

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S2/15/01 S3/15/01

A Bill

SENATE BILL 397

5 By: Senators K. Smith, *Bisbee, Fitch, T. Smith, Cash, Mahony, Riggs, J. Jeffress*
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS LAWS CONCERNING THE
10 EXCISE TAX ON TOBACCO PRODUCTS; AND FOR OTHER
11 PURPOSES.
12

Subtitle

14 TO AMEND VARIOUS LAWS CONCERNING THE
15 EXCISE TAX ON TOBACCO PRODUCTS.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code 26-57-203 is amended to read as follows:
21 26-57-203. Definitions.

22 As used in this subchapter, unless the context otherwise requires:

23 (1) "Annual" or "annually" means the fiscal year from July 1 through
24 the next June 30;

25 (2) "Chewing tobacco" means any leaf tobacco that is intended to be
26 placed in the oral cavity;

27 ~~(2)~~ (3) "Cigarette" means all rolled tobacco, or substitutes therefor,
28 for smoking which is wrapped in paper or any substitute other than natural
29 leaf tobacco in its natural state;

30 ~~(3)~~ (4) "Consumer" means a member of the public at large;

31 ~~(4)~~ (5) "First sale" means the sale of tobacco products made by a
32 manufacturer to licensed wholesalers and licensed vendors or a licensed
33 retailer only;

34 ~~(5)~~ (6) "Gross sales" means the amount received for tobacco products
35 sold at retail, including both the federal and state taxes of the tobacco
36 products when purchased by a retailer;

1 ~~(6)~~ (7) "Licensed" means that the person has received a license or
2 permit from the Director of the Tobacco Control Board and is otherwise
3 qualified to do business in this state except that "licensed" does not mean
4 that a person is registered as a manufacturer;

5 ~~(7)~~ (8) "Manufacturer" means any person who produces any tobacco
6 product for sale and includes, but is not limited to, importers and
7 distributors who deal in tobacco products as manufacturers and who are
8 required under this subchapter to sell only to licensed wholesalers or
9 licensed retailers located in Arkansas;

10 ~~(8)~~ ~~"Restricted tobacco products vendor" means a vendor who is licensed~~
11 ~~to operate vending machines owned by him on his own premises, and be otherwise~~
12 ~~subject to all other restrictions imposed on a general tobacco products~~
13 ~~vendor;~~

14 (9) "Person" means any individual, retailer, wholesaler, manufacturer,
15 firm, association, company, partnership, limited liability company,
16 corporation, joint-stock company, club, agency, syndicate, the State of
17 Arkansas, county, municipal corporation or other political subdivision of this
18 state, receiver, trustee, fiduciary, or trade association;

19 (10) "Pipe tobacco" means any tobacco which, because of its appearance,
20 type, packaging, or labeling, is suitable for use and likely to be offered to,
21 or purchased by, consumers as tobacco to be smoked in a pipe;

22 ~~(10)~~ (11) "Place of business" means the place where orders are taken or
23 received or where tobacco products are sold;

24 (12) "Restricted tobacco products vendor" means a vendor who is
25 licensed to operate vending machines owned by the person on the person's own
26 premises, and be otherwise subject to all other restrictions imposed on a
27 general tobacco products vendor;

28 ~~(11)~~ (13) "Retailer" means any person who purchases tobacco products
29 from licensed wholesalers for the purpose of selling them over the counter at
30 retail to consumers;

31 (14) "Roll-your-own-tobacco" means any tobacco which, because of its
32 appearance, type, packaging, or labeling, is suitable for use and likely to be
33 offered to, or purchased by, consumers as tobacco for making cigarettes;

34 ~~(12)~~ (15) "Salesman" means the agent or employee of a wholesaler who
35 sells or offers for sale to licensed wholesalers or licensed retailers or who
36 solicits for sale, takes orders for, or in any manner promotes the sale or use

1 of tobacco products;

2 (16) "Snuff" means any finely cut, ground, or powdered tobacco that is
3 intended to be placed in the oral cavity;

4 ~~(13)~~ (17) The pronouns "he", "his", "him", "they", or any other pronoun
5 shall apply to any person covered by this subchapter;

