

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.

Act 110 of the Regular Session

As Engrossed: S1/29/07 H2/6/07 H2/7/07

A Bill

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007

SENATE BILL 185

4
5 By: Senators Glover, Hill, Capps, Miller, T. Smith, Faris, Altes, Wilkinson, Baker, Bisbee, Bookout,
6 Broadway, Brown, Bryles, Crumbly, Hendren, Horn, G. Jeffress, J. Jeffress, B. Johnson, Laverty, Luker,
7 Madison, Malone, B. Pritchard, Salmon, J. Taylor, Whitaker, Wilkins, Womack
8 By: Representatives D. Evans, Allen, T. Baker, Blount, J. Brown, Burris, Cheatham, Cook, Cornwell, D.
9 Creekmore, Davenport, Davis, Edwards, Glidewell, R. Green, Hardwick, Hardy, Harrelson, Hawkins,
10 House, Hoyt, D. Hutchinson, J. Johnson, Key, Lowery, Medley, Pate, Pennartz, Pickett, Pierce, Powers,
11 S. Prater, Rainey, Reep, Reynolds, J. Roebuck, Saunders, Shelby, L. Smith, Wagner, Walters, Webb,
12 Adcock, Bond, Cash, D. Johnson, Breedlove, E. Brown, Burkes, L. Cowling, Everett, Greenberg, Kidd,
13 Lamoureux, W. Lewellen, Lovell, Maloch, M. Martin, Moore, Pyle, Ragland, Stewart, Sumpter, Wills,
14 Woods, *Abernathy, Anderson, Berry, T. Bradford, Chesterfield, Cooper, Dickinson, S. Dobbins, Dunn, L.*
15 *Evans, Flowers, Garner, Gaskill, George, Hall, Harris, Hyde, Jeffrey, Kenney, King, Maxwell, Norton,*
16 *Overbey, Pace, Patterson, Petrus, Rogers, Rosenbaum, Sample, Schulte, Sullivan, Thyer, Wells, Wood,*
17 *Wyatt*

18
19
20 **For An Act To Be Entitled**

21 AN ACT TO AMEND THE STATE SALES AND USE TAX RATE
22 ON FOOD AND FOOD INGREDIENTS; TO CONTINUE THE
23 IMPOSITION OF LOCAL SALES AND USE TAX ON FOOD AND
24 FOOD INGREDIENTS; AND FOR OTHER PURPOSES.

25
26 **Subtitle**

27 TO AMEND THE STATE SALES AND USE TAX
28 RATE ON FOOD AND FOOD INGREDIENTS.

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30
31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

32
33 SECTION 1. Arkansas Code § 26-52-317 is amended to read as follows:
34 26-52-317. Food and food ingredients.

35 (a)(1) The Director of the Department of Finance and Administration



1 shall determine the following conditions:

2 (A) That federal law authorizes the state to collect sales
3 and use tax from some or all of the sellers who have no physical presence in
4 the State of Arkansas and who make sales of taxable goods and services to
5 Arkansas purchasers;

6 (B) That initiating the collection of sales and use tax
7 from these sellers would increase the net available general revenues needed
8 to fund state agencies, services, and programs; and

9 (C)(i) That during a six-month consecutive period, the
10 amount of net available general revenues attributable to the collection of
11 sales and use tax from sellers who have no physical presence in the State of
12 Arkansas is equal to or greater than one hundred fifty percent (150%) of
13 sales and use tax collected under ~~§§ 26-52-301, 26-52-302(a), (b), and (d),~~
14 ~~26-53-106, and 26-53-107(a), (b), and (d)~~ subsection (c) of this section and
15 § 26-53-145 on food and food ingredients;

16 (ii) The director shall make the determination under
17 subdivision (a)(1)(C)(i) of this section on a monthly basis following the
18 determination that the conditions under subdivision (a)(1)(A) of this section
19 have been met.

20 (2) When the director finds that all of the conditions in
21 subdivision (a)(1) of this section have been met, then the gross receipts or
22 gross proceeds taxes levied under ~~§§ 26-52-301 and 26-52-302(a), (b), and (d)~~
23 subsection (c) of this section shall be levied at the rate of zero percent
24 (0%) on the sale of food and food ingredients beginning on the first day of
25 the second calendar month following the determination of the director.

