

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 1170

4
5 By: Senator Hill
6 By: Representative Thomason

For An Act To Be Entitled

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8
9
10 AN ACT TO PROVIDE SALES AND USE TAX DEFINITIONS
11 THAT ARE CONSISTENT WITH THE DEFINITIONS PROVIDED
12 BY THE STREAMLINED SALES TAX AGREEMENT; AND FOR
13 OTHER PURPOSES.

Subtitle

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15
16 AN ACT TO PROVIDE SALES AND USE TAX
17 DEFINITIONS THAT ARE CONSISTENT WITH THE
18 DEFINITIONS PROVIDED BY THE STREAMLINED
19 SALES TAX AGREEMENT.

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

23
24 SECTION 1. Arkansas Code § 26-52-103 [Effective until contingency in
25 Acts 2003, No. 1273, § 88 is met], as it appears on page 3 of the 2003
26 Supplement to Volume 27A of the Arkansas Code, is repealed.

27 ~~26-52-103. Definitions. [Effective until contingency in Acts 2003, No.~~
28 ~~1273, § 88 is met.]~~

29 ~~(a) The following words and phrases, except where the context clearly~~
30 ~~indicates a different meaning, when used in this act shall have the following~~
31 ~~meanings:~~

32 ~~(1) "Person" includes any individual, company, partnership,~~
33 ~~limited liability company, joint venture, joint agreement, association,~~
34 ~~mutual or otherwise, corporation, estate, trust, business trust, receiver, or~~
35 ~~trustee appointed by any state or federal court or otherwise, syndicate, this~~
36 ~~state, any county, city, municipality, school district, or any other~~



1 ~~political subdivision of the state or group or combination acting as a unit;~~

2 ~~(2) "Director" means the Director of the Department of Finance~~
 3 ~~and Administration, or any of his authorized agents;~~

4 ~~(3)(A) "Sale" is declared to mean the transfer of either the~~
 5 ~~title or possession, except in the case of leases or rentals, for a valuable~~
 6 ~~consideration of tangible personal property, regardless of the manner,~~
 7 ~~method, instrumentality, or device by which the transfer is accomplished.~~

8 ~~(B) "Sale" is also declared to include the exchange,~~
 9 ~~barter, lease, or rental of tangible personal property.~~

10 ~~(C)(i) In the case of leases or rentals for less than~~
 11 ~~thirty (30) days of tangible personal property including motor vehicles and~~
 12 ~~trailers, the tax shall be paid on the basis of rental or lease payments made~~
 13 ~~to the lessor of such tangible personal property during the term of the lease~~
 14 ~~or rental regardless of whether Arkansas gross receipts tax or compensating~~
 15 ~~use tax was paid by the lessor at the time of the purchase of the property.~~

16 ~~(ii) In the case of leases or rentals for thirty~~
 17 ~~(30) days or more of tangible personal property including motor vehicles and~~
 18 ~~trailers, the tax shall be paid on the basis of rental or lease payments made~~
 19 ~~to the lessor of the tangible personal property during the term of the lease~~
 20 ~~or rental unless Arkansas gross receipts tax or compensating use tax was paid~~
 21 ~~by the lessor at the time of the purchase of the property.~~

22 ~~(iii) Any person engaged in the business of leasing~~
 23 ~~or renting motor vehicles shall collect, report, and remit gross receipts tax~~
 24 ~~on the lease or rental payments in lieu of paying tax at the time of~~
 25 ~~registration.~~

26 ~~(D) "Sale" shall also include the sale, giving away,~~
 27 ~~exchanging, or other disposition of admissions, dues, or fees to clubs, to~~
 28 ~~places of amusement, or recreational or athletic events, or for the privilege~~
 29 ~~of having access to or the use of amusement, athletic, or entertainment~~
 30 ~~facilities.~~

31 ~~(E) "Sale" shall not include the furnishing or rendering~~
 32 ~~of services, except as otherwise provided in this section.~~

33 ~~(F) "Sale" shall not include the transfer of title to a~~
 34 ~~vehicle by the vehicle owner to an insurance company as a result of the~~
 35 ~~settlement of a claim for damages to the vehicle;~~

36 ~~(4)(A)(i) "Gross receipts" or "gross proceeds" means the total~~

1 amount of consideration for the sale of tangible personal property and such
 2 services as are herein specifically provided for, whether the consideration
 3 is in money or otherwise, without any deduction on account of the cost of the
 4 properties sold, labor service performed, interest paid, losses, or any
 5 expenses whatsoever.

