

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 523

5 By: Senator J. Hutchinson
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE SALES AND USE TAXES APPLICABLE TO
9 FOOD AND FOOD INGREDIENTS; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO AMEND THE SALES AND USE TAXES
12 APPLICABLE TO FOOD AND FOOD INGREDIENTS.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 26-52-317 is amended to read as follows:
20 26-52-317. Food and food ingredients.

21 ~~(a)(1) The Director of the Department of Finance and Administration~~
22 ~~shall determine the following conditions:~~

23 ~~(A) That federal law authorizes the state to collect sales~~
24 ~~and use tax from some or all of the sellers that have no physical presence in~~
25 ~~the State of Arkansas and that make sales of taxable goods and services to~~
26 ~~Arkansas purchasers;~~

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

30 ~~(C)(i) That during a six month consecutive period, the~~
31 ~~amount of net available general revenues attributable to the collection of~~
32 ~~sales and use tax from sellers that have no physical presence in the State of~~
33 ~~Arkansas is equal to or greater than one hundred fifty percent (150%) of~~
34 ~~sales and use tax collected under subsection (c) of this section and § 26-53-~~
35 ~~145 on food and food ingredients.~~

36 ~~(ii) The director shall make the determination under~~



1 ~~subdivision (a)(1)(C)(i) of this section on a monthly basis following the~~
 2 ~~determination that the conditions under subdivision (a)(1)(A) of this section~~
 3 ~~have been met.~~

4 ~~(2)(A) Beginning July 1, 2013, the director shall make a monthly~~
 5 ~~determination as to whether the aggregate amount of deductions from net~~
 6 ~~general revenues attributable to the following during the most recently ended~~
 7 ~~six month consecutive period, as compared with the same six month period in~~
 8 ~~the prior year, has declined by thirty five million dollars (\$35,000,000) or~~
 9 ~~more:~~

10 ~~(i) The Educational Adequacy Fund;~~

11 ~~(ii) Bonds issued under the Arkansas College Savings~~
 12 ~~Bond Act of 1989, § 6-62-701 et seq.;~~

13 ~~(iii) Bonds issued under the Arkansas Higher~~
 14 ~~Education Technology and Facility Improvement Act of 2005, § 6-62-1101 et~~
 15 ~~seq.;~~

16 ~~(iv) The City-County Tourist Facilities Aid Fund;~~

17 ~~(v) Amounts disbursed or approved to be disbursed by~~
 18 ~~the Department of Education for desegregation expenses under any~~
 19 ~~desegregation settlement agreement, as certified by the Treasurer of State~~
 20 ~~and the Chief Fiscal Officer of the State under § 6-20-212; and~~

21 ~~(vi) Bonds issued under the Arkansas Water, Waste~~
 22 ~~Disposal and Pollution Abatement Facilities Financing Act of 1997 and the~~
 23 ~~Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing~~
 24 ~~Act of 2007, § 15-20-1301 et seq.~~

25 ~~(B)(i) In making the determination in this subdivision~~
 26 ~~(a)(2), the director shall consider all economic factors existing at the time~~
 27 ~~of the determination that could potentially affect the decline in the~~
 28 ~~aggregate amount of deductions, including without limitation pending~~
 29 ~~litigation.~~

30 ~~(ii) If the consideration of additional economic~~
 31 ~~factors under subdivision (a)(2)(B)(i) of this section results in a~~
 32 ~~determination that the decline in the aggregate amount of deductions is not~~
 33 ~~likely to remain at that reduced level, the director shall conclude that the~~
 34 ~~conditions in this subdivision (a)(2) have not been met.~~

35 ~~(3) When the director finds that all of the conditions in either~~
 36 ~~subdivision (a)(1) of this section or subdivision (a)(2) of this section have~~

1 been met, then the gross receipts or gross proceeds taxes levied under
 2 subsection (c) of this section shall be levied at the rate of zero percent
 3 (0%) on the sale of food and food ingredients beginning on the first day of
 4 the calendar quarter that is at least thirty (30) days following the
 5 determination of the director.

6 ~~(b)~~ (a) As used in this section:

7 (1) "Food" and "food ingredients" mean the same as defined in §
 8 26-52-103 except that "food" and "food ingredients" do not include prepared
 9 food; and

10 (2) "Prepared food" means the same as defined in § 26-52-103
 11 except that "prepared food" does not include:

12 (A) Food that is only cut, repackaged, or pasteurized by
 13 the seller; or

14 (B) Eggs, fish, meat, and poultry, and foods containing
 15 these raw animal foods requiring cooking by the consumer to prevent food-
 16 borne illnesses, as recommended by the United States Food and Drug
 17 Administration in its 2005 Food Code, § 3-401.11, as it existed on January 1,
 18 2007.

