

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

A Bill

SENATE BILL 684

4
5 By: Senator Files

For An Act To Be Entitled

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7
8 AN ACT TO AMEND THE LAWS PERTAINING TO TAXES LEVIED
9 ON TOBACCO PRODUCTS; TO CLARIFY THAT CURRENT LAW
10 IMPOSES AN EXCISE TAX ON ALL TOBACCO PRODUCTS SOLD IN
11 THE STATE; TO DECLARE AN EMERGENCY; AND FOR OTHER
12 PURPOSES.

Subtitle

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16 TO AMEND THE LAWS PERTAINING TO TAXES
17 LEVIED ON TOBACCO PRODUCTS; TO CLARIFY
18 THAT CURRENT LAW IMPOSES AN EXCISE TAX ON
19 ALL TOBACCO PRODUCTS SOLD IN THE STATE;
20 AND TO DECLARE AN EMERGENCY.

21
22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 SECTION 1. Arkansas Code § 26-57-203(11), concerning the definitions
26 to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to
27 read as follows:

28 (11) "First sale" means ~~the~~:

29 (A) The first sale within this state of tobacco products
30 made by a manufacturer or any other person to a licensed wholesaler ~~and~~
31 wholesaler, a licensed vendors vendor, or a licensed retailer; and

32 (B) The first possession of a tobacco product within this
33 state that was purchased outside of this state and subsequently brought into
34 this state by any person for the purpose of selling the tobacco product at
35 retail to consumers in this state;



1 SECTION 2. Arkansas Code § 26-57-203(15), concerning the definitions
2 to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to
3 read as follows:

4 (15) "Invoice price" means ~~the~~:

5 (A) The price that a wholesaler or retailer of tobacco
6 products pays to a manufacturer, importer, ~~or~~ distributor ~~for~~, or any other
7 seller to acquire tobacco products that the ~~wholesaler or retailer~~ purchaser
8 subsequently sells in the state; or

9 (B) If a person possessing a tobacco product lacks proof
10 of the price at which the tobacco product was purchased, the highest price,
11 in the normal course of business and before any discount, at which the
12 manufacturer or manufacturers of the tobacco product sell the tobacco product
13 in question;

14
15 SECTION 3. Arkansas Code § 26-57-203(18), concerning the definitions
16 to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to
17 read as follows:

18 (18)(A) "Manufacturer" means a person that ~~produces or offers~~
19 manufactures, fabricates, assembles, or processes a tobacco product ~~for sale~~,
20 including without limitation federally licensed importers and federally
21 licensed distributors that deal in tobacco products ~~as manufacturers and that~~
22 ~~are required under this subchapter to sell only to licensed wholesalers or~~
23 ~~licensed retailers located in the state.~~

24 (B) "Manufacturer" includes a sales entity affiliate of
25 the manufacturer and any other entity representing the manufacturer with
26 regard to the sale of tobacco products produced by the manufacturer to
27 wholesalers or licensed retailers;

28
29 SECTION 4. Arkansas Code § 26-57-203(35), concerning the definitions
30 to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to
31 read as follows:

32 (35) "Wholesaler" means a person other than a manufacturer or a
33 person owned or operated by a manufacturer that:

34 (A) Does business within the state ~~and purchases unstamped~~
35 ~~or untaxed;~~

36 (B) Purchases cigarettes or other tobacco products

1 ~~directly from manufacturers that distribute~~ any source;

2 (C) Distributes or sells the cigarettes or other tobacco
3 products in the state; and to other wholesalers, vendors, or retailers; and

4 (D) Does not distribute or sell the cigarettes or other
5 tobacco products at retail to consumers.

6 ~~(B) Sells to properly licensed cigarette or other tobacco~~
7 ~~product vendors or retailers.~~

8
9 SECTION 5. Arkansas Code § 26-57-208(2)(A)(i), concerning the rate of
10 tax and levy of tax on tobacco products other than cigarettes, is amended to
11 read as follows:

12 (2)(A)(i) ~~The~~ An excise or privilege tax is levied on the first
13 sale of tobacco products other than cigarettes ~~that are offered for sale in~~
14 ~~the state is~~ at the rate of sixteen percent (16%) of the invoice price ~~to a~~
15 ~~wholesaler or retailer,~~ before discounts.

