

State of Arkansas
84th General Assembly
Second Extraordinary Session, 2003

A Bill

Call Item 6

SENATE BILL 24

By: Senator T. Smith
By: Representative Mathis

For An Act To Be Entitled

AN ACT TO AMEND TITLE 26, CHAPTER 18 OF THE
ARKANSAS CODE TO PROVIDE FOR THE CLOSURE OF
BUSINESSES FAILING TO REPORT AND REMIT SALES AND
USE TAXES; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE FOR THE CLOSURE OF BUSINESSES
FAILING TO REPORT AND REMIT SALES AND
USE TAXES.

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

SECTION 1. Arkansas Code § 26-18-104, concerning definitions used in
the Arkansas Tax Procedure Act, is amended by adding a new subdivision to
read as follows:

(18) "Noncompliant taxpayer" means any taxpayer who has failed:

(A) to file two (2) gross receipts tax or compensating use
tax returns during any consecutive twenty-four-month period; or

(B) to pay the gross receipts or use tax reported on the
tax return or determined by the Department of Finance and Administration to
be due for any two (2) months during any consecutive twenty-four-month
period.

SECTION 2. Arkansas Code Title 26, Chapter 18, is amended to add an
additional subchapter to read as follows:

26-18-1001. Business closure authority -- Notice.



1 (a) In addition to all other remedies provided by law for the
2 collection of unpaid taxes, the Director of the Department of Finance and
3 Administration has the authority to close the business of a noncompliant
4 taxpayer as defined by § 26-18-104(18).

5 (b) The director shall give notice to the noncompliant taxpayer that
6 any further tax delinquencies will result in the closure of the business.
7 The notice must be in writing and delivered to the noncompliant taxpayer by
8 the United States Postal Service or by hand delivery.

9 (c) After the notice is issued, if the noncompliant taxpayer fails to
10 report or remit gross receipts or use tax for the third time in a twenty-
11 four-month period, the director will notify the taxpayer by certified mail or
12 by hand delivery that the business will be closed within five (5) calendar
13 days of the date of notice unless the noncompliant taxpayer makes
14 arrangements with the director to satisfy the tax delinquency.

15 (d) A noncompliant taxpayer may avoid closure of the business by:

16 (1) filing all delinquent reports and by remitting the
17 delinquent tax including any interest and penalty;

18 (2) entering into a payment agreement approved by the director
19 to satisfy the tax delinquency.

20
21 26-18-1002. Administrative hearing.

22 (a) A noncompliant taxpayer may request an administrative hearing
23 concerning the decision of the Director of the Department of Finance and
24 Administration to close the business by following the procedures in this
25 section.

26 (b) Within five (5) days after the delivery or attempted delivery of
27 the notice required by § 26-18-1001(c), the taxpayer may file a written
28 protest, signed by the taxpayer or his authorized agent, stating the reasons
29 for opposing the closure of the business and requesting an administrative
30 hearing.

31 (c)(1) A noncompliant taxpayer may request that an administrative
32 hearing be held in person, by telephone, upon written documents furnished by
33 the taxpayer, or upon written documents and any evidence produced by the
34 taxpayer at an administrative hearing.

35 (2) The director has the discretion to determine whether an
36 administrative hearing where testimony is to be presented will be conducted

1 in person or by telephone.

2 (3) A noncompliant taxpayer who requests an administrative
3 hearing based upon written documents is not entitled to any other
4 administrative hearing prior to the hearing officer rendering a decision.

5 (d) The administrative hearing will be conducted by a hearing officer
6 appointed by the director under § 26-18-405.

7 (e)(1) The hearing officer will set the time and place for a hearing
8 and will give the noncompliant taxpayer notice of the hearing.

9 (2) At the administrative hearing, the noncompliant taxpayer may
10 be represented by an authorized representative and may present evidence in
11 support of his or her position.

12 (f) The hearing may be held in any city in which the Revenue Division
13 of the Department of Finance and Administration maintains a field audit
14 district office or in such other city as the director may designate. The
15 administrative hearing will be held within fourteen (14) days of receipt by
16 the director of the request for hearing.