19 ~~(c)(1) Beginning July 1, 2011, in~~ (b)(1) In lieu of the gross
 20 receipts or gross proceeds taxes levied on food and food ingredients under §§
 21 26-52-301 and 26-52-302, there is levied a tax on the gross receipts or gross
 22 proceeds derived from the sale of food and food ingredients at the rate of
 23 one and three-eighths percent (1.375%), to be distributed as follows:

24 (A) Seventy-six and six-tenths percent (76.6%) of the
 25 taxes, interest, penalties, and costs received by the ~~director~~ Director of
 26 the Department of Finance and Administration under this subdivision ~~(c)(1)~~
 27 (b)(1) shall be deposited as general revenues;

28 (B) Eight and five-tenths percent (8.5%) of the taxes,
 29 interest, penalties, and costs received by the director under this
 30 subdivision ~~(c)(1)~~ (b)(1) shall be deposited into the Property Tax Relief
 31 Trust Fund; and

32 (C) Fourteen and nine-tenths percent (14.9%) of the taxes,
 33 interest, penalties, and costs received by the director under this
 34 subdivision ~~(c)(1)~~ (b)(1) shall be deposited into the Educational Adequacy
 35 Fund.

36 (2) The gross receipts or gross proceeds taxes levied under

1 subdivision ~~(e)(1)~~ (b)(1) of this section shall be collected, reported, and
 2 paid in the same manner and at the same time as is prescribed by law for the
 3 collection, reporting, and payment of all other Arkansas gross receipts
 4 taxes.

5 ~~(d)~~ (c) The gross receipts or gross proceeds derived from the sale of
 6 food and food ingredients shall continue to be subject to the:

7 (1) Excise tax levied under Arkansas Constitution, Amendment 75,
 8 § 2; and

9 (2) All municipal and county gross receipts taxes.

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

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 13 SECTION 2. Arkansas Code § 26-53-145 is amended to read as follows:
 14 26-53-145. Food and food ingredients.

15 ~~(a)(1) The Director of the Department of Finance and Administration~~
 16 ~~shall determine the following conditions:~~

17 ~~(A) That federal law authorizes the state to collect sales~~
 18 ~~and use tax from some or all of the sellers that have no physical presence in~~
 19 ~~the State of Arkansas and that make sales of taxable goods and services to~~
 20 ~~Arkansas purchasers;~~

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

24 ~~(C)(i) That during a six month consecutive period, the~~
 25 ~~amount of net available general revenues attributable to the collection of~~
 26 ~~sales and use tax from sellers that have no physical presence in the State of~~
 27 ~~Arkansas is equal to or greater than one hundred fifty percent (150%) of~~
 28 ~~sales and use tax collected under subsection (c) of this section and § 26-52-~~
 29 ~~317 on food and food ingredients.~~

30 ~~(ii) The director shall make the determination under~~
 31 ~~subdivision (a)(1)(C)(i) of this section on a monthly basis following the~~
 32 ~~determination that the conditions under subdivision (a)(1)(A) of this section~~
 33 ~~have been met.~~

34 ~~(2)(A) Beginning July 1, 2013, the director shall make a monthly~~
 35 ~~determination as to whether the aggregate amount of deductions from net~~
 36 ~~general revenues attributable to the following during the most recently ended~~

1 ~~six month consecutive period, as compared with the same six month period in~~
2 ~~the prior year, has declined by thirty five million dollars (\$35,000,000) or~~
3 ~~more.~~

4 ~~(i) The Educational Adequacy Fund;~~

5 ~~(ii) Bonds issued under the Arkansas College Savings~~
6 ~~Bond Act of 1989, § 6-62-701 et seq.;~~

7 ~~(iii) Bonds issued under the Arkansas Higher~~
8 ~~Education Technology and Facility Improvement Act of 2005, § 6-62-1101 et~~
9 ~~seq.;~~

10 ~~(iv) The City County Tourist Facilities Aid Fund;~~

11 ~~(v) Amounts disbursed or approved to be disbursed by~~
12 ~~the Department of Education for desegregation expenses under any~~
13 ~~desegregation settlement agreement, as certified by the Treasurer of State~~
14 ~~and the Chief Fiscal Officer of the State under § 6-20-212; and~~

15 ~~(vi) Bonds issued under the Arkansas Water, Waste~~
16 ~~Disposal and Pollution Abatement Facilities Financing Act of 1997 and the~~
17 ~~Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing~~
18 ~~Act of 2007, § 15-20-1301 et seq.~~

19 ~~(B)(i) In making the determination in this subdivision~~
20 ~~(a)(2), the director shall consider all economic factors existing at the time~~
21 ~~of the determination that could potentially affect the decline in the~~
22 ~~aggregate amount of deductions, including without limitation pending~~
23 ~~litigation.~~

24 ~~(ii) If the consideration of additional economic~~
25 ~~factors under subdivision (a)(2)(B)(i) of this section results in a~~
26 ~~determination that the decline in the aggregate amount of deductions is not~~
27 ~~likely to remain at that reduced level, the director shall conclude that the~~
28 ~~conditions in this subdivision (a)(2) have not been met.~~

29 ~~(3) When the director finds that all of the conditions in either~~
30 ~~subdivision (a)(1) or subdivision (a)(2) of this section have been met, then~~
31 ~~the compensating use taxes levied under subsection (c) of this section shall~~
32 ~~be levied at the rate of zero percent (0%) on the sale of food and food~~
33 ~~ingredients beginning on the first day of the calendar quarter that is at~~
34 ~~least thirty (30) days following the determination of the director.~~

