

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 86th General Assembly
3 Regular Session, 2007

A Bill

SENATE BILL 185

4
5 By: Senators Glover, Hill, Capps, Miller, T. Smith, Faris, Altes, Wilkinson, Baker, Bisbee, Bookout,
6 Broadway, Brown, Bryles, Crumbly, Hendren, Horn, G. Jeffress, J. Jeffress, B. Johnson, Laverty, Luker,
7 Madison, Malone, B. Pritchard, Salmon, J. Taylor, Whitaker, Wilkins, Womack
8 By: Representatives D. Evans, Allen, T. Baker, Blount, J. Brown, Burris, Cheatham, Cook, Cornwell, D.
9 Creekmore, Davenport, Davis, Edwards, Glidewell, R. Green, Hardwick, Hardy, Harrelson, Hawkins,
10 House, Hoyt, D. Hutchinson, J. Johnson, Key, Lowery, Medley, Pate, Pennartz, Pickett, Pierce, Powers,
11 S. Prater, Rainey, Reep, Reynolds, J. Roebuck, Saunders, Shelby, L. Smith, Wagner, Walters, Webb

For An Act To Be Entitled

12
13
14 AN ACT TO AMEND THE STATE SALES AND USE TAX RATE
15 ON FOOD AND FOOD INGREDIENTS; TO CONTINUE THE
16 IMPOSITION OF LOCAL SALES AND USE TAX ON FOOD AND
17 FOOD INGREDIENTS; AND FOR OTHER PURPOSES.
18

Subtitle

19
20 TO AMEND THE STATE SALES AND USE TAX
21 RATE ON FOOD AND FOOD INGREDIENTS.
22

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

26
27 SECTION 1. Arkansas Code § 26-52-317 is amended to read as follows:
28 26-52-317. Food and food ingredients.

29 (a)(1) The Director of the Department of Finance and Administration
30 shall determine the following conditions:

31 (A) That federal law authorizes the state to collect sales
32 and use tax from some or all of the sellers who have no physical presence in
33 the State of Arkansas and who make sales of taxable goods and services to
34 Arkansas purchasers;

35 (B) That initiating the collection of sales and use tax
36 from these sellers would increase the net available general revenues needed



1 to fund state agencies, services, and programs; and

2 (C)(i) That during a six-month consecutive period, the
3 amount of net available general revenues attributable to the collection of
4 sales and use tax from sellers who have no physical presence in the State of
5 Arkansas is equal to or greater than one hundred fifty percent (150%) of
6 sales and use tax collected under ~~§§ 26-52-301, 26-52-302(a), (b), and (d),~~
7 ~~26-53-106, and 26-53-107(a), (b), and (d)~~ subsection (c) of this section and
8 § 26-53-145 on food and food ingredients;

9 (ii) The director shall make the determination under
10 subdivision (a)(1)(C)(i) of this section on a monthly basis following the
11 determination that the conditions under subdivision (a)(1)(A) of this section
12 have been met.

13 (2) When the director finds that all of the conditions in
14 subdivision (a)(1) of this section have been met, then the gross receipts or
15 gross proceeds taxes levied under ~~§§ 26-52-301 and 26-52-302(a), (b), and (d)~~
16 subsection (c) of this section shall be levied at the rate of zero percent
17 (0%) on the sale of food and food ingredients beginning on the first day of
18 the second calendar month following the determination of the director.

19 (b) As used in this section:

20 (1) "Alcoholic beverage" means a beverage that is suitable for
21 human consumption and contains one-half of one percent (0.5%) or more of
22 alcohol by volume;

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

25 (A) Contains one (1) or more of the following dietary
26 ingredients:

27 (i) A vitamin;

28 (ii) A mineral;

29 (iii) An herb or other botanical;

30 (iv) An amino acid;

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

33 (vi) A concentrate, metabolite, constituent,
34 extract, or combination of any ingredient described in this subdivision
35 (b)(2)(A), and is intended for ingestion in tablet, capsule, powder, softgel,
36 gelcap, or liquid form, or if not intended for ingestion in such a form, is

1 not represented as conventional food and is not represented for use as a sole
2 item of a meal or of the diet; and

3 (B) Is required to be labeled as a dietary supplement,
4 identifiable by the "Supplemental Facts" box found on the label and as
5 required pursuant to 21 C.F.R. § 101.36, as it existed on January 1, 2007;

6 (3)(A) "Food and food ingredients" means substances, whether in
7 liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold
8 for ingestion or chewing by humans and are consumed for their taste or
9 nutritional value.