6 (ii) ~~However, the term "gross receipts" or "gross~~
 7 ~~proceeds" shall not include the manufacturer's federal excise taxes levied~~
 8 ~~upon articles if the manufacturer's federal excise taxes are separately~~
 9 ~~stated or separately billed.~~

10 (B)(i) ~~The term "gross proceeds" or "gross receipts" shall~~
 11 ~~include the value of any goods, wares, merchandise, or property withdrawn or~~
 12 ~~used from the established business or from the stock in trade of the~~
 13 ~~established reserves for consumption or use in such business or by any other~~
 14 ~~person.~~

15 (ii) ~~However, the term "gross receipts" or "gross~~
 16 ~~proceeds" shall not include the value of any goods, wares, merchandise, or~~
 17 ~~property withdrawn or used from the established business or from the stock in~~
 18 ~~trade of the established reserves for consumption or use in such business or~~
 19 ~~by any other person if the goods, wares, merchandise, or property withdrawn~~
 20 ~~or used is donated to National Guard members, emergency service workers or~~
 21 ~~volunteers providing services to a county which has been declared a disaster~~
 22 ~~area by the Governor;~~

23 (5) ~~"Taxpayer" means any person liable to remit a tax hereunder~~
 24 ~~or to make a report for the purpose of claiming any exemption from payment of~~
 25 ~~taxes levied by this act;~~

26 (6) ~~"Established business" means any business operated or~~
 27 ~~conducted by any person in a continuous manner for any length of time from an~~
 28 ~~established place or in an established manner;~~

29 (7) ~~"Seller" means every person making a sale in an established~~
 30 ~~business as defined in this section;~~

31 (8) ~~"Tax period" or "taxable period" means either the calendar~~
 32 ~~period or the taxpayer's fiscal period where a taxpayer has obtained a permit~~
 33 ~~from the director or from any of his authorized agents to use a fiscal period~~
 34 ~~in lieu of a calendar period;~~

35 (9)(A) ~~"Consumer" or "user" means the person to whom the taxable~~
 36 ~~sale is made or to whom taxable services are furnished. All contractors are~~

1 ~~deemed to be consumers or users of all tangible personal property, including~~
 2 ~~materials, supplies, and equipment, used or consumed by them in performing~~
 3 ~~any contract, and the sales of all such property to contractors are taxable~~
 4 ~~sales within the meaning of this act.~~

5 ~~(B) "Contract" means any agreement or undertaking to~~
 6 ~~construct, manage, or supervise the construction, erection, alteration, or~~
 7 ~~repair of any building or other improvement or structure affixed to real~~
 8 ~~estate, including any of their component parts.~~

9 ~~(C) "Contractor" means any person who contracts or~~
 10 ~~undertakes to construct, manage, or supervise the construction, erection,~~
 11 ~~alteration, or repair of any building or other improvement or structure~~
 12 ~~affixed to real estate, including any of their component parts; and~~

13 ~~(10)(A) "Doing business" or "engaging in business" includes any~~
 14 ~~and all local activity regularly and persistently pursued by any seller or~~
 15 ~~vendor through agents, employees, or representatives with the object of gain,~~
 16 ~~profit, or advantage and which results in a sale, delivery, or the transfer~~
 17 ~~of the physical position of any tangible personal property by the vendor to~~
 18 ~~the vendee, at or from any point within Arkansas, whether from warehouse,~~
 19 ~~store, office, storage point, rolling store, motor vehicle, delivery~~
 20 ~~conveyance, or by any method or device under the control of seller effecting~~
 21 ~~such local delivery, without regard to the terms of sale with respect to~~
 22 ~~point of acceptance of the order, point of payment, or any other condition.~~

23 ~~(B) "Doing business" or "engaging in business", as set out~~
 24 ~~in this subdivision, is equally applicable to sellers of services as are made~~
 25 ~~the subject matter of the tax imposed by this act.~~

