

1 State of Arkansas

2 80th General Assembly

3 Regular Session, 1995

4 By: Representative Critcher

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For An Act To Be Entitled

8 "AN ACT TO AMEND TITLE 26, CHAPTER 52, SUBCHAPTER 5 OF THE
9 ARKANSAS CODE OF 1987 ANNOTATED TO PROVIDE THAT A SELLER
10 WHO ACCEPTS A VALID RESALE CERTIFICATE FROM A PURCHASER IN
11 GOOD FAITH WILL BE RELIEVED FROM LIABILITY FOR SALES OR
12 USE TAX; AND FOR OTHER PURPOSES."

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Subtitle

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

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23 SECTION 1. Title 26, Chapter 52, Subchapter 5 of the Arkansas Code of
24 1987 Annotated is amended by adding a new section to read as follows:

25 "26-52-516. (a) The sales tax liability for all sales of tangible
26 personal property is upon the seller unless, at or before the time of sale,
27 the seller takes in good faith a certificate of resale from the holder of a
28 valid retailer's permit who is regularly engaged in the established business
29 of reselling property of the type being purchased. The resale certificate
30 must contain the purchaser's sales tax permit number, must state that the
31 purchase is for resale and must contain any additional information as the
32 director may require.

33 (b) Where tangible personal property is purchased tax free pursuant to
34 subsection (a) of this section and the tangible personal property is not
35 resold by the purchaser, the purchaser is solely liable for reporting and

1 remitting to the director any tax which should have been paid at the time of
2 purchase. Use or disposition of the property other than for resale shall be
3 deemed a withdrawal from stock for all purposes, including reporting and
4 remittance of the tax due, and the tax shall be due from the purchaser at the
5 time of the withdrawal from stock.

6 (c) The director may provide sale for resale certificates to assist
7 retailers in properly accounting for nontaxable sales of tangible personal
8 property. Such certificates must be completed as to the information required
9 in order to be valid and cannot be used to establish any other exemption from
10 sales or use tax.

11 (d) Any person repeatedly selling the same type of property to the same
12 purchaser for resale may accept a blanket certificate covering more than one
13 (1) transaction.

14 (e) The liability for the tax is not transferred from the seller to the
15 purchaser if the seller has not accepted a valid exemption certificate in
16 good faith. If the seller has actual knowledge of information or
17 circumstances indicating that it is unlikely that the property will be
18 resold, then in order to act in good faith the seller must make further
19 inquiry to determine the facts supporting the certificate of resale."
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21 SECTION 2. Ark. Code Ann. §26-53-106(d)(1) is amended to read as
22 follows:

23 "(d)(1) For the purpose of the proper administration of this subchapter
24 and to prevent evasion of the tax and the duty to collect the tax imposed in
25 this section, it shall be presumed that tangible personal property sold by
26 any vendor for delivery in this state or transportation to this state is sold
27 for storage, use, distribution, or consumption in this state unless the
28 vendor selling the tangible personal property has taken from the purchaser a
29 resale certificate signed by and bearing the name, address and sales tax
30 permit number of the purchaser certifying that the property was purchased for
31 resale. The use by the purchaser of a resale certificate and any resulting
32 liability for, or exemption from, use tax in a transaction involving a resale
33 certificate shall be governed in all respects by the terms of § 26-52-516."
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35 SECTION 3. All provisions of this act of a general and permanent

1 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
2 Code Revision Commission shall incorporate the same in the Code.

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4 SECTION 4. If any provision of this act or the application thereof to
5 any person or circumstance is held invalid, such invalidity shall not affect
6 other provisions or applications of the act which can be given effect without
7 the invalid provision or application, and to this end the provisions of this
8 act are declared to be severable.

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10 SECTION 5. All laws and parts of laws in conflict with this act are
11 hereby repealed.

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13 SECTION 6. EMERGENCY. It is hereby found and determined by the
14 General Assembly of the State of Arkansas that vendors in the ordinary course
15 of business have relied to their detriment by accepting resale certificates
16 from purchasers in good faith, only to later incur tax liability if the
17 property purchased was not resold by the purchaser; that the purchaser in
18 most cases will be in the best position to determine whether the resale
19 exemption is valid but current law does not permit recourse against the
20 purchaser if the property purchased is not in fact resold; and that the
21 practicalities of business require that vendors be permitted to relieve
22 themselves of tax liability upon good faith acceptance of a resale
23 certificate and this act is designed to afford such relief. Therefore, an
24 emergency is hereby declared to exist and this act being necessary for the
25 immediate preservation of the public peace, health and safety shall be in
26 full force and effect from and after July 1, 1995.

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