10 (B) "Food and food ingredients" does not include an
11 alcoholic beverage, tobacco, a dietary supplement, or prepared food.

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

13 (i) Food sold in a heated state or heated by the
14 seller;

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

17 (iii)(a) Food sold with an eating utensil provided
18 by the seller, including a plate, knife, fork, spoon, glass, cup, napkin, or
19 a straw.

20 (b) As used in this subdivision (b)(4)(A)(iii)
21 "plate" does not include a container or packaging used to transport the food.

22 (B) "Prepared food" does not include food that is only
23 cut, repackaged, or pasteurized by the seller, or eggs, fish, meat, poultry,
24 and foods containing these raw animal foods requiring cooking by the consumer
25 to prevent food borne illnesses as recommended by the Food and Drug
26 Administration in Chapter 3, Part 401.11 of its Food Code as it existed on
27 January 1, 2007; and

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

30 (c)(1) Beginning July 1, 2007, in lieu of the gross receipts or gross
31 proceeds taxes levied on food and food ingredients under §§ 26-52-301 and 26-
32 52-302, there is levied a tax on the gross receipts or gross proceeds derived
33 from the sale of food and food ingredients at the rate of two and seven-
34 eighths percent (2.875%) to be distributed as follows:

35 (A) Seventy-six and six-tenths percent (76.6%) of the
36 taxes, interest, penalties, and costs received by the director under this

1 subdivision (c)(1) shall be deposited as general revenues;

2 (B) Eight and one-half percent (8.5%) of the taxes,
 3 interest, penalties, and costs received by the director under this
 4 subdivision (c)(1) shall be deposited into the Property Tax Relief Trust
 5 Fund; and

6 (C) Fourteen and nine-tenths percent (14.9%) of the taxes,
 7 interest, penalties, and costs received by the director under this
 8 subdivision (c)(1) shall be deposited into the Educational Adequacy Fund.

9 (2) The gross receipts or gross proceeds taxes levied under this
 10 subdivision (c)(1) shall be collected, reported, and paid in the same manner
 11 and at the same time as is prescribed by law for the collection, reporting,
 12 and payment of all other Arkansas gross receipts taxes.

13 ~~(b)~~ (d) The gross receipts or gross proceeds derived from the sale of
 14 food and food ingredients shall continue to be subject to the:

15 ~~(1) Taxes levied under § 26-52-302(e);~~

16 ~~(2)~~ (1) Excise tax levied under Arkansas Constitution, Amendment
 17 75, § 2; and

18 ~~(3)~~ (2) All municipal and county gross receipts taxes.

19 ~~(e)~~ (e) The Department of Finance and Administration shall promulgate
 20 rules to implement the provisions of this section.

21
 22 SECTION 2. Arkansas Code § 26-53-145 is amended to read as follows:

23 26-53-145. Food and food ingredients.

24 (a)(1) The Director of the Department of Finance and Administration
 25 shall determine the following conditions:

26 (A) That federal law authorizes the state to collect sales
 27 and use tax from some or all of the sellers who have no physical presence in
 28 the State of Arkansas and who make sales of taxable goods and services to
 29 Arkansas purchasers;

30 (B) That initiating the collection of sales and use tax
 31 from these sellers would increase the net available general revenues needed
 32 to fund state agencies, services, and programs; and

33 (C)(i) That during a six-month consecutive period, the
 34 amount of net available general revenues attributable to the collection of
 35 sales and use tax from sellers who have no physical presence in the State of
 36 Arkansas is equal to or greater than one hundred fifty percent (150%) of

1 sales and use tax collected under ~~§§ 26-52-301, 26-52-302(a), (b), and (d),~~
 2 ~~26-53-106, and 26-53-107(a), (b), and (d)~~ subsection (c) of this section and
 3 § 26-52-317 on food and food ingredients.