35 ~~(b) (a) As used in this section:~~

36 ~~(1) "Food" and "food ingredients" mean the same as defined in §~~

1 26-53-102 except that “food” and “food ingredients” do not include prepared
 2 food; and

3 (2) “Prepared food” means the same as defined in § ~~26-53-103~~ 26-
 4 53-102 except that “prepared food” does not include:

5 (A) Food that is only cut, repackaged, or pasteurized by
 6 the seller; or

7 (B) Eggs, fish, meat, and poultry, and foods containing
 8 these raw animal foods requiring cooking by the consumer to prevent food-
 9 borne illnesses, as recommended by the United States Food and Drug
 10 Administration in its 2005 Food Code, § 3-401.11, as it existed on January 1,
 11 2007.

12 ~~(e)(1) Beginning July 1, 2011, in~~ (b)(1) In lieu of the compensating
 13 use taxes levied on food and food ingredients under §§ 26-53-106 and 26-53-
 14 107, there is levied a tax on the privilege of storing, using, distributing,
 15 or consuming food and food ingredients at the rate of one and three-eighths
 16 percent (1.375%) to be distributed as follows:

17 (A) Seventy-six and six-tenths percent (76.6%) of the
 18 taxes, interest, penalties, and costs received by the ~~director~~ Director of
 19 the Department of Finance and Administration under this subdivision ~~(e)(1)~~
 20 (b)(1) shall be deposited as general revenues;

21 (B) Eight and five-tenths percent (8.5%) of the taxes,
 22 interest, penalties, and costs received by the director under this
 23 subdivision ~~(e)(1)~~ (b)(1) shall be deposited into the Property Tax Relief
 24 Trust Fund; and

25 (C) Fourteen and nine-tenths percent (14.9%) of the taxes,
 26 interest, penalties, and costs received by the director under this
 27 subdivision ~~(e)(1)~~ (b)(1) shall be deposited into the Educational Adequacy
 28 Fund.

29 (2) The use tax levied under subdivision ~~(e)(1)~~ (b)(1) of this
 30 section shall be collected, reported, and paid in the same manner and at the
 31 same time as is prescribed by law for the collection, reporting, and payment
 32 of all other Arkansas compensating use taxes.

33 ~~(d)~~ (c) The following shall continue to apply to the sales price of
 34 food and food ingredients:

35 (1) The compensating use tax levied under Arkansas Constitution,
 36 Amendment 75, § 2; and

1 (2) All municipal and county use taxes.

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

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5 SECTION 3. Arkansas Code § 19-5-1103(b), concerning the Property Tax
 6 Relief Trust Fund, is amended to read as follows:

7 (b) The fund shall consist of such revenues as generated by §§ 26-52-
 8 302(c), ~~26-52-317(e)(1)(B)~~ 26-52-317(b)(1)(B), 26-52-319(a)(2)(B), 26-53-
 9 107(c), ~~26-53-145(e)(1)(B)~~ 26-53-145(b)(1)(B), 26-53-148(a)(2)(B), 26-56-
 10 201(g)(1)(C), and 26-56-224(c)(2) and shall be used for such purposes as set
 11 out in § 26-26-310.

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13 SECTION 4. Arkansas Code § 19-5-1227(b), concerning the Educational
 14 Adequacy Fund, is amended to read as follows:

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

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

21 (2) The revenues credited to the Educational Adequacy Fund under
 22 § 26-54-113(b)(2);

23 (3) The revenues generated by §§ 26-52-302(d), 26-52-316, ~~26-52-~~
 24 ~~317(e)(1)(C)~~ 26-52-317(b)(1)(C), 26-52-319(a)(2)(C), 26-53-107(d), ~~26-53-~~
 25 ~~145(e)(1)(C)~~ 26-53-145(b)(1)(C), 26-53-148(a)(2)(C), 26-56-201(g)(1)(B), 26-
 26 56-224(c)(3), and 26-57-1002(d)(1)(A)(ii); and

27 (4) Other revenues as provided by law.

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29 SECTION 5. Arkansas Code § 19-6-201(58), concerning the enumeration of
 30 general revenues, is amended to read as follows:

31 (58) Seventy-six and six-tenths percent (76.6%) of all taxes,
 32 interest, penalties, and costs on taxes levied on the gross receipts or gross
 33 proceeds derived from the sale of food and food ingredients, § ~~26-52-~~
 34 ~~317(e)(1)(A)~~ 26-52-317(b)(1)(A);

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36 SECTION 6. Arkansas Code § 19-6-201(60), concerning the enumeration of

1 general revenues, is amended to read as follows:

2 (60) Seventy-six and six-tenths percent (76.6%) of the taxes,
3 interest, penalties, and costs received on taxes levied on the privilege of
4 storing, using, distributing, or using food and food ingredients, § ~~26-53-~~
5 ~~145(e)(1)(A)~~ 26-53-145(b)(1)(A);

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