

State of Arkansas

76th General Assembly

Regular Session, 1987

HOUSE BILL 1948

By: Representative Mahony

"AN ACT TO REQUIRE WHOLESALERS TO COLLECT AND REMIT SALES TAX, TO PROVIDE FOR A CREDIT FOR SALES TAX PAID BY RETAILERS, TO PROVIDE FOR A PERMIT FOR WHOLESALERS, TO PROVIDE FOR THE ADMINISTRATION OF THE COLLECTION OF TAX BY WHOLESALERS; AND FOR OTHER PURPOSES."

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

SECTION 1. DEFINITIONS. (A) General. Terms used in this Act shall have the same meaning as those terms have when used in the Sales Tax, Use Tax, or Tax Procedure Act, whichever applies, unless a different meaning is specifically required by a provision of this Act or the use of the term in this Act clearly requires a different meaning.

(B) "Retail sale" means a sale to the ultimate consumer.

(C) "Retailer" or "retail seller" or "retail vendor" is any seller or vendor other than a wholesaler.

(D) "Sales tax" means the tax levied by Act 386 of 1941, as amended (Ark. Stats. Ann. §84-1901 et seq.), and any other statewide tax which is additional or supplemental thereto which is levied on sales of tangible personal property.

(E) "Tax Procedure Act" means the Arkansas Tax Procedure Act, Act 401 of 1979, as amended (Ark. Stats. Ann. §84-4701 et seq.).

(F) "Use tax" means the tax levied by Act 487 of 1949, as amended (Ark. Stats. Ann. §84-3101 et seq.), and any other statewide tax which is additional or supplemental thereto which is levied on the storage, use or consumption of tangible personal property in this State which was purchased out of state.

(G) "Wholesaler" means a seller or out-of-state vendor of tangible personal property whose retail sales are less than fifty percent (50%) of the dollar amount of his total sales. To calculate total sales for the preceding

sentence, sales made in interstate commerce and sales where delivery is made outside the territorial jurisdiction of the State of Arkansas shall be included as sales, but shall not be considered retail sales. A seller or out-of-state vendor, who can prove at least fifty percent (50%) of his sales excluding sales of motor fuel and distillate special motor fuels are exempt from Arkansas sales tax, may apply to the Commissioner for a wholesaler permit and if the Commissioner finds it in the best interest for the administration of this Act he may grant a wholesaler permit to the applicant even though the applicant might not otherwise qualify as a wholesaler.

(H) "Manufacturer" means any person who is a manufacturer, compounder, processor, assembler or preparer of products for sale.

SECTION 2. (A) After the effective date of this Act no retailer shall be entitled to the sale for resale exemption allowed by Section 4(i) of Act 386 of 1941 (Ark. Stats. Ann. §84-1904(i)) but shall be required to pay the sales or use tax due to the seller or vendor.

(B) No person shall be allowed to claim a sales exempt as a sale for resale under Ark. Stats. Ann. §84-1904(i) unless that person qualifies for and has a permit required for a wholesaler under this Act. This restriction of the sale for resale exemption shall include manufacturers which claim sale for resale for tangible personal property sold which becomes a recognizable and integral part of a manufactured product.

(C) Manufacturers shall purchase and wholesalers shall sell to manufacturer as sales for resale only that property which becomes a recognizable and integral part of the manufactured product. Manufacturers who claim property purchased as exempt sales for resale when the property does not become a recognizable and integral part of the manufactured product shall be jointly and severally liable for tax, penalty and interest with the seller of that property.

SECTION 3. After the effective date of this Act all wholesalers and retailers shall collect and remit the sales or use tax due on all sales to retailers. All wholesalers and retailers shall file a return showing the amount of tax due as required by law and shall pay the tax due at the time of filing such return. The return filed by wholesalers and retailers which is required by this Act shall be made and paid at the same time and subject to

the same requirements, rules, regulations, discounts and penalties as provided for returns of sales or use taxes, whichever is applicable. Returns made by wholesalers and retailers shall be on such forms as the Commissioner of Revenues shall require. No wholesaler or retailer shall be required to report or remit any local sales and use tax whether levied by a county, city or town on any sale to a retailer.

SECTION 4. (A) Wholesalers shall include the value of any goods, wares, merchandise, or property withdrawn or used:

- (1) From the established business,
- (2) From the stock in trade of the established reserves, or
- (3) From any other property purchased tax exempt for consumption or use in such business or by any other person as taxable sales on the return required by this Act.

(B) Retailers shall not be entitled to claim the credit hereafter provided for tax paid on any goods, wares, merchandise or property withdrawn or used from the established business or from the stock in trade of the established reserves for consumption or use in such business or by any other person when completing the return which they are required to file under the sales or use tax acts.

SECTION 5. Retailers are hereby granted and shall be allowed a credit equal to the amount of sales tax which they actually paid for tangible personal property which the retailer purchased for resale. In the event the retailer is entitled to credit in excess of his tax liability for any reporting period the Commissioner of Revenues shall issue the retailer a refund. The Commissioner of Revenues shall not issue any refund under this Act in an amount of five dollars or less unless the taxpayer requests the refund in writing.

SECTION 6. On and after the effective date of this Act each wholesaler required by this Act to report and remit tax shall obtain a permit from the Commissioner of Revenues for the purpose of reporting such tax. The application for the permit shall contain such information as is contained in a sales tax permit and any other additional information which may be required by the Commissioner of Revenues in order to determine whether a person is qualified

as a wholesaler under this Act.

SECTION 7. All purchases by persons holding the direct pay permit authorized at Ark. Stats. Ann. §84-1945 shall be exempt from the tax unless the Commissioner of Revenues shall have excluded such purchases from direct pay treatment.

SECTION 8. All provisions of this Act shall be administered in the same manner as provided for similar provisions in the Sales Tax, Use Tax, and Tax Procedure Act laws.

SECTION 9. REPEALER. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 10. EFFECTIVE DATE. This Act shall be effective on and after October 1, 1987.

