

1 State of Arkansas  
2 84th General Assembly  
3 Second Extraordinary Session, 2003  
4

As Engrossed: S1/12/04 S1/14/04

Call Item 6

# A Bill

SENATE BILL 59

5 By: Senators T. Smith, Baker  
6  
7

## For An Act To Be Entitled

9 AN ACT TO INCREASE THE STATE SALES AND USE TAX  
10 RATE BY ONE AND ONE-EIGHTH OF ONE PERCENT  
11 (1 1/8%) TO BENEFIT THE PUBLIC SCHOOL FUND; TO  
12 REDUCE THE STATE SALES TAX ON FOOD TO ZERO  
13 PERCENT (0%); AND FOR OTHER PURPOSES.  
14

## Subtitle

15 AN ACT TO INCREASE THE STATE SALES AND  
16 USE TAX BY ONE AND ONE-EIGHTH OF ONE  
17 PERCENT (1 1/8%) TO BENEFIT THE PUBLIC  
18 SCHOOL FUND AND TO REDUCE THE STATE  
19 SALES TAX ON FOOD TO ZERO PERCENT (0%).  
20  
21  
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code § 26-52-302, pertaining to additional gross  
26 receipts tax, is amended to add a new subsection to read as follows:

27 (d)(1) There is levied an additional excise tax of one and one-eighth  
28 of one percent (1 1/8%) upon all taxable sales of property and services  
29 subject to the tax levied by the Arkansas Gross Receipts Act of 1941, as  
30 amended, § 26-52-101 et seq.

31 (2) The tax shall be collected, reported, and paid in the same  
32 manner and at the same time as is prescribed by the Arkansas Gross Receipts  
33 Act of 1941, as amended, § 26-52-101 et seq., for the collection, reporting,  
34 and payment of Arkansas gross receipts taxes.

35 (3) All tax, penalty, and interest collected under this  
36 subsection (d) shall be distributed as follows:



1 (A) Five percent (5%) of the collections shall be special  
2 revenues and shall be deposited in the State Treasury to the credit of the  
3 Property Tax Relief Trust Fund;

4 (B) One and one-half percent (1.5%) of the collections  
5 shall be special revenues and shall be deposited in the State Treasury to the  
6 credit of the Conservation Tax Fund for subsequent distribution in accordance  
7 with § 19-6-484;

8 (C) Forty-eight percent (48%) of the collections shall be  
9 deposited in the State Treasury to the credit of the Department of Education  
10 Public School Fund Account; and

11 (D) The remaining forty-five and one-half percent (45.5%)  
12 of the collections shall be deposited in the State Treasury to the credit of  
13 the General Revenue Fund Account of the State Apportionment Fund.

14  
15 SECTION 2. Arkansas Code Title 26, Chapter 52, Subchapter 3 is amended  
16 to add a new section as follows:

17 26-52-316. Food and food ingredients.

18 (a) As used in this section:

19 (1) "Dietary supplement" means any product, other than tobacco,  
20 intended to supplement the diet that:

21 (A) Contains one (1) or more of the following dietary  
22 ingredients:

23 (i) A vitamin;

24 (ii) A mineral;

25 (iii) An herb or other botanical;

26 (iv) An amino acid;

27 (v) A dietary substance for use by humans to  
28 supplement the diet by increasing the total dietary intake; and

29 (vi) A concentrate, metabolite, constituent,  
30 extract, or combination of any ingredient described in this subdivision

31 (a)(1)(A);

32 (B) Is intended for ingestion in tablet, capsule, powder,  
33 softgel, gelcap, or liquid form, or if not intended for ingestion in such a  
34 form, is not represented as conventional food and is not represented for use  
35 as a sole item of a meal or of the diet; and

36 (C) Is required to be labeled as a dietary supplement,

1 identifiable by the "Supplemental Facts" box found on the label and as  
2 required pursuant to 21 C.F.R § 101.36;

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

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

8 (ii) Bakery items, including bread, rolls, buns,  
9 biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,  
10 tarts, muffins, bars, cookies, or tortillas.

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

14 (3) "Food sold through vending machines" means food dispensed  
15 from a machine or other mechanical device that accepts payment;

16 (4)(A) "Prepared food" means:

17 (i) Food sold in a heated state or heated by the  
18 seller;

19 (ii) Two (2) or more food ingredients mixed or  
20 combined by the seller for sale as a single item; or

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

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

26 (B) "Prepared food" does not include:

27 (i) Food that is only cut, repackaged, or  
28 pasteurized by the seller; and

29 (ii) Eggs, fish, meat, poultry, and foods containing  
30 these raw animal foods requiring cooking by the consumer as recommended by  
31 the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code  
32 so as to prevent food-borne illnesses;

33 (5) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco,  
34 or any other item that contains tobacco.

35 (b) The gross receipts taxes levied under §§ 26-52-301 and 26-52-302  
36 upon the gross receipts or gross proceeds derived from the sale of food and

1 food ingredients shall be levied at the rate of zero percent (0%).

2 (c) The gross receipts or gross proceeds derived from the sale of food  
3 and food ingredients shall continue to be subject to all municipal and county  
4 gross receipts taxes.

