

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995  
4 By: Representatives Cash, Kidd, Schexnayder, McGee, Stalnaker, McKissack,  
5 Northcutt and Wilkins

# A Bill

HOUSE BILL 1994

## For An Act To Be Entitled

"AN ACT TO PROVIDE FOR THE PAYMENT OF TAXES ON TANGIBLE  
PERSONAL PROPERTY SOLD THROUGH VENDING DEVICES; AND FOR  
OTHER PURPOSES."

### Subtitle

"AN ACT PROVIDING FOR THE TAXATION OF  
PROPERTY SOLD THROUGH VENDING DEVICES."

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

SECTION 1. For the purposes of this Act, the following definitions shall apply:

(a) "Person" shall mean any individual, partnership, corporation, limited liability corporation, association, organization, nonprofit corporation and any county or municipal subdivision of this State.

(b) "Vending Device" shall mean any machine or manual device which dispenses tangible personal property after a coin or thing of value is inserted. The term "vending device" shall not include devices used exclusively for the purpose of selling cigarettes, newspapers, magazines or postage stamps.

(c) "Director" shall mean the Director of the Arkansas Department of Finance and Administration or his authorized agents.

(d) "Vending Device Operator" shall mean any person who sells tangible personal property through vending devices *and who elect to pay the taxes imposed by Section 2 of this act.*

SECTION 2. (a) Any person who sells tangible personal property

1 through vending devices may elect to register with the director as a vending  
2 device operator and pay the state and local sales and use taxes as provided  
3 in this Section.

4 (b) Any person who elects to register as a vending device operator  
5 shall obtain a gross receipts tax permit from the director as provided in  
6 Ark. Code Ann. §26-52-201 through §26-52-208.

7 (c) All tangible personal property purchased by a vending device  
8 operator for resale through a vending device shall be purchased exempt from  
9 the Arkansas Gross Receipts Tax, the Arkansas Compensating Use Tax and any  
10 local sales and use taxes pursuant to the sale for resale exemption provided  
11 for in Ark. Code Ann. §26-52-401(12). The vending device operator shall  
12 maintain suitable records reflecting all purchases of tangible personal  
13 property during each calendar month for resale through a vending device.

14 (d) (1) A tax of 4½% is hereby levied on the purchase price of all  
15 tangible personal property purchased or withdrawn from inventory during each  
16 calendar month by a vending device operator for resale through a vending  
17 device. This tax shall be in lieu of any State gross receipts tax on the  
18 gross receipts or gross proceeds derived from the sale of the property by the  
19 vending device operator through a vending device.

20 (2) An additional tax of 1% is hereby levied on the purchase  
21 price of all tangible personal property purchased or withdrawn from inventory  
22 during each calendar month for resale through a vending device. This tax  
23 shall be in lieu of any local gross receipts taxes imposed by any city or  
24 county of this State on the gross receipts or gross proceeds derived from the  
25 sale of the property by the vending device operator through a vending device.

26 (e) The taxes levied by subsection (d) of this Section shall be  
27 reported and paid in the same manner and at the same time as prescribed by  
28 law for the reporting and payment of the Arkansas Gross Receipts Tax.

29 (f) When calculating the taxes due under this Section, a vending  
30 device operator shall be allowed to deduct any manufacturer's rebates  
31 received which lower the final purchase price paid by the vending device  
32 operator for property sold through a vending device.

33 (g) *Any vending device operator who manufactures the product which is*  
34 *withdrawn from stock for sale through a vending device shall calculate the*  
35 *tax due by multiplying the tax rate set out in subsection (d) of this section*

1 *by the selling price which the person would sell the product to another*  
2 *vending device operator for resale through a vending device.*

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4 SECTION 3. (a) Any person selling tangible personal property through  
5 a vending device and who elect not to register as a vending device operator  
6 shall:

7 (1) Surrender any gross receipts tax permits issued by the  
8 director unless the permit is needed to report taxable sales other than sales  
9 through a vending device; and