26 ~~(C) The provisions of this subdivision shall be cumulative~~
 27 ~~to the gross receipts tax law and shall not be construed as levying a tax on~~
 28 ~~any receipts derived from personal or professional services not heretofore~~
 29 ~~made the subject matter and within the scope of the present gross receipts~~
 30 ~~tax law, as amended, nor shall the provisions of this subdivision be~~
 31 ~~construed as repealing or modifying any of the provisions therein.~~

32 ~~(b) The definitions of words provided in this section are for the~~
 33 ~~purposes of this act only.~~

34
 35 SECTION 2. Arkansas Code § 26-52-103 [Effective when contingency in
 36 Acts 2003, No. 1273, § 88 is met], as it appears on page 6 of the 2003

1 Supplement to Volume 27A of the Arkansas Code, is amended to read as follows:
2 26-52-103. Definitions. ~~{Effective when contingency in Acts 2003, No.~~
3 ~~1273, § 88 is met.}~~

4 As used in this chapter:

5 (1)(A) "Consumer" or "user" means the person to whom the taxable
6 sale is made or to whom taxable services are furnished.

7 (B) All contractors are deemed to be consumers or users of
8 all tangible personal property, including materials, supplies, and equipment
9 used or consumed by them in performing any contract.

10 (C) The sales of all such property to contractors are
11 taxable sales within the meaning of this chapter;

12 (2) "Contract" means any agreement or undertaking to construct,
13 manage, or supervise the construction, erection, alteration, or repair of any
14 building or other improvement or structure affixed to real estate, including
15 any of their component parts;

16 (3) "Contractor" means any person who contracts or undertakes to
17 construct, manage, or supervise the construction, erection, alteration, or
18 repair of any building or other improvement or structure affixed to real
19 estate, including any of their component parts;

20 (4)(A) "Direct mail" means printed material delivered or
21 distributed by United States mail or other delivery service to a mass
22 audience or to addressees on a mailing list provided by the purchaser or at
23 the direction of the purchaser when the cost of the items is not billed
24 directly to the recipients.

25 (B) "Direct mail" includes tangible personal property
26 supplied directly or indirectly by the purchaser to the direct mail seller
27 for inclusion in the package containing the printed material.

28 (C) "Direct mail" does not include multiple items of
29 printed material delivered to a single address;

30 (5) "Director" means the Director of the Department of Finance
31 and Administration or any of his or her authorized agents;

32 (6)(A) "Doing business" or "engaging in business" includes any
33 and all local activity regularly and persistently pursued by any seller or
34 vendor through agents, employees, or representatives with the object of gain,
35 profit, or advantage and that results in a sale, delivery, or the transfer of
36 the physical position of any tangible personal property by the vendor to the

1 vendee at or from any point within Arkansas, whether from warehouse, store,
2 office, storage point, rolling store, motor vehicle, delivery conveyance, or
3 by any method or device under the control of the seller effecting such a
4 local delivery without regard to the terms of sale with respect to point of
5 acceptance of the order, point of payment, or any other condition.

6 (B) "Doing business" or "engaging in business", as set out
7 in this subdivision, is equally applicable to sellers of services as are made
8 the subject matter of the tax imposed by this chapter.

9 (C) The provisions of this subdivision shall be cumulative
10 to the gross receipts tax law and shall not be construed as levying a tax on
11 any receipts derived from personal or professional services not heretofore
12 made the subject matter and within the scope of the present gross receipts
13 tax law, as amended. The provisions of this subdivision (6)(C) shall not be
14 construed as repealing or modifying any of the provisions therein;

15 (7) "Established business" means any business operated or
16 conducted by any person in a continuous manner for any length of time from an
17 established place or in an established manner;

18 (8)(A) "Gross receipts" or "gross proceeds" means the total
19 amount of consideration for the sale of tangible personal property and such
20 services as are specifically provided for in this section, whether the
21 consideration is in money or otherwise, without any deduction on account of
22 the cost of the properties sold, all taxes imposed on the seller, all costs
23 of transportation to the seller, labor service performed, interest paid,
24 losses, or any expenses whatsoever.

