

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

# A Bill

HOUSE BILL 1033

5 By: Representative Lendall  
6  
7

## For An Act To Be Entitled

9 "AN ACT TO PROVIDE AN EXEMPTION FROM THE ARKANSAS  
10 GROSS RECEIPTS TAX FOR SALES OF FOOD FOR HUMAN  
11 CONSUMPTION AND FOR SALES OF USED MOTOR VEHICLES; TO  
12 IMPOSE AN ADDITIONAL ONE PERCENT SALES AND USE TAX; TO  
13 AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE TO CONFORM  
14 TO THIS ACT; AND FOR OTHER PURPOSES."

## Subtitle

16 "AN ACT TO PROVIDE AN EXEMPTION FROM THE  
17 ARKANSAS GROSS RECEIPTS TAX FOR SALES OF  
18 FOOD FOR HUMAN CONSUMPTION AND FOR SALES  
19 OF USED MOTOR VEHICLES; TO IMPOSE AN  
20 ADDITIONAL ONE PERCENT SALES AND USE  
21 TAX."  
22  
23  
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
26

27 SECTION 1. Arkansas Code 26-52-401 concerning exemptions from the  
28 Arkansas Gross Receipts Tax, is amended to add the following additional  
29 subdivisions:

30 "(36) (A) Gross receipts or gross proceeds derived from the sale of food  
31 for human consumption other than sales by restaurants, cafes, and cafeterias.

32 (B) For the purpose of this subdivision (36) 'food' means food  
33 eligible for purchase with food stamps or food coupons issued in accordance  
34 with the Food Stamp Act of 1964. However, this subdivision shall not be  
35 construed or interpreted as repealing or amending §26-52-401 (27). The  
36 reference in this subdivision is used solely for the purpose of identifying

1 those items exempt from tax.

2 (37) Gross receipts or gross proceeds derived from the sale of used  
 3 motor vehicles."

5 SECTION 2. In addition to the excise tax levied upon the gross proceeds  
 6 or gross receipts derived from all sales by the Arkansas Gross Receipts Act,  
 7 beginning at Arkansas Code 26-52-101, there is levied an excise tax of one  
 8 percent (1%) upon all taxable sales of property and services subject to the  
 9 tax levied in that act, and such tax shall be collected, reported, and paid in  
 10 the same manner and at the same time as is prescribed by law for the  
 11 collection, reporting, and payment of all other Arkansas gross receipts taxes.  
 12 Provided that, in computing gross receipts or gross proceeds as defined in  
 13 Arkansas Code 26-52-103(a)(4), a deduction shall be allowed for bad debts  
 14 resulting from the sale of tangible personal property.

16 SECTION 3. In addition to the excise tax levied upon the privilege of  
 17 storing, using, distributing, or consuming tangible personal property within  
 18 this state by the Arkansas Compensating Tax Act, beginning at Arkansas Code  
 19 26-53-101, there is levied an excise tax of one percent (1%) upon all tangible  
 20 personal property subject to the tax levied in that act, and the tax shall be  
 21 collected, reported, and paid in the same manner and at the same time as is  
 22 prescribed by law for the collection, reporting, and payment of state  
 23 compensating taxes.

25 SECTION 4. Arkansas Code 26-52-510 is amended to read as follows:

26 "26-52-510. Direct payment of tax by consumer-user - ~~New and used~~ cars.  
 27 ~~[Effective January 1, 1998.]~~

28 (a)(1)(A) The tax levied by this chapter and all other gross receipts  
 29 taxes levied by the state in respect to the sale of new ~~or used~~ motor  
 30 vehicles, or new or used trailers, or semitrailers required to be licensed in  
 31 this state shall be paid by the consumer to the Director of the Department of  
 32 Finance and Administration instead of being collected by the dealer or seller,  
 33 and it is the mandatory duty of the director to require the payment of such  
 34 tax at the time of registration before issuing licenses for new ~~or used~~ motor  
 35 vehicles or trailers.

36 (B)(i) The tax shall apply regardless of whether the motor

1 vehicle, trailer, or semi trailer is sold by a vehicle dealer, or an  
 2 individual, corporation, or partnership not licensed as a vehicle dealer.

