

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 87th General Assembly
3 Regular Session, 2009
4

A Bill

HOUSE BILL 1179

5 By: Representatives J. Burris, Woods, King
6
7

For An Act To Be Entitled

9 AN ACT TO CHANGE ORIGIN SOURCING UNTIL SUCH TIME
10 AS IT IS DETERMINED THAT FEDERAL STREAMLINED
11 SALES TAX LAWS HAVE GONE INTO EFFECT; TO PROVIDE
12 FOR ORIGIN SOURCING DURING THE INTERVENING TIME
13 PERIOD; AND FOR OTHER PURPOSES.
14

Subtitle

15 TO CHANGE ORIGIN SOURCING UNTIL SUCH
16 TIME AS FEDERAL STREAMLINED SALES TAX
17 LAWS HAVE GONE INTO EFFECT AND TO
18 PROVIDE FOR ORIGIN SOURCING DURING THE
19 INTERVENING TIME PERIOD.
20
21
22

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

25 SECTION 1. Effective July 1, 2009, Arkansas Code § 26-52-521 is
26 amended to read as follows:

27 26-52-521. Sourcing of sales.

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

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

36 (b) ~~Excluding a lease or rental, the~~ The retail sale of a product or



1 service shall be sourced as follows:

2 (1) Unless otherwise stated in this subsection, a retail sale is
 3 sourced to the seller's business location;

4 (2) If a purchaser picks up the tangible personal property in
 5 Arkansas in his or her own conveyance, then the sale is intrastate and the
 6 sales or use tax shall be collected and remitted;

7 (3) When tangible personal property is sold in a transaction by
 8 a seller engaged in an established business in this state and under the terms
 9 of a contract of sale or order in a transaction, the seller delivers by
 10 common carrier, United States Postal Service, or in the seller's own
 11 conveyance to a point outside this state for consumption and use, the
 12 transaction is not subject to sales or use tax and may be deducted provided
 13 proper records are preserved to establish the deduction, including mail or
 14 Internet orders, shipping orders, and all data pertinent to the purchase and
 15 delivery; and

16 (4) When a taxable service is performed in Arkansas, a taxable
 17 event has occurred, and the sales or use tax shall be collected and remitted
 18 based on the location of where the taxable service was performed even though
 19 the purchaser of the taxable service resides or is located in another state
 20 or the tangible personal property upon which the taxable service is performed
 21 is shipped to another state.

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

25 ~~(2) If the product or service is not received by the purchaser~~
 26 ~~at a business location of the seller, the sale is sourced to the location~~
 27 ~~where receipt by the purchaser or the purchaser's designated donee occurs,~~
 28 ~~including the location indicated by instructions for delivery to the~~
 29 ~~purchaser or donee known to the seller;~~

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

35 ~~(4) If subdivisions (b)(1) (3) of this section do not apply, the~~
 36 ~~sale is sourced to the location indicated by an address for the purchaser~~

1 obtained during the consummation of the sale, including the address of a
2 purchaser's payment instrument, if no other address is available if the use
3 of this address does not constitute bad faith; or

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

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

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

16 (B) Periodic payments made after the first payment are
17 sourced to the primary property location for each period covered by the
18 payment.

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

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

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

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

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

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

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

5 ~~(C) This location shall not be altered by intermittent use~~
 6 ~~at different locations;~~

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

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

13 ~~(e)(1) Including a lease or rental, the retail sale of transportation~~
 14 ~~equipment shall be sourced the same as a retail sale in accordance with the~~
 15 ~~provisions of subsection (b) of this section, notwithstanding the exclusion~~
 16 ~~of a lease or rental in subsection (b) of this section.~~

17 ~~(2) As used in this section, "transportation equipment" means~~
 18 ~~any of the following:~~

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

21 ~~(B) Trucks and truck tractors with a Gross Vehicle Weight~~
 22 ~~Rating of ten thousand one pounds (10,001 lbs.) or greater, trailers,~~
 23 ~~semitrailers, or passenger buses that are:~~

24 ~~(i) Registered through the International~~
 25 ~~Registration Plan; and~~

26 ~~(ii) Operated under authority of a carrier~~
 27 ~~authorized and certificated by the United States Department of Transportation~~
 28 ~~or another federal authority to engage in the carriage of persons or property~~
 29 ~~in interstate commerce;~~

