

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

As Engrossed: S1/13/04 S1/15/04

Call Item 6

A Bill

SENATE BILL 60

5 By: Senator Glover
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7

For An Act To Be Entitled

9 AN ACT TO LEVY AN ADDITIONAL GROSS RECEIPTS TAX
10 OF ONE PERCENT (1%); TO LEVY AN ADDITIONAL ONE
11 PERCENT (1%) COMPENSATING USE TAX; TO PHASE OUT
12 THE STATE SALES AND USE TAX ON FOOD AND FOOD
13 INGREDIENTS; TO CREATE THE EDUCATIONAL ADEQUACY
14 TRUST FUND; AND FOR OTHER PURPOSES.

Subtitle

16 TO LEVY AN ADDITIONAL GROSS RECEIPTS TAX
17 OF ONE PERCENT (1%); TO LEVY AN
18 ADDITIONAL ONE PERCENT (1%) COMPENSATING
19 USE TAX; TO PHASE OUT THE STATE SALES
20 AND USE TAX ON FOOD AND FOOD
21 INGREDIENTS.
22
23
24

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

26
27 SECTION 1. Arkansas Code § 26-52-302 is amended to read as follows:
28 26-52-302. Additional taxes levied.

29 (a) In addition to the excise tax levied upon the gross proceeds or
30 gross receipts derived from all sales by the Arkansas Gross Receipts Act, §
31 26-52-101 et seq., there is levied an excise tax of one percent (1%) upon all
32 taxable sales of property and services subject to the tax levied in that act.
33 This tax shall be collected, reported, and paid in the same manner and at the
34 same time as is prescribed by law for the collection, reporting, and payment
35 of all other Arkansas gross receipts taxes. In computing gross receipts or
36 gross proceeds as defined in § 26-52-103(a)(4), a deduction shall be allowed



1 for bad debts resulting from the sale of tangible personal property.

2 (b) In addition to the excise tax levied upon the gross proceeds or
3 gross receipts derived from all sales by the Arkansas Gross Receipts Act, §
4 26-52-101 et seq., there is hereby levied an excise tax of one-half of one
5 percent (0.5%) upon all taxable sales of property and services subject to the
6 tax levied in that act, and such tax shall be collected, reported, and paid
7 in the same manner and at the same time as is prescribed by law for the
8 collection, reporting, and payment of all other Arkansas gross receipts
9 taxes. Provided that, in computing gross receipts or gross proceeds as
10 defined in § 26-52-103(a)(4), a deduction shall be allowed for bad debts
11 resulting from the sale of tangible personal property.

12 (c)(1) Beginning January 1, 2001, there is hereby levied an additional
13 excise tax of one-half of one percent (0.5%) upon all taxable sales of
14 property and services subject to the tax levied by the Arkansas Gross
15 Receipts Act of 1941, § 26-52-101 et seq.

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

20 (d)(1) Beginning March 1, 2004, there is levied an additional excise
21 tax of one percent (1%) upon all taxable sales of property and services
22 subject to the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-
23 52-101 et seq.

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

28
29 SECTION 2. Arkansas Code § 26-53-107 is amended to read as follows:

30 26-53-107. Additional taxes levied. [Effective until contingency in
31 Acts 2003, No. 1273, § 88 is met.]

32 (a) In addition to the excise tax levied upon the privilege of
33 storing, using, distributing, or consuming tangible personal property within
34 this state by the Arkansas Compensating Tax Act, § 26-53-101 et seq., there
35 is levied an excise tax of one percent (1%) upon all tangible personal
36 property subject to the tax levied in that act, and the tax shall be

1 collected, reported, and paid in the same manner and at the same time as is
2 prescribed by law for the collection, reporting, and payment of state
3 compensating taxes.

4 (b) In addition to the excise tax levied upon the privilege of
5 storing, using, distributing, or consuming tangible personal property within
6 the state by the Arkansas Compensating Tax Act, § 26-53-101 et seq., there is
7 hereby levied an excise tax of one-half of one percent (0.5%) upon all
8 tangible personal property subject to the tax levied in that act, and such
9 tax shall be collected, reported, and paid in the same manner and at the same
10 time as is prescribed by law for the collection, reporting, and payment of
11 Arkansas compensating taxes.

12 (c)(1) Beginning January 1, 2001, there is hereby levied an additional
13 excise tax of one-half of one percent (0.5%) upon all tangible personal
14 property subject to the tax levied by the Arkansas Compensating Tax Act of
15 1949, § 26-53-101 et seq.