25 (B) The term "gross proceeds" or "gross receipts" shall
26 include the value of any goods, wares, merchandise, or property withdrawn or
27 used from the established business or from the stock in trade of the
28 established reserves for consumption or use in the business or by any other
29 person.

30 (C) The term "gross receipts" or "gross proceeds" shall
31 not include:

32 (i) The value of any goods, wares, merchandise, or
33 property withdrawn or used from the established business or from the stock in
34 trade of the established reserves for consumption or use in the business or
35 by any other person if the goods, wares, merchandise, or property withdrawn
36 or used is donated to National Guard members, emergency service workers, or

1 volunteers providing services to a county that has been declared a disaster
2 area by the Governor;

3 (ii) Discounts, including cash, term, or coupons
4 that are not reimbursed by a third party that are allowed by a seller and
5 taken by a purchaser on a sale;

6 (iii) Interest, financing, and carrying charges from
7 credit extended on the sale of personal property or services if the amount is
8 separately stated on the invoice; or

9 (iv) Any taxes legally imposed directly on the
10 consumer that are separately stated on the invoice, bill of sale, or similar
11 document given to the purchaser;

12 (9)(A)(i) "Lease" or "rental" means any transfer of possession
13 or control of tangible personal property for a fixed or indeterminate term
14 for consideration.

15 (ii) A lease or rental may include future options to
16 purchase or extend.

17 (B) "Lease" or "rental" does not include:

18 (i) A transfer of possession or control of property
19 under a security agreement or deferred payment plan that requires the
20 transfer of title upon completion of the required payments;

21 (ii) A transfer of possession or control of property
22 under an agreement that requires the transfer of title upon completion of
23 required payments and payment of an option price that does not exceed the
24 greater of one hundred dollars (\$100) or one percent (1%) of the total
25 required payments; or

26 (iii)(a) Providing tangible personal property along
27 with an operator for a fixed or indeterminate period of time.

28 (b) A condition of this exclusion is that the
29 operator is necessary for the equipment to perform as designed.

30 (c) For the purpose of this subdivision, an
31 operator must do more than maintain, inspect, or set up the tangible personal
32 property.

33 (C) "Lease" or "rental" does include agreements covering
34 motor vehicles and trailers if the amount of consideration may be increased
35 or decreased by reference to the amount realized upon the sale or disposition
36 of the property as defined in 26 U.S.C. § 7701(h)(2).

1 (D) This definition shall be used for sales and use tax
2 purposes regardless of whether a transaction is characterized as a lease or
3 rental under generally accepted accounting principles, the Internal Revenue
4 Code, the Uniform Commercial Code, § 4-1-101 et seq., or other provisions of
5 federal, state, or local law.

6 (E)(i) This definition will be applied only prospectively
7 from the effective date of this subdivision and will have no retroactive
8 impact on existing leases or rentals.

9 (ii) This definition shall impact neither any
10 existing sale-leaseback exemptions nor exclusions;

11 (10) "Person" includes any individual, company, partnership,
12 limited liability company, joint venture, joint agreement, association,
13 mutual or otherwise, corporation, estate, trust, business trust, fiduciary,
14 receiver, or trustee appointed by any state or federal court or otherwise,
15 syndicate, this state, any county, city, municipality, school district, or
16 any other political subdivision of the state or group or combination acting
17 as a unit, or any other legal entity;

18 (11) "Retail sale" or "sale at retail" means any sale, lease, or
19 rental for any purpose other than for resale, sublease, or subrent;

20 (12)(A) "Sale" means the transfer of either the title or
21 possession except in the case of leases or rentals for a valuable
22 consideration of tangible personal property regardless of the manner, method,
23 instrumentality, or device by which the transfer is accomplished.

24 (B) "Sale" includes the exchange, barter, lease, or rental
25 of tangible personal property.

26 (C)(i) In the case of leases or rentals of tangible
27 personal property, including motor vehicles and trailers for less than thirty
28 (30) days, the tax shall be paid on the basis of rental or lease payments
29 made to the lessor of the tangible personal property during the term of the
30 lease or rental regardless of whether Arkansas gross receipts tax or
31 compensating use tax was paid by the lessor at the time of the purchase of
32 the property.