30 ~~(C) Aircraft that are operated by air carriers authorized~~
 31 ~~and certificated by the United States Department of Transportation or another~~
 32 ~~federal or a foreign authority to engage in the carriage of persons or~~
 33 ~~property in interstate or foreign commerce; or~~

34 ~~(D) Containers designed for use on and component parts~~
 35 ~~attached or secured on the items under subdivision (e)(1) of this section and~~
 36 ~~this subdivision (e)(2).~~

1 ~~(f) As used in subsection (b) of this section:~~

2 ~~(1) "Receive" and "receipt" mean:~~

3 ~~(A) Taking possession of tangible personal property; or~~

4 ~~(B) Making first use of services; and~~

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

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

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

12 ~~(i) The Director of the Department of Finance and Administration shall~~
 13 ~~have the authority to delay the implementation of the destination sourcing~~
 14 ~~rules in this section until July 1, 2009, as those sourcing rules relate to~~
 15 ~~florists if the director determines that:~~

16 ~~(1) The Streamlined Sales Tax Governing Board, Inc., has changed~~
 17 ~~or postponed the destination sourcing requirement for florists; and~~

18 ~~(2) The director determines that such delay is necessary to~~
 19 ~~prevent undue hardship for Arkansas florists.~~

20
 21 SECTION 2. Effective July 1, 2009, Arkansas Code § 26-52-522 is
 22 repealed.

23 ~~26-52-522. Direct mail sourcing.~~

24 ~~(a)(1) Notwithstanding § 26-52-521, a purchaser of direct mail that is~~
 25 ~~not a holder of a direct pay permit shall provide to the seller in~~
 26 ~~conjunction with the purchase either a direct mail form or information to~~
 27 ~~show the state and local jurisdictions to which the direct mail is delivered~~
 28 ~~to recipients.~~

29 ~~(2)(A) Upon receipt of the direct mail form, the seller is~~
 30 ~~relieved of all obligations to collect, pay, or remit the applicable tax, and~~
 31 ~~the purchaser is obligated to pay or remit the applicable tax on a direct pay~~
 32 ~~basis.~~

33 ~~(B) A direct mail form shall remain in effect for all~~
 34 ~~future sales of direct mail by the seller to the purchaser until it is~~
 35 ~~revoked in writing.~~

36 ~~(3)(A) Upon receipt of information from the purchaser showing~~

1 ~~the jurisdictions to which the direct mail is delivered to recipients, the~~
 2 ~~seller shall collect the tax according to the delivery information provided~~
 3 ~~by the purchaser.~~

4 ~~(B) In the absence of bad faith, the seller is relieved of~~
 5 ~~any further obligation to collect tax on any transaction if the seller has~~
 6 ~~collected tax pursuant to the delivery information provided by the purchaser.~~

7 ~~(b)(1) If the purchaser of direct mail does not have a direct pay~~
 8 ~~permit and does not provide the seller with either a direct mail form or~~
 9 ~~delivery information as required by subsection (a) of this section, the~~
 10 ~~seller shall collect the tax according to § 26-52-521(b)(5).~~

11 ~~(2) Nothing in this subsection shall limit a purchaser's~~
 12 ~~obligation for sales or use tax to any state to which the direct mail is~~
 13 ~~delivered.~~

14 ~~(c) If a purchaser of direct mail provides the seller with~~
 15 ~~documentation of direct pay authority, the purchaser shall not be required to~~
 16 ~~provide a direct mail form or delivery information to the seller.~~

17 ~~(d) The direct mail form must:~~

18 ~~(1) Contain the purchaser's name and sales tax permit number;~~

19 ~~(2) State that the purchaser will be remitting sales and use tax~~
 20 ~~to the state; and~~

21 ~~(3) Contain any additional information that the Director of the~~
 22 ~~Department of Finance and Administration may require.~~

23
 24 SECTION 3. Effective July 1, 2009, Arkansas Code § 26-53-102(11),
 25 concerning sales tax definitions, is amended to read as follows:

26 (11)(A) "Sale" means any transfer, barter, or exchange of the
 27 title or ownership of tangible personal property or taxable services or the
 28 right to use, store, distribute, or consume the tangible personal property or
 29 taxable services for a consideration paid or to be paid in installments or
 30 otherwise and includes any transaction whether called leases, rentals,
 31 bailments, loans, conditional sales, or otherwise, notwithstanding that the
 32 title or possession of the property, or both, is retained for security.