16
17 SECTION 6. Arkansas Code § 26-57-208(3), concerning the rate of tax
18 and levy of tax on tobacco products, is amended to read as follows:

19 (3)(A)(i) The taxes levied by this section shall be reported and
20 paid by wholesalers that shall be licensed ~~pursuant to~~ under § 26-57-214.

21 (ii) However, unless a retailer has confirmed and
22 establishes by clear and convincing evidence that the tax levied under this
23 section has been paid previously on the tobacco products, ~~retailers shall be~~
24 the retailer is liable for reporting and paying these taxes when a the
25 retailer purchases obtains tobacco products ~~directly from a manufacturer or~~
26 ~~from a person other than~~ a wholesaler ~~or distributor not licensed pursuant to~~
27 under § 26-57-214.

28 (B)(i) ~~Any~~ A taxpayer ~~who that~~ fails to report and remit
29 the tobacco tax due on tobacco products ~~purchased~~ obtained from
30 ~~manufacturers, distributors, or wholesalers who are not~~ any person other than
31 a wholesaler that is licensed under § 26-57-214 ~~shall be~~ is subject to the
32 following penalties:

33 (a) Five percent (5%) of the total tobacco tax
34 due for the first offense;

35 (b) Twenty percent (20%) of the total tobacco
36 tax due for the second offense; and

1 (c) Twenty-five percent (25%) of the total
 2 tobacco tax due for the third and any subsequent offenses.

3 (ii) In addition, the taxpayer's retail
 4 cigarette/tobacco permit shall be revoked for a period of ninety (90) days
 5 for the third and any subsequent offenses.

6 (C) ~~The provisions of this~~ This subdivision (3) ~~shall~~ does
 7 not affect ~~the provisions of~~ § 26-57-228; and

8
 9 SECTION 7. Arkansas Code § 26-57-209(a), concerning exemptions from
 10 the tax levied on tobacco products, is amended to read as follows:

11 (a) The following are not subject to the taxes imposed under § 26-57-
 12 208:

13 (1) Tobacco products sold to military departments of the United
 14 States or the state for resale on military bases within the state; ~~and~~

15 (2) Tobacco products sold and delivered to authorized purchasers
 16 outside the state for resale ~~and to other wholesalers licensed under this~~
 17 subchapter; and

18 (3) Cigarettes sold and delivered to other wholesalers licensed
 19 under this subchapter.

20
 21 SECTION 8. Arkansas Code § 26-57-803(b), concerning an additional tax
 22 on tobacco products, is amended to read as follows:

23 (b)(1) In addition to ~~the tax imposed by § 26-57-208(2)~~ other taxes
 24 imposed by law, there is levied an additional excise or privilege tax on the
 25 first sale of tobacco products other than cigarettes ~~that are offered for~~
 26 ~~sale in the state~~ at the rate of seven percent (7%) of the invoice price ~~to a~~
 27 ~~wholesaler or retailer~~, before discounts.

28 (2) However, the excise or privilege tax levied under
 29 subdivision (b)(1) of this section is subject to the limitation stated in §
 30 26-57-208(2)(B).

31 (3) As used in this subsection, "invoice price" means the same
 32 as defined in § 26-57-203.

33
 34 SECTION 9. Arkansas Code § 26-57-803(c), concerning an additional tax
 35 on tobacco products, is amended to read as follows:

36 (c)(1)(A) The taxes levied by this section shall be reported and paid

1 by wholesalers that shall be licensed pursuant to under § 26-57-214.

2 (B) However, unless a retailer has confirmed and
 3 establishes by clear and convincing evidence that the tax levied under this
 4 section has been paid previously on the tobacco products, retailers shall be
 5 the retailer is liable for reporting and paying these taxes when a the
 6 retailer ~~purchases~~ obtains tobacco products ~~directly from a manufacturer or~~
 7 ~~from a person other than~~ a wholesaler ~~or distributor not licensed pursuant to~~
 8 under § 26-57-214.