26 (b) As used in this section:

27 (1) “Alcoholic beverage” means a beverage that is suitable for
28 human consumption and contains one-half of one percent (0.5%) or more of
29 alcohol by volume;

30 (2) “Dietary supplement” means any product, other than tobacco,
31 intended to supplement the diet that:

32 (A) Contains one (1) or more of the following dietary
33 ingredients:

34 (i) A vitamin;

35 (ii) A mineral;

36 (iii) An herb or other botanical;

1 (iv) An amino acid;
2 (v) A dietary substance for use by humans to
3 supplement the diet by increasing the total dietary intake; or
4 (vi) A concentrate, metabolite, constituent,
5 extract, or combination of any ingredient described in this subdivision
6 (b)(2)(A), and is intended for ingestion in tablet, capsule, powder, softgel,
7 gelcap, or liquid form, or if not intended for ingestion in such a form, is
8 not represented as conventional food and is not represented for use as a sole
9 item of a meal or of the diet; and

10 (B) Is required to be labeled as a dietary supplement,
11 identifiable by the “Supplemental Facts” box found on the label and as
12 required pursuant to 21 C.F.R. § 101.36, as it existed on January 1, 2007;

13 (3)(A) “Food and food ingredients” means substances, whether in
14 liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold
15 for ingestion or chewing by humans and are consumed for their taste or
16 nutritional value.

17 (B) “Food and food ingredients” does not include an
18 alcoholic beverage, tobacco, a dietary supplement, or prepared food.

19 (4)(A) “Prepared food” means:

20 (i) Food sold in a heated state or heated by the
21 seller;

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

24 (iii)(a) Food sold with an eating utensil provided
25 by the seller, including a plate, knife, fork, spoon, glass, cup, napkin, or
26 a straw.

27 (b) As used in this subdivision (b)(4)(A)(iii)
28 “plate” does not include a container or packaging used to transport the food.

29 (B) “Prepared food” does not include food that is only
30 cut, repackaged, or pasteurized by the seller, or eggs, fish, meat, poultry,
31 and foods containing these raw animal foods requiring cooking by the consumer
32 to prevent food borne illnesses as recommended by the Food and Drug
33 Administration in Chapter 3, Part 401.11 of its Food Code as it existed on
34 January 1, 2007; and

35 (5) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco,
36 or any other item that contains tobacco.

1 (c)(1) Beginning July 1, 2007, in lieu of the gross receipts or gross
2 proceeds taxes levied on food and food ingredients under §§ 26-52-301 and 26-
3 52-302, there is levied a tax on the gross receipts or gross proceeds derived
4 from the sale of food and food ingredients at the rate of two and seven-
5 eighths percent (2.875%) to be distributed as follows:

6 (A) Seventy-six and six-tenths percent (76.6%) of the
7 taxes, interest, penalties, and costs received by the director under this
8 subdivision (c)(1) shall be deposited as general revenues;

9 (B) Eight and one-half percent (8.5%) of the taxes,
10 interest, penalties, and costs received by the director under this
11 subdivision (c)(1) shall be deposited into the Property Tax Relief Trust
12 Fund; and

13 (C) Fourteen and nine-tenths percent (14.9%) of the taxes,
14 interest, penalties, and costs received by the director under this
15 subdivision (c)(1) shall be deposited into the Educational Adequacy Fund.

16 (2) The gross receipts or gross proceeds taxes levied under this
17 subdivision (c)(1) shall be collected, reported, and paid in the same manner
18 and at the same time as is prescribed by law for the collection, reporting,
19 and payment of all other Arkansas gross receipts taxes.

20 ~~(b)~~ (d) The gross receipts or gross proceeds derived from the sale of
21 food and food ingredients shall continue to be subject to the:

22 ~~(1) Taxes levied under § 26-52-302(e);~~

23 ~~(2)~~ (1) Excise tax levied under Arkansas Constitution, Amendment
24 75, § 2; and

25 ~~(3)~~ (2) All municipal and county gross receipts taxes.

26 ~~(e)~~ (e) The Department of Finance and Administration shall promulgate
27 rules to implement the provisions of this section.