33 (B) For the purpose of this subchapter, ~~the sale of~~
 34 ~~tangible personal property or taxable services shall be sourced according to~~
 35 ~~§§ 26-52-521, 26-52-522, and 26-52-523~~ the place of delivery of tangible
 36 personal property to the purchaser, user, storer, or consumer is deemed to be

1 the place of sale, whether the delivery is made by the vendor or by a common
2 carrier, private contractor, mail, express, agent, salesperson, solicitor,
3 hawker, representative, consignee, peddler, canvasser, or otherwise;
4

5 SECTION 4. Effective July 1, 2009, Arkansas Code § 26-52-315(d)(3)(C),
6 concerning the sourcing of telecommunications and related services, is
7 amended to read as follows:
8

9 (C)(i) A sale of prepaid calling service or a sale of a
10 prepaid wireless calling service is sourced in accordance with § 26-52-
11 521(b).

12 (ii) Except for a sale of prepaid wireless calling
13 service that is a prepaid telecommunications service, the rule provided in §
14 26-52-521(b)~~(5)~~ shall include as an option the location associated with the
15 mobile telephone number; or
16

17 SECTION 5. Effective July 1, 2009, Arkansas Code Title 26, Chapter 52,
18 Subchapter 5, is amended to add an additional subsection to read as follows:
19 26-52-524. Florists transmitting orders.

20 (a) The gross receipts tax levied by this state shall be due and
21 collected by all florists who transmit any order by telegraph, telephone,
22 Internet, or other means of communication for flowers, floral arrangements,
23 potted plants, or any other article common to the florist business for
24 delivery to any other place within or without this state.

25 (b) The gross receipts tax collected by the florist transmitting the
26 order by telegraph, telephone, Internet, or other means of communication
27 shall be the only tax collected on that order regardless of whether the order
28 originated within or without this state.
29

30 SECTION 6. Effective July 1, 2009, Arkansas Code § 26-53-124(a)(1),
31 concerning the collection of tax by a vendor, is amended to read as follows:

32 (a)(1)(A) Every vendor making a sale of tangible personal property or
33 taxable services directly or indirectly for the purpose of storage, use,
34 distribution, or consumption in this state shall collect the tax from the
35 purchaser and give a receipt for the tangible personal property or taxable
36 services.

1 (B) Subdivision (a)(1)(A) of this section includes all
 2 out-of-state vendors who deliver merchandise and taxable services into
 3 Arkansas in their own ~~conveyance~~ conveyances when ~~such~~ the merchandise or
 4 taxable services will be stored, used, distributed, or consumed within this
 5 state.

6 ~~(C) The sale of tangible personal property or taxable~~
 7 ~~services will be sourced according to §§ 26-52-521-26-52-523.~~

9 SECTION 7. Effective July 1, 2009, Arkansas Code § 26-74-212(b),
 10 concerning the applicability of tax, is amended to read as follows:

11 (b) When a direct pay permit holder purchases tangible personal
 12 property or taxable services either from an Arkansas or out-of-state vendor
 13 for use, storage, consumption, or distribution in Arkansas, the direct pay
 14 permit holder shall accrue and remit the county sales or use tax, if any,
 15 pursuant to the sourcing rules in §§ 26-52-521 ~~and 26-52-522~~.

17 SECTION 8. Effective July 1, 2009, Arkansas Code § 26-74-608(b),
 18 concerning the applicability of tax, is amended to read as follows:

19 (b) When a direct pay permit holder purchases tangible personal
 20 property or taxable services either from an Arkansas or out-of-state vendor
 21 for use, storage, consumption, or distribution in Arkansas, the direct pay
 22 permit holder shall accrue and remit the county sales or use tax, if any,
 23 pursuant to the sourcing rules in §§ 26-52-521 ~~and 26-52-522~~.

25 SECTION 9. Effective July 1, 2009, Arkansas Code § 26-75-216(b),
 26 concerning the applicability of tax, is amended to read as follows:

27 (b) When a direct pay permit holder purchases tangible personal
 28 property or taxable services either from an Arkansas or out-of-state vendor
 29 for use, storage, consumption, or distribution in Arkansas, the direct pay
 30 permit holder shall accrue and remit the city sales and use tax, if any,
 31 pursuant to the sourcing rules in §§ 26-52-521 ~~and 26-52-522~~.