6 ~~(14)~~ (18) "Stamps" means the Arkansas cigarette stamps denoting the tax
7 on cigarettes. When affixed to a container of cigarettes, the stamps shall
8 indicate that the tax has been paid;

9 ~~(15)~~ (19) "Tobacco products" means all products containing tobacco for
10 consumption and includes, but is not limited to, cigarettes, cigars, little
11 cigars, cigarillos, chewing tobacco, smokeless tobacco, snuff, smoking
12 tobacco, including pipe tobacco, and smoking tobacco substitutes;

13 ~~(16)~~ (20) "Tobacco products vending machine" means any coin-operated
14 vending machine from which tobacco products are sold;

15 ~~(17)~~ (21) "General tobacco products vendor" or "vendor" means any
16 person who operates a vending machine or who uses any other mechanical device,
17 from which cigarettes or other tobacco products are delivered to the consumer
18 by inserting coins therein, and who purchases tobacco products only from
19 licensed wholesalers. A general vendor is authorized to operate licensed
20 vending machines, on his own premises and on the premises of others, as a
21 principal business;

22 ~~(18)~~ (22) "Warehouse" means a place where tobacco products are stored
23 for another person and to or from which place the tobacco products are shipped
24 or delivered upon order by the owner of the tobacco products to the warehouse;

25 ~~(19)~~ (23) "Wholesaler" means any individual or person, not a
26 manufacturer or owned or operated by a manufacturer, who does business within
27 this state at or from an established place of business who purchases unstamped
28 or untaxed cigarettes or other tobacco products directly from manufacturers
29 that distribute tobacco products in Arkansas, and who sells to properly
30 licensed cigarette vendors or retailers. However, where an Arkansas city is
31 separated from a city in another state only by a state line, a resident of the
32 Arkansas city who maintains a warehouse in the adjoining city in the adjoining
33 state may qualify as a wholesaler under this subchapter if that person is
34 regularly engaged in the sale of tobacco products to licensed retailers within
35 Arkansas as a first sale and is eligible to purchase unstamped cigarettes
36 direct from manufacturers.

1
2 SECTION 2. Arkansas Code 26-57-208(2), concerning the method of
3 determining the excise tax on tobacco products, is amended to read as follows:

4 ~~(2)(A)~~ The excise or privilege tax on tobacco products, other than
5 cigarettes, on the sale by wholesalers to retailers, or by licensed retailers
6 to the Director of the Department of Finance and Administration, within the
7 state is as follows:

8 (A)(i) At the rate of thirty-two cents (32¢) per ounce of
9 snuff, with a proportionate tax at the like rate on all fractional parts of an
10 ounce of snuff.

11 (ii) The tax shall be computed based on the net
12 weight as listed by the manufacturer;

13 (B)(i) At the rate of nine cents (9¢) per ounce of chewing
14 tobacco, with a proportionate tax at the like rate on all fractional parts of
15 an ounce of chewing tobacco.

16 (ii) The tax shall be computed based on the net
17 weight as listed by the manufacturer;

18 (C)(i) At the rate of twenty-three cents (23¢) per ounce of
19 pipe tobacco, with a proportionate tax at the like rate on all fractional
20 parts of an ounce of pipe tobacco.

21 (ii) The tax shall be computed based on the net
22 weight as listed by the manufacturer;

23 (D)(i) At the rate of twenty-two cents (22¢) per ounce of
24 roll-your-own tobacco, with a proportionate tax at the like rate on all
25 fractional parts of an ounce of roll-your-own tobacco.

26 (ii) The tax shall be computed based on the net
27 weight as listed by the manufacturer; and

28 (E)(i) For all other tobacco products not otherwise taxed
29 under this section, sixteen percent (16%) of the manufacturer's selling price.

30 ~~(ii)(B)~~ The tax shall be computed on the actual
31 manufacturer invoice price before discounts.