28
29 SECTION 2. Arkansas Code § 26-53-145 is amended to read as follows:

30 26-53-145. Food and food ingredients.

31 (a)(1) The Director of the Department of Finance and Administration
32 shall determine the following conditions:

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

1 (B) That initiating the collection of sales and use tax
2 from these sellers would increase the net available general revenues needed
3 to fund state agencies, services, and programs; and

4 (C)(i) That during a six-month consecutive period, the
5 amount of net available general revenues attributable to the collection of
6 sales and use tax from sellers who have no physical presence in the State of
7 Arkansas is equal to or greater than one hundred fifty percent (150%) of
8 sales and use tax collected under ~~§§ 26-52-301, 26-52-302(a), (b), and (d),~~
9 ~~26-53-106, and 26-53-107(a), (b), and (d)~~ subsection (c) of this section and
10 § 26-52-317 on food and food ingredients.

11 (ii) The director shall make the determination under
12 subdivision (a)(1)(C)(i) of this section on a monthly basis following the
13 determination that the conditions under subdivision (a)(1)(A) of this section
14 have been met.

15 (2) When the director finds that all of the conditions in
16 subdivision (a)(1) of this section have been met, then the compensating use
17 taxes levied under ~~§§ 26-53-106 and 26-53-107(a), (b), and (d)~~ subsection (c)
18 of this section shall be levied at the rate of zero percent (0%) on the sale
19 of food and food ingredients beginning on the first day of the second
20 calendar month following the determination of the director.

21 (b) As used in this section:

22 (1) "Alcoholic beverage" means a beverage that is suitable for
23 human consumption and contains one-half of one percent (0.5%) or more of
24 alcohol by volume;

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

27 (A) Contains one (1) or more of the following dietary
28 ingredients:

29 (i) A vitamin;

30 (ii) A mineral;

31 (iii) An herb or other botanical;

32 (iv) An amino acid;

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

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

1 (b)(2)(A), and is intended for ingestion in tablet, capsule, powder, softgel,
2 gelcap, or liquid form, or if not intended for ingestion in such a form, is
3 not represented as conventional food and is not represented for use as a sole
4 item of a meal or of the diet; and

5 (B) Is required to be labeled as a dietary supplement,
6 identifiable by the “Supplemental Facts” box found on the label and as
7 required pursuant to 21 C.F.R. § 101.36, as it existed on January 1, 2007;

8 (3)(A) “Food and food ingredients” means substances, whether in
9 liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold
10 for ingestion or chewing by humans and are consumed for their taste or
11 nutritional value;

12 (B) “Food and food ingredients” does not include an
13 alcoholic beverage, tobacco, a dietary supplement, or prepared food;

14 (4)(A) “Prepared food” means:

15 (i) Food sold in a heated state or heated by the
16 seller;

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

19 (iii)(a) Food sold with an eating utensil provided
20 by the seller, including a plate, knife, fork, spoon, glass, cup, napkin, or
21 straw.

22 (b) As used in this subdivision

23 (b)(4)(A)(iii), “plate” does not include a container or packaging used to
24 transport the food.

25 (B) “Prepared food” does not include food that is only
26 cut, repackaged, or pasteurized by the seller, or eggs, fish, meat, poultry,
27 and foods containing these raw animal foods requiring cooking by the consumer
28 to prevent food borne illnesses as recommended by the Food and Drug
29 Administration in Chapter 3, Part 401.11 of its Food Code as it existed on
30 January 1, 2007; and

31 (5) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco,
32 or any other item that contains tobacco.

33 (c)(1) Beginning July 1, 2007, in lieu of the compensating use taxes
34 levied on food and food ingredients under §§ 26-53-106 and 26-53-107, there
35 is levied a tax on the privilege of storing, using, distributing, or
36 consuming food and food ingredients at the rate of two and seven-eighths

1 percent (2.875%) to be distributed as follows:

2 (A) Seventy-six and six-tenths percent (76.6%) of the
3 taxes, interest, penalties, and costs received by the director under
4 subdivision (c)(1) shall be deposited as general revenues;

5 (B) Eight and one-half percent (8.5%) of the taxes,
6 interest, penalties, and costs received by the director under this
7 subdivision (c)(1) shall be deposited into the Property Tax Relief Trust
8 Fund; and

9 (C) Fourteen and nine-tenths percent (14.9%) of the taxes,
10 interest, penalties, and costs received by the director under this
11 subdivision (c)(1) shall be deposited into the Educational Adequacy Fund.

