ARKANSAS SENATE

84th General Assembly - Second Extraordinary Session, 2003

Amendment Form

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Subtitle of Senate Bill No. 62

"TO PROVIDE ADDITIONAL REVENUE TO FUND THE EDUCATIONAL SYSTEM."

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Amendment No. 1 to Senate Bill No. 62.

Amend Senate Bill No. 62 as originally introduced:

Deleting Sections 1 through 29 of the bill and substituting the following:

"SECTION 1. Arkansas Code § 26-52-302, concerning levying additional sales taxes, is amended to add an additional subsection to read as follows:

(d)(1) Beginning March 1, 2004, there is levied an additional excise tax of five-eighths of one percent (0.625%) upon all taxable sales of property and services subject to the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

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

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

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

SECTION 3. Arkansas Code § 26-53-107, effective until contingency in Acts 2003, No. 1273, § 88 is met, is amended to add an additional subsection to read as follows:

(d)(1) Beginning March 1, 2004, there is levied an additional excise tax of five-eighths of one percent (0.625%) upon all tangible personal property subject to the tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

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

SECTION 4. Arkansas Code § 26-53-107, effective when contingency in Acts 2003, No. 1223, § 88 is met, is amended to read as follows:

(d)(1) Beginning March 1, 2004, there is levied an additional excise tax of five-eighths of one percent (0.625%) upon all tangible personal property and taxable services subject to the tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

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

SECTION 5. Arkansas Code § 26-53-106 is amended to read as follows:

26-53-106. Imposition and rate of tax generally - Presumption. [Effective until contingency in Acts 2003, No. 1273, § 88 is met.]

(a) There is levied and there shall be collected from every person in this state a tax or excise for the privilege of storing, using, distributing, or consuming within this state any article of tangible personal property purchased for storage, use, distribution, or consumption in this state at the rate of three percent (3%) of the sales price of the property.

~~(b) This tax will not apply with respect to the storage, use, distribution, or consumption of any article of tangible personal property purchased, produced, or manufactured outside this state until the transportation of the article has finally come to rest within this state or until the article has become commingled with the general mass of property of this state.~~

~~(c)~~(b) This tax shall apply to use, storage, distribution, or consumption of every article of tangible personal property, except as provided in this subchapter, irrespective of whether the article or similar articles are manufactured within the State of Arkansas or are available for purchase within the State of Arkansas and irrespective of any other condition.

~~(d)(1)(A)~~(c)(1)(A) For the purpose of the proper administration of this subchapter and to prevent evasion of the tax and the duty to collect the tax imposed in this section, it shall be presumed that tangible personal property sold by any vendor for delivery in this state or transportation to this state is sold for storage, use, distribution, or consumption in this state unless the vendor selling the tangible personal property has taken from the purchaser a resale certificate signed by and bearing the name, address, and sales tax permit number of the purchaser certifying that the property was purchased for resale.

(B) The use by the purchaser of a resale certificate and any resulting liability for, or exemption from, use tax in a transaction involving a resale certificate shall be governed in all respects by the terms of § 26-52-517.

(2) It is further presumed that tangible personal property shipped, mailed, expressed, transported, or brought to this state by the purchaser was purchased from a vendor for storage, use, distribution, or consumption in this state.

SECTION 6. Arkansas Code § 26-53-106 is amended to read as follows:

26-53-106. Imposition and rate of tax generally - Presumptions.

[Effective when contingency in Acts 2003, No. 1273, § 88 is met.]

(a) There is levied and there shall be collected from every person in this state a tax or excise for the privilege of storing, using, distributing, or consuming within this state any article of tangible personal property or taxable service purchased for storage, use, distribution, or consumption in this state at the rate of three percent (3%) of the sales price of the property.

~~(b) This tax will not apply with respect to the storage, use, distribution, or consumption of any article of tangible personal property purchased, produced, or manufactured outside this state until the transportation of the article has finally come to rest within this state or until the article has become commingled with the general mass of property of this state.~~

~~(c)~~(b) This tax shall apply to use, storage, distribution, or consumption of every article of tangible personal property or taxable service except as provided in this subchapter irrespective of whether the article or similar articles are manufactured within the State of Arkansas or are available for purchase within the State of Arkansas and irrespective of any other condition.

~~(d)(1)(A)~~(c)(1)(A) For the purpose of the proper administration of this subchapter and to prevent evasion of the tax and the duty to collect the tax imposed in this section, it shall be presumed that tangible personal property or taxable services sold by any vendor for delivery in this state or transportation to this state are sold for storage, use, distribution, or consumption in this state unless the vendor selling the tangible personal property or taxable services has taken from the purchaser a resale certificate signed by and bearing the name, address, and sales tax permit number of the purchaser certifying that the property was purchased for resale except that sales made electronically will not require the purchaser's signature.

(B) The use by the purchaser of a resale certificate and any resulting liability for, or exemption from, use tax in a transaction involving a resale certificate shall be governed in all respects by the terms of § 26-52-517.

(2) It is further presumed that tangible personal property or taxable services shipped, mailed, expressed, transported, or brought to this state by the purchaser were purchased from a vendor for storage, use, distribution, or consumption in this state.

SECTION 7. Arkansas Code § 26-52-301(3)(C), effective until contingency in Acts 2003, No. 1273, § 88 is met, is amended to read as follows:

(C)(i) Service of initial installation, alteration, addition, cleaning, refinishing, replacement, and repair of motor vehicles, aircraft, farm machinery and implements, motors of all kinds, tires and batteries, boats, electrical appliances and devices, furniture, rugs, flooring, upholstery, household appliances, televisions and radios, jewelry, watches and clocks, engineering instruments, medical and surgical instruments, machinery of all kinds, bicycles, office machines and equipment, shoes, tin and sheetmetal, mechanical tools, and shop equipment.

