

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 H2/7/07

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, 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,
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, *Abernathy, Anderson, Berry, T. Bradford, Chesterfield, Cooper, Dickinson, S. Dobbins, Dunn, L.*
15 *Evans, Flowers, Garner, Gaskill, George, Hall, Harris, Hyde, Jeffrey, Kenney, King, Maxwell, Norton,*
16 *Overbey, Pace, Patterson, Petrus, Rogers, Rosenbaum, Sample, Schulte, Sullivan, Thyer, Wells, Wood,*
17 *Wyatt*

For An Act To Be Entitled

21 AN ACT TO AMEND THE STATE SALES AND USE TAX RATE
22 ON FOOD AND FOOD INGREDIENTS; TO CONTINUE THE
23 IMPOSITION OF LOCAL SALES AND USE TAX ON FOOD AND
24 FOOD INGREDIENTS; AND FOR OTHER PURPOSES.

Subtitle

27 TO AMEND THE STATE SALES AND USE TAX
28 RATE ON FOOD AND FOOD INGREDIENTS.

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

33 SECTION 1. Arkansas Code § 26-52-317 is amended to read as follows:
34 26-52-317. Food and food ingredients.

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



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

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

8 (C)(i) That during a six-month consecutive period, the
9 amount of net available general revenues attributable to the collection of
10 sales and use tax from sellers who have no physical presence in the State of
11 Arkansas is equal to or greater than one hundred fifty percent (150%) of
12 sales and use tax collected under ~~§§ 26-52-301, 26-52-302(a), (b), and (d),~~
13 ~~26-53-106, and 26-53-107(a), (b), and (d)~~ subsection (c) of this section and
14 § 26-53-145 on food and food ingredients;

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

19 (2) When the director finds that all of the conditions in
20 subdivision (a)(1) of this section have been met, then the gross receipts or
21 gross proceeds taxes levied under ~~§§ 26-52-301 and 26-52-302(a), (b), and (d)~~
22 subsection (c) of this section shall be levied at the rate of zero percent
23 (0%) on the sale of food and food ingredients beginning on the first day of
24 the second calendar month following the determination of the director.

25 (b) As used in this section:

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

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

31 (A) Contains one (1) or more of the following dietary
32 ingredients:

33 (i) A vitamin;

34 (ii) A mineral;

35 (iii) An herb or other botanical;

36 (iv) An amino acid;

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

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

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

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

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

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

19 (i) Food sold in a heated state or heated by the
20 seller;

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

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

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

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

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

36 (c)(1) Beginning July 1, 2007, in lieu of the gross receipts or gross

1 proceeds taxes levied on food and food ingredients under §§ 26-52-301 and 26-
 2 52-302, there is levied a tax on the gross receipts or gross proceeds derived
 3 from the sale of food and food ingredients at the rate of two and seven-
 4 eighths percent (2.875%) to be distributed as follows:

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

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

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

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

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

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

22 ~~(2) (1)~~ Excise tax levied under Arkansas Constitution, Amendment
 23 75, § 2; and

24 ~~(3) (2)~~ All municipal and county gross receipts taxes.

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

27
 28 SECTION 2. Arkansas Code § 26-53-145 is amended to read as follows:

29 26-53-145. Food and food ingredients.

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

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

36 (B) That initiating the collection of sales and use tax

1 from these sellers would increase the net available general revenues needed
2 to fund state agencies, services, and programs; and

3 (C)(i) That during a six-month consecutive period, the
4 amount of net available general revenues attributable to the collection of
5 sales and use tax from sellers who have no physical presence in the State of
6 Arkansas is equal to or greater than one hundred fifty percent (150%) of
7 sales and use tax collected under ~~§§ 26-52-301, 26-52-302(a), (b), and (d),~~
8 ~~26-53-106, and 26-53-107(a), (b), and (d)~~ subsection (c) of this section and
9 § 26-52-317 on food and food ingredients.

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

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

20 (b) As used in this section:

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

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

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

28 (i) A vitamin;

29 (ii) A mineral;

30 (iii) An herb or other botanical;

31 (iv) An amino acid;

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

34 (vi) A concentrate, metabolite, constituent,
35 extract, or combination of any ingredient described in this subdivision
36 (b)(2)(A), and is intended for ingestion in tablet, capsule, powder, softgel,

1 gelcap, or liquid form, or if not intended for ingestion in such a form, is
2 not represented as conventional food and is not represented for use as a sole
3 item of a meal or of the diet; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 ~~(2)~~ (1) The compensating use tax levied under Arkansas
19 Constitution, Amendment 75, § 2; and

20 ~~(3)~~ (2) All municipal and county use taxes.

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

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

27 ~~There~~ Except for food and food ingredients which are taxed under § 26-
28 52-317, there is levied an excise tax of three percent (3%) upon the gross
29 proceeds or gross receipts derived from all sales to any person of the
30 following:

31
32 SECTION 4. Arkansas Code § 26-52-302 is amended to read as follows:

33 26-52-302. Additional taxes levied.

34 (a)(1) In addition to the excise tax levied upon the gross proceeds or
35 gross receipts derived from all sales by the Arkansas Gross Receipts Act of
36 1941, § 26-52-101 et seq., except for food and food ingredients which are

1 taxed under § 26-52-317, there is levied an excise tax of one percent (1%)
2 upon all taxable sales of property and services subject to the tax levied in
3 the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

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

7 (3) In computing gross receipts or gross proceeds as defined in
8 § 26-52-103(a)(7), a deduction shall be allowed for bad debts resulting from
9 the sale of tangible personal property.

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

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

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

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

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

32 (d)(1) ~~There~~ Except for food and food ingredients which are taxed
33 under § 26-52-317, there is levied an additional excise tax of seven-eighths
34 of one percent (0.875%) upon all taxable sales of property and services
35 subject to the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-
36 52-101 et seq.

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

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

9 (a) There is levied and there shall be collected from every person in
10 this state a tax or excise for the privilege of storing, using, distributing,
11 or consuming within this state any article of tangible personal property or
12 taxable service purchased for storage, use, distribution, or consumption in
13 this state at the rate of three percent (3%) of the sales price of the
14 property except for food and food ingredients which are taxed under § 26-53-
15 145.

16
17 SECTION 6. Arkansas Code § 26-53-107 [Effective July 1, 2007] is
18 amended to read as follows:

19 26-53-107. Additional taxes levied. [Effective July 1, 2007.]

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

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

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

35 (2) The tax shall be collected, reported, and paid in the same
36 manner and at the same time as is prescribed by law for the collection,

1 reporting, and payment of Arkansas compensating taxes.

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

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

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

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

16
17 SECTION 7. Arkansas Code § 19-5-1103 is amended to read as follows:

18 19-5-1103. Property Tax Relief Trust Fund.

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

22 (b) The fund shall consist of such revenues as generated by §§ 26-52-
23 302(c), 26-52-317(c)(1)(B), 26-53-107(c), and 26-53-145(c)(1)(B), and shall
24 be used for such purposes as set out in § 26-26-310.

25
26 SECTION 8. Arkansas Code § 19-5-1227(b), pertaining to the Educational
27 Adequacy Fund, is amended as follows:

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

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

34 (2) The revenues credited to the Educational Adequacy Fund under
35 § 26-54-113(b)(2);

36 (3) The revenues generated by §§ 26-52-302(d), 26-52-316, 26-52-

1 317(c)(1)(C), 26-53-107(d), 26-53-145(c)(1)(C), and 26-57-1002(d)(1)(A)(ii);
2 and

3 (4) Other revenues as provided by law.
4

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

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14 /s/ Glover
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