

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 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: H3/17/03*

# A Bill

HOUSE BILL 2368

5 By: Representative R. Smith  
6  
7

## For An Act To Be Entitled

9 AN ACT TO INCREMENTALLY REDUCE THE SALES AND USE  
10 TAX ON FOOD IF SUFFICIENT REVENUE GROWTH IS  
11 FORECASTED; TO EXEMPT FOOD WHEN THE TAX RATE IS  
12 REDUCED TO LESS THAN ONE PERCENT (1%); AND FOR  
13 OTHER PURPOSES.  
14

### Subtitle

15 TO INCREMENTALLY REDUCE THE SALES TAX ON  
16 FOOD IF REVENUE GROWTH IS FORECASTED.  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Title 26, Chapter 52, Subchapter 4, is amended to add a new  
23 section to read as follows:

24 26-52-433. Food and food ingredients.

25 (a) As provided in this section, the gross receipts derived from the  
26 sale of food and food ingredients shall be exempt from the Arkansas Gross  
27 Receipts Act of 1941, § 26-52-101 et seq.

28 (b) DEFINITIONS. As used in this section:

29 (1)(A) "Candy" means a preparation of sugar, honey, or other  
30 natural or artificial sweeteners in combination with chocolate, fruits, nuts,  
31 or other ingredients or flavorings in the form of bars, drops, or pieces.

32 (B) "Candy" shall not include any preparation containing  
33 flour and shall require no refrigeration;

34 (2) "Dietary supplement" means any product, other than tobacco,  
35 intended to supplement the diet that:

36 (A) Contains one (1) or more of the following dietary



1 ingredients:

2 (i) A vitamin;

3 (ii) A mineral;

4 (iii) An herb or other botanical;

5 (iv) An amino acid;

6 (v) A dietary substance for use by humans to  
7 supplement the diet by increasing the total dietary intake;

8 (vi) A concentrate, metabolite, constituent,  
9 extract, or combination of any ingredient described in this subdivision  
10 (b)(2)(A); and

11 (B) Is intended for ingestion in tablet, capsule, powder,  
12 softgel, gelcap, or liquid form, or if not intended for ingestion in such a  
13 form, is not represented as conventional food and is not represented for use  
14 as a sole item of a meal or of the diet; and

15 (C) Is required to be labeled as a dietary supplement,  
16 identifiable by the "Supplemental Facts" box found on the label and as  
17 required pursuant to 21 C.F.R § 101.36;

18 (3)(A) "Food and food ingredients" means:

19 (i) Substances, whether in liquid, concentrated,  
20 solid, frozen, dried, or dehydrated form, that are sold for ingestion or  
21 chewing by humans and are consumed for their taste or nutritional value;

22 (ii) Candy and soft drinks;

23 (iii) Food sold in an unheated state by weight or  
24 volume as a single item; and

25 (iv) Bakery items, including bread, rolls, buns,  
26 biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,  
27 tarts, muffins, bars, cookies, or tortillas.

28 (B) "Food and food ingredients" does not include alcoholic  
29 beverages, dietary supplements, prepared foods, food sold through vending  
30 machines, or tobacco;

31 (4) "Food sold through vending machines" means food dispensed  
32 from a machine or other mechanical device that accepts payment;

33 (5) "Gross receipts tax rate" means the sum of the state gross  
34 receipts taxes levied by §§ 26-51-301 and 26-52-302, Amendment 75 to the  
35 Arkansas Constitution and any other state gross receipts taxes enacted on or  
36 after January 1, 2003;

1           (6)(A) “Prepared food” means:

2                   (i) Food sold in a heated state or heated by the  
3 seller;

4                   (ii) Two or more food ingredients mixed or combined  
5 by the seller for sale as a single item; or

6                   (iii) Food sold with eating utensils provided by the  
7 seller, including plates, knives, forks, spoons, glasses, cups, napkins, or  
8 straws. A plate does not include a container or packaging used to transport  
9 the food.

10                   (B) “Prepared food” in subdivision (ii) of this  
11 subdivision (6) does not include:

12                   (i) Food that is only cut, repackaged, or  
13 pasteurized by the seller; and

14                   (ii) Eggs, fish, meat, poultry, and foods containing  
15 these raw animal foods requiring cooking by the consumer as recommended by  
16 the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code  
17 so as to prevent food borne illnesses;

18                   (7)(A) “Soft drinks” means nonalcoholic beverages that contain  
19 natural or artificial sweeteners.

20                   (B) “Soft drinks” do not include beverages that contain  
21 milk or milk products, soy, rice, or similar milk substitutes, or greater  
22 than fifty percent of vegetable or fruit juice by volume; and

23                   (8) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco,  
24 or any other item that contains tobacco.

25                   (c) The gross receipts derived from the sale of food and food  
26 ingredients shall not be exempt from municipal or county gross receipts  
27 taxes.