33 SECTION 10. Effective when the contingency in § 19 of this Act is met,
 34 Arkansas Code § 26-52-521 is amended to read as follows:

35 26-52-521. Sourcing of sales.

36 (a)(1) This section applies for purposes of determining a seller's

1 obligation to pay or collect and remit a sales or use tax with respect to the
 2 seller's retail sale of a product or service.

3 (2) This section does not affect the obligation of a purchaser
 4 or lessee to remit sales or use tax on the use of the product or service to
 5 the taxing jurisdictions of that use and does not apply to the sales or use
 6 taxes levied on the retail sale, excluding lease or rental, of motor
 7 vehicles, trailers, or semitrailers that require licensing.

8 (b) Excluding a lease or rental, the The retail sale of a product or
 9 service shall be is sourced as follows:

10 ~~(1) Unless otherwise stated in this subsection (b), sales are~~
 11 ~~sourced to the seller's business location.~~

12 ~~(2) If a customer picks up the property in Arkansas in his own~~
 13 ~~conveyance, then the sale is intrastate and tax must be collected and~~
 14 ~~remitted.~~

15 ~~(3) When tangible personal property is sold by a seller engaged~~
 16 ~~in an established business in this state and under the terms of a contract of~~
 17 ~~sale or order, the seller delivers by common carrier, U.S. Postal Service or~~
 18 ~~in the seller's own conveyance to a point outside this state for consumption~~
 19 ~~and use, such transactions are not subject to the tax and may be deducted~~
 20 ~~provided proper records are preserved to establish such deductions including~~
 21 ~~mail or Internet orders, shipping orders, and all data pertinent to the~~
 22 ~~purchase and delivery.~~

23 ~~(4) When a taxable service is performed in Arkansas a taxable~~
 24 ~~event has occurred and the tax must be collected and remitted based on the~~
 25 ~~location of where the service was performed even though the consumer of the~~
 26 ~~service resides or is located in another state or the property upon which the~~
 27 ~~service is performed is shipped to another state.~~

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

31 (2) If the product or service is not received by the purchaser
 32 at a business location of the seller, the sale is sourced to the location
 33 where receipt by the purchaser or the purchaser's designated donee occurs,
 34 including the location indicated by instructions for delivery to the
 35 purchaser or donee known to the seller;

36 (3) If subdivisions (b)(1) and (2) of this section do not apply,

1 the sale is sourced to the location indicated by an address for the purchaser
 2 that is available from the business records of the seller that are maintained
 3 in the ordinary course of the seller's business when use of this address does
 4 not constitute bad faith;

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

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

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

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

22 (B) Periodic payments made after the first payment are
 23 sourced to the primary property location for each period covered by the
 24 payment.

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

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

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

35 (3) This subsection does not affect the imposition or
 36 computation of sales or use tax on leases or rentals based on a lump sum or

1 accelerated basis or on the acquisition of property for lease.

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

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

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

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

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

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

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

23 (2) As used in this section, "transportation equipment" means
 24 any of the following:

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

27 (B) Trucks and truck tractors with a Gross Vehicle Weight
 28 Rating of ten thousand one pounds (10,001 lbs.) or greater, trailers,
 29 semitrailers, or passenger buses that are:

30 (i) Registered through the International
 31 Registration Plan; and

32 (ii) Operated under authority of a carrier
 33 authorized and certificated by the United States Department of Transportation
 34 or another federal authority to engage in the carriage of persons or property
 35 in interstate commerce;

36 (C) Aircraft that are operated by air carriers authorized

1 and certificated by the United States Department of Transportation or another
 2 federal or a foreign authority to engage in the carriage of persons or
 3 property in interstate or foreign commerce; or

4 (D) Containers designed for use on and component parts
 5 attached or secured on the items under subdivision (e)(1) of this section and
 6 this subdivision (e)(2).

7 (f) As used in subsection (b) of this section:

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

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

10 (B) Making first use of services; and

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

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

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

18 (i) The Director of the Department of Finance and Administration shall
 19 have the authority to delay the implementation of the destination sourcing
 20 rules in this section until July 1, 2009, as those sourcing rules relate to
 21 florists if the director determines that:

22 (1) The Streamlined Sales Tax Governing Board, Inc., has changed
 23 or postponed the destination sourcing requirement for florists; and

24 (2) The director determines that such delay is necessary to
 25 prevent undue hardship for Arkansas florists.

