

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

As Engrossed: S3/14/05

A Bill

SENATE BILL 1071

4
5 By: Senator Glover
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For An Act To Be Entitled

8
9 AN ACT TO MODIFY THE EFFECTIVE DATE OF ACT 1273
10 OF 2003 AS IT APPLIES TO THE SOURCING OF SALES
11 FOR SALES AND USE TAX PURPOSES; TO PROTECT
12 MUNICIPAL SALES AND USE TAX REVENUES; AND FOR
13 OTHER PURPOSES.
14

Subtitle

15
16 TO MODIFY THE EFFECTIVE DATE OF ACT 1273
17 OF 2003 AS IT APPLIES TO THE SOURCING OF
18 SALES FOR SALES AND USE TAX PURPOSES AND
19 TO PROTECT MUNICIPAL SALES AND USE TAX
20 REVENUES.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 *26-52-521. Sourcing of sales. ~~Effective when contingency in Acts~~*
26 *~~2003, No. 1273, § 88 is met.~~*

27 *(a)(1) This section applies for purposes of determining a seller's*
28 *obligation to pay or collect and remit a sales or use tax with respect to the*
29 *seller's retail sale of a product or service.*

30 *(2) This section does not affect the obligation of a purchaser*
31 *or lessee to remit tax on the use of the product or service to the taxing*
32 *jurisdictions of that use and does not apply to the sales or use taxes levied*
33 *on the retail sale excluding lease or rental, of motor vehicles, trailers, or*
34 *semitrailers that require licensing.*

35 *(b) Excluding lease or rental, the retail sale of a product or service*
36 *shall be sourced as follows:*



1 (1) If the product or service is received by the purchaser at a
2 business location of the seller, the sale is sourced to that business
3 location;

4 (2) If the product or service is not received by the purchaser
5 at a business location of the seller, the sale is sourced to the location
6 where receipt by the purchaser or the purchaser's designated donee occurs,
7 including the location indicated by instructions for delivery to the
8 purchaser or donee known to the seller;

9 (3) If subdivisions (b)(1) and (2) of this section do not apply,
10 the sale is sourced to the location indicated by an address for the purchaser
11 that is available from the business records of the seller that are maintained
12 in the ordinary course of the seller's business when use of this address does
13 not constitute bad faith;

14 (4) If subdivisions (b)(1)-(3) of this section do not apply, the
15 sale is sourced to the location indicated by an address for the purchaser
16 obtained during the consummation of the sale, including the address of a
17 purchaser's payment instrument, if no other address is available if the use
18 of this address does not constitute bad faith; or

19 (5) If none of the previous rules of subdivisions (b)(1)-(4) of
20 this section apply, including the circumstance in which the seller is without
21 sufficient information to apply the previous rules, the location will be
22 determined by the address from which tangible personal property was shipped
23 or from which the service was provided, disregarding for these purposes any
24 location that merely provided the digital transfer of the product sold.

25 (c) The lease or rental of tangible personal property other than
26 property identified in subsection (d) or (e) of this section shall be sourced
27 as follows:

28 (1)(A) For a lease or rental that requires recurring periodic
29 payments, the first periodic payment is sourced the same as a retail sale in
30 accordance with the provisions of subsection (b) of this section.

31 (B) Periodic payments made after the first payment are
32 sourced to the primary property location for each period covered by the
33 payment.

34 (C) The primary property location shall be as indicated by
35 an address for the property provided by the lessee that is available to the
36 lessor from its records maintained in the ordinary course of business if use

1 of this address does not constitute bad faith.

2 (D) The property location shall not be altered by
3 intermittent use at different locations such as use of business property that
4 accompanies employees on business trips and service calls;

5 (2) For a lease or rental that does not require recurring
6 periodic payments, the payment is sourced the same as a retail sale in
7 accordance with the provisions of subsection (b) of this section; and

8 (3) This subsection does not affect the imposition or
9 computation of sales or use tax on leases or rentals based on a lump sum or
10 accelerated basis or on the acquisition of property for lease.

11 (d) The lease or rental of motor vehicles, trailers, semitrailers, or
12 aircraft that do not qualify as transportation equipment as defined in
13 subsection (e) of this section shall be sourced as follows:

14 (1)(A) For a lease or rental that requires recurring periodic
15 payments, each periodic payment is sourced to the primary property location.

16 (B) The primary property location shall be as indicated by
17 an address for the property provided by the lessee that is available to the
18 lessor from its records maintained in the ordinary course of business if use
19 of this address does not constitute bad faith.

20 (C) This location shall not be altered by intermittent use
21 at different locations;

22 (2) For a lease or rental that does not require recurring
23 periodic payments, the payment is sourced the same as a retail sale in
24 accordance with the provisions of subsection (b) of this section; and

25 (3) This subsection does not affect the imposition or
26 computation of sales or use tax on leases or rentals based on a lump sum or
27 accelerated basis or on the acquisition of property for lease.

28 (e)(1) Including lease or rental, the retail sale of transportation
29 equipment shall be sourced the same as a retail sale in accordance with the
30 provisions of subsection (b) of this section, notwithstanding the exclusion
31 of lease or rental in subsection (b) of this section.

32 (2) "Transportation equipment" means any of the following:

33 (A) Locomotives and railcars that are utilized for the
34 carriage of persons or property in interstate commerce;

35 (B) Trucks and truck tractors with a Gross Vehicle Weight
36 Rating of ten thousand one pounds (10,001 lbs.) or greater, trailers,

1 semitrailers, or passenger buses that are:

2 (i) Registered through the International
3 Registration Plan; and

4 (ii) Operated under authority of a carrier
5 authorized and certificated by the United States Department of Transportation
6 or another federal authority to engage in the carriage of persons or property
7 in interstate commerce;

8 (C) Aircraft that are operated by air carriers authorized
9 and certificated by the United States Department of Transportation or another
10 federal or a foreign authority to engage in the carriage of persons or
11 property in interstate or foreign commerce; or

12 (D) Containers designed for use on and component parts
13 attached or secured on the items under subdivisions (e)(1)-(3) of this
14 section.

15 (f) For the purpose of subsection (b) of this section:

16 (1) "Receive" and "receipt" mean:

17 (A) Taking possession of tangible personal property; or

18 (B) Making first use of services; and

19 (2) "Receive" and "receipt" do not include possession by a
20 shipping company on behalf of the purchaser.

21 (g) When a motor vehicle, trailer, or semitrailer that requires
22 licensing is sold to a person who resides in Arkansas, the sale is sourced to
23 the residence of the purchaser.

24 (h) This section shall apply to all state and local taxes administered
25 by the Department of Finance and Administration.

26 (i)(1) The provisions of this section shall become effective on the
27 first day of the second calendar month following a determination by the
28 Director of the Department of Finance and Administration that federal law
29 authorizes the state to collect sales and use tax from some or all of the
30 sellers that have no physical presence in the State of Arkansas and that make
31 sales of taxable goods and services to Arkansas purchasers.

32 (2) Subdivision (i)(1) of this section shall supersede all
33 previous dates or conditions upon which this section previously became
34 effective.

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36 /s/ Glover