

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 87th General Assembly  
3 Regular Session, 2009

# A Bill

SENATE BILL 322

4  
5 By: Senator Teague  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE SALE AND USE TAX LAWS TO BE  
10 CONSISTENT WITH THE STREAMLINED SALES TAX  
11 AGREEMENT; TO CLARIFY THAT A WITHDRAWAL FROM  
12 STOCK IS SUBJECT TO SALES AND USE TAX; AND FOR  
13 OTHER PURPOSES.  
14

## Subtitle

15  
16 TO AMEND THE SALE AND USE TAX LAWS TO BE  
17 CONSISTENT WITH THE STREAMLINED SALES  
18 TAX AGREEMENT AND TO CLARIFY THAT A  
19 WITHDRAWAL FROM STOCK IS SUBJECT TO  
20 SALES AND USE TAX.  
21  
22

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

25 SECTION 1. Arkansas Code § 26-52-103(13)(A)(v)-(vii), concerning the  
26 sales tax definitions, is amended to read as follows:

27 (v)(a) Installation charge.

28 (b) Installation charges will not be included  
29 in the "gross receipts", "gross proceeds", or "sales price" if they are not a  
30 specifically taxable service under this chapter or the Arkansas Compensating  
31 Tax Act of 1949, § 26-53-101 et seq., and the installation charges have been  
32 separately stated on the invoice, billing, or similar document given to the  
33 purchaser; or

34 ~~(vi) The value of exempt tangible personal property~~  
35 ~~given to the purchaser if taxable and exempt tangible personal property have~~  
36 ~~been bundled together and sold by the seller as a single product or piece of~~



1 merchandise; and

2 ~~(vii)~~ (vi) Credit for any trade-in.

3

4 SECTION 2. Arkansas Code § 26-52-103, concerning the sales tax  
5 definitions, is amended to add an additional subdivision to read as follows:

6 (24) "Motor vehicle" means a vehicle that is self-propelled and  
7 is required to be registered for use on the highway;

8

9 SECTION 3. Arkansas Code § 26-52-301(2), concerning utilities and  
10 public services, is amended to read as follows:

11 (2) Natural or artificial gas, electricity, water, ice, steam, or any  
12 other tangible personal property sold as a utility or provided as a public  
13 service, except transportation services, sewer services, and sanitation or  
14 garbage collection services;

15

16 SECTION 4. Arkansas Code § 26-52-304(a)(1)(B)(vi), concerning the  
17 definition of prewritten computer software, is amended to read as follows:

18 (vi) "Prewritten computer software" means computer  
19 software, including prewritten upgrades, which is not designed and developed  
20 by the author or other creator to the specifications of a specific purchaser;  
21 and

22

23 SECTION 5. Arkansas Code Title 26, Chapter 52, Subchapter 3 is amended  
24 to add an additional section to read as follows:

25 26-52-322. Withdrawals from stock.

26 (a) As used in this section, "withdrawal from stock" means the  
27 withdrawal or use of goods, wares, merchandise, or tangible personal property  
28 from an established business, or from the stock in trade of the established  
29 reserves of an established business, for consumption or use in the  
30 established business or by any other person.

31 (b)(1) The gross receipts tax levied by this chapter, and the  
32 compensating use tax levied by the Arkansas Compensating Tax Act of 1949, §  
33 26-53-101 et seq., are levied on a withdrawal from stock.

34 (2) For purposes of calculating the gross receipts tax or the  
35 compensating use tax under subdivision (b)(1) of this section, the gross  
36 receipts or gross proceeds for a withdrawal from stock is the value of any

1 goods, wares, merchandise, or tangible personal property withdrawn.

2 (c) The Director of the Department of Finance and Administration may  
3 promulgate rules to implement this section.

4  
5 SECTION 6. Arkansas Code § 26-52-433(b)(2), concerning durable medical  
6 equipment, is amended to read as follows:

7 (2)(A) "Durable medical equipment" means equipment, including  
8 repair and replacement parts for the equipment, that:

9 (i) Can withstand repeated use;

10 (ii) Is primarily and customarily used to serve a  
11 medical purpose;

12 (iii) Generally is not useful to a person in the  
13 absence of illness or injury;

14 (iv) Is not worn in or on the body; and

15 (v) Is for home use.

16 (B) ~~"Durable medical equipment" does not include mobility-~~  
17 ~~enhancing equipment;~~ "Repair and replacement parts" include all components or  
18 attachments used in conjunction with the durable medical equipment;

19 (C) "Durable medical equipment" does not include mobility-  
20 enhancing equipment;

21  
22 SECTION 7. Arkansas Code § 26-52-507, concerning tax on florists, is  
23 amended to read as follows:

24 26-52-507. ~~{Repealed.}~~ Florists transmitting orders.

25 (a) The gross receipts tax levied by this state shall be due and  
26 collected by a florist who transmits an order by telegraph, telephone, or  
27 other means of communication for flowers, floral arrangements, potted plants,  
28 or any other article common to the florist business for delivery to any other  
29 place within or without this state.

30 (b) The gross receipts tax collected by the florist transmitting the  
31 order by telegraph, telephone, or other means of communication shall be the  
32 only tax collected on that order regardless of whether the order originated  
33 within or without this state.