26
 27 SECTION 11. Effective when the contingency in § 19 of this Act is met,
 28 Arkansas Title 26, Chapter 52, Subchapter 5, is amended to add an additional
 29 section to read as follows:

30 26-52-522. Direct mail sourcing.

31 (a)(1) Notwithstanding § 26-52-521, a purchaser of direct mail that is
 32 not a holder of a direct pay permit shall provide to the seller in
 33 conjunction with the purchase either a direct mail form or information to
 34 show the state and local jurisdictions to which the direct mail is delivered
 35 to recipients.

36 (2)(A) Upon receipt of the direct mail form, the seller is

1 relieved of all obligations to collect, pay, or remit the applicable tax, and
 2 the purchaser is obligated to pay or remit the applicable tax on a direct pay
 3 basis.

4 (B) A direct mail form shall remain in effect for all
 5 future sales of direct mail by the seller to the purchaser until it is
 6 revoked in writing.

7 (3)(A) Upon receipt of information from the purchaser showing
 8 the jurisdictions to which the direct mail is delivered to recipients, the
 9 seller shall collect the tax according to the delivery information provided
 10 by the purchaser.

11 (B) In the absence of bad faith, the seller is relieved of
 12 any further obligation to collect tax on any transaction if the seller has
 13 collected tax pursuant to the delivery information provided by the purchaser.

14 (b)(1) If the purchaser of direct mail does not have a direct pay
 15 permit and does not provide the seller with either a direct mail form or
 16 delivery information as required by subsection (a) of this section, the
 17 seller shall collect the tax according to § 26-52-521(b)(5).

18 (2) Nothing in this subsection shall limit a purchaser's
 19 obligation for sales or use tax to any state to which the direct mail is
 20 delivered.

21 (c) If a purchaser of direct mail provides the seller with
 22 documentation of direct pay authority, the purchaser shall not be required to
 23 provide a direct mail form or delivery information to the seller.

24 (d) The direct mail form must:

25 (1) Contain the purchaser's name and sales tax permit number;

26 (2) State that the purchaser will be remitting sales and use tax
 27 to the state; and

28 (3) Contain any additional information that the Director of the
 29 Department of Finance and Administration may require.

30
 31 SECTION 12. Effective when the contingency in § 19 of this Act is met,
 32 Arkansas Code § 26-53-102(11), concerning sales tax definitions, is amended
 33 to read as follows:

34 (11)(A) "Sale" means any transfer, barter, or exchange of the
 35 title or ownership of tangible personal property or taxable services or the
 36 right to use, store, distribute, or consume the tangible personal property or

1 taxable services for a consideration paid or to be paid in installments or
 2 otherwise and includes any transaction whether called leases, rentals,
 3 bailments, loans, conditional sales, or otherwise, notwithstanding that the
 4 title or possession of the property, or both, is retained for security.

5 (B) For the purpose of this subchapter, the sale of
 6 tangible personal property or taxable services shall be sourced according to
 7 §§ 26-52-521 and 26-52-522 ~~the place of delivery of tangible personal~~
 8 ~~property to the purchaser, user, storer, or consumer shall be deemed to be~~
 9 ~~the place of sale, whether such delivery is made by the vendor or by common~~
 10 ~~carriers, private contractors, mails, express, agents, salesmen, solicitors,~~
 11 ~~hawkers, representatives, consignees, peddlers, canvassers, or otherwise;~~
 12

13 SECTION 13. Effective when the contingency in § 19 of this Act is met,
 14 Arkansas Code § 26-52-315(d)(3)(C), concerning the sourcing of
 15 telecommunications and related services, is amended to read as follows:

16 (C)(i) A sale of prepaid calling service or a sale of a
 17 prepaid wireless calling service is sourced in accordance with § 26-52-
 18 521(b).