28                   (d) TAX RATE. The gross receipts tax imposed by §§ 26-52-301, 26-52-  
29 302, and Amendment 75 to the Arkansas Constitution on the gross receipts  
30 derived from the sale of food and food ingredients shall be levied as  
31 follows:

32                   (1)(A) On or before July 1, 2003, and each July 1 thereafter,  
33 the director shall:

34                   (i) Determine whether the conditions of § 26-52-  
35 433(e) have been met; and

36                   (ii) Under § 26-52-433(d)(1)(B) and (C), establish

1 the rate of gross receipts tax on the gross receipts derived from the sale of  
2 food and food ingredients for the twelve-month period beginning on the  
3 following January 1.

4 (B) If the conditions of § 26-52-433(e) have not been met,  
5 the rate of gross receipts tax on the gross receipts derived from the sale of  
6 food and food ingredients for the twelve-month period beginning on the  
7 following January 1, shall be the same as the rate of tax for the preceding  
8 twelve-month period.

9 (C) If the conditions of § 26-52-433(e) have been met, the  
10 rate of gross receipts tax on the gross receipts derived from the sale of  
11 food and food ingredients for the twelve-month period beginning on the  
12 following January 1, shall be one-half of one percent (1/2 of 1%) less than  
13 the rate during the previous twelve-month period and shall be distributed  
14 under § 26-52-433(f).

15 (e)(1) The rate of tax on gross receipts derived from the sale of food  
16 and food ingredients for any twelve-month period beginning on and after  
17 January 1, 2004, shall not be reduced below the rate of tax for the previous  
18 twelve-month period unless:

19 (A) The net available general revenue forecast provided to  
20 the Joint Committee on Economic and Tax Policy under § 10-3-1404 in May prior  
21 to the beginning of the fiscal year in which a rate reduction is contemplated  
22 indicates that net available general revenue growth for the fiscal year in  
23 which a rate reduction is contemplated will be four and two tenths of one  
24 percent (4.2%) or greater; and

25 (B)(i) The net available general revenue for the fiscal  
26 year immediately preceding the fiscal year in which a rate reduction is  
27 contemplated exceeds official forecast by at least one half of one percent  
28 (1/2 of 1%); or

29 (ii) The net available general revenue for the  
30 fiscal year immediately preceding the fiscal year in which a rate reduction  
31 is contemplated exceeds the total distributions for that fiscal year under  
32 the provisions of the Revenue Stabilization Law, § 19-5-101, et seq.

33 (f) REVENUE DISTRIBUTION.

34 (1)(A) On the last day of each month, the Chief Fiscal Officer  
35 of the State shall certify to the State Treasurer the amount of gross  
36 receipts and compensating tax attributable to the sale of food and food

1 ingredients that was:

2 (i) Deposited to the Revenue Holding Fund Account of  
3 the State Apportionment Fund pursuant to § 19-6-484(a); and

4 (ii) Derived from the levy of all state gross  
5 receipts and compensating taxes in effect on January 1, 2004, including  
6 Amendment 75 to the Arkansas Constitution.

7 (B) The remainder of gross receipts and compensating tax  
8 deposited to the Revenue Holding Fund Account shall be distributed pursuant  
9 to § 19-6-484(b).

10 (2) The amount of tax certified pursuant to § 26-52-433(f)(1)(A)  
11 shall be distributed as follows:

12 (A)(i) That percentage of tax equal to a fraction in which  
13 the denominator is the reduced gross receipts tax rate and the numerator is  
14 one-eighth of one percent (1/8 of 1%), shall be transferred to the Special  
15 Revenue Fund Account for subsequent distribution to the Conservation Tax Fund  
16 in accordance with § 19-6-484.

17 (ii) "Reduced gross receipts tax rate" means the  
18 total rate of state gross receipts tax in effect during the month in which  
19 the sale of food and food ingredients occurred, as provided in § 26-52-  
20 433(d), including the gross receipts tax levied by Amendment 75 to the  
21 Arkansas Constitution.

22 (B) The State Treasurer shall credit the remaining tax as  
23 follows:

24 (i) Ninety percent (90%) to the General Revenue Fund  
25 Account of the State Apportionment Fund; and

26 (ii) Ten percent (10%) to the Property Tax Relief  
27 Trust Fund.

28  
29 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
30 General Assembly of the State of Arkansas that applying sales tax to food  
31 creates a tax burden on Arkansas families; that removing the sales tax from  
32 food without revenue controls will severely impair the state budgeting  
33 process and reduce necessary services to Arkansans; that this bill will allow  
34 the sales tax on food to be gradually reduced if revenue forecasts indicate  
35 future revenue growth. Therefore, an emergency is declared to exist and this  
36 act being immediately necessary for the preservation of the public peace,

1 health, and safety shall become effective on July 1, 2004.

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*/s/ R. Smith*

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