(ii) However, the provisions of this section shall not apply to coin-operated car washes. For the purposes of this section, a

coin-operated car wash shall be defined as one wherein the car washing equipment is activated by the insertion of coins into a slot or receptacle and where the labor of washing the exterior of the car or motor vehicle is performed solely by the customer or by mechanical equipment.

(iii) Additionally, the gross receipts tax levied in this section shall not apply to the repair or maintenance of railroad parts, railroad cars, and equipment brought into the State of Arkansas solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within this state.

(iv) The General Assembly determines and affirms that the original intent of subdivision (3) of this section which provides that gross receipts derived from certain services would be subject to the gross receipts tax was not intended to be applicable, nor shall Arkansas gross receipts taxes be collected, with respect to services performed on watches and clocks which are received by mail or common carrier from outside this state and which, after the service is performed, are returned by mail or common carrier or in the repairman's own conveyance to points outside this state.

(v) Additionally, the gross receipts tax levied in this section shall not apply to the repair or remanufacture of industrial metal rollers or platens that have a remanufactured, nonmetallic material covering on all or part of the roller or platen surface which are brought into the State of Arkansas solely and exclusively for the purpose of being repaired or remanufactured in this state and are then shipped back to the state of origin.

(vi) The gross receipts tax levied in this section shall not apply to the service of alteration, addition, cleaning, refinishing, replacement, or repair of commercial jet aircraft, commercial jet aircraft components, or commercial jet aircraft subcomponents. The term "commercial jet aircraft" shall mean any commercial, military, private, or other turbine or turbo jet aircraft having a certified maximum take-off weight of more than twelve thousand five hundred (12,500) pounds;

(vii) The provisions of subdivision (3)(C)(i) of this section shall not apply to the services performed by a temporary or leased employee or other contract laborer on items owned or leased by the employer. The following criteria must be met for a person to be a temporary or leased employee:

(a) There must be a written contract with the temporary employment agency, employee leasing company, or other contractor providing the services;

(b) The employee, temporary employment agency, employee leasing company, or other contractor must not bear the risk of loss for damages caused during the performance of the contract. The person for whom the services are performed must bear the risk of loss; and

(c) The temporary or leased employee or contract laborer is controlled by the employer as if he were a full-time permanent employee. "Control" includes, but is not limited to, scheduling work hours, designating work duties, and directing work performance.

(viii)(a) Additionally, the gross receipts tax levied in this section shall not apply to the <u>initial installation,</u> alteration, addition, cleaning, refinishing, replacement, or repair of nonmechanical, passive, or manually operated components of buildings or other

improvements or structures affixed to real estate, including, but not limited to, the following:

(1) Walls;
~~(2) Floors;~~
~~(3)~~(2) Ceilings;
~~(4)~~(3) Doors;
~~(5)~~(4) Locks;
~~(6)~~(5) Windows;
~~(7)~~(6) Glass;
~~(8)~~(7) Heat and air ducts;
~~(9)~~(8) Roofs;
~~(10)~~(9) Wiring;
~~(11)~~(10) Breakers;
~~(12)~~(11) Breaker boxes;
~~(13)~~(12) Electrical switches and receptacles;
~~(14)~~(13) Light fixtures;
~~(15)~~(14) Pipes;
~~(16)~~(15) Plumbing fixtures;
~~(17)~~(16) Fire and security alarms;
~~(18)~~(17) Intercoms;
~~(19)~~(18) Sprinkler systems;
~~(20)~~(19) Parking lots;
~~(21)~~(20) Fences;
~~(22)~~(21) Gates;
~~(23)~~(22) Fireplaces; and
~~(24)~~(23) Similar components which become a part of real estate after, installation, except flooring.

(b) Contractors are deemed to be consumers or users of all tangible personal property used or consumed by them in providing such nontaxable services, in the same manner as when performing any other contract.

(c) Subdivision (3)(C)(viii) of this section shall not apply to any services subject to tax pursuant to the terms of ~~subdivision (3)(E)~~ subdivisions (3)(C)(i) and (3)(E) of this section.

SECTION 8. Arkansas Code § 26-52-301(3)(C), effective when contingency in Acts 2003, No. 1273, § 88 is met, is amended to read as follows:

(C)(i) Service of initial installation, alteration, addition, cleaning, refinishing, replacement, and repair of motor vehicles, aircraft, farm machinery and implements, motors of all kinds, tires and batteries, boats, electrical appliances and devices, furniture, rugs, flooring, upholstery, household appliances, televisions and radios, jewelry, watches and clocks, engineering instruments, medical and surgical instruments, machinery of all kinds, bicycles, office machines and equipment, shoes, tin and sheetmetal, mechanical tools, and shop equipment.

(ii) However, the provisions of this section shall not apply to coin-operated car washes. For the purposes of this section, a coin-operated car wash shall be defined as one wherein the car washing equipment is activated by the insertion of coins into a slot or receptacle and where the labor of washing the exterior of the car or motor vehicle is performed solely by the customer or by mechanical equipment.

(iii) Additionally, the gross receipts tax levied in this section shall not apply to the repair or maintenance of railroad parts, railroad cars, and equipment brought into the State of Arkansas solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within this state.

(iv) The General Assembly determines and affirms that the original intent of subdivision (3) of this section which provides that gross receipts derived from certain services would be subject to the gross receipts tax was not intended to be applicable, nor shall Arkansas gross receipts taxes be collected, with respect to services performed on watches and clocks which are received by mail or common carrier from outside this state and which, after the service is performed, are returned by mail or common carrier or in the repairman's own conveyance to points outside this state.

(v) Additionally, the gross receipts tax levied in this section shall not apply to the repair or remanufacture of industrial metal rollers or platens that have a remanufactured, nonmetallic material covering on all or part of the roller or platen surface which are brought into the State of Arkansas solely and exclusively for the purpose of being repaired or remanufactured in this state and are then shipped back to the state of origin.

