

1 State of Arkansas
2 81st General Assembly
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4
5 By: Senator Mahony
6
7

A Bill

SENATE BILL 506

For An Act To Be Entitled

9 "AN ACT TO REPEAL THE WHOLESALE VENDING MACHINE TAX AND TO
10 PROVIDE THAT ALL ITEMS SOLD THROUGH A VENDING MACHINE WILL
11 BE SUBJECT TO SALES TAX; AND FOR OTHER PURPOSES."

Subtitle

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14 "AN ACT TO REPEAL THE WHOLESALE VENDING
15 MACHINE TAX AND TO PROVIDE THAT ALL
16 ITEMS SOLD THROUGH A VENDING MACHINE
17 WILL BE SUBJECT TO SALES TAX."
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Subchapter 10 of Chapter 57 of Title 26 is hereby repealed.

22 ~~— § 26-57-1001. Definitions.~~

23 ~~For the purposes of this subchapter, the following definitions shall apply:~~

24 ~~— (1) "Director" shall mean the Director of the Department of Finance and~~
25 ~~Administration or his authorized agents;~~

26 ~~— (2) "Person" shall mean any individual, partnership, corporation, limited~~
27 ~~liability corporation, association, organization, or nonprofit corporation,~~
28 ~~and any county or municipal subdivision of this state;~~

29 ~~— (3)(A) "Vending device" shall mean any machine or manual device which~~
30 ~~dispenses tangible personal property after a coin or thing of value is~~
31 ~~inserted.~~

32 ~~— (B) The term "vending device" shall not include devices used~~
33 ~~exclusively for the purpose of selling cigarettes, newspapers, magazines, or~~
34 ~~postage stamps; and~~

35 ~~— (4) "Vending device operator" shall mean any person who sells tangible~~
36 ~~personal property through vending devices, and who elects to pay the taxes~~

1 ~~imposed by \AA 26-57-1002.~~

2

3 ~~\AA 26-57-1002. Registration - Records - Amount of tax.~~

4 ~~(a) Any person who sells tangible personal property through vending devices~~
5 ~~may elect to register with the director as a vending device operator and pay~~
6 ~~the state and local sales and use taxes as provided in this section.~~

7 ~~— (b) Any person who elects to register as a vending device operator shall~~
8 ~~obtain a gross receipts tax permit from the director as provided in \AA~~
9 ~~26-52-201 et seq.~~

10 ~~— (c)(1) All tangible personal property purchased by a vending device~~
11 ~~operator for resale through a vending device shall be purchased exempt from~~
12 ~~the Arkansas gross receipts tax, \AA 26-52-101 et seq., the Arkansas~~
13 ~~compensating use tax, \AA 26-53-101 et seq., and any local sales and use taxes~~
14 ~~pursuant to the sale for resale exemption provided for in \AA 26-52-401(12).~~

15 ~~— (2) The vending device operator shall maintain suitable records~~
16 ~~reflecting all purchases of tangible personal property during each calendar~~
17 ~~month for resale through a vending device.~~

18 ~~— (d)(1)(A) A tax of four and one-half percent (4.5%) is hereby levied on~~
19 ~~the purchase price of all tangible personal property purchased or withdrawn~~
20 ~~from inventory during each calendar month by a vending device operator for~~
21 ~~resale through a vending device.~~

22 ~~— (B) This tax shall be in lieu of any state gross receipts tax on the~~
23 ~~gross receipts or gross proceeds derived from the sale of the property by the~~
24 ~~vending device operator through a vending device.~~

25 ~~— (2)(A) An additional tax of one percent (1%) is hereby levied on the~~
26 ~~purchase price of all tangible personal property purchased or withdrawn from~~
27 ~~inventory during each calendar month for resale through a vending device.~~

28 ~~— (B) This tax shall be in lieu of any local gross receipts taxes imposed~~
29 ~~by any city or county of this state on the gross receipts or gross proceeds~~
30 ~~derived from the sale of the property by the vending device operator through a~~
31 ~~vending device.~~

32 ~~— (e) The taxes levied by subsection (d) of this section shall be reported~~
33 ~~and paid in the same manner and at the same time as prescribed by law for the~~
34 ~~reporting and payment of the Arkansas gross receipts tax, \AA 26-52-101 et seq.~~

35 ~~— (f) When calculating the taxes due under this section, a vending device~~
36 ~~operator shall be allowed to deduct any manufacturer's rebates received which~~

1 ~~lower the final purchase price paid by the vending device operator for~~
2 ~~property sold through a vending device.~~

3 ~~— (g) Any vending device operator who manufactures the product which is~~
4 ~~withdrawn from stock for sale through a vending device shall calculate the tax~~
5 ~~due by multiplying the tax rate set out in subsection (d) of this section by~~
6 ~~the selling price for which the person would sell the product to another~~
7 ~~vending device operator for resale through a vending device.~~

8

9 ~~— § 26-57-1003. Election not to register.~~

10 ~~(a) Any person selling tangible personal property through a vending device,~~
11 ~~and who elects not to register as a vending device operator, shall:~~

12 ~~— (1) Surrender any gross receipts tax permits issued by the director,~~
13 ~~unless the permit is needed to report taxable sales other than sales through a~~
14 ~~vending device; and~~