12 (2) The use tax levied under this subdivision (c)(1) shall be
13 collected, reported, and paid in the same manner and at the same time as is
14 prescribed by law for the collection, reporting, and payment of all other
15 Arkansas compensating use taxes.

16 ~~(b)~~ (d) The following shall continue to apply to the sales price of
17 food and food ingredients:

18 ~~(1) The compensating use tax levied under § 26-53-107(e);~~

19 ~~(2) (1)~~ (1) The compensating use tax levied under Arkansas
20 Constitution, Amendment 75, § 2; and

21 ~~(3) (2)~~ (2) All municipal and county use taxes.

22 ~~(e)~~ (e) The Department of Finance and Administration shall promulgate
23 rules to implement the provisions of this section.

24
25 SECTION 3. The introductory language of Arkansas Code § 26-52-301
26 [Effective July 1, 2007], pertaining to the levy of sales tax, is amended to
27 read as follows:

28 ~~There~~ Except for food and food ingredients which are taxed under § 26-
29 52-317, there is levied an excise tax of three percent (3%) upon the gross
30 proceeds or gross receipts derived from all sales to any person of the
31 following:

32
33 SECTION 4. Arkansas Code § 26-52-302 is amended to read as follows:

34 26-52-302. Additional taxes levied.

35 (a)(1) In addition to the excise tax levied upon the gross proceeds or
36 gross receipts derived from all sales by the Arkansas Gross Receipts Act of

1 1941, § 26-52-101 et seq., except for food and food ingredients which are
2 taxed under § 26-52-317, there is levied an excise tax of one percent (1%)
3 upon all taxable sales of property and services subject to the tax levied in
4 the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

5 (2) This tax shall be collected, reported, and paid in the same
6 manner and at the same time as is prescribed by law for the collection,
7 reporting, and payment of all other Arkansas gross receipts taxes.

8 (3) In computing gross receipts or gross proceeds as defined in
9 § 26-52-103(a)(7), a deduction shall be allowed for bad debts resulting from
10 the sale of tangible personal property.

11 (b)(1) In addition to the excise tax levied upon the gross proceeds or
12 gross receipts derived from all sales by the Arkansas Gross Receipts Act of
13 1941, § 26-52-101 et seq., except for food and food ingredients which are
14 taxed under § 26-52-317, there is hereby levied an excise tax of one-half of
15 one percent (0.5%) upon all taxable sales of property and services subject to
16 the tax levied in the Arkansas Gross Receipts Act of 1941, § 26-52-101 et
17 seq.

18 (2) This tax shall be collected, reported, and paid in the same
19 manner and at the same time as is prescribed by law for the collection,
20 reporting, and payment of all other Arkansas gross receipts taxes.

21 (3) However, in computing gross receipts or gross proceeds as
22 defined in § 26-52-103(a)(7), a deduction shall be allowed for bad debts
23 resulting from the sale of tangible personal property.

24 (c)(1) ~~There~~ Except for food and food ingredients which are taxed
25 under § 26-52-317, there is levied an additional excise tax of one-half of
26 one percent (0.5%) upon all taxable sales of property and services subject to
27 the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et
28 seq.

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

33 (d)(1) ~~There~~ Except for food and food ingredients which are taxed
34 under § 26-52-317, there is levied an additional excise tax of seven-eighths
35 of one percent (0.875%) upon all taxable sales of property and services
36 subject to the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-

1 52-101 et seq.

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

6

7 SECTION 5. Arkansas Code § 26-53-106(a) [Effective July 1, 2007],
8 pertaining to the imposition and rate of use tax, is amended to read as
9 follows:

10 (a) There is levied and there shall be collected from every person in
11 this state a tax or excise for the privilege of storing, using, distributing,
12 or consuming within this state any article of tangible personal property or
13 taxable service purchased for storage, use, distribution, or consumption in
14 this state at the rate of three percent (3%) of the sales price of the
15 property except for food and food ingredients which are taxed under § 26-53-
16 145.