17 (g) The administrative hearing and determinations made by the hearing
18 officer under this subchapter are not subject to the provisions of the
19 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

20 (h) The defenses to the closure of a business under this subchapter
21 are:

22 (1) Written proof that the noncompliant taxpayer filed all
23 delinquent returns and paid the delinquent tax due including interest and
24 penalty; or

25 (2) That the noncompliant taxpayer has entered into a written
26 payment agreement, approved by the director, to satisfy the tax delinquency.

27 (i) The decision of the hearing officer must be in writing with copies
28 delivered to the taxpayer and the Department of Finance and Administration by
29 the United States Postal Service or by hand delivery.

30
31 26-18-1003. Judicial relief.

32 (a)(1) If the decision of the hearing officer is to affirm the
33 closure of the business, the decision shall be submitted in writing and
34 delivered by mail to the noncompliant taxpayer.

35 (2) The noncompliant taxpayer may seek judicial relief from the
36 decision by filing suit within twenty (20) days of the date of the decision.

1 (b)(1) Jurisdiction for a suit to contest a determination of the
2 Director of the Department of Finance and Administration under this section
3 shall be in the Pulaski County Circuit Court or the circuit court of the
4 county in which the noncompliant taxpayer resides or has his principal place
5 of business, where the matter shall be tried de novo.

6 (2)(A) If the circuit court finds that the business closure
7 order was appropriately issued by the director, the court shall issue an
8 injunction against the noncompliant taxpayer prohibiting the further
9 operation of the business.

10 (B) In the event that a business subject to an injunction
11 issued by the circuit court as provided in this subchapter continues in
12 operation, any person responsible for the decision to operate the business
13 after the issuance of the injunction shall upon conviction be guilty of a
14 Class D felony.

15 (3) An appeal may be made from the circuit court to the
16 appropriate appellate court, as provided by law.

17 (c) The procedures established by this section are the sole methods
18 for seeking relief from a written decision to close the business of a
19 noncompliant taxpayer.

20 (d) The decision to close the business of a noncompliant taxpayer will
21 be final:

22 (1) if the noncompliant taxpayer fails to request an
23 administrative hearing under § 26-18-1002;

24 (2) the noncompliant taxpayer fails to seek judicial relief
25 under § 26-18-1003; or

26 (3) upon final decision of a circuit court or an appellate
27 court.

28
29 26-18-1004. Business closure procedure.

30 (a) If a noncompliant taxpayer fails to timely seek administrative or
31 judicial review of a business closure decision, or if the business closure
32 decision is affirmed after administrative or judicial review, the Director of
33 the Department of Finance and Administration shall affix a written notice to
34 all entrances of the business that:

35 (1) Identifies the business as being subject to a business
36 closure order; and

1 (2) State that the business is prohibited from further
2 operation.

3 (b) The director may also lock or otherwise secure the business so
4 that it may not be operated.

5 (c) The director may request the assistance of the Arkansas State
6 Police or any state or local law enforcement official to post the notice or
7 to secure the business as authorized in this section.

8 (d) Any taxpayer information disclosed by the director under the
9 procedures outlined in this section shall not be subject to the
10 confidentiality provisions of § 26-18-303.

11
12 26-18-1005. Suspension of a business license.

13 (a) After the decision becomes final, the Director of the Department
14 of Finance and Administration shall contact the appropriate administrative
15 body responsible for granting licenses to operate the business and report the
16 closure of the business.

17 (b) The closure of a business under this subchapter shall be grounds
18 for the suspension or revocation of any business license granted under the
19 laws of the State of Arkansas, excluding professional licenses.

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21 26-18-1006. Authority to promulgate rules.

22 The Director of the Department of Finance and Administration is
23 authorized to promulgate rules necessary for the enforcement of this
24 subchapter.

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26 SECTION 2. This act becomes effective on July 1, 2004.
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