4 (ii) The director shall make the determination under
 5 subdivision (a)(1)(C)(i) of this section on a monthly basis following the
 6 determination that the conditions under subdivision (a)(1)(A) of this section
 7 have been met.

8 (2) When the director finds that all of the conditions in
 9 subdivision (a)(1) of this section have been met, then the compensating use
 10 taxes levied under ~~§§ 26-53-106 and 26-53-107(a), (b), and (d)~~ subsection (c)
 11 of this section shall be levied at the rate of zero percent (0%) on the sale
 12 of food and food ingredients beginning on the first day of the second
 13 calendar month following the determination of the director.

14 (b) As used in this section:

15 (1) “Alcoholic beverage” means a beverage that is suitable for
 16 human consumption and contains one-half of one percent (0.5%) or more of
 17 alcohol by volume;

18 (2) “Dietary supplement” means any product, other than tobacco,
 19 intended to supplement the diet that:

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

22 (i) A vitamin;

23 (ii) A mineral;

24 (iii) An herb or other botanical;

25 (iv) An amino acid;

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

28 (vi) A concentrate, metabolite, constituent,
 29 extract, or combination of any ingredient described in this subdivision
 30 (b)(2)(A), and is intended for ingestion in tablet, capsule, powder, softgel,
 31 gelcap, or liquid form, or if not intended for ingestion in such a form, is
 32 not represented as conventional food and is not represented for use as a sole
 33 item of a meal or of the diet; and

34 (B) Is required to be labeled as a dietary supplement,
 35 identifiable by the “Supplemental Facts” box found on the label and as
 36 required pursuant to 21 C.F.R. § 101.36, as it existed on January 1, 2007;

1 (3)(A) “Food and food ingredients” means substances, whether in
2 liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold
3 for ingestion or chewing by humans and are consumed for their taste or
4 nutritional value;

5 (B) “Food and food ingredients” does not include an
6 alcoholic beverage, tobacco, a dietary supplement, or prepared food;

7 (4)(A) “Prepared food” means:

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

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

12 (iii)(a) Food sold with an eating utensil provided
13 by the seller, including a plate, knife, fork, spoon, glass, cup, napkin, or
14 straw.

15 (b) As used in this subdivision
16 (b)(4)(A)(iii), “plate” does not include a container or packaging used to
17 transport the food.

18 (B) “Prepared food” does not include food that is only
19 cut, repackaged, or pasteurized by the seller, or eggs, fish, meat, poultry,
20 and foods containing these raw animal foods requiring cooking by the consumer
21 to prevent food borne illnesses as recommended by the Food and Drug
22 Administration in Chapter 3, Part 401.11 of its Food Code as it existed on
23 January 1, 2007; and

24 (5) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco,
25 or any other item that contains tobacco.

26 (c)(1) Beginning July 1, 2007, in lieu of the compensating use taxes
27 levied on food and food ingredients under §§ 26-53-106 and 26-53-107, there
28 is levied a tax on the privilege of storing, using, distributing, or
29 consuming food and food ingredients at the rate of two and seven-eighths
30 percent (2.875%) to be distributed as follows:

31 (A) Seventy-six and six-tenths percent (76.6%) of the
32 taxes, interest, penalties, and costs received by the director under
33 subdivision (c)(1) shall be deposited as general revenues;

34 (B) Eight and one-half percent (8.5%) of the taxes,
35 interest, penalties, and costs received by the director under this
36 subdivision (c)(1) shall be deposited into the Property Tax Relief Trust

1 Fund; and

2 (C) Fourteen and nine-tenths percent (14.9%) of the taxes,
 3 interest, penalties, and costs received by the director under this
 4 subdivision (c)(1) shall be deposited into the Educational Adequacy Fund.