(vi) The gross receipts tax levied in this section shall not apply to the service of alteration, addition, cleaning, refinishing, replacement, or repair of commercial jet aircraft, commercial jet aircraft components, or commercial jet aircraft subcomponents. The term "commercial jet aircraft" shall mean any commercial, military, private, or other turbine or turbo jet aircraft having a certified maximum take-off weight of more than twelve thousand five hundred (12,500) pounds;

(vii) The provisions of subdivision (3)(C)(i) of this section shall not apply to the services performed by a temporary or leased employee or other contract laborer on items owned or leased by the employer. The following criteria must be met for a person to be a temporary or leased employee:

(a) There must be a written contract with the temporary employment agency, employee leasing company, or other contractor providing the services;

(b) The employee, temporary employment agency, employee leasing company, or other contractor must not bear the risk of loss for damages caused during the performance of the contract. The person for whom the services are performed must bear the risk of loss; and

(c) The temporary or leased employee or contract laborer is controlled by the employer as if he were a full-time permanent employee. "Control" includes, but is not limited to, scheduling work hours, designating work duties, and directing work performance.

(viii)(a) Additionally, the gross receipts tax levied in this section shall not apply to the <u>initial installation,</u> alteration, addition, cleaning, refinishing, replacement, or repair of nonmechanical, passive, or manually operated components of buildings or other improvements or structures affixed to real estate, including, but not limited to, the following:

(1) Walls;

~~(2) Floors;~~

~~(3)~~(2) Ceilings;
~~(4)~~(3) Doors;
~~(5)~~(4) Locks;
~~(6)~~(5) Windows;
~~(7)~~(6) Glass;
~~(8)~~(7) Heat and air ducts;
~~(9)~~(8) Roofs;
~~(10)~~(9) Wiring;
~~(11)~~(10) Breakers;
~~(12)~~(11) Breaker boxes;
~~(13)~~(12) Electrical switches and receptacles;
~~(14)~~(13) Light fixtures;
~~(15)~~(14) Pipes;
~~(16)~~(15) Plumbing fixtures;
~~(17)~~(16) Fire and security alarms;
~~(18)~~(17) Intercoms;
~~(19)~~(18) Sprinkler systems;
~~(20)~~(19) Parking lots;
~~(21)~~(20) Fences;
~~(22)~~(21) Gates;
~~(23)~~(22) Fireplaces; and
~~(24)~~(23) Similar components which become a part of real estate after installation, except flooring.

(b) Contractors are deemed to be consumers or users of all tangible personal property used or consumed by them in providing such nontaxable services, in the same manner as when performing any other contract.

(c) Subdivision (3)(C)(viii) of this section shall not apply to any services subject to tax pursuant to the terms of ~~subdivision (3)(E)~~ subdivisions (3)(C)(i) and (3)(E) of this section.

SECTION 9. Arkansas Code § 26-52-304 is amended to read as follows:

26-52-304. Tax levied on sales of computer software and maintenance of computer hardware.

~~(a)~~ The excise tax levied by the Arkansas Gross Receipts Act, § 26-52-101 et seq.~~, and by any act supplemental thereto,~~ is levied on gross receipts or gross proceeds received from the following:

(1)(A) Sales of computer software or programs and software licensing fees. ~~which shall be taxed as sales of tangible personal property. Software shall include tapes, disks, cards, or other devices or materials which contain instructions for a computer and dictate different operations or functions to be performed by the computer;~~

(B) "Computer software or programs" means

(i) A series of instructions sold as a completed program that are coded for acceptance or use by a computer system and designed to permit the computer system to process data and provide results and information.

(ii) The instructions may be in the form of magnetic tapes, semiconductor chips, punched cards, printed instructions, or other tangible or electronic media.

(iii) "Completed program" means any modification,

installation, or maintenance charges made in connection with the sale of the program;

(2) Service of repairing or maintaining computer equipment or hardware in any form;

(3) Charges for installation of computer software or programs;

(4) Software transmitted from one computer or system to another computer or system, electronically or otherwise;

~~(b) It is found and determined by the General Assembly that technological advances in the computer industry have created an uncertainty as to whether sales of computer software constitute a transfer of tangible personal property.~~

~~(c) This section is not intended to affect the taxability of any sales of computer software prior to February 9, 1984.~~

SECTION 10. Arkansas Code Title 26, Chapter 52, Subchapter 3 is amended to add an additional section to read as follows:

26-52-316. Services subject to tax.

The gross proceeds or gross receipts derived from the following services are subject to the gross receipts tax:

(1) Wrecker and towing services;

(2) Collection and disposal of solid wastes;

(3) Cleaning parking lots and gutters;

(4) Dry cleaning and laundry services;

(5) Industrial laundry services;

(6) Mini warehouse and self storage rental services;

(7) Body piercing, tattooing, and electrolysis services;

(8) Pest control services;

(9) Security and alarm monitoring services;

(10) Boat storage and docking fees;

(11) Furnishing camping spaces or trailer spaces at public or privately-owned campgrounds, except for federal campgrounds, on less than a month-to-month basis;

(12)(A) Locksmith services.

(B) "Locksmith services" means repairing, servicing, or installing locks and locking devices, whether the locks and locking devices are:

(i) Incorporated into real property;

(ii) Incorporated into tangible personal property; or

(iii) Locks separate and apart from other property.

(C) "Locksmith services" also includes unlocking locks or locking devices for another person.

(13)(A) Personal instruction services.

(B) "Personal instruction services" means teaching an individual or group of individuals:

(i) To play a musical instrument or to dance;

(ii) To paint, sculpt, draw, make pottery or jewelry, or otherwise engage in artistic or creative activities;

(iii) To mime, act, or otherwise engage in dramatic activities;

(iv) Tae kwon do, tae bo, kung fu, karate, or other martial arts;

(v) To play or improve skills in baseball, football, basketball, soccer, volleyball, golf, tennis, or other sports;

(vi) To drive a motor vehicle;

(vii) To fly an airplane, glider, or other aircraft; or

(viii) To operate a boat, jet ski, or other watercraft; and

(14) Pet grooming and kennel services.