19 (ii) Except for a sale of prepaid wireless calling
 20 service that is a prepaid telecommunications service, the rule provided in §
 21 26-52-521(b)(5) shall include as an option the location associated with the
 22 mobile telephone number; or
 23

24 SECTION 14. Effective when the contingency in § 19 of this Act is met,
 25 Arkansas Code § 26-52-524 is repealed.

26 ~~26-52-524. Florists transmitting orders.~~

27 ~~(a) The gross receipts tax levied by this state shall be due and~~
 28 ~~collected by all florists who transmit any order by telegraph, telephone,~~
 29 ~~Internet, or other means of communication for flowers, floral arrangements,~~
 30 ~~potted plants, or any other article common to the florist business for~~
 31 ~~delivery to any other place within or without this state.~~

32 ~~(b) The gross receipts tax collected by the florist transmitting the~~
 33 ~~order by telegraph, telephone, Internet, or other means of communication~~
 34 ~~shall be the only tax collected on that order regardless of whether the order~~
 35 ~~originated within or without this state.~~
 36

1 SECTION 15. Effective when the contingency in § 19 of this Act is met,
 2 Arkansas Code § 26-53-124(a)((1), concerning the collection of tax by a
 3 vendor, is amended to read as follows:

4 (a)(1)(A) Every vendor making a sale of tangible personal property or
 5 taxable services directly or indirectly for the purpose of storage, use,
 6 distribution, or consumption in this state shall collect the tax from the
 7 purchaser and give a receipt for the tangible personal property or taxable
 8 services.

9 (B) Subdivision (a)(1)(A) of this section includes all
 10 out-of-state vendors who deliver merchandise and taxable services into
 11 Arkansas in their own ~~conveyance~~ conveyances when ~~such~~ the merchandise or
 12 taxable services will be stored, used, distributed, or consumed within this
 13 state.

14 (C) The sale of tangible personal property or taxable
 15 services is sourced according to §§ 26-52-521 and 26-52-522.

16
 17 SECTION 16. Effective when the contingency in § 19 of this Act is met,
 18 Arkansas Code § 26-74-212(b), concerning the applicability of tax, is amended
 19 to read as follows:

20 (b) When a direct pay permit holder purchases tangible personal
 21 property or taxable services either from an Arkansas or out-of-state vendor
 22 for use, storage, consumption, or distribution in Arkansas, the direct pay
 23 permit holder shall accrue and remit the county sales or use tax, if any,
 24 pursuant to the sourcing rules in §§ 26-52-521 and 26-52-522.

25
 26 SECTION 17. Effective when the contingency in § 19 of this Act is met,
 27 Arkansas Code § 26-74-608(b), concerning the applicability of tax, is
 28 amended to read as follows:

29 (b) When a direct pay permit holder purchases tangible personal
 30 property or taxable services either from an Arkansas or out-of-state vendor
 31 for use, storage, consumption, or distribution in Arkansas, the direct pay
 32 permit holder shall accrue and remit the county sales or use tax, if any,
 33 pursuant to the sourcing rules in §§ 26-52-521 and 26-52-522.

34
 35 SECTION 18. Effective when the contingency in § 19 of this Act is met,
 36 Arkansas Code § 26-75-216(b), concerning the applicability of tax, is amended

1 to read as follows:

2 (b) When a direct pay permit holder purchases tangible personal
 3 property or taxable services either from an Arkansas or out-of-state vendor
 4 for use, storage, consumption, or distribution in Arkansas, the direct pay
 5 permit holder shall accrue and remit the city sales and use tax, if any,
 6 pursuant to the sourcing rules in §§ 26-52-521 and 26-52-522.

7
 8 SECTION 19. Effective date for Sections 10 through 18. It is found
 9 and determined by the Eighty-Seventh General Assembly that the change from
 10 origin sourcing to destination sourcing has imposed a burden on the state's
 11 retailers and that retailers should resume origin sourcing until a federal
 12 law is enacted that would require out-of-state businesses with no physical
 13 presence in this state to collect Arkansas sales and use tax. Therefore,
 14 Sections 10 through 18 shall become effective on the first day of the first
 15 calendar quarter following the effective date of the federal legislation
 16 requiring out-of-state businesses with no physical presence in this state to
 17 collect Arkansas sales and use tax.

18
 19 SECTION 20. EMERGENCY CLAUSE. It is found and determined by the
 20 General Assembly of the State of Arkansas that the change from origin
 21 sourcing to destination sourcing that was implemented on January 1, 2008, has
 22 imposed a burden on the state's retailers, that currently there is no federal
 23 law requiring non-nexus sellers to collect Arkansas sales and use tax, and
 24 that until this federal legislation is enacted, Arkansas sellers should be
 25 allowed to use origin sourcing. Therefore, an emergency is declared to exist
 26 and that Sections 1 through 9 of this act being necessary for the
 27 preservation of the public peace, health, and safety shall become effective
 28 on July 1, 2009.

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