5 (2) The use tax levied under this subdivision (c)(1) shall be
 6 collected, reported, and paid in the same manner and at the same time as is
 7 prescribed by law for the collection, reporting, and payment of all other
 8 Arkansas compensating use taxes.

9 ~~(b)~~ (d) The following shall continue to apply to the sales price of
 10 food and food ingredients:

11 ~~(1) The compensating use tax levied under § 26-53-107(e);~~

12 ~~(2)~~ (1) The compensating use tax levied under Arkansas
 13 Constitution, Amendment 75, § 2; and

14 ~~(3)~~ (2) All municipal and county use taxes.

15 ~~(e)~~ (e) The Department of Finance and Administration shall promulgate
 16 rules to implement the provisions of this section.

17
 18 SECTION 3. The introductory language of Arkansas Code § 26-52-301
 19 [Effective July 1, 2007], pertaining to the levy of sales tax, is amended to
 20 read as follows:

21 ~~There~~ Except for food and food ingredients which are taxed under § 26-
 22 52-317, there is levied an excise tax of three percent (3%) upon the gross
 23 proceeds or gross receipts derived from all sales to any person of the
 24 following:

25
 26 SECTION 4. Arkansas Code § 26-52-302 is amended to read as follows:

27 26-52-302. Additional taxes levied.

28 (a)(1) In addition to the excise tax levied upon the gross proceeds or
 29 gross receipts derived from all sales by the Arkansas Gross Receipts Act of
 30 1941, § 26-52-101 et seq., except for food and food ingredients which are
 31 taxed under § 26-52-317, there is levied an excise tax of one percent (1%)
 32 upon all taxable sales of property and services subject to the tax levied in
 33 the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

34 (2) This tax shall be collected, reported, and paid in the same
 35 manner and at the same time as is prescribed by law for the collection,
 36 reporting, and payment of all other Arkansas gross receipts taxes.

1 (3) In computing gross receipts or gross proceeds as defined in
2 § 26-52-103(a)(7), a deduction shall be allowed for bad debts resulting from
3 the sale of tangible personal property.

4 (b)(1) In addition to the excise tax levied upon the gross proceeds or
5 gross receipts derived from all sales by the Arkansas Gross Receipts Act of
6 1941, § 26-52-101 et seq., except for food and food ingredients which are
7 taxed under § 26-52-317, there is hereby levied an excise tax of one-half of
8 one percent (0.5%) upon all taxable sales of property and services subject to
9 the tax levied in the Arkansas Gross Receipts Act of 1941, § 26-52-101 et
10 seq.

11 (2) This tax shall be collected, reported, and paid in the same
12 manner and at the same time as is prescribed by law for the collection,
13 reporting, and payment of all other Arkansas gross receipts taxes.

14 (3) However, in computing gross receipts or gross proceeds as
15 defined in § 26-52-103(a)(7), a deduction shall be allowed for bad debts
16 resulting from the sale of tangible personal property.

17 (c)(1) ~~There~~ Except for food and food ingredients which are taxed
18 under § 26-52-317, ~~there~~ is levied an additional excise tax of one-half of
19 one percent (0.5%) upon all taxable sales of property and services subject to
20 the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et
21 seq.

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

26 (d)(1) ~~There~~ Except for food and food ingredients which are taxed
27 under § 26-52-317, ~~there~~ is levied an additional excise tax of seven-eighths
28 of one percent (0.875%) upon all taxable sales of property and services
29 subject to the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-
30 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 prescribed by the Arkansas Gross Receipts Act
33 of 1941, § 26-52-101 et seq., for the collection, reporting, and payment of
34 Arkansas gross receipts taxes.

35
36 SECTION 5. Arkansas Code § 26-53-106(a) [Effective July 1, 2007],

1 pertaining to the imposition and rate of use tax, is amended to read as
2 follows:

3 (a) There is levied and there shall be collected from every person in
4 this state a tax or excise for the privilege of storing, using, distributing,
5 or consuming within this state any article of tangible personal property or
6 taxable service purchased for storage, use, distribution, or consumption in
7 this state at the rate of three percent (3%) of the sales price of the
8 property except for food and food ingredients which are taxed under § 26-53-
9 145.