33 (ii) In the case of leases or rentals of tangible
34 personal property, including motor vehicles and trailers for thirty (30) days
35 or more, the tax shall be paid on the basis of rental or lease payments made
36 to the lessor of the tangible personal property during the term of the lease

1 or rental unless Arkansas gross receipts tax or compensating use tax was paid
 2 by the lessor at the time of the purchase of the property.

3 (iii) Any person engaged in the business of leasing
 4 or renting motor vehicles shall collect, report, and remit gross receipts tax
 5 on the lease or rental payments in lieu of paying tax at the time of
 6 registration.

7 (D) "Sale" shall also include the sale, giving away,
 8 exchanging, or other disposition of admissions, dues, or fees to clubs, to
 9 places of amusement, or to recreational or athletic events or for the
 10 privilege of having access to or the use of amusement, athletic, or
 11 entertainment facilities.

12 (E) "Sale" shall not include the furnishing or rendering
 13 of services except as otherwise provided in this section.

14 (F) "Sale" shall not include the transfer of title to a
 15 vehicle by the vehicle owner to an insurance company as a result of the
 16 settlement of a claim for damages to the vehicle;

17 (13) "Seller" means every person making a sale in an established
 18 business as defined in this section;

19 (14)(A) "Tangible personal property" means personal property
 20 that can be seen, weighed, measured, felt, or touched, or that is in any
 21 other manner perceptible to the senses.

22 (B) "Tangible personal property" includes electricity,
 23 water, gas, steam, and prewritten computer software;

24 ~~(14)~~(15) "Tax period" or "taxable period" means either the
 25 calendar period or the taxpayer's fiscal period when a taxpayer has obtained
 26 a permit from the director or from any of his or her authorized agents to use
 27 a fiscal period in lieu of a calendar period; and

28 ~~(15)~~(16) "Taxpayer" means any person liable to remit a tax
 29 hereunder or to make a report for the purpose of claiming any exemption from
 30 payment of taxes levied by this chapter.

31
 32 SECTION 3. Arkansas Code § 26-53-102 [Effective until contingency in
 33 Acts 2003, No. 1273, § 88 is met], as it appears on page 133 of Volume 27A of
 34 the Arkansas Code, is repealed.

35 ~~26-53-102. Definitions.~~

36 ~~As used in this subchapter, unless the context otherwise requires:~~

1 ~~(1) "Sales price" means the consideration paid or given, or~~
2 ~~contracted to be paid or given, by the purchaser to the vendor for the~~
3 ~~article of the tangible personal property including any services that are a~~
4 ~~part of the sale valued in money, whether paid in money or otherwise, and~~
5 ~~includes any amount for which credit is given to the purchaser by the vendor~~
6 ~~without any deduction therefrom on account of the cost of the property sold,~~
7 ~~the cost of materials used, labor or service cost, interest charged, losses,~~
8 ~~or any other expenses whatsoever; provided that cash discounts allowed and~~
9 ~~taken on sales shall not be included. "Sales price" shall not include the~~
10 ~~amount charged for property returned by customers upon rescission of the~~
11 ~~contract of sales when the entire amount charged therefor is refunded either~~
12 ~~in cash or credit, or the amount charged for labor or services rendered in~~
13 ~~installing or applying the property sold, the use, storage, or consumption of~~
14 ~~which is taxable under this subchapter. The term shall include, in addition~~
15 ~~to the consideration paid or given or contracted to be paid or given, the~~
16 ~~amount of any tariff or duty paid with respect to the importation of the~~
17 ~~article stored, used, or consumed in this state;~~

18 ~~(2) "Storage" means and includes any keeping or retention in~~
19 ~~this state of tangible personal property purchased from a vendor for any~~
20 ~~purpose, except sale or subsequent use solely outside this state;~~

21 ~~(3) "Use" means and includes the exercise of any right or power~~
22 ~~over tangible personal property incident to the ownership or control of that~~
23 ~~property, except that it shall not include the sale of that property in the~~
24 ~~regular course of business;~~