SECTION 11. Arkansas Code § 26-51-815 is amended to read as follows:

26-51-815. Computing capital gains and losses.

(a) To the extent they apply to capital gains and losses realized or incurred during income years beginning after December 31, 1996, 26 U.S.C. §§ 1211-1237 and 1239-1257 as in effect on January 1, 1999, and the regulations of the Secretary of the Treasury promulgated thereunder and in effect on January 1, 1999, are adopted for the purpose of computing tax liability under the Income Tax Act of 1929, as amended, § 26-51-101 et seq. However, the provisions of this section shall not apply to C corporations as defined in 26 U.S.C. § 1361, as in effect on January 1, 1997. Furthermore, any other provisions of the federal income tax law and regulations necessary for interpreting and implementing 26 U.S.C. §§ 1211-1237 and 1239-1257 are adopted to that extent and as in effect on January 1, 1999.

~~(b) If a taxpayer has a net capital gain for tax years beginning on and after January 1, 1999, thirty percent (30%) of the gain shall be exempt from state income tax.~~

~~(c)~~(b) Section 1202 of the Internal Revenue Code of 1986, as in effect on January 1, 1995, regarding the exclusion from gain of certain small business stock, is adopted for the purpose of computing Arkansas income tax liability.

~~(d)~~(c)(1) If a taxpayer has a net capital gain from a venture capital investment, one hundred percent (100%) of the gain shall be exempt from the Income Tax Act of 1929, § 26-51-101 et seq., if:

(A) The venture capital investment was initially made on or after January 1, 2001; and

(B) The venture capital investment was held for at least five (5) years prior to disposition.

(2)(A) "Venture capital" means equity financing, broadly defined, including early stage research, development, commercialization, seed capital for startup enterprises, and other risk capital for expansion of entrepreneurial enterprises doing business in Arkansas that are qualified technology-based enterprises doing business in Arkansas, qualified biotechnology enterprises doing business in Arkansas, or qualified technology incubator clients doing business in Arkansas.

(B) "Venture capital" does not include the purchase of a share of stock in a company if, on the date on which the share of stock is purchased, the company has securities outstanding that are:

(i) Registered on a national securities exchange under Section 12(b) of Title I of the Securities Exchange Act of 1934 as it exists on January 1, 2001;

(ii) Registered or required to be registered under Section 12(g) of Title I of the Securities Exchange Act of 1934 as it exists on January 1, 2001; or

(iii) Required to be registered except for the exemptions in Section 12(g)(2) of Title I of the Securities Exchange Act of 1934 as it exists on January 1, 2001.

(C) "Qualified biotechnology enterprise" means a corporation, partnership, limited liability company, sole proprietorship, or other entity that is certified by the department pursuant to § 2-8-108.

(D) "Qualified technology incubator" means a business incubator certified by the Board of Directors of the Arkansas Science and Technology Authority as being a facility operated in cooperation with an Arkansas college or university to foster the growth of technology-based enterprises.

(E) "Qualified technology incubator client" means a corporation, partnership, limited liability company, sole proprietorship, or other entity that, as of the date of the venture capital investment, is certified by an Arkansas college or university as currently receiving, or having received within the previous three (3) years, the services of a qualified technology incubator.

(F) "Qualified technology-based enterprise" means a corporation, partnership, limited liability company, sole proprietorship, or other legal entity whose primary business directly involves commercializing the results of research in fields having long-term economic or commercial value to the state and having been identified in the research and development plan approved by the board.

SECTION 12. Arkansas Code § 3-7-104 is amended to read as follows:

3-7-104. Rate of tax.

There is levied and there shall be collected as provided by law and regulation the following taxes:

(1)(A)(i) A tax at the rate of two dollars and fifty cents ($2.50) on each gallon of spirituous liquor sold or offered for sale in the State of Arkansas.

(ii) Beginning March 1, 2004, an additional tax at the rate of fifty cents (50¢) on each gallon of spirituous liquor sold or offered for sale in this state.

(B) "Spirituous liquor", as used in this section, means liquor distilled from the fermented juices of grain, fruits, or vegetables and any mixture containing liquor distilled from the fermented juices of grain, fruits, or vegetables, with an alcoholic content of twenty-one percent (21%) or more alcohol by weight;

(2)(A) A tax at the rate of one dollar ($1.00) on each gallon of premixed spirituous liquor sold or offered for sale in the State of Arkansas.

(B) "Premixed spirituous liquor", as used in this section, means liquor distilled from the fermented juices of grain, fruits, or vegetables, having an alcoholic content of less than twenty-one percent (21%) alcohol by weight but more than five percent (5%) alcohol by weight;

(3)(A) A tax at the rate of fifty cents (50¢) on each gallon of light spirituous liquor sold or offered for sale in the State of Arkansas.

(B) "Light spirituous liquor", as used in this section, means liquor distilled from the fermented juices of grain, fruits, or vegetables and any mixture containing liquor distilled from the fermented juices of grain, fruits, or vegetables, having an alcoholic content between one-half of one percent (0.5%) and five percent (5%) alcohol by weight;

(4)(A)(i) A tax at the rate of seventy-five cents (75¢) on each gallon of vinous liquor, except wines fermented and manufactured within the State of Arkansas from grapes, berries, or other fruits grown in Arkansas, as authorized by §§ 3-5-401 - 3-5-412, sold or offered for sale in the State of Arkansas.

(ii) Beginning March 1, 2004, an additional tax at the rate of twenty-five cents (25¢) on each gallon of vinous liquor, except wines fermented and manufactured within this state from grapes, berries, or other fruits grown in Arkansas, as authorized by §§ 3-5-401 - 3-5-412, sold or offered for sale in this state.