17

18 SECTION 6. Arkansas Code § 26-53-107 [Effective July 1, 2007] is
19 amended to read as follows:

20 26-53-107. Additional taxes levied. [Effective July 1, 2007.]

21 (a)(1) In addition to the excise tax levied upon the privilege of
22 storing, using, distributing, or consuming tangible personal property and
23 taxable services within this state by this subchapter, there is levied an
24 excise tax of one percent (1%) upon all tangible personal property and
25 taxable services subject to the tax levied in this subchapter except for food
26 and food ingredients which are taxed under § 26-53-145.

27 (2) The tax shall be collected, reported, and paid in the same
28 manner and at the same time as is prescribed by law for the collection,
29 reporting, and payment of state compensating taxes.

30 (b)(1) In addition to the excise tax levied upon the privilege of
31 storing, using, distributing, or consuming tangible personal property and
32 taxable services within the state by this subchapter, there is levied an
33 excise tax of one-half of one percent (0.5%) upon all tangible personal
34 property and taxable services subject to the tax levied in this subchapter
35 except for food and food ingredients which are taxed under § 26-53-145.

36 (2) The tax shall be collected, reported, and paid in the same

1 manner and at the same time as is prescribed by law for the collection,
2 reporting, and payment of Arkansas compensating taxes.

3 (c)(1) There is levied an additional excise tax of one-half of one
4 percent (0.5%) upon all tangible personal property and taxable services
5 subject to the tax levied by this subchapter except for food and food
6 ingredients which are taxed under § 26-53-145.

7 (2) The tax shall be collected, reported, and paid in the same
8 manner and at the same time as is prescribed by this subchapter for the
9 collection, reporting, and payment of Arkansas compensating taxes.

10 (d)(1) There is levied an additional excise tax of seven-eighths of
11 one percent (0.875%) upon all tangible personal property and taxable services
12 subject to the tax levied by this subchapter except for food and food
13 ingredients which are taxed under § 26-53-145.

14 (2) The tax shall be collected, reported, and paid in the same
15 manner and at the same time as is prescribed by this subchapter for the
16 collection, reporting, and payment of Arkansas compensating taxes.

17
18 SECTION 7. Arkansas Code § 19-5-1103 is amended to read as follows:
19 19-5-1103. Property Tax Relief Trust Fund.

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

23 (b) The fund shall consist of such revenues as generated by §§ 26-52-
24 302(c), 26-52-317(c)(1)(B), 26-53-107(c), and 26-53-145(c)(1)(B), and shall
25 be used for such purposes as set out in § 26-26-310.

26
27 SECTION 8. Arkansas Code § 19-5-1227(b), pertaining to the Educational
28 Adequacy Fund, is amended as follows:

29 (b) After the Treasurer of State has made deductions from the revenues
30 under § 19-5-203(b)(2)(A), the Educational Adequacy Fund shall consist of:

31 (1) All net revenues collected due to enactments of the Eighty-
32 Fourth General Assembly meeting in Second Extraordinary Session, unless a
33 different distribution of those additional net revenues is otherwise provided
34 in the act creating those additional net revenues;

35 (2) The revenues credited to the Educational Adequacy Fund under
36 § 26-54-113(b)(2);

1 (3) The revenues generated by §§ 26-52-302(d), 26-52-316, 26-52-
2 317(c)(1)(C), 26-53-107(d), 26-53-145(c)(1)(C), and 26-57-1002(d)(1)(A)(ii);
3 and

4 (4) Other revenues as provided by law.

5
6 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
7 General Assembly of the State of Arkansas that the people of Arkansas are
8 having to pay more in fuel costs due to the rise in oil prices; that the rise
9 in fuel costs has resulted in an increase in the price of food and other
10 goods; and that in order to offset these rising prices the sales and use tax
11 rate on food and food ingredients should be reduced. Therefore, an emergency
12 is declared to exist and this act being necessary for the preservation of the
13 public peace, health, and safety shall become effective on July 1, 2007.

14
15 /s/ Glover

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17 APPROVED: 2/15/2007
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