25 ~~(4) "Vendor" means and includes every person engaged in making~~
26 ~~sales of tangible personal property by mail order, by advertising, by agent,~~
27 ~~or by peddling tangible personal property, soliciting, or taking orders for~~
28 ~~sales of same for storage, use, or consumption in this state; and includes~~
29 ~~all salesmen, solicitors, hawkers, representatives, consignees, peddlers, or~~
30 ~~canvassers as agents of the dealers, distributors, consignors, supervisors,~~
31 ~~principals, or employers under whom they operate or from whom they obtain the~~
32 ~~tangible personal property sold by them. Irrespective of whether persons are~~
33 ~~making sales on their own behalf or on behalf of dealers, distributors,~~
34 ~~consignors, supervisors, principals, or employers, they must be regarded as~~
35 ~~vendors; and the dealers, distributors, consignors, supervisors, principals,~~
36 ~~or employers must be regarded as vendors for purposes of this subchapter;~~

1 ~~(5) "Purchase" means the sale of tangible personal property by a~~
 2 ~~vendor to a person for the purpose of storage, use, or consumption in this~~
 3 ~~state. Furthermore, for purposes of this subchapter, the term "purchase" also~~
 4 ~~includes any withdrawal of tangible person property from a stock or reserve~~
 5 ~~maintained outside of the state by any person and subsequently brought into~~
 6 ~~this state and thereafter stored, consumed, or used by that person or by any~~
 7 ~~other person, and, in such event, the tax shall be computed on the value of~~
 8 ~~the tangible personal property at the time it is brought into this state. No~~
 9 ~~tax shall be computed to the extent that a withdrawal consists of~~
 10 ~~carbonaceous materials such as petroleum coke or carbon anodes which are to~~
 11 ~~be directly used or consumed in the electrolytic reduction process of~~
 12 ~~producing tangible personal property for ultimate sale at retail.~~

13 ~~(6)(A) "Sale" means any transfer, barter, or exchange of the~~
 14 ~~title or ownership of tangible personal property, or the right to use, store~~
 15 ~~or consume the same for a consideration paid or to be paid, in installments~~
 16 ~~or otherwise, and includes any transaction whether called leases, rentals,~~
 17 ~~bailments, loans, conditional sales, or otherwise, notwithstanding that the~~
 18 ~~title or possession of said property, or both, is retained for security.~~

19 ~~(B) For the purpose of this subchapter, the place of~~
 20 ~~delivery of tangible personal property to the purchaser, user, storer, or~~
 21 ~~consumer shall be deemed to be the place of sale, whether such delivery is~~
 22 ~~made by the vendor or by common carriers, private contractors, mails,~~
 23 ~~express, agents, salesmen, solicitors, hawkers, representatives, consignees,~~
 24 ~~peddlers, canvassers, or otherwise;~~

25 ~~(7) "Purchaser" means and includes any person who is the~~
 26 ~~recipient of any sale of tangible personal property for a valuable~~
 27 ~~consideration acquired for use, storage, or consumption in this state;~~

28 ~~(8)(A) "Person" includes any individual, company, partnership,~~
 29 ~~limited liability company, joint venture, joint agreement, association,~~
 30 ~~mutual or otherwise, corporation, estate, trust, business trust, receiver or~~
 31 ~~trustee appointed by any state or federal court or otherwise, syndicate, this~~
 32 ~~state, any county, city, municipality, school district, or any other~~
 33 ~~political subdivision of the state, or group or combination acting as a unit.~~

34 ~~(B) It is the purpose and intent of the General Assembly~~
 35 ~~in passing this subsection to provide the same definition for the word~~
 36 ~~"person" in this subchapter as that word is defined in the Arkansas Cross~~

1 ~~Receipts Act, § 26-52-101 et seq., and the exclusion of any wording formerly~~
 2 ~~appearing in the definition of the word "person" in this subchapter shall by~~
 3 ~~no means be construed by the courts, or by administrative officials, as an~~
 4 ~~intention of the General Assembly to grant any additional exclusion or~~
 5 ~~exemption from the provisions of this subchapter;~~

6 ~~(9) "Taxpayer" means any person remitting the tax or who should~~
 7 ~~remit the tax or should have remitted the tax levied by this subchapter;~~

8 ~~(10) "Director" means the Director of the Department of Finance~~
 9 ~~and Administration;~~

10 ~~(11) "Tangible personal property" means personal property which~~
 11 ~~may be seen, weighed, measured, felt, touched, or is in any other manner~~
 12 ~~perceptible to the senses;~~