34 (c) The destination sourcing rules in § 26-52-521 do not apply to the  
35 florist transmitting the order by telegraph, telephone, or other means of  
36 communication.

1  
 2 SECTION 8. Arkansas Code § 26-52-521(i), concerning the sourcing of  
 3 sales by florists, is amended to read as follows:

4 (i) ~~The Director of the Department of Finance and Administration shall~~  
 5 ~~have the authority to delay the implementation of the destination sourcing~~  
 6 ~~rules in this section until July 1, 2009, as those sourcing rules relate to~~  
 7 ~~florists if the director determines that:~~ The destination sourcing rules in  
 8 this section do not apply to florists.

9 (1) ~~The Streamlined Sales Tax Governing Board, Inc., has changed~~  
 10 ~~or postponed the destination sourcing requirement for florists; and~~

11 (2) ~~The director determines that such delay is necessary to~~  
 12 ~~prevent undue hardship for Arkansas florists.~~

13  
 14 SECTION 9. Arkansas Code § 26-52-801(4), concerning definitions for  
 15 custom manufactured homes, is amended to read as follows:

16 (4) ~~"Sales price"~~ "Acquisition price" means the purchase price  
 17 of the new manufactured home or modular home to be paid by the purchaser as  
 18 set forth on the actual invoice or bill of sale, excluding transportation and  
 19 delivery fees, installation fees, and other items or services that are to be  
 20 included as part of the final sale of the new manufactured home or modular  
 21 home by the retailer before the consideration of a trade-in allowance or down  
 22 payment paid in cash or otherwise.

23  
 24 SECTION 10. Arkansas Code § 26-52-802(a) and (b), concerning the sale  
 25 of manufactured, modular, or mobile homes, is amended to read as follows:

26 (a) Whether from an established business or by a licensed retailer,  
 27 every person selling manufactured homes or modular homes in this state shall  
 28 obtain a permit and report and remit to the Director of the Department of  
 29 Finance and Administration as provided in this chapter, together with:

30 (1) Copies of invoices, sales, tickets, or bills of sale  
 31 reflecting the dates of all sales of such new manufactured homes or modular  
 32 homes;

33 (2) The purchaser's name and address;

34 (3) The make, year, model, serial number, and ~~sales~~ acquisition  
 35 price of each manufactured home or modular home; and

36 (4) If applicable, the amount of tax collected from the

1 purchaser.

2 (b) Upon the initial sale of a new manufactured home or modular home,  
 3 the tax levied by this chapter shall be collected on sixty-two percent (62%)  
 4 of the ~~sales~~ acquisition price of the new manufactured home or modular home.  
 5

6 SECTION 11. Arkansas Code § 26-53-102(12)(A)(v) -- (vii), concerning  
 7 definitions for compensating use tax, is amended to read as follows:

8 (v)(a) Installation charge.

9 (b) However, installation charges will not be  
 10 included in the "sales price" if they are not a specifically taxable service  
 11 under the Arkansas Gross Receipts Tax Act of 1941, § 26-52-101 et seq. or  
 12 this subchapter and the installation charges have been separately stated on  
 13 the invoice, billing, or similar document given to the purchaser; or

14 ~~(vi) The value of exempt personal property given to~~  
 15 ~~the purchaser when taxable and exempt personal property have been bundled~~  
 16 ~~together and sold by the seller as a single product or piece of merchandise;~~  
 17 ~~and~~

18 ~~(vii)~~ (vi) Credit for any trade-in.  
 19

20 SECTION 12. Arkansas Code § 26-53-102, concerning definitions for  
 21 compensating use tax, is amended to add an additional subdivision to read as  
 22 follows:

23 (21) "Motor vehicle" means a vehicle that is self-propelled and  
 24 is required to be registered for use on the highway;  
 25

26 SECTION 13. Arkansas Code § 26-53-109(a)(1)(B)(vi), concerning the  
 27 definition of prewritten computer software, is amended to read as follows:

28 (vi) "Prewritten computer software" means computer  
 29 software, including prewritten upgrades, which is not designed and developed  
 30 by the author or other creator to the specifications of a specific purchaser;  
 31 and  
 32

33 SECTION 14. Arkansas Code § 26-53-141(b)(2)(B), concerning durable  
 34 medical equipment, is amended to read as follows:

35 (B) "Repair and replacement parts" include all components  
 36 or attachments used in conjunction with the durable medical equipment.

1                   (C) “Durable medical equipment” does not include mobility-  
2 enhancing equipment;

3  
4           SECTION 15. EMERGENCY CLAUSE. It is found and determined by the  
5 General Assembly of the State of Arkansas that certain provisions of the law  
6 require amendment to provide consistency with the Streamlined Sales and Use  
7 Tax Agreement, that a withdrawal from stock is subject to gross receipts tax  
8 under current law, that clarification is needed to ensure that the original  
9 legislative intent is fulfilled, and that this act is immediately necessary  
10 to prevent possible confusion among the taxpayers of Arkansas. Therefore, an  
11 emergency is declared to exist and this act being necessary for the  
12 preservation of the public peace, health, and safety shall become effective  
13 on:

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

15           (2) If the bill is neither approved nor vetoed by the Governor, the  
16 expiration of the period of time during which the Governor may veto the bill;

17 or

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

20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36