3 (ii) The exemption provided for in § 26-52-401(17)  
 4 for isolated sales shall not apply to the sale of motor vehicles, trailers, or  
 5 semi trailers.

6 (2)(A) The tax levied by this chapter and all other gross  
 7 receipts taxes levied by the state in respect to the sale of new ~~or used~~ motor  
 8 vehicles, or new or used trailers, or semi trailers required to be licensed in  
 9 this state shall be paid by the consumer on or before the time for  
 10 registration as prescribed by § 27-14-903(a).

11 (B)(i) Failure to pay the tax when due shall result in an  
 12 assessment of a penalty equal to ten percent (10%) of the amount of tax due.

13 (ii) The penalty must be paid to the director along  
 14 with the tax before the vehicle license will be issued.

15 (b)(1)(A) Except as provided herein, when a used ~~motor vehicle,~~  
 16 trailer, or semi trailer is taken in trade as a credit or part payment on the  
 17 sale of a new or used ~~motor vehicle,~~ trailer, or semi trailer, the tax levied  
 18 by this chapter and all other gross receipts taxes levied by the state shall  
 19 be paid on the net difference between the total consideration for the new or  
 20 used ~~vehicle,~~ trailer, or semi trailer sold and the credit for the used  
 21 ~~vehicle,~~ trailer, or semi trailer taken in trade.

22 (B) However, if the total consideration for the sale of the  
 23 new or used ~~motor vehicle,~~ trailer, or semi trailer is less than two thousand  
 24 five hundred dollars (\$2,500), no tax shall be due.

25 (C) When a used ~~motor vehicle,~~ trailer, or semi trailer is  
 26 sold by a consumer, rather than traded-in as a credit or part payment on the  
 27 sale of a new or used ~~motor vehicle,~~ trailer, or semi trailer, and the consumer  
 28 subsequently purchases a new or used ~~vehicle,~~ trailer or semi trailer of  
 29 greater value within forty-five (45) days of the sale, the tax levied by this  
 30 chapter and all other gross receipts taxes levied by the state shall be paid  
 31 on the net difference between the total consideration for the new or used  
 32 ~~vehicle,~~ trailer, or semi trailer purchased subsequently and the amount  
 33 received from the sale of the used ~~vehicle,~~ trailer, or semi trailer sold in  
 34 lieu of a trade-in.

35 (2)(A)(~~i~~) When a motor vehicle dealer removes a vehicle from its  
 36 inventory and the vehicle is used by the dealership as a service vehicle, the

1 dealer shall register the vehicle, obtain a certificate of title, and pay  
 2 sales tax on the listed retail price of the new vehicle.

3 ~~(ii) When the motor vehicle dealer returns the~~  
 4 ~~service vehicle to inventory as a used vehicle and replaces it with a new~~  
 5 ~~vehicle for dealership use as a service vehicle, the dealer shall pay sales~~  
 6 ~~tax on the difference between the listed retail price of the new service~~  
 7 ~~vehicle to be used by the dealership and the value of the used service vehicle~~  
 8 ~~being returned to inventory. The value of the used service vehicle shall be~~  
 9 ~~the highest listed wholesale price reflected in the most current edition of~~  
 10 ~~the National Automotive Dealers' Association's Official Used Car Guide.~~

11 (B)(i) For purposes of this subsection, the term 'service  
 12 vehicle' means a motor vehicle driven exclusively by an employee of the  
 13 dealership and used either to transport dealership customers or dealership  
 14 parts and equipment.

15 (ii) 'Service vehicle' does not include motor  
 16 vehicles which are rented by the dealership, used as demonstration vehicles,  
 17 used by dealership employees for personal use, or used to haul or pull other  
 18 vehicles.

19 (c) All parts and accessories purchased by motor vehicle sellers for  
 20 resale or used by them for the reconditioning or rebuilding of used motor  
 21 vehicles intended for resale are exempt from gross receipts tax, provided that  
 22 the motor vehicle seller meets the requirements of § 26-52-401(12)(A) and  
 23 applicable regulations promulgated by the director.

24 (d) Nothing in this section shall be construed to repeal any exemption  
 25 from the Arkansas Gross Receipts Act, § 26-52-101 et seq.