13 ~~(12) "In this state" or "in the state" or "within this state"~~
 14 ~~means within the exterior limits of the State of Arkansas and includes all~~
 15 ~~territory within those limits owned by or ceded to the United States of~~
 16 ~~America.~~

17
 18 SECTION 4. Arkansas Code § 26-53-102 [Effective when contingency in
 19 Acts 2003, No. 1273, § 88 is met], as it appears on page 80 of the 2003
 20 Supplement to Volume 27A of the Arkansas Code, is amended to read as follows:

21 26-53-102. Definitions. ~~{Effective when contingency in Acts 2003, No.~~
 22 ~~1273, § 88 is met.}~~

23 As used in this subchapter, unless the context otherwise requires:

24 (1) "Director" means the Director of the Department of Finance
 25 and Administration;

26 (2) "In this state" or "in the state" or "within this state"
 27 means within the exterior limits of the State of Arkansas and includes all
 28 territory within those limits owned by or ceded to the United States of
 29 America;

30 (3)(A) "Person" means any individual, company, partnership,
 31 limited liability company, joint venture, joint agreement, association,
 32 mutual or otherwise, corporation, estate, trust, business trust, fiduciary,
 33 receiver, or trustee appointed by any state or federal court or otherwise,
 34 syndicate, this state, any county, city, municipality, school district, or
 35 any other political subdivision of the state, or group or combination acting
 36 as a unit, or any other legal entity.

1 (B) It is the purpose and intent of the General Assembly
 2 in passing this subsection to provide the same definition for the word
 3 "person" in this subchapter as that word is defined in the Arkansas Gross
 4 Receipts Act, § 26-52-101 et seq., and the exclusion of any wording formerly
 5 appearing in the definition of the word "person" in this subchapter shall by
 6 no means be construed by the courts or by administrative officials as an
 7 intention of the General Assembly to grant any additional exclusion or
 8 exemption from the provisions of this subchapter;

9 (4)(A) "Purchase" means the sale of tangible personal property
 10 or taxable services by a vendor to a person for the purpose of storage, use,
 11 distribution, or consumption in this state.

12 (B)(i) Furthermore, for purposes of this subchapter,
 13 "purchase" also includes any withdrawal of tangible personal property from a
 14 stock or reserve maintained outside of the state by any person and
 15 subsequently brought into this state and thereafter stored, consumed,
 16 distributed, or used by that person or by any other person.

17 (ii) In such an event, the tax shall be computed on
 18 the value of the tangible personal property at the time it is brought into
 19 this state.

20 (C) No tax shall be computed to the extent that a
 21 withdrawal consists of carbonaceous materials such as petroleum coke or
 22 carbon anodes that are to be directly used or consumed in the electrolytic
 23 reduction process of producing tangible personal property for ultimate sale
 24 at retail;

25 (5) "Purchaser" means ~~any person who is the recipient of any~~
 26 ~~sale of tangible personal property or taxable services for a valuable~~
 27 ~~consideration acquired for use, storage, distribution, or consumption in this~~
 28 ~~state;~~ a person to whom a sale of personal property is made or to whom a
 29 taxable service is furnished;

30 (6)(A) "Sale" means any transfer, barter, or exchange of the
 31 title or ownership of tangible personal property or taxable services or the
 32 right to use, store, distribute, or consume the tangible personal property or
 33 taxable services for a consideration paid or to be paid in installments or
 34 otherwise and includes any transaction whether called leases, rentals,
 35 bailments, loans, conditional sales, or otherwise, notwithstanding that the
 36 title or possession of the property, or both, is retained for security.

1 (B) For the purpose of this subchapter, the sale of
 2 tangible personal property or taxable services shall be sourced according to
 3 §§ 26-52-521, 26-52-522, and 26-52-523;

4 (7)(A)~~(i)~~ "Sales price" means the consideration paid or given or
 5 contracted to be paid or given by the purchaser to the vendor for taxable
 6 services or the article of the tangible personal property, including any
 7 services that are a part of the sale valued in money whether paid in money or
 8 otherwise and includes any amount for which credit is given to the purchaser
 9 by the vendor without any deduction therefrom on account of the cost of the
 10 property sold, the cost of materials used, labor or service cost, interest
 11 charged, losses, all costs of transportation to the seller, delivery charges,
 12 all taxes imposed on the seller, charges by the seller for any services
 13 necessary to complete the sale, or any other expenses whatsoever.

