

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
4

As Engrossed: S1/29/07 H2/6/07

A Bill

SENATE BILL 185

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, Lavery, 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,
12 Adcock, Bond, Cash, D. Johnson, Breedlove, E. Brown, Burkes, L. Cowling, Everett, Greenberg, Kidd,
13 Lamoureux, W. Lewellen, Lovell, Maloch, M. Martin, Moore, Pyle, Ragland, Stewart, Sumpter, Wills,
14 Woods

For An Act To Be Entitled

15
16
17 AN ACT TO AMEND THE STATE SALES AND USE TAX RATE
18 ON FOOD AND FOOD INGREDIENTS; TO CONTINUE THE
19 IMPOSITION OF LOCAL SALES AND USE TAX ON FOOD AND
20 FOOD INGREDIENTS; AND FOR OTHER PURPOSES.
21

Subtitle

22
23 TO AMEND THE STATE SALES AND USE TAX
24 RATE ON FOOD AND FOOD INGREDIENTS.
25
26

27
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. Arkansas Code § 26-52-317 is amended to read as follows:
31 26-52-317. Food and food ingredients.

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

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



1 Arkansas purchasers;

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

5 (C)(i) That during a six-month consecutive period, the
6 amount of net available general revenues attributable to the collection of
7 sales and use tax from sellers who have no physical presence in the State of
8 Arkansas is equal to or greater than one hundred fifty percent (150%) of
9 sales and use tax collected under ~~§§ 26-52-301, 26-52-302(a), (b), and (d),~~
10 ~~26-53-106, and 26-53-107(a), (b), and (d)~~ subsection (c) of this section and
11 § 26-53-145 on food and food ingredients;

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

16 (2) When the director finds that all of the conditions in
17 subdivision (a)(1) of this section have been met, then the gross receipts or
18 gross proceeds taxes levied under ~~§§ 26-52-301 and 26-52-302(a), (b), and (d)~~
19 subsection (c) of this section shall be levied at the rate of zero percent
20 (0%) on the sale of food and food ingredients beginning on the first day of
21 the second calendar month following the determination of the director.

22 (b) As used in this section:

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

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

28 (A) Contains one (1) or more of the following dietary
29 ingredients:

30 (i) A vitamin;

31 (ii) A mineral;

32 (iii) An herb or other botanical;

33 (iv) An amino acid;

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

36 (vi) A concentrate, metabolite, constituent,

1 extract, or combination of any ingredient described in this subdivision
2 (b)(2)(A), and is intended for ingestion in tablet, capsule, powder, softgel,
3 gelcap, or liquid form, or if not intended for ingestion in such a form, is
4 not represented as conventional food and is not represented for use as a sole
5 item of a meal or of the diet; and

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

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

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

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

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

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

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

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

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

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

33 (c)(1) Beginning July 1, 2007, in lieu of the gross receipts or gross
34 proceeds taxes levied on food and food ingredients under §§ 26-52-301 and 26-
35 52-302, there is levied a tax on the gross receipts or gross proceeds derived
36 from the sale of food and food ingredients at the rate of two and seven-

1 eighths percent (2.875%) to be distributed as follows:

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

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

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

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

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

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

19 ~~(2)~~ (1) Excise tax levied under Arkansas Constitution, Amendment
 20 75, § 2; and

21 ~~(3)~~ (2) All municipal and county gross receipts taxes.

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

24
 25 SECTION 2. Arkansas Code § 26-53-145 is amended to read as follows:

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

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

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

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

36 (C)(i) That during a six-month consecutive period, the

1 amount of net available general revenues attributable to the collection of
2 sales and use tax from sellers who have no physical presence in the State of
3 Arkansas is equal to or greater than one hundred fifty percent (150%) of
4 sales and use tax collected under ~~§§ 26-52-301, 26-52-302(a), (b), and (d),~~
5 ~~26-53-106, and 26-53-107(a), (b), and (d)~~ subsection (c) of this section and
6 § 26-52-317 on food and food ingredients.

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

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

17 (b) As used in this section:

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

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

23 (A) Contains one (1) or more of the following dietary
24 ingredients:

25 (i) A vitamin;

26 (ii) A mineral;

27 (iii) An herb or other botanical;

28 (iv) An amino acid;

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

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

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

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

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

10 (4)(A) “Prepared food” means:

11 (i) Food sold in a heated state or heated by the
12 seller;

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

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

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

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

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

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

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

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

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

8 (2) The use tax levied under this subdivision (c)(1) 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 all other
11 Arkansas compensating use taxes.

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

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

15 ~~(2) (1)~~ (1) The compensating use tax levied under Arkansas
16 Constitution, Amendment 75, § 2; and

17 ~~(3) (2)~~ (2) All municipal and county use taxes.

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

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

24 ~~There~~ Except for food and food ingredients which are taxed under § 26-
25 52-317, there is levied an excise tax of three percent (3%) upon the gross
26 proceeds or gross receipts derived from all sales to any person of the
27 following:

28
29 SECTION 4. Arkansas Code § 26-52-302 is amended to read as follows:

30 26-52-302. Additional taxes levied.

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

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

4 (3) In computing gross receipts or gross proceeds as defined in
5 § 26-52-103(a)(7), a deduction shall be allowed for bad debts resulting from
6 the sale of tangible personal property.

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

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

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

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

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

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

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

1 Arkansas gross receipts taxes.

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3 SECTION 5. Arkansas Code § 26-53-106(a) [Effective July 1, 2007],
4 pertaining to the imposition and rate of use tax, is amended to read as
5 follows:

6 (a) There is levied and there shall be collected from every person in
7 this state a tax or excise for the privilege of storing, using, distributing,
8 or consuming within this state any article of tangible personal property or
9 taxable service purchased for storage, use, distribution, or consumption in
10 this state at the rate of three percent (3%) of the sales price of the
11 property except for food and food ingredients which are taxed under § 26-53-
12 145.

13

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

16 26-53-107. Additional taxes levied. [Effective July 1, 2007.]

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

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

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

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

35 (c)(1) There is levied an additional excise tax of one-half of one
36 percent (0.5%) upon all tangible personal property and taxable services

1 subject to the tax levied by this subchapter except for food and food
2 ingredients which are taxed under § 26-53-145.

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

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

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

13
14 SECTION 7. Arkansas Code § 19-5-1103 is amended to read as follows:

15 19-5-1103. Property Tax Relief Trust Fund.

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

19 (b) The fund shall consist of such revenues as generated by §§ 26-52-
20 302(c), 26-52-317(c)(1)(B), 26-53-107(c), and 26-53-145(c)(1)(B), and shall
21 be used for such purposes as set out in § 26-26-310.

22
23 SECTION 8. Arkansas Code § 19-5-1227(b), pertaining to the Educational
24 Adequacy Fund, is amended as follows:

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

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

31 (2) The revenues credited to the Educational Adequacy Fund under
32 § 26-54-113(b)(2);

33 (3) The revenues generated by §§ 26-52-302(d), 26-52-316, 26-52-
34 317(c)(1)(C), 26-53-107(d), 26-53-145(c)(1)(C), and 26-57-1002(d)(1)(A)(ii);
35 and

36 (4) Other revenues as provided by law.

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SECTION 9. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the people of Arkansas are having to pay more in fuel costs due to the rise in oil prices; that the rise in fuel costs has resulted in an increase in the price of food and other goods; and that in order to offset these rising prices the sales and use tax rate on food and food ingredients should be reduced. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007.

/s/ Glover