(B) "Vinous liquor", as used in this section, means the fermented juices of grapes, berries, or other fruits and any other mixture containing the fermented juices of grapes, berries, or other fruits, having an alcoholic content of more than five percent (5%) alcohol by weight;

(5)(A) A tax at the rate of twenty-five cents (25¢) on each gallon of light wine except light wine fermented and manufactured within the State of Arkansas from grapes, berries, or other fruits grown in Arkansas, as authorized by §§ 3-5-401 - 3-5-412, sold or offered for sale in the State of Arkansas.

(B) "Light wine", as used in this section, means the fermented juices of grapes, berries, or fruits and any other mixture containing the fermented juices of grapes, berries, or fruits, having an alcoholic content of between one-half of one percent (0.5%) and five percent (5%) alcohol by weight;

(6)(A) A tax at the rate of seven dollars and fifty cents ($7.50) per barrel of thirty-two (32) gallons, and proportionately for larger and smaller gallon ages per barrel, on all beer having an alcoholic content of five percent (5%) or less by weight sold or offered for sale in the State of Arkansas.

(B) This tax shall be paid in the manner prescribed by § 3-7-401 et seq.; and

(7) A tax at the rate of twenty cents (20¢) on each gallon of malt liquor sold or offered for sale in the State of Arkansas.

SECTION 13. Arkansas Code § 3-5-409(a), concerning the tax rate on native wine, is amended to read as follows:

(a)(1)(A) Under the provisions of this subchapter, for the privilege of manufacturing wine and for selling it at the winery or in this state, there is imposed, assessed, and levied a tax of seventy-five cents (75¢) per gallon upon all the wine manufactured and sold in this state under the provisions of this subchapter.

(B) Beginning March 1, 2004, for the privilege of manufacturing wine and for selling it at the winery or in this state, there is imposed, assessed, and levied an additional tax of twenty-five cents (25¢) per gallon upon all the wine manufactured and sold in this state under the provisions of this subchapter.

(2) For the privilege of manufacturing light wine under the provisions of this subchapter, and for selling it at the winery or in this state, there is imposed, assessed, and levied a tax of twenty-five cents (25¢) per gallon upon all light wine manufactured and sold in this state under the provisions of this subchapter.

SECTION 14. Arkansas Code § 3-5-605(c), concerning the tax levied on each gallon of imported wines or wines produced from fruits and vegetables not grown in this state, is amended to read as follows:

(c)(1)(A) An Arkansas winery importing fruits or vegetables grown outside the State of Arkansas for use in making wines in this state shall pay the seventy-five cents (75¢) per gallon tax levied on imported wines or wines produced from fruits and vegetables not grown in this state or on wine made from such juices extracted from fruits or vegetables brought into the state if the wine is sold in Arkansas.

(B) Beginning March 1, 2004, an Arkansas winery importing fruits or vegetables grown outside the State of Arkansas for use in making wines in this state shall pay an additional twenty-five cents (25¢) per gallon tax levied on imported wines or wines produced from fruits and vegetables not grown in this state or on wine made from such juices extracted from fruits or vegetables brought into the state if the wine is sold in Arkansas.

(2) The tax shall be paid in the same manner as prescribed by law on the twentieth day of the month on sales in Arkansas for the month preceding.

(3) Records at the Arkansas winery required by federal law shall be maintained to reflect the ratio of blend of Arkansas-grown wine and the amount of wine in the blend made from the fruits or vegetables grown outside the State of Arkansas.

(4) The seventy-five cents (75¢) per gallon tax and the additional twenty-five cents (25¢) per gallon tax levied effective March 1, 2004, shall be required to be paid only on the portion of the blend made from fruits or vegetables grown outside the State of Arkansas which are sold in Arkansas.

(5) The tax on the Arkansas-grown portion of the wine blend shall be the same as now required on wines produced from Arkansas-grown fruits and vegetables.

SECTION 15. Arkansas Code § 3-5-606(b), concerning the tax levied on each gallon of imported wines for blending, is amended to read as follows:

(b)(1) The Arkansas winery shall pay a tax of seventy-five cents (75¢) per gallon on all wines imported into this state if the wines are sold in Arkansas. The seventy-five cents (75¢) per gallon tax shall be required to be paid only on the portion of the blend not grown and produced in Arkansas. The tax on the Arkansas-grown portion of the wine blend shall be the same as now required for wines produced from Arkansas-produced fruits and vegetables.

(2) Beginning March 1, 2004, the Arkansas winery shall pay an additional tax of twenty-five cents (25¢) per gallon on all wines imported into this state if the wines are sold in Arkansas. The additional twenty-five cents (25¢) per gallon tax shall be required to be paid only on the portion of the blend not grown and produced in Arkansas. The tax on the Arkansas-grown portion of the wine blend shall be the same as now required for wines produced from Arkansas-produced fruits and vegetables.

SECTION 16. Arkansas Code § 26-57-1002 is amended to read as follows:

26-57-1002. Registration - Records - Amount of tax.

(a) Any person who sells tangible personal property through vending devices ~~may elect to~~ shall register with the director as a vending device

operator and pay the ~~state and local sales and use~~ wholesale vending taxes as provided in this section.

(b) ~~Any person who elects to register as a vending device operator~~ All vending device operators shall obtain a gross receipts tax permit from the director as provided in § 26-52-201 et seq.

(c)(1) All tangible personal property purchased by a vending device operator for resale through a vending device shall be purchased exempt from the Arkansas gross receipts tax, § 26-52-101 et seq., the Arkansas compensating use tax, § 26-53-101 et seq., and any local sales and use taxes pursuant to the sale for resale exemption provided for in § 26-52-401(12).

(2) The vending device operator shall maintain suitable records reflecting all purchases of tangible personal property during each calendar month for resale through a vending device.

(d)(1)(A) ~~A tax of four and one-half percent (4.5%)~~ A wholesale vending tax at the rate of ten percent (10%) is hereby levied on the purchase price of all tangible personal property purchased or withdrawn from inventory during each calendar month by a vending device operator for resale through a vending device.