15 ~~— (2)(A) Pay the Arkansas gross receipts tax, § 26-52-101 et seq., the~~
16 ~~Arkansas compensating use tax, § 26-53-101 et seq., and any applicable local~~
17 ~~sales and use taxes to their vendor on all purchases of tangible personal~~
18 ~~property purchased for resale through a vending device.~~

19 ~~— (B)(i) The sale for resale exemption provided in § 26-52-401(12) shall~~
20 ~~not apply to purchases of tangible personal property for resale through~~
21 ~~vending devices unless the purchaser is registered with the director as a~~
22 ~~vending device operator.~~

23 ~~— (ii) However, any person not registered as a vending device operator~~
24 ~~who maintains property in inventory for subsequent resale on which the state~~
25 ~~and local sales and use taxes have not been paid, and who subsequently~~
26 ~~withdraws that property from inventory for sale through a vending device,~~
27 ~~shall report and pay the state and local sales and use taxes on their purchase~~
28 ~~price of such property withdrawn from inventory.~~

29 ~~— (b) Any person selling property through vending devices who has paid the~~
30 ~~state and local sales and use taxes in the manner provided by this section~~
31 ~~shall not be required to collect and remit state or local sales tax on sales~~
32 ~~of tangible personal property through the vending device.~~

33 ~~— (c) Any person who elects to pay tax on tangible personal property sold~~
34 ~~through vending devices in accordance with the provisions of this section and~~
35 ~~who manufactures the product which is withdrawn from stock for resale through~~
36 ~~a vending device shall pay the taxes due under this section by multiplying the~~

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

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4 ~~§ 26-57-1004. Identification of taxpayer - Presumption of nonpayment.~~

5 ~~(a) All persons who sell tangible personal property through vending devices~~
 6 ~~shall affix the name and identification number, if any, of the person~~
 7 ~~responsible for the payment of the taxes imposed by §§ 26-57-1002 and~~
 8 ~~26-57-1003.~~

9 ~~— (b)(1)(A) If any vending device does not have the information required by~~
 10 ~~subsection (a) of this section affixed thereto, there shall be a presumption~~
 11 ~~that the taxes imposed by this subchapter have not been paid.~~

12 ~~— (B) The director shall seal any vending device subject to this~~
 13 ~~presumption in such a manner as to prevent any further sales through the~~
 14 ~~device and shall assess and collect a penalty of fifty dollars (\$50.00) per~~
 15 ~~vending device against the person selling tangible personal property through~~
 16 ~~the device.~~

17 ~~— (2) The presumption in subdivision (b)(1) of this section shall be~~
 18 ~~overcome if the person selling property through the vending device affixes the~~
 19 ~~information required by this section to the device and proves that the taxes~~
 20 ~~imposed by §§ 26-57-1002 and 26-57-1003 have been paid.~~

21

22 ~~§ 26-57-1005. Disposition of revenues.~~

23 ~~(a) The revenues derived from § 26-57-1002(d)(1) shall be general revenues~~
 24 ~~and shall be deposited in the State Treasury in the same manner as the~~
 25 ~~Arkansas gross receipts tax, § 26-52-101 et seq.~~

26 ~~— (b) All revenues derived from § 26-57-1002(d)(2) shall be deposited by~~
 27 ~~the Treasurer of State in the Identification Pending Trust Fund for Local~~
 28 ~~Sales and Use Taxes in accordance with the provisions of §§ 26-74-221 and~~
 29 ~~26-75-223, and all revenues deposited in that fund shall be distributed to the~~
 30 ~~cities and counties of this state in accordance with the provisions of §§~~
 31 ~~26-74-221(a)(2)(C)(ii) and 26-75-223(a)(2)(C)(ii).~~

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33 SECTION 2. Title 26, Chapter 52, Subchapter 3 is amended to add a new
 34 section at the end thereof to read as follows:

35 "The gross receipts or gross proceeds derived from the sale of tangible
 36 personal property through vending devices are subject to the Arkansas Gross

1 Receipts Tax, §§ 26-52-101, et seq. The selling price of the items sold
2 through a vending device is deemed to include all applicable state and local
3 sales tax, and the amount of tax due to be remitted shall be calculated
4 accordingly."

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6 SECTION 3. All provisions of this act of a general and permanent nature
7 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
8 Revision Commission shall incorporate the same in the Code.

9

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

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

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19 SECTION 6. EMERGENCY. It is hereby found and determined by the General
20 Assembly of the State of Arkansas that the current method of taxing sales by
21 vending devices is ineffective and unfair to vendors who sell the same items
22 without using vending devices because they must collect the remit tax based
23 upon the price paid by their customer for the item, whereas operators of
24 vending devices have the option of paying tax on the amount they pay for the
25 item placed into the vending device rather than the amount the customer pays
26 for the item. This disparate treatment which is based solely upon how the
27 sale is effectuated gives operators of vending devices an unfair competitive
28 advantage over their competitors who do not operate vending devices.
29 Therefore an emergency is declared to exist and this act being immediately
30 necessary for the preservation of the public peace, health and safety shall
31 be in full force and effect as of July 1, 1997.

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