26 (e) No credit shall be allowed for sales or use taxes paid to another  
 27 state with respect to the purchase of motor vehicles, trailers, or  
 28 semi trailers which were first registered by the purchaser in Arkansas. This  
 29 subsection shall apply to all motor vehicles, trailers, or semi trailers  
 30 purchased on or after November 3, 1989.

31 ~~(f)(1) Any motor vehicle dealer licensed pursuant to § 27-14-601(a)(6)~~  
 32 ~~who has purchased a used motor vehicle may, upon payment of all applicable~~  
 33 ~~registration and title fees, register the vehicle for the sole purpose of~~  
 34 ~~obtaining a certificate of title to the vehicle without payment of gross~~  
 35 ~~receipts tax.~~

36 ~~(2) No license plate shall be provided with such registration,~~

1 ~~and the used vehicle titled by a dealer under this subsection may not be~~  
 2 ~~operated on the public highways unless there is displayed thereon a dealer's~~  
 3 ~~license plate issued under the provisions of § 27-14-601(a)(6)(B)(ii).~~

4 ~~(f)(g)(1) For purposes of this section, the total consideration for a~~  
 5 ~~used motor vehicle shall be presumed to be the greater of the actual sales~~  
 6 ~~price as provided on the bill of sale, invoice or financing agreement, or the~~  
 7 ~~average loan value price of the vehicle as listed in the most current edition~~  
 8 ~~of a publication which is generally accepted by the industry as providing an~~  
 9 ~~accurate valuation of used vehicles. If the published loan value exceeds the~~  
 10 ~~invoiced price, then the taxpayer must establish to the director's~~  
 11 ~~satisfaction that the price reflected on the invoice or other document is true~~  
 12 ~~and correct. If the director determines that the invoiced price is not the~~  
 13 ~~actual selling price of the vehicle, then the total consideration will be~~  
 14 ~~deemed to be the published loan value.~~

15 ~~(2) For purposes of this section, the total consideration for a~~  
 16 ~~new or used trailer or semitrailer shall be the actual sales price as provided~~  
 17 ~~on a bill of sale, invoice or financing agreement. The director may require~~  
 18 ~~additional information to conclusively establish the true selling price of the~~  
 19 ~~trailer."~~

20  
 21 SECTION 5. Arkansas Code 26-52-514 is amended to read as follows:

22 "26-52-514. Determining total consideration for sale of vehicle -  
 23 Alternative method.

24 The Director of the Department of Finance and Administration is  
 25 authorized to adopt an alternative method for determining the total  
 26 consideration for the sale of new or used house trailers or mobile homes under  
 27 § 26-52-504; new or used aircraft under § 26-52-505; and ~~new or used~~ motor  
 28 ~~vehicles, or new or used~~ trailers, or semitrailers under §§ 26-52-510 and 26-  
 29 53-126. The alternative method adopted shall incorporate any generally  
 30 accepted method of determining the value of the item being sold. If the  
 31 consideration stated by the parties to the sale is less than the value  
 32 determined by such generally accepted method of valuation, then for purposes  
 33 of taxation, it shall be presumed that the higher figure is the total  
 34 consideration unless the taxpayer provides a contract, bill of sale, or other  
 35 evidence establishing that the true consideration is less than the value  
 36 determined under the alternative method."

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

SECTION 6. Arkansas Code 26-53-126 is amended to read as follows:

"26-53-126. Tax on ~~used~~ cars - Payment and collection. [~~Effective January 1, 1998.~~]

(a)(1)(A)(i) All new ~~and used~~ motor vehicles, or new or used trailers, or semi trailers required to be licensed in this state shall, upon being registered in this state, be subject to the tax levied herein and all other use taxes levied by the state irrespective of whether such motor vehicle, trailer, or semi trailer was purchased from a dealer or an individual.

(ii) The tax shall be paid to the director by the person making application to register the motor vehicle, trailer, or semi trailer instead of being collected by the dealer or individual seller.

(iii) It shall be the mandatory duty of the director to collect the tax before issuing a license for any motor vehicle, trailer, or semi trailer.

(B) The exemption provided for in § 26-52-401(17) for isolated sales shall not apply to the sale of motor vehicles, trailers, and semi trailers.