(B) This tax shall be in lieu of any state gross receipts tax on the gross receipts or gross proceeds derived from the sale of the property by the vending device operator through a vending device.

(2)(A) An additional tax of ~~one percent (1%)~~ one and three-quarters percent (1.75%) is hereby levied on the purchase price of all tangible personal property purchased or withdrawn from inventory during each calendar month for resale through a vending device.

(B) This tax shall be in lieu of any local gross receipts taxes imposed by any city or county of this state on the gross receipts or gross proceeds derived from the sale of the property by the vending device operator through a vending device.

(e) The taxes levied by subsection (d) of this section shall be reported and paid in the same manner and at the same time as prescribed by law for the reporting and payment of the Arkansas gross receipts tax, § 26-52-101 et seq.

(f) When calculating the taxes due under this section, a vending device operator shall be allowed to deduct any manufacturer's rebates received which lower the final purchase price paid by the vending device operator for property sold through a vending device.

(g) Any vending device operator who manufactures the product which is withdrawn from stock for sale through a vending device shall calculate the tax due by multiplying the tax rate set out in subsection (d) of this section by the selling price for which the person would sell the product to another vending device operator for resale through a vending device.

SECTION 17. Arkansas Code § 26-57-1003 is repealed:

~~26-57-1003. Election not to register.~~

~~(a) Any person selling tangible personal property through a vending device, and who elects not to register as a vending device operator, shall:~~

~~(1) Surrender any gross receipts tax permits issued by the director, unless the permit is needed to report taxable sales other than sales through a vending device; and~~

~~(2)(A) Pay the Arkansas gross receipts tax, § 26-52-101 et seq., the Arkansas compensating use tax, § 26-53-101 et seq., and any applicable~~

~~local sales and use taxes to their vendor on all purchases of tangible personal property purchased for resale through a vending device.~~

~~(B)(i) The sale for resale exemption provided in § 26-52-401(12) shall not apply to purchases of tangible personal property for resale through vending devices unless the purchaser is registered with the director as a vending device operator.~~

~~(ii) However, any person not registered as a vending device operator who maintains property in inventory for subsequent resale on which the state and local sales and use taxes have not been paid, and who subsequently withdraws that property from inventory for sale through a vending device, shall report and pay the state and local sales and use taxes on their purchase price of such property withdrawn from inventory.~~

~~(b) Any person selling property through vending devices who has paid the state and local sales and use taxes in the manner provided by this section shall not be required to collect and remit state or local sales tax on sales of tangible personal property through the vending device.~~

~~(c) Any person who elects to pay tax on tangible personal property sold through vending devices in accordance with the provisions of this section and who manufactures the product which is withdrawn from stock for resale through a vending device shall pay the taxes due under this section by multiplying the tax rate by the selling price for which the person would sell the product to another for resale through a vending device.~~

SECTION 18. Arkansas Code § 26-57-1004 is amended to read as follows:

26-57-1004. Identification of taxpayer - Presumption of nonpayment.

(a) All persons who sell tangible personal property through vending devices shall affix the name and identification number, if any, of the person responsible for the payment of the taxes imposed by ~~§§ 26-57-1002 and 26-57-1003~~ § 26-57-1002.

(b)(1)(A) If any vending device does not have the information required by subsection (a) of this section affixed thereto, there shall be a presumption that the taxes imposed by this subchapter have not been paid.

(B) The director shall seal any vending device subject to this presumption in such a manner as to prevent any further sales through the device and shall assess and collect a penalty of fifty dollars ($50.00) per vending device against the person selling tangible personal property through the device.

(2) The presumption in subdivision (b)(1) of this section shall be overcome if the person selling property through the vending device affixes the information required by this section to the device and proves that the taxes imposed by ~~§§ 26-57-1002 and 26-57-1003~~ § 26-57-1002 have been paid.

SECTION 19. Arkansas Code § 26-57-1204 is amended to read as follows:

26-57-1204. Application, issuance and display of decal. [Effective January 1, 1998.]

(a) Any person who is the operator of a vending device in this state that is made available for use and operation by the general public (whether the operator is the owner of such vending device, or a lessee, renter, bailee, etc. of the owner of such vending device) ~~may, in lieu of paying sales taxes under the provisions of § 26-52-101, et seq., or under the provisions of § 26-57-1001, et seq. elect to~~ shall obtain a decal and pay the decal fees provided by § 26-57-1206. ~~If such election is not made by the~~

~~operator, then the general or short term sales taxes that are otherwise applicable to the operation of these vending devices shall be imposed upon the sale of tangible personal property from such vending devices.~~

(b) ~~The~~ An operator of vending devices~~, who makes the election to pay the decal fees provided by this subchapter,~~ shall be responsible for applying to the Director of the Department of Finance and Administration for the issuance of an annual or short-term special vending device decal for such vending device and shall, at the same time, pay to the Director of the Department of Finance and Administration the annual or short-term special vending device decal fee provided for by this subchapter, before such vending device is made available for use and operation by the general public.

(c) The Director of the Department of Finance and Administration, upon receipt of full payment of the applicable decal fee, and upon approval of such application, shall issue to the person making such application an annual or short-term special vending device decal for the type of vending device or devices covered by such application and payment.

(d)(1) The annual or short-term special vending device decals, and the application provided for herein, shall be in such form as prescribed by the Director of the Department of Finance and Administration. These decals and applications shall contain on their faces such information and descriptions as shall be required by regulations adopted by the Director of the Department of Finance and Administration to properly and reasonably implement the provisions of this subchapter.

(2) Any number of vending devices may be included in one (1) application, but all vending devices operated by the applying operator must be made subject to this ~~alternative~~ decal fee. ~~Such operator may not choose to have part of his or her vending devices covered by the decal fee provided by this subchapter, while other vending devices operated by the same operator during the decal registration year would be subject to the general or sales taxes that would be otherwise applicable to the sale of tangible personal property from such vending devices.~~

(e) Before any vending device is put into operation or placed where the same may be used or operated by any member of the general public, and at all times when the vending device is being used or operated or made available to members of the general public for use or operation, an annual or short-term special vending device decal shall be firmly affixed to the vending device covered thereby by the person who is the operator of the vending device, so that such decal shall be plainly visible to, and readable by, the members of the general public.