9 (2)(A) ~~Any A taxpayer who~~ that fails to report and remit the
 10 tobacco tax due on tobacco products ~~purchased~~ obtained from ~~manufacturers,~~
 11 ~~distributors, or wholesalers who are not~~ any person other than a wholesaler
 12 that is licensed under § 26-57-214 shall be subject to the following
 13 penalties:

14 (i) Five percent (5%) of the total tobacco tax due
 15 for the first offense;

16 (ii) Twenty percent (20%) of the total tobacco tax
 17 due for the second offense; and

18 (iii) Twenty-five percent (25%) of the total tobacco
 19 tax due for the third and any subsequent offenses.

20 (B) In addition, the taxpayer's retail cigarette/tobacco
 21 permit shall be revoked for a period of ninety (90) days for the third and
 22 any subsequent offenses.

23 (3) ~~The provisions of this~~ This subsection ~~shall~~ does not affect
 24 the provisions of § 26-57-228.

25
 26 SECTION 10. Arkansas Code § 26-57-805(a) and (b), concerning an
 27 additional tax on tobacco products other than cigarettes, are amended to read
 28 as follows:

29 (a)(1) In addition to ~~the excise or privilege taxes levied under §§~~
 30 ~~26-57-208, 26-57-803, and 26-57-1102~~ other taxes imposed by law, there is
 31 levied an additional excise or privilege tax on the first sale of tobacco
 32 products other than cigarettes ~~that are offered for sale in the state at the~~
 33 rate of seven percent (7%) of the invoice price to a wholesaler or retailer,
 34 before discounts.

35 (2) However, the excise or privilege tax levied under
 36 subdivision (a)(1) of this section is subject to the limitation stated in §

1 26-57-208(2)(B).

2 (3) As used in this subsection, "invoice price" means the same
 3 as defined in § 26-57-203.

4 (b)(1) The tax levied by this section shall be reported and paid by
 5 wholesalers that shall be licensed pursuant to ~~under~~ § 26-57-214.

6 (2) However, unless a retailer has confirmed and establishes by
 7 clear and convincing evidence that the tax levied under this section has been
 8 paid previously on the tobacco products, retailers shall be the retailer is
 9 liable for reporting and paying this tax when a the retailer ~~purchases~~
 10 obtains tobacco products ~~directly from a manufacturer or from a person other~~
 11 than a wholesaler ~~or distributor not licensed pursuant to~~ under § 26-57-214.
 12

13 SECTION 11. Arkansas Code § 26-57-805, concerning an additional tax on
 14 tobacco products other than cigarettes, is amended to add an additional
 15 subsection to read as follows:

16 (f)(1) A taxpayer that fails to report and remit the tobacco tax due
 17 on tobacco products obtained from a person other than a wholesaler that is
 18 licensed under § 26-57-214 is subject to the following penalties:

19 (A) For the first offense, five percent (5%) of the total
 20 tobacco tax due;

21 (B) For the second offense, twenty percent (20%) of the
 22 total tobacco tax due; and

23 (C) For the third and any subsequent offenses, twenty-five
 24 percent (25%) of the total tobacco tax due.

25 (2) In addition, a taxpayer's cigarette or tobacco permit shall
 26 be revoked for a period of ninety (90) days for the third and subsequent
 27 offenses.
 28

29 SECTION 12. Arkansas Code § 26-57-807(a) and (b), concerning an
 30 additional tax on tobacco products other than cigarettes, are amended to read
 31 as follows:

32 (a)(1) In addition to ~~the excise or privilege taxes levied under §§~~
 33 ~~26-57-208, 26-57-803, 26-57-805, and 26-57-1102~~ other taxes imposed by law,
 34 there is levied an additional excise or privilege tax on the first sale of
 35 tobacco products ~~that are offered for sale in the state~~ other than cigarettes
 36 at the rate of thirty-six percent (36%) of the invoice price to a wholesaler

1 or retailer, before discounts.

2 (2) However, the excise or privilege tax levied under
3 subdivision (a)(1) of this section is subject to the limitation stated in §
4 26-57-208(2)(B).

5 (3) As used in this subsection, "invoice price" means the same
6 as defined in § 26-57-203.

7 (b)(1) The tax levied by this section shall be reported and paid by
8 wholesalers that shall be licensed pursuant to under § 26-57-214.