14 ~~(ii) However, discounts, including cash, term, or~~
 15 ~~coupons that are not reimbursed by a third party, allowed and taken on sales~~
 16 ~~shall not be included.~~

17 (B) "Sales price" shall not include:

18 (i) Any interest, financing, or carrying charges
 19 from credit extended on the sale or any taxes legally imposed directly on the
 20 consumer that are separately stated on the invoice, bill of sale, or similar
 21 document given to the purchaser; ~~or~~

22 (ii) The amount charged for property returned by
 23 customers upon rescission of the contract of sales when the entire amount
 24 charged for the property is refunded either in cash or credit, or the amount
 25 charged for labor or services rendered in ~~installing or~~ applying the property
 26 sold, the use, storage, distribution, or consumption of which is taxable
 27 under this subchapter;

28 (iii) Any taxes legally imposed directly on the
 29 consumer that are separately stated on the invoice, bill of sale, or similar
 30 document given to the purchaser; or

31 (iv) Discounts, including cash, term, or coupons
 32 that are not reimbursed by a third party that are allowed by a seller and
 33 taken by a purchaser on a sale.

34 (C) In addition to the consideration paid or given or
 35 contracted to be paid or given, "sales price" shall include the amount of any
 36 tariff or duty paid with respect to the importation of the taxable service or

1 article stored, used, distributed, or consumed in this state;

2 (8) "Storage" means any keeping or retention in this state of
3 tangible personal property or taxable services purchased from a vendor for
4 any purpose except sale or subsequent use solely outside this state;

5 (9)(A) "Tangible personal property" means personal property that
6 may be seen, weighed, measured, felt, or touched or is in any other manner
7 perceptible to the senses.

8 (B) "Tangible personal property" includes electricity,
9 water, gas, steam, and prewritten computer software;

10 (10) "Taxable service" means a service that is taxable under the
11 Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., or the Arkansas
12 Gross Receipts Act of 1941, § 26-52-101 et seq.;

13 (11) "Taxpayer" means any person remitting the tax or who should
14 remit the tax or should have remitted the tax levied by this subchapter;

15 (12)(A) "Use", with respect to tangible personal property, means
16 the exercise of any right or power over tangible personal property incident
17 to the ownership or control of that property except that it shall not include
18 the sale of that property in the regular course of business.

19 (B) With respect to a taxable service, "use" means the
20 privilege of using the service, enjoyment of the service, or the first act
21 within this state by which the purchaser takes or assumes dominion or control
22 over the service or the article of tangible personal property upon which the
23 service was performed; and

24 (13)(A)(i) "Vendor" means every person engaged in making sales
25 of tangible personal property or taxable services by mail order, by
26 advertising, or by agent, by peddling tangible personal property or taxable
27 services, by soliciting, or by taking orders for such sales for storage, use,
28 distribution, or consumption in this state.

29 (ii) "Vendor" includes all salesmen, solicitors,
30 hawkers, representatives, consignees, peddlers, or canvassers as agents of
31 the dealers, distributors, consignors, supervisors, principals, or employers
32 under whom they operate or from whom they obtain the tangible personal
33 property or taxable services sold by them.

34 (B) Irrespective of whether persons are making sales on
35 their own behalf or on behalf of dealers, distributors, consignors,
36 supervisors, principals, or employers, they must be regarded as vendors, and

1 the dealers, distributors, consignors, supervisors, principals, or employers
2 must be regarded as vendors for purposes of this subchapter.

3
4 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
5 General Assembly of the State of Arkansas that this state is losing sales tax
6 revenue due to the rapid growth of Internet sales; that the playing field
7 between local businesses and out-of-state businesses needs to be leveled;
8 that an undue burden on interstate commerce currently exists; and that this
9 act is necessary in order for the State of Arkansas to be in compliance with
10 the Streamlined Sales Tax Agreement. Therefore, an emergency is declared to
11 exist and this act being necessary for the preservation of the public peace,
12 health, and safety shall become effective on July 1, 2005.