

State of Arkansas

As Engrossed: S12/18/03 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), subject to the administrative and
5 judicial appeal procedures in this subchapter, if the noncompliant taxpayer,
6 for three (3) times within any consecutive twenty-four month period, fails to
7 either:

8 (1) report gross receipts or compensating use tax in the manner
9 required by Arkansas law; or

10 (2) remit gross receipts or compensating use tax for the
11 reporting period that the tax is due.

12 (b) The director shall give notice to the noncompliant taxpayer that
13 the third delinquency in reporting or remitting tax in any consecutive
14 twenty-four month period will result in the closure of the business. The
15 notice must be in writing and delivered to the noncompliant taxpayer by the
16 United States Postal Service or by hand delivery

17 (c)(1) If the noncompliant taxpayer has a third delinquency in
18 reporting or remitting tax in any consecutive twenty-four month period after
19 the issuance of the notice provided in subsection (b) of this section, the
20 director shall notify the noncompliant taxpayer by certified mail or by hand
21 delivery that the business will be closed within five (5) business days from
22 the date of the notice unless the noncompliant taxpayer makes arrangements
23 with the director to satisfy the tax delinquency.

24 (2) When the fifth day falls on a Saturday, Sunday, or legal
25 holiday, the performance of the act is considered timely if it is performed
26 on the next succeeding business day that is not a Saturday, Sunday, or legal
27 holiday.

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

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

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

33
34 26-18-1002. Administrative hearing.

35 (a) A noncompliant taxpayer may request an administrative hearing
36 concerning the decision of the Director of the Department of Finance and

1 Administration to close the business by following the procedures in this
2 section.

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

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

12 (2) The director has the discretion to determine whether an
13 administrative hearing where testimony is to be presented will be conducted
14 in person or by telephone.

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

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

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

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

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

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

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

35 (1) Written proof that the noncompliant taxpayer filed all
36 delinquent returns and paid the delinquent tax due including interest and

1 penalty; or

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

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

7
8 26-18-1003. Judicial relief.

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

12 (2) The noncompliant taxpayer may seek judicial relief from the
13 decision by filing suit within twenty (20) calendar days of the date of the
14 decision.

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

20 (2)(A) If the circuit court finds that the business closure
21 order was appropriately issued by the director, the court shall issue an
22 injunction against the noncompliant taxpayer prohibiting the further
23 operation of the business.

24 (B) In the event that a business subject to an injunction
25 issued by the circuit court as provided in this subchapter continues in
26 operation, any person responsible for the decision to operate the business
27 after the issuance of the injunction shall upon conviction be guilty of a
28 Class A misdemeanor.

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

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

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

36 (1) if the noncompliant taxpayer fails to request an

1 administrative hearing under § 26-18-1002;

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

4 (3) upon final decision of a circuit court or an appellate
5 court.

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

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

9 (B) Not appealed by the delinquent taxpayer under this
10 subchapter.

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

14
15 26-18-1004. Business closure procedure.

16 (a) If a noncompliant taxpayer fails to timely seek administrative or
17 judicial review of a business closure decision, or if the business closure
18 decision is affirmed after administrative or judicial review, the Director of
19 the Department of Finance and Administration shall affix a written notice to
20 all entrances of the business that:

21 (1) Identifies the business as being subject to a business
22 closure order; and

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

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

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

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

35
36 26-18-1005. Suspension of a business license.

1 (a) After the decision becomes final, the Director of the Department
2 of Finance and Administration shall contact the appropriate administrative
3 body responsible for granting licenses to operate the business and report the
4 closure of the business.

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

8
9 26-18-1006. Authority to promulgate rules.

10 The Director of the Department of Finance and Administration is
11 authorized to promulgate rules necessary for the enforcement of this
12 subchapter.

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

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17 */s/ T. Smith*
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