SECTION 20. Arkansas Code § 26-57-1206 is amended to read as follows:

26-57-1206. Annual decal fee - ~~Special decal - In lieu of sales tax.~~ Short-term special decal. ~~[Effective January 1, 1998.]~~

(a)(1) Every person who is the operator of a vending device~~, who elects to have the operation of such vending device covered by the provisions of this subchapter,~~ and who makes available to the general public for use and operation vending devices described in this subchapter, shall pay to the Director of the Department of Finance and Administration (for the benefit of the state and its municipalities and counties) the following annual vending device decal fee for each vending device before such vending device may be placed in service within the state for use by members of the public:

(A) For each coin-operated vending device requiring a coin

or thing of value ~~of twenty-five cents (25¢) or more~~ for a sale, ~~seventy dollars ($70.00)~~ twenty dollars ($20.00);

~~(B) For each coin-operated vending device requiring a coin or thing of value of less than twenty-five cents (25¢) for a sale, fifteen dollars ($15.00);~~

~~(C)~~(B) For each coin-operated bulk vending device requiring a coin or thing of value ~~of more than twenty-five cents (25¢)~~ for a sale, ~~seven dollars and fifty cents ($7.50)~~ five dollars ($5.00); and

~~(D) For each coin-operated bulk vending device requiring a coin or thing of value of twenty-five cents (25¢) or less for a sale, two dollars and fifty cents ($2.50); and~~

~~(E)~~(C) For each coin-operated manually powered vending devices, coin-operated tabletop snack vending device, or other manually powered coin-operated vending device requiring a coin or thing of value ~~of twenty-five cents (25¢) or more~~ for a sale, ~~thirty dollars ($30.00)~~ twenty dollars ($20.00).

(2) The annual vending device decal issued by the Director of the Department of Finance and Administration, after payment of the appropriate annual vending device decal fee, shall bear on its face the year of its issue, and such annual decal must be affixed to each vending device in a place that is clearly visible to the user of such device before each such vending device may be placed for public use or operation in this state by the operator.

(3) Such annual vending device decal shall not be transferred from one (1) vending device to another, unless the person who is the operator of such vending device shall establish to the satisfaction of the Director of the Department of Finance and Administration that the vending device to which the annual vending device decal is to be transferred is a vending device that is replacing the vending device to which such annual decal was originally affixed.

(b) In those instances where it is shown to the satisfaction of the Director of the Department of Finance and Administration that a vending device upon which an annual vending device decal fee is otherwise due will be placed in service for use by members of the general public for a definite, but limited, period of time that is less than one (1) year, such as where the vending device shall be placed for public use in connection with fairs, carnivals, and places of amusement that operate only during certain seasons of the year, the Director of the Department of Finance and Administration shall issue a short-term special vending device decal and collect a short-term special vending device decal fee for such vending devices as hereinafter computed:

(1) Such short-term special decal may be issued for any number of thirty-day periods, less than a full year, and such short-term special decal shall indicate on its face that it is a short-term special decal, not an annual decal, and such short-term special decal shall be for one (1) or more thirty-day periods, but such short-term special decal shall state on its face the precise dates for which it has been issued and such short-term special decal shall not be transferred from one (1) vending device to another.

(2) The short-term special vending device decal fee shall be computed and paid by the person who is the operator of such vending device ~~on the basis of one-fifth (1/5) of the annual vending device decal fee charged~~

~~by this subchapter for the type of vending device operated, for each thirty-day period for which such short term decal is issue.~~ on the following basis:

(A) For each coin-operated or manually-powered vending device, the fee shall be five dollars ($5.00) for each thirty-day period for which the short-term decal is issued, up to the annual rate of twenty dollars ($20.00); and

(B) For each coin-operated bulk vending device, the fee shall be one dollar ($1.00) for each thirty-day period for which the short-term decal is issued, up to the annual rate of five dollars ($5.00).

(3) In the event the vending device is made available to the public for a period beyond that for which the short-term special decal is issued, then a full year's fee and penalty, as set out in § 26-57-1206, shall be due on such vending device from the person who is the operator of such vending device.

(c) The annual or short-term special vending device decal fees required to be paid by subsections (a) and (b) of this section shall be paid by the person who is the operator of such vending device ~~in lieu of the requirement that such person collect and remit: (1) the state and local gross receipts (sales) taxes levied pursuant to the provisions of the Arkansas Gross Receipts Act of 1941, as amended, § 26-52-101 et. seq., or any provision of Chapters 74 and 75 of Title 26, or any other provision of this Code which provides for the levy of a local sales tax; or (2)~~ in addition to the special sales taxes levied pursuant to the provisions of the Vending Devices Sales Tax Act of 1995, § 26-57-1001, et seq. ~~Where gross receipts or gross proceeds are received by a person who is the operator of a vending device from the sale of any item of tangible personal property, through the vending device, where the annual vending device decal fee has been paid and such decal is affixed to the vending device, then it is the intent of the General Assembly that such gross proceeds or gross receipts shall not be subject to any state or local gross receipts (sales) taxes imposed in this state.~~

(d) Any sales made by the operator of a coin-operated vending device that is made without the use of a vending device, e.g., office coffee service, manual hot foods lines, catering events, etc., shall be subject to the state and local gross (sales) taxes levied pursuant to the provisions of the Arkansas Gross Receipts Act of 1941, as amended, § 26-52-101, et seq, or any provision of Chapters 74 and 75 of Title 26, or any other provision of the Code that provides for the levy of a local sales tax.