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

20 (d)(1) Beginning March 1, 2004, there is levied an additional excise
21 tax of one percent (1%) upon all tangible personal property subject to the
22 tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

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

27
28 SECTION 3. Arkansas Code § 26-53-107 is amended to read as follows:

29 26-53-107. Additional taxes levied. [Effective when contingency in
30 Acts 2003, No. 1273, § 88 is met.]

31 (a) In addition to the excise tax levied upon the privilege of
32 storing, using, distributing, or consuming tangible personal property and
33 taxable services within this state by the Arkansas Compensating Tax Act of
34 1949, § 26-53-101 et seq., there is levied an excise tax of one percent (1%)
35 upon all tangible personal property and taxable services subject to the tax
36 levied in that act, and the tax shall be collected, reported, and paid in the

1 same manner and at the same time as is prescribed by law for the collection,
2 reporting, and payment of state compensating taxes.

3 (b) In addition to the excise tax levied upon the privilege of
4 storing, using, distributing, or consuming tangible personal property and
5 taxable services within the state by the Arkansas Compensating Tax Act of
6 1949, § 26-53-101 et seq., there is hereby levied an excise tax of one-half
7 of one percent (0.5%) upon all tangible personal property and taxable
8 services subject to the tax levied in that act, and the tax shall be
9 collected, reported, and paid in the same manner and at the same time as is
10 prescribed by law for the collection, reporting, and payment of Arkansas
11 compensating taxes.

12 (c)(1) Beginning January 1, 2001, there is hereby levied an additional
13 excise tax of one-half of one percent (0.5%) upon all tangible personal
14 property and taxable services subject to the tax levied by the Arkansas
15 Compensating Tax Act of 1949, § 26-53-101 et seq.

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

20 (d)(1) Beginning March 1, 2004, there is levied an additional excise
21 tax of one percent (1%) upon all tangible personal property and taxable
22 services subject to the tax levied by the Arkansas Compensating Tax Act of
23 1949, § 26-53-101 et seq.

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

28
29 SECTION 4. Arkansas Code § 26-52-311(b)(1), pertaining to the rental
30 vehicle tax, is amended to read as follows:

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

36

1 SECTION 5. Arkansas Code Title 26, Chapter 52, Subchapter 4 is amended
2 to add an additional section to read as follows:

3 26-52-437. Food and food ingredients.

4 (a) As used in this section:

5 (1) "Alcoholic beverages" means beverages that are suitable for
6 human consumption and contain one-half of one percent or more of alcohol by
7 volume;

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

10 (A) Contains one or more of the following dietary
11 ingredients:

12 (i) A vitamin;

13 (ii) A mineral;

14 (iii) An herb or other botanical;

15 (iv) An amino acid;

16 (v) A dietary substance for use by humans to
17 supplement the diet by increasing the total dietary intake; or

18 (vi) A concentrate, metabolite, constituent,
19 extract, or combination of any ingredient as described in this subdivision
20 (a)(2)(A);

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

25 (C) Is required to be labeled as a dietary supplement,
26 identifiable by the "Supplemental Facts" box found on the label and as
27 required under 21 C.F.R. § 101.36 as in effect on January 1, 2004;

28 (3)(A) "Food and food ingredients" mean:

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

32 (ii) Food sold in an unheated state by weight or
33 volume as a single item; and

34 (iii) Bakery items, including bread, rolls, buns,
35 biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,
36 tarts, muffins, bars, cookies, and tortillas.

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

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

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

7 (i) Food sold in a heated state or heated by the
8 seller;

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

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

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

16 (B) "Prepared food" under subdivision (5)(A)(ii) of this
17 section does not include:

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

20 (ii) Eggs, fish, meat, poultry, and foods containing
21 these raw animal foods that require cooking by the consumer as recommended by
22 the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code,
23 as in effect on January 1, 2004, so as to prevent food borne illnesses;

24 (6) "Tobacco" means cigarettes, cigars, chewing tobacco, pipe
25 tobacco, or any other item that contains tobacco.

26 (b)(1) Beginning July 1, 2005, the gross receipts taxes levied under
27 §§ 26-52-301 and 26-52-302(a) and (b) upon the gross receipts or gross
28 proceeds derived from the sale of food and food ingredients shall be levied
29 at the rate of three and three-eighths percent (3.375%).