9 (2) However, unless a retailer has confirmed and establishes by
10 clear and convincing evidence that the tax levied under this section has been
11 paid previously on the tobacco products, retailers shall be the retailer is
12 liable for reporting and paying this tax when a the retailer purchases
13 obtains tobacco products directly from a manufacturer or from a person other
14 than a wholesaler or distributor not licensed pursuant to under § 26-57-214.
15

16 SECTION 13. Arkansas Code § 26-57-807, concerning an additional tax on
17 tobacco products other than cigarettes, is amended to add an additional
18 subsection to read as follows:

19 (g)(1) A taxpayer that fails to report and remit the tobacco tax due
20 on tobacco products obtained from a person other than a wholesaler that is
21 licensed under § 26-57-214 is subject to the following penalties:

22 (A) For the first offense, five percent (5%) of the total
23 tobacco tax due;

24 (B) For the second offense, twenty percent (20%) of the
25 total tobacco tax due; and

26 (C) For the third and any subsequent offenses, twenty-five
27 percent (25%) of the total tobacco tax due.

28 (2) In addition, a taxpayer's cigarette or tobacco permit shall
29 be revoked for a period of ninety (90) days for the third and subsequent
30 offenses.

31
32 SECTION 14. Arkansas Code § 26-57-1102(a) and (b), concerning an
33 additional tax on tobacco products other than cigarettes, are amended to read
34 as follows:

35 (a) In addition to ~~the tax imposed by § 26-57-208(2)~~ other taxes
36 imposed by law, there is levied an additional excise or privilege tax on the

1 first sale of tobacco products other than cigarettes ~~that are offered for~~
2 ~~sale in the state~~ at the rate of two percent (2%) of the invoice price to a
3 wholesaler or retailer, before discounts.

4 (b)(1)(A) The taxes levied by this section and § 26-57-1101 shall be
5 reported and paid by wholesalers that shall be licensed pursuant to ~~under~~ §
6 26-57-214.

7 (B) However, unless a retailer has confirmed and
8 establishes by clear and convincing evidence that the tax levied under this
9 section has been paid previously on the tobacco products, ~~retailers shall be~~
10 the retailer is liable for reporting and paying these taxes when a the
11 retailer ~~purchases~~ obtains tobacco products ~~directly from a manufacturer or~~
12 ~~from a person other than~~ a wholesaler ~~or distributor not licensed pursuant to~~
13 under § 26-57-214.

14 (2)(A) ~~Any~~ A taxpayer ~~who~~ that fails to report and remit the
15 tobacco tax due on tobacco products ~~purchased~~ obtained from ~~manufacturers,~~
16 ~~distributors, or wholesalers who are not~~ any person other than a wholesaler
17 that is licensed under § 26-57-214 shall be subject to the following
18 penalties:

19 (i) Five percent (5%) of the total tobacco tax due
20 for the first offense;

21 (ii) Twenty percent (20%) of the total tobacco tax
22 due for the second offense; and

23 (iii) Twenty-five percent (25%) of the total tobacco
24 tax due for the third and any subsequent offenses.

25 (B) In addition, the taxpayer's retail cigarette/tobacco
26 permit shall be revoked for a period of ninety (90) days for the third and
27 any subsequent offenses.

28 (3) ~~The provisions of this~~ This subsection ~~shall~~ does not affect
29 the provisions of § 26-57-228.

30
31 SECTION 15. EMERGENCY CLAUSE. It is found and determined by the
32 General Assembly of the State of Arkansas that recent changes enacted with
33 regard to state law imposing excise taxes on tobacco products other than
34 cigarettes have resulted in confusion among tobacco product wholesalers; that
35 the excise taxes collected on tobacco products are necessary to fund the
36 essential activities of state government; that without these revenues,

1 citizens of this state will not receive the services essential to their well-
2 being; and that this act is immediately necessary to eliminate the confusion
3 created by current law and to ensure that the essential revenues from the
4 taxes levied on tobacco products continue to be collected. Therefore, an
5 emergency is declared to exist, and this act being immediately necessary for
6 the preservation of the public peace, health, and safety shall become
7 effective on:

8 (1) The date of its approval by the Governor;

9 (2) If the bill is neither approved nor vetoed by the Governor,
10 the expiration of the period of time during which the Governor may veto the
11 bill; or

12 (3) If the bill is vetoed by the Governor and the veto is
13 overridden, the date the last house overrides the veto.

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16 **APPROVED: 04/06/2015**
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