

State of Arkansas

*As Engrossed: S12/18/03*

Call Item 6

84th General Assembly

# A Bill

Second Extraordinary Session, 2003

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 A misdemeanor.

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       (e)(1) It is unlawful for a business to continue in operation after a  
29 business closure order is issued that is:

30               (A) Upheld on appeal under this subchapter; or

31               (B) Not appealed by the delinquent taxpayer under this  
32 subchapter.

33       (2) Any person responsible for the decision to operate the  
34 business in violation of this subchapter shall upon conviction be guilty of a  
35 Class A misdemeanor.

1       26-18-1004. Business closure procedure.

2       (a) If a noncompliant taxpayer fails to timely seek administrative or  
3 judicial review of a business closure decision, or if the business closure  
4 decision is affirmed after administrative or judicial review, the Director of  
5 the Department of Finance and Administration shall affix a written notice to  
6 all entrances of the business that:

7               (1) Identifies the business as being subject to a business  
8 closure order; and

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

11       (b) The director may also lock or otherwise secure the business so  
12 that it may not be operated. If the business is located in the noncompliant  
13 taxpayer's home, the director shall not lock or otherwise secure the business  
14 but may post the notice under subsection (a) of this section.

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

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

21  
22       26-18-1005. Suspension of a business license.

23       (a) After the decision becomes final, the Director of the Department  
24 of Finance and Administration shall contact the appropriate administrative  
25 body responsible for granting licenses to operate the business and report the  
26 closure of the business.

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

30  
31       26-18-1006. Authority to promulgate rules.

32       The Director of the Department of Finance and Administration is  
33 authorized to promulgate rules necessary for the enforcement of this  
34 subchapter.

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

*/s/ T. Smith*