32
33 SECTION 3. Arkansas Code 26-57-803(b), concerning the method of
34 calculating the additional tax on tobacco products, is amended to read as
35 follows:

36 (b) In addition to the tax imposed by § 26-57-208(2), for the months of

1 February, March, April, May, and June 1993, there is hereby imposed an
 2 additional excise or privilege tax on the sale of tobacco products other than
 3 cigarettes by wholesalers to retailers or by licensed retailers to the
 4 Director of the Department of Finance and Administration at nine percent (9%)
 5 of the manufacturer's selling price, and for all months beginning on or after
 6 July 1, 1993, there is hereby levied an additional excise or privilege tax on
 7 tobacco products as follows:

8 (1)(A) At the rate of fourteen cents (14¢) per ounce of snuff,
 9 with a proportionate tax at the like rate on all fractional parts of an ounce
 10 of snuff.

11 (B) The tax shall be computed based on the net weight as
 12 listed by the manufacturer;

13 (2)(A) At the rate of four cents (4¢) per ounce of chewing
 14 tobacco, with a proportionate tax at the like rate on all fractional parts of
 15 an ounce of chewing tobacco.

16 (B) The tax shall be computed based on the net weight as
 17 listed by the manufacturer;

18 (3)(A) At the rate of ten cents (10¢) per ounce of pipe tobacco,
 19 with a proportionate tax at the like rate on all fractional parts of an ounce
 20 of pipe tobacco.

21 (B) The tax shall be computed based on the net weight as
 22 listed by the manufacturer;

23 (4)(A) At the rate of nine cents (9¢) per ounce of roll-your-own
 24 tobacco, with a proportionate tax at the like rate on all fractional parts of
 25 an ounce of roll-your-own tobacco.

26 (B) The tax shall be computed based on the net weight as
 27 listed by the manufacturer; and

28 (5) For all other tobacco products not otherwise taxed under this
 29 section, at seven percent (7%) of the manufacturer's selling price. The tax
 30 shall be computed before discounts.

31
 32 *SECTION 4. Arkansas Code 26-57-208(2) is amended to read as follows:*

33 *(2)(A) ~~The~~ Beginning July 1, 2009, the excise or privilege tax on*
 34 *tobacco products other than cigarettes on the sale by wholesalers to*
 35 *retailers, or by licensed retailers to the Director of the Department of*
 36 *Finance and Administration within the state is sixteen percent (16%) of the*

1 manufacturer's selling price.

2 (B) The tax shall be computed on the actual manufacturer's
3 invoice price before discounts.

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5 SECTION 5. Arkansas Code 26-57-803(b) is amended to read as follows:

6 (b) ~~4th Beginning July 1, 2009, in~~ addition to the tax imposed by § 26-
7 57-208(2), ~~for the months of February, March, April, May, and June 1993,~~ there
8 is hereby imposed an additional excise or privilege tax on the sale of tobacco
9 products other than cigarettes by wholesalers to retailers or by licensed
10 retailers to the Director of the Department of Finance and Administration at
11 ~~nine percent (9%)~~ seven percent (7%) of the manufacturer's selling price, ~~and~~
12 ~~for all months beginning on or after July 1, 1993, there is hereby levied an~~
13 ~~additional excise or privilege tax on tobacco products at seven percent (7%)~~
14 ~~of the manufacturer's selling price. The tax shall be computed before~~
15 discounts.

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17 SECTION 6. EFFECTIVE DATES. The provisions of Section 1 shall be
18 effective on and after July 1, 2001. The provisions of Section 2 and 3 shall
19 be effective on July 1, 2001 and shall expire on June 30, 2009. The
20 provisions of Sections 4 and 5 shall be effective on and after July 1, 2009.

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22 SECTION 7. EMERGENCY. It is found and determined by the General
23 Assembly of the State of Arkansas that the current method of computing excise
24 or privilege tax on certain tobacco products creates an inequity in the tax
25 burden on wholesalers and retailers of tobacco products; that by levying the
26 tax on certain tobacco products based on the weight of the product, the
27 inequity is relieved; that this act is necessary to create tax equality for
28 tobacco product sellers; and that in order to properly administer the
29 provisions of this act, the Department of Finance and Administration must
30 provide adequate notice to affected taxpayers. Therefore, an emergency is
31 declared to exist and this act being immediately necessary for the
32 preservation of the public peace, health and safety shall become effective on
33 July 1, 2001.

34 /s/ K. Smith