10 (2) Pay the Arkansas Gross Receipts Tax, the Arkansas  
11 Compensating Use Tax and any applicable local sales and use taxes to their  
12 vendor on all purchases of tangible personal property purchased for resale  
13 through a vending device. The sale for resale exemption provided in Ark.  
14 Code Ann. §26-52-401(12) shall not apply to purchases of tangible personal  
15 property for resale through vending devices unless the purchaser is  
16 registered with the director as a vending device operator. However, any  
17 person not registered as a vending device operator who maintains property in  
18 inventory for subsequent resale on which the state and local sales and use  
19 taxes have not been paid and who subsequently withdraws that property from  
20 inventory for sale through a vending device, shall report and pay the state  
21 and local sales and use taxes on their purchase price of such property  
22 withdrawn from inventory.

23 (b) Any person selling property through vending devices who has paid  
24 the state and local sales and use taxes in the manner provided by this  
25 Section shall not be required to collect and remit state or local sales tax  
26 on sales of tangible personal property through the vending device.

27 (c) *Any person who elects to pay tax on tangible personal property*  
28 *sold through vending devices in accordance with the provisions of this*  
29 *section, who manufactures the product which is withdrawn from stock for*  
30 *resale through a vending device shall pay the taxes due under this section by*  
31 *multiplying the tax rate by the selling price which the person would sell the*  
32 *product to another for resale through a vending device.*

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34 SECTION 4. (a) The revenues derived from *Section 2(d)(1)* of this Act  
35 shall be general revenues and shall be deposited in the State Treasury in the

1 same manner as the Arkansas Gross Receipts Tax imposed by Ark. Code Ann. §26-  
2 52-101 et seq.

3 (b) All revenues derived from Section 2(d)(2) of this Act shall be  
4 deposited by the State Treasurer in the Identification Pending Trust Fund for  
5 Local Sales Use Taxes in accordance with the provision of Ark. Code Ann. §§  
6 26-74-221 and 26-75-223 and all revenues deposited in that fund shall be  
7 distributed to the cities and counties of this State in accordance with the  
8 provisions of Ark. Code Ann. §§ 26-74-221(a)(2)(C)(ii) and 26-75-  
9 223(a)(2)(C)(ii).

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11 SECTION 5. The provisions of the Arkansas Vending Devices Decal Act of  
12 1993, the same being Ark. Code Ann. §§ 26-57-1001 through 26-57-1017, are  
13 hereby repealed effective July 1, 1995.

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15 SECTION 6. (a) All persons who sell tangible personal property  
16 through vending devices shall affix the name and identification number, if  
17 any, of the person responsible for the payment of the taxes imposed by  
18 Sections 2 and 3 of this Act.

19 (b) (1) If any vending device does not have the information required  
20 by subsection (a) of this Section affixed thereto, there shall be a  
21 presumption that the taxes imposed by this Act have not been paid. The  
22 director shall seal any vending device subject to this presumption in such a  
23 manner to prevent any further sales through the device and shall assess and  
24 collect a penalty of \$50 per vending device against the person selling  
25 tangible personal property through the device.

26 (2) The presumption in subsection (b) (1) of this Section shall  
27 be overcome if the person selling property through the vending device affixes  
28 the information required by this Section to the device and proves that the  
29 taxes imposed by Sections 2 and 3 of this Act have been paid.

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32 SECTION 7. All provisions of this act of a general and permanent  
33 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
34 Code Revision Commission shall incorporate the same in the Code.

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

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7 SECTION 9. All laws and parts of laws in conflict with this act are  
8 hereby repealed.

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10 SECTION 10. EMERGENCY. It is hereby found and determined that the  
11 Vending Devices Decal Act of 1993 will expire on June 30, 1995 and that it is  
12 necessary to provide for the payment of taxes on tangible personal property  
13 sold through vending devices after June 30, 1995 and this Act provides a fair  
14 and equitable method for collecting taxes on tangible personal property sold  
15 through vending devices after that date. Therefore, an emergency is hereby  
16 declared to exist and this Act being necessary for the immediate  
17 preservation of the public peace, health and safety shall be in full force  
18 and effect on and after July 1, 1995.

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*/s/Claud V. Cash, et al*

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*As Engrossed: 3/16/95*

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