tax imposed by this subchapter does not apply to a motorboat
16 to be registered by a bona fide nonresident of this state.

17 (e) This section does not repeal any exemption from this subchapter.

18 (f)(1) Upon payment of all applicable fees, a motorboat dealer with a
19 permit under § 27-101-302(5) who has purchased a used motorboat may apply for
20 a certificate of number for the motorboat for the sole purpose of obtaining a
21 certificate of title to the vehicle without payment of use tax.

22 (2) If a certificate of number is issued for a motorboat under §
23 27-101-302(5)(C), and the used motorboat titled by a dealer under this
24 subsection may not be operated on the waters of this state unless there is
25 displayed on the used motorboat the identifying certificate of number issued
26 under § 27-101-302(5)(C).

27 (g)(1) For purposes of this section, the total consideration for a
28 used motorboat shall be presumed to be the greater of the actual sales price
29 as provided on a bill of sale, invoice or financing agreement, or the average
30 loan value of the motorboat as listed in the most current edition of a
31 publication which is generally accepted by the industry as providing an
32 accurate valuation of used motorboats.

33 (2) If the published loan value exceeds the invoiced price, then
34 the taxpayer shall establish to the secretary's satisfaction that the price
35 reflected on the invoice or other document is true and correct.

1 (3) If the secretary determines that the invoiced price is not
2 the actual selling price of the motorboat, then the total consideration shall
3 be deemed to be the published loan value.
4

5 SECTION 5. EFFECTIVE DATE. Sections 1 through 4 of this act are
6 effective on the first day of the calendar quarter following the effective
7 date of this act.
8

9
10 Referred requested by the Arkansas Senate
11 Prepared by: JLL/SJA
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36