(2)(A) The tax levied herein and all other use taxes levied by the state shall be paid on or before the time for registration as prescribed by § 27-14-903(a).

(B)(i) Failure to pay the tax when due shall result in an assessment of a penalty equal to ten percent (10%) of the amount of tax due.

(ii) The penalty must be paid to the director along with the tax before the vehicle license will be issued.

(b)(1) When a used ~~motor vehicle,~~ trailer, or semi trailer is taken in trade as a credit or part payment on the sale of a new or used ~~vehicle,~~ trailer, or semi trailer, the tax levied herein and all other use taxes levied by the state shall be paid on the net difference between the total consideration for the new or used ~~vehicle,~~ trailer, or semi trailer sold and the credit for the used ~~vehicle,~~ trailer, or semi trailer taken in trade.

(2) However, if the total consideration for the sale of the new or used ~~motor vehicle,~~ trailer, or semi trailer is less than two thousand five hundred dollars (\$2,500), no tax shall be due.

(3) When a used ~~motor vehicle,~~ trailer, or semi trailer is sold by a consumer, rather than traded in as a credit or part payment on the sale of a

1 new or used ~~motor vehicle~~, trailer, or semitrailer, and the consumer  
 2 subsequently purchases a new or used ~~vehicle~~, trailer or semitrailer of  
 3 greater value within forty-five (45) days of the sale, the tax levied by this  
 4 chapter and all other gross receipts taxes levied by the state shall be paid  
 5 on the net difference between the total consideration for the new or used  
 6 ~~vehicle~~, trailer, or semitrailer purchased subsequently and the amount  
 7 received from the sale of the used ~~vehicle~~, trailer, or semitrailer sold in  
 8 lieu of a trade-in.

9 (c) The tax imposed by this subchapter shall not apply to a motor  
 10 vehicle, trailer, or semitrailer to be registered by a bona fide nonresident  
 11 of this state.

12 (d) Nothing in this section shall be construed to repeal any exemption  
 13 from the Arkansas Compensating Tax Act, § 26-53-101 et seq.

14 ~~(e)(1) Any motor vehicle dealer licensed pursuant to § 27-14-601(a)(6)~~  
 15 ~~who has purchased a used motor vehicle may, upon payment of all applicable~~  
 16 ~~registration and title fees, register the vehicle for the sole purpose of~~  
 17 ~~obtaining a certificate of title to the vehicle without payment of use tax.~~

18 ~~(2) No license plate shall be provided with such registration,~~  
 19 ~~and the used vehicle titled by a dealer under this subsection may not be~~  
 20 ~~operated on the public highways unless there is displayed thereon a dealer's~~  
 21 ~~license plate issued under the provisions of § 27-14-601(a)(6)(B)(ii).~~

22 ~~(f)(1) For purposes of this section, the total consideration for a used~~  
 23 ~~motor vehicle shall be presumed to be the greater of the actual sales price as~~  
 24 ~~provided on a bill of sale, invoice or financing agreement, or the average~~  
 25 ~~loan value of the vehicle as listed in the most current edition of a~~  
 26 ~~publication which is generally accepted by the industry as providing an~~  
 27 ~~accurate valuation of used vehicles. If the published loan value exceeds the~~  
 28 ~~invoiced price, then the taxpayer must establish to the director's~~  
 29 ~~satisfaction that the price reflected on the invoice or other document is true~~  
 30 ~~and correct. If the director determines that the invoiced price is not the~~  
 31 ~~actual selling price of the vehicle, then the total consideration will be~~  
 32 ~~deemed to be the published loan value.~~

33 ~~(2)(e)~~ For purposes of this section, the total consideration for  
 34 a new or used trailer or semitrailer shall be the actual sales price as  
 35 provided on a bill of sale, invoice or financing agreement. The director may  
 36 require additional information to conclusively establish the true selling

1 price of the trailer.”

2  
3 SECTION 7. All provisions of this Act of a general and permanent nature  
4 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
5 Revision Commission shall incorporate the same in the Code.

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

12  
13 SECTION 9. All laws and parts of laws in conflict with this Act are  
14 hereby repealed.