5  
6 SECTION 3. Arkansas Code § 26-53-107, pertaining to additional use  
7 taxes and which is effective until contingency in Acts 2003, No. 1273, § 88  
8 is met, is amended to add a new subsection to read as follows:

9 (d)(1) There is levied an additional excise tax of one and one-eighth  
10 of one percent (1 1/8%) upon all tangible personal property subject to the  
11 tax levied by the Arkansas Compensating Tax Act of 1949, as amended, § 26-53-  
12 101 et seq.

13 (2) The tax shall be collected, reported, and paid in the same  
14 manner and at the same time as is prescribed by the Arkansas Compensating Tax  
15 Act of 1949, as amended, § 26-53-101 et seq., for the collection, reporting,  
16 and payment of Arkansas compensating taxes.

17 (3) All tax, penalty, and interest collected under this  
18 subsection (d) shall be distributed as follows:

19 (A) Five percent (5%) of the collections shall be special  
20 revenues and shall be deposited in the State Treasury to the credit of the  
21 Property Tax Relief Trust Fund;

22 (B) One and one-half percent (1.5%) of the collections  
23 shall be special revenues and shall be deposited in the State Treasury to the  
24 credit of the Conservation Tax Fund for subsequent distribution in accordance  
25 with § 19-6-484;

26 (C) Forty-eight percent (48%) of the collections shall be  
27 deposited in the State Treasury to the credit of the Department of Education  
28 Public School Fund Account; and

29 (D) The remaining forty-five and one-half percent (45.5%)  
30 of the collections shall be deposited in the State Treasury to the credit of  
31 the General Revenue Fund Account of the State Apportionment Fund.

32  
33 SECTION 4. Arkansas Code § 26-53-107, pertaining to additional use  
34 taxes and which is effective when contingency in Acts 2003, No. 1273, § 88 is  
35 met, is amended to add a new subsection to read as follows:

36 (d)(1) There is levied an additional excise tax of one and one-eighth

1 of one percent (1 1/8%) upon all tangible personal property and taxable  
2 services subject to the tax levied by the Arkansas Compensating Tax Act of  
3 1949, as amended, § 26-53-101 et seq.

4 (2) The tax shall be collected, reported, and paid in the same  
5 manner and at the same time as is prescribed by the Arkansas Compensating Tax  
6 Act of 1949, as amended, § 26-53-101 et seq., for the collection, reporting,  
7 and payment of Arkansas compensating taxes.

8 (3) All tax, penalty, and interest collected under this  
9 subsection (d) shall be distributed as follows:

10 (A) Five percent (5%) of the collections shall be special  
11 revenues and shall be deposited in the State Treasury to the credit of the  
12 Property Tax Relief Trust Fund;

13 (B) One and one-half percent (1.5%) of the collections  
14 shall be special revenues and shall be deposited in the State Treasury to the  
15 credit of the Conservation Tax Fund for subsequent distribution in accordance  
16 with § 19-6-484;

17 (C) Forty-eight percent (48%) of the collections shall be  
18 deposited in the State Treasury to the credit of the Department of Education  
19 Public School Fund Account; and

20 (D) The remaining forty-five and one-half percent (45.5%)  
21 of the collections shall be deposited in the State Treasury to the credit of  
22 the General Revenue Fund Account of the State Apportionment Fund.

23  
24 SECTION 5. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended  
25 to add a new section to read as follows:

26 26-53-145. Food and food ingredients.

27 (a) The compensating taxes levied under §§ 26-53-106 and 26-53-107  
28 shall be levied at the rate of zero percent (0%) on the sales price of food  
29 and food ingredients.

30 (b) All municipal and county use taxes shall continue to apply to the  
31 sales price of food and food ingredients.

32 (c) "Food and food ingredients" has the same meaning as provided in  
33 § 26-52-316(a).

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35 SECTION 6. Arkansas Code § 26-52-311(b)(1), concerning rental vehicle  
36 tax, is amended to read as follows:

1 (b)(1) In addition to the rate in subsection (c) of this section, the  
2 rental vehicle tax shall be levied at the ~~same rate as the combined gross~~  
3 ~~receipts taxes levied by §§ 26-52-301 and 26-52-302 and any act supplemental~~  
4 ~~thereto~~ rate of five percent (5%) and the rate of any applicable municipal or  
5 county taxes.

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7 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the  
8 General Assembly of the State of Arkansas that as a result of the Arkansas  
9 Supreme Court decision, Lake View Sch. Dist. No. 25 v. Huckabee, 351 Ark. 31,  
10 91 S.W.3d 472 (2002), additional revenue is necessary for the improvement of  
11 public schools, to provide all Arkansas children an adequate education, and  
12 to equalize funding for schools and teachers; that without additional  
13 revenue, the state will be unable to fulfill its constitutional duty to  
14 provide an adequate and equitable education to Arkansas children; and that  
15 this act is immediately necessary as it will provide needed revenue for the  
16 support and improvement of public schools. Therefore, an emergency is  
17 declared to exist and this act being necessary for the preservation of the  
18 public peace, health, and safety shall become effective on the first day of  
19 the second calendar month following:

20 (1) The date of its approval by the Governor;

21 (2) If the bill is neither approved nor vetoed by the Governor,  
22 the expiration of the period of time during which the Governor may veto the  
23 bill; or

24 (3) If the bill is vetoed by the Governor and the veto is  
25 overridden, the date the last house overrides the veto.

26  
27 /s/ T. Smith  
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