

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: S3/18/03

A Bill

SENATE BILL 7

5 By: Senator Glover
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For An Act To Be Entitled

9 AN ACT TO EXEMPT FOOD FROM SALES TAX; TO PHASE IN
10 THE TAX EXEMPTION OVER FOUR (4) FISCAL YEARS
11 BEGINNING ON JULY 1, 2006; AND FOR OTHER
12 PURPOSES.
13

Subtitle

14 AN ACT TO EXEMPT FOOD FROM STATE SALES
15 TAX; TO PHASE IN THE TAX EXEMPTION OVER
16 FOUR (4) FISCAL YEARS BEGINNING ON JULY
17 1, 2006.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 26-52-433. Food and food ingredients.

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

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

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

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

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

35 (A) Contains one or more of the following dietary
36 ingredients:



1 (i) A vitamin;
2 (ii) A mineral;
3 (iii) An herb or other botanical;
4 (iv) An amino acid;
5 (v) A dietary substance for use by humans to
6 supplement the diet by increasing the total dietary intake; or
7 (vi) A concentrate, metabolite, constituent,
8 extract, or combination of any ingredient as described in this subdivision
9 (2)(A);

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

14 (C) Is required to be labeled as a dietary supplement,
15 identifiable by the "Supplemental Facts" box found on the label and as
16 required under 21 C.F.R. § 101.36 as in effect on January 1, 2003;

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

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

21 (ii) Candy and soft drinks;

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

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

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

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

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

36 (6)(A) "Prepared food" means:

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

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

5 (iii)(a) Food sold with eating utensils provided by
6 the seller, including plates, knives, forks, spoons, glasses, cups, napkins,
7 or straws.

8 (b) A plate does not include a container or
9 packaging used to transport the food.

10 (B) "Prepared food" under subdivision (6)(A)(ii) of this
11 section does not include:

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

14 (ii) Eggs, fish, meat, poultry, and foods containing
15 these raw animal foods that require cooking by the consumer as recommended by
16 the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code,
17 as in effect on January 1, 2003, so as to prevent food borne illnesses;

18 (7)(A) "Soft drinks" mean non-alcoholic 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 (50%) of vegetable or fruit juice by volume; and

23 (8) "Tobacco" means cigarettes, cigars, chewing tobacco, pipe
24 tobacco, 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 RATES. The gross receipts tax imposed by the Arkansas Gross
29 Receipts Act of 1941, § 26-52-101 et. seq., on the sale of food and food
30 ingredients shall be phased out as follows:

31 (1) Beginning July 1, 2006, the gross receipts tax rate shall be
32 reduced by one percent (1%) and the revenue distributed as provided in
33 subsection (e) of this section;

34 (2) Beginning July 1, 2007, the gross receipts tax rate shall be
35 reduced by an additional one percent (1%) and the revenue distributed as
36 provided in subsection (e) of this section;

1 (3) Beginning July 1, 2008, the gross receipts tax rate shall be
2 reduced by an additional one percent (1%) and the revenue distributed as
3 provided in subsection (e) of this section;

4 (4) Beginning July 1, 2009, the gross receipts tax rate shall be
5 reduced by an additional one percent (1%) and the revenue distributed as
6 provided in subsection (e) of this section; and

7 (5) Beginning July 1, 2010, food and food ingredients shall be
8 fully exempt from all state gross receipts taxes, including any additional
9 gross receipts taxes that may be levied between July 1, 2006, and July 1,
10 2010, and shall be exempt from the gross receipts tax levied by Amendment 75
11 to the Arkansas Constitution.

12 (e) REVENUE DISTRIBUTION.

13 (1)(A) On the last day of each month, the Chief Fiscal Officer
14 of the State shall certify to the State Treasurer the amount of gross
15 receipts and compensating tax attributable to the sale of food and food
16 ingredients that was:

17 (i) Deposited to the Revenue Holding Fund Account of
18 the State Apportionment Fund under § 19-6-484(a); and

19 (ii) Derived from the levy of all state gross
20 receipts and compensating taxes in effect on January 1, 2003, including
21 Amendment 75 to the Arkansas Constitution.

22 (B) The remainder of gross receipts and compensating tax
23 deposited to the Revenue Holding Fund Account of the State Apportionment Fund
24 shall be distributed under § 19-6-484(b).

25 (2) The amount of tax certified under § 26-52-433(e)(1)(A) shall
26 be distributed as follows:

27 (A)(i) That percentage of tax equal to a fraction in which
28 the denominator is the reduced gross receipts tax rate and the numerator is
29 one-eighth of one percent (1/8 of 1%) shall be transferred to the Special
30 Revenue Fund Account of the State Apportionment Fund for subsequent
31 distribution to the Conservation Tax Fund under § 19-6-484.

32 (ii) "Reduced gross receipts tax rate" means the
33 total rate of state gross receipts tax in effect during the month in which
34 the sale of food and food ingredients occurred, as provided in § 26-52-
35 433(d), including the gross receipts tax levied by Amendment 75 to the
36 Arkansas Constitution; and

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

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

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

/s/ Glover