10
11 SECTION 6. Arkansas Code § 26-53-107 [Effective July 1, 2007] is
12 amended to read as follows:

13 26-53-107. Additional taxes levied. [Effective July 1, 2007.]

14 (a)(1) In addition to the excise tax levied upon the privilege of
15 storing, using, distributing, or consuming tangible personal property and
16 taxable services within this state by this subchapter, there is levied an
17 excise tax of one percent (1%) upon all tangible personal property and
18 taxable services subject to the tax levied in this subchapter except for food
19 and food ingredients which are taxed under § 26-53-145.

20 (2) The tax shall be collected, reported, and paid in the same
21 manner and at the same time as is prescribed by law for the collection,
22 reporting, and payment of state compensating taxes.

23 (b)(1) In addition to the excise tax levied upon the privilege of
24 storing, using, distributing, or consuming tangible personal property and
25 taxable services within the state by this subchapter, there is levied an
26 excise tax of one-half of one percent (0.5%) upon all tangible personal
27 property and taxable services subject to the tax levied in this subchapter
28 except for food and food ingredients which are taxed under § 26-53-145.

29 (2) The tax shall be collected, reported, and paid in the same
30 manner and at the same time as is prescribed by law for the collection,
31 reporting, and payment of Arkansas compensating taxes.

32 (c)(1) There is levied an additional excise tax of one-half of one
33 percent (0.5%) upon all tangible personal property and taxable services
34 subject to the tax levied by this subchapter except for food and food
35 ingredients which are taxed under § 26-53-145.

36 (2) The tax shall be collected, reported, and paid in the same

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

3 (d)(1) There is levied an additional excise tax of seven-eighths of
4 one percent (0.875%) upon all tangible personal property and taxable services
5 subject to the tax levied by this subchapter except for food and food
6 ingredients which are taxed under § 26-53-145.

7 (2) The tax shall be collected, reported, and paid in the same
8 manner and at the same time as is prescribed by this subchapter for the
9 collection, reporting, and payment of Arkansas compensating taxes.

10
11 SECTION 7. Arkansas Code § 19-5-1103 is amended to read as follows:
12 19-5-1103. Property Tax Relief Trust Fund.

13 (a) There is created on the books of the Treasurer of State, the
14 Auditor of State, and the Chief Fiscal Officer of the State a special revenue
15 fund to be known as the Property Tax Relief Trust Fund.

16 (b) The fund shall consist of such revenues as generated by §§ 26-52-
17 302(c), 26-52-317(c)(1)(B), 26-53-107(c), and 26-53-145(c)(1)(B), and shall
18 be used for such purposes as set out in § 26-26-310.

19
20 SECTION 8. Arkansas Code § 19-5-1227(b), pertaining to the Educational
21 Adequacy Fund, is amended as follows:

22 (b) After the Treasurer of State has made deductions from the revenues
23 under § 19-5-203(b)(2)(A), the Educational Adequacy Fund shall consist of:

24 (1) All net revenues collected due to enactments of the Eighty-
25 Fourth General Assembly meeting in Second Extraordinary Session, unless a
26 different distribution of those additional net revenues is otherwise provided
27 in the act creating those additional net revenues;

28 (2) The revenues credited to the Educational Adequacy Fund under
29 § 26-54-113(b)(2);

30 (3) The revenues generated by §§ 26-52-302(d), 26-52-316, 26-52-
31 317(c)(1)(C), 26-53-107(d), 26-53-145(c)(1)(C), and 26-57-1002(d)(1)(A)(ii);
32 and

33 (4) Other revenues as provided by law.

34
35 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
36 General Assembly of the State of Arkansas that the people of Arkansas are

1 having to pay more in fuel costs due to the rise in oil prices; that the rise
2 in fuel costs has resulted in an increase in the price of food and other
3 goods; and that in order to offset these rising prices the sales and use tax
4 rate on food and food ingredients should be reduced. Therefore, an emergency
5 is declared to exist and this act being necessary for the preservation of the
6 public peace, health, and safety shall become effective on July 1, 2007.

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