~~(e) For all vending devices that the operator does not elect to have covered by the decal fee provided by this section, the operator of that vending device shall acquire from the Director of the Department of Finance and Administration an identifying decal that the operator shall affix to the vending device in a prominent place so as to establish to the consuming public that such vending device is not covered by the provisions of this subchapter. The Director of the Department of Finance and Administration shall establish, by reasonable regulations, the amount to be charged for such identifying decal, which amount shall not exceed the cost of producing such decals.~~

~~(f) Operators who elect to pay tax at the wholesale level and which have been issued an identification number by the Department of Finance and Administration as of March 31, 1997, shall be entitled to utilize that identification number for all vending devices owned by that operator.~~

SECTION 21. Arkansas Code § 26-57-1208 is repealed.

~~26-57-1208. Distribution of revenue. [Effective January 1, 1998.]~~

~~(a) It is hereby declared to be the purpose of this subchapter to provide revenues for general governmental functions of the state, and its counties and municipalities, in lieu of the state and local gross receipts (sales) taxes or vending devices sales taxes that would otherwise be due and owing from the person who is the operator of such vending devices. For that purpose and to that end, it is expressly provided that the revenue derived by the Director of the Department of Finance and Administration from the sale of annual or special vending device decal fees, including penalties, shall be deposited by the director into the State Treasury and credited as follows.~~

~~(b) The vending device decal fees imposed by § 26-57-1206, or any proportionate amount thereof, shall be divided.~~

~~(1) With eighty percent (80%) of such amount being deposited to the credit of the General Revenue Fund Account of the State Apportionment Fund provided by § 19-5-202; and~~

~~(2) With twenty percent (20%) of such amount being deposited by the Treasurer of the State in the Identification Pending Trust Fund for Local Sales and Use Taxes in accordance with the provisions of §§ 26-74-221 and 26-75-223, and all revenues deposited into that fund shall be distributed to the cities and counties of this state in accordance with the provisions of §§ 26-74-221 (a)(2)(C)(ii) and 26-75-223 (a)(2)(C)(ii).~~

SECTION 22. Arkansas Code § 26-57-1217 is repealed.

~~26-57-1217. Purpose. [Effective January 1, 1998.]~~

~~The purpose for the enactment of this "Vending Devices Decal Act of 1997" is to provide a simplified method for the operators of such vending devices to be able to pay their proportionate amount of state and local taxes, without being required to maintain complex financial records that would otherwise be required of such operators (who are in the unique position among retailers in this state of not being able to pass the cost of sales taxes directly on to their customers), and to assure that the State of Arkansas and its cities and counties collect their fair share of taxes from what is almost entirely a cash business.~~

SECTION 23. Arkansas Code Title 26, Chapter 57, Subchapter 12 is amended to add an additional section to read as follows:

26-57-1218. Renewal.

(a) All annual vending device decals issued by the Director of the Department of Finance and Administration authorizing the use and operation of vending devices are renewable by June 30 of each calendar year for the fiscal year beginning July 1.

(b) Any person who renews an annual vending device decal after June 30 shall pay a penalty. For each sixty-day period or a portion thereof after June 30 during which the renewal fee is paid, the penalty shall be one-half (1/2) of the yearly renewal fee.

(c) No annual vending device decal shall be renewed by the Department of Finance and Administration for a vending device decal holder who has failed to pay any wholesale vending tax, excise tax, or any other state and local taxes.

SECTION 24. Educational Adequacy Trust Fund.

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

(b) The Educational Adequacy Trust Fund shall consist of the revenues enacted by the Second Extraordinary Session of the 84th General Assembly and other revenues as provided by law.

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

(d)(1) Additionally, for each of the state's fiscal years, the Chief Fiscal Officer of the State shall determine as an annual allocation amount for the Educational Adequacy Trust Fund an amount equivalent to the revenues generated by Arkansas Code § 26-52-316. The determination shall be based on the total net general revenues as enumerated in § 19-6-201(1) and (2), which were collected in the immediate past year, times a factor of 0.0109.

(2) Upon the determination, the Chief Fiscal Officer of the State shall certify to the Treasurer of State the amount determined in subdivision (d)(1) of this section for transfer to the fund.

(3) The Treasurer of State shall make the transfer from general revenues after making the deductions required from the net general revenues under Arkansas Code § 19-5-202(b)(2)(B)(i).

(e)(1) Additionally, for each of the state's fiscal years, the Chief Fiscal Officer of the State shall determine as an annual allocation amount for this Educational Adequacy Trust Fund an amount equivalent to the revenues generated by the increase in the wholesale vending tax. The determination shall be based on the total net general revenues as enumerated in § 19-6-201(1) and (2), which were collected in the immediate past year, times a factor of 0.0044.

(2) Upon the determination, the Chief Fiscal Officer of the State shall certify to the Treasurer of State the amount determined in subdivision (d)(1) of this section for transfer to the Educational Adequacy Trust Fund.

(3) The Treasurer of State shall make the transfer from general revenues after making the deductions required from the net general revenues under Arkansas Code § 19-5-202(b)(2)(B)(i).

SECTION 25. Sections 1 through 6 of this bill become effective on March 1, 2004.

SECTION 26. Sections 7, 8, 9 and 10 of this bill becomes effective on July 1, 2004.

SECTION 27. Section 11 applies to tax years beginning on or after January 1, 2004.

SECTION 28. Sections 12, 13, 14, and 15 become effective on March 1, 2004.

SECTION 29. Sections 16 through 23 become effective on July 1, 2004.

SECTION 30. EMERGENCY CLAUSE. It is found and determined by the General Assembly, that the provision of an equal opportunity for an adequate education to all the citizens of the state is imperative; that additional funds are immediately needed to provide an equal opportunity for an adequate education; that this act is designed to provide the additional revenues needed to provide this equal opportunity to all citizens; and that a delay in the effective date of this act will cause irreparable harm upon the provision of essential education opportunities and the proper administration of educational programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of March 1, 2004."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Wooldridge

KWH/WLM - 01-15-2004 14:48 _____

WLM045 **Secretary**