

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 H3/19/03

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.

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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, 2003.

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/s/ R. Smith