30 (2) Beginning July 1, 2006, the gross receipts taxes levied
31 under §§ 26-52-301 and 26-52-302(a) and (b) upon the gross receipts or gross
32 proceeds derived from the sale of food and food ingredients shall be levied
33 at the rate of two and one-fourth percent (2.25%).

34 (3) Beginning July 1, 2007, the gross receipts taxes levied
35 under §§ 26-52-301 and 26-52-302(a) and (b) upon the gross receipts or gross
36 proceeds derived from the sale of food and food ingredients shall be levied

1 at the rate of one and one-eighth percent (1.125%).

2 (4) Beginning July 1, 2008, the gross receipts taxes levied
3 under §§ 26-52-301 and 26-52-302(a) and (b) upon the gross receipts or gross
4 proceeds derived from the sale of food and food ingredients shall be levied
5 at the rate of zero percent (0%).

6 (c) The gross receipts or gross proceeds derived from the sale of food
7 and food ingredients shall continue to be subject to the taxes levied under §
8 26-52-302(c) and (d).

9 (d) The gross receipts or gross proceeds derived from the sale of food
10 and food ingredients shall continue to be subject to the tax levied under
11 Arkansas Constitution, Amendment 75, § 2.

12 (e) The gross receipts or gross proceeds derived from the sale of food
13 and food ingredients shall continue to be subject to all municipal and county
14 gross receipts taxes.

15
16 SECTION 6. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended
17 to add an additional section to read as follows:

18 26-53-145. Food and Food Ingredients.

19 (a)(1) Beginning July 1, 2005, the compensating use taxes levied under
20 §§ 26-53-106 and 26-53-107(a) and (b) shall be levied at the rate of three
21 and three-eighths percent (3.375%) on the sales price of food and food
22 ingredients.

23 (2) Beginning July 1, 2006, the compensating use taxes levied
24 under §§ 26-53-106 and 26-53-107(a) and (b) shall be levied at the rate of
25 two and one-fourth percent (2.25%) on the sales price of food and food
26 ingredients.

27 (3) Beginning July 1, 2007, the compensating use taxes levied
28 under §§ 26-53-106 and 26-53-107(a) and (b) shall be levied at the rate of
29 one and one-eighth percent (1.125%) on the sales price of food and food
30 ingredients.

31 (4) Beginning July 1, 2008, the compensating use taxes levied
32 under §§ 26-53-106 and 26-53-107(a) and (b) shall be levied at the rate of
33 zero percent (0%) on the sales price of food and food ingredients.

34 (b) The use taxes levied under § 26-53-107(c) and (d) shall continue
35 to apply to the sales price of food and food ingredients.

36 (c) The use tax levied under Arkansas Constitution, Amendment 75, § 2

1 shall continue to apply to the sales price of food and food ingredients.

2 (d) All municipal and county use taxes shall continue to apply to the
3 sales price of food and food ingredients.

4
5 SECTION 7. Educational Adequacy Trust Fund.

6 (a) There is hereby created on the books of the Treasurer of State,
7 the Auditor of State, and Chief Fiscal Officer of the State a special revenue
8 fund to be known as the Educational Adequacy Trust Fund.

9 (b) The fund shall consist of the revenues generated by Arkansas Code
10 §§ 26-52-302(d) and 26-53-107(d).

11 (c) On the last day of the month, the Treasurer of State shall
12 transfer amounts available in the Educational Adequacy Trust Fund to the
13 Department of Education Public School Fund Account established in Arkansas
14 Code § 19-5-305, to be used for the purposes as provided by law. The
15 Treasurer of State shall make the transfer after making the deductions
16 required from the net special revenues as set out in Arkansas Code § 19-5-
17 203(b)(2)(A).

18
19 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
20 General Assembly that the provision of an equal opportunity for an adequate
21 education to all the citizens of the state is imperative; that additional
22 funds are immediately needed to provide an equal opportunity for an adequate
23 education; that this act is designed to provide the additional revenues
24 needed to provide this equal opportunity to all citizens; and that a delay in
25 the effective date of this act will cause irreparable harm upon the provision
26 of essential education opportunities and the proper administration of
27 educational programs. Therefore, an emergency is declared to exist and this
28 act being immediately necessary for the preservation of the public peace,
29 health, and safety shall be in full force and effect on March 1, 2004.

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31 /s/ Glover
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