

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

*As Engrossed: S4/1/13*

# A Bill

SENATE BILL 135

5 By: Senators Rapert, *E. Cheatham, Elliott, J. English, Holland, K. Ingram, U. Lindsey, Maloch, B. Pierce,*  
6 *Teague, R. Thompson, D. Wyatt*

7 By: Representative Williams  
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## For An Act To Be Entitled

10 AN ACT TO REDUCE THE STATE SALES AND USE TAX ON FOOD  
11 AND FOOD INGREDIENTS IF CERTAIN FUND BALANCES EXIST;  
12 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.  
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## Subtitle

15 TO REDUCE THE STATE SALES AND USE TAX ON  
16 FOOD AND FOOD INGREDIENTS IF CERTAIN FUND  
17 BALANCES EXIST; AND TO DECLARE AN  
18 EMERGENCY.  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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24 SECTION 1. Arkansas Code § 26-52-317(a), concerning the sales tax  
25 levied on food and food ingredients, is amended to read as follows:

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

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

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

35 (C)(i) That during a six-month consecutive period, the  
36 amount of net available general revenues attributable to the collection of



1 sales and use tax from sellers that have no physical presence in the State of  
2 Arkansas is equal to or greater than one hundred fifty percent (150%) of  
3 sales and use tax collected under subsection (c) of this section and § 26-  
4 53-145 on food and food ingredients.

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

9 (2)(A) Beginning July 1, 2013, the director shall make a monthly  
10 determination as to whether the aggregate amount of deductions from net  
11 general revenues attributable to the following during the most recently ended  
12 six-month consecutive period, as compared with the same six-month period in  
13 the prior year, has declined by thirty-five million dollars (\$35,000,000) or  
14 more:

15 (i) The Educational Adequacy Fund;

16 (ii) Bonds issued under the Arkansas College Savings  
17 Bond Act of 1989;

18 (iii) Bonds issued under the Arkansas Higher  
19 Education Technology and Facility Improvement Act of 2005;

20 (iv) The City-County Tourist Facilities Aid Fund;

21 (v) Amounts disbursed or approved to be disbursed by  
22 the Department of Education for desegregation expenses under any  
23 desegregation settlement agreement, as certified by the Treasurer of State  
24 and the Chief Fiscal Officer of the State under § 6-20-212; and

25 (vi) Bonds issued under the Arkansas Water, Waste  
26 Disposal and Pollution Abatement Facilities Financing Act of 1997 and the  
27 Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing  
28 Act of 2007.

29 (B)(i) In making the determination in this subdivision  
30 (a)(2), the director shall consider all economic factors existing at the time  
31 of the determination that could potentially affect the decline in the  
32 aggregate amount of deductions, including without limitation pending  
33 litigation.

34 (ii) If the consideration of additional economic  
35 factors under subdivision (a)(2)(B)(i) of this section results in a  
36 determination that the decline in the aggregate amount of deductions is not

1 likely to remain at that reduced level, the director shall conclude that the  
2 conditions in this subdivision (a)(2) have not been met.

3 ~~(2)~~ (3) When the director finds that all of the conditions in  
4 either subdivision (a)(1) or (a)(2) of this section have been met, then the  
5 gross receipts or gross proceeds taxes levied under subsection (c) of this  
6 section shall be levied at the rate of zero percent (0%) on the sale of food  
7 and food ingredients beginning on the first day of the ~~second calendar month~~  
8 calendar quarter that is at least thirty (30) days following the  
9 determination of the director.

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11 SECTION 2. Arkansas Code § 26-53-145(a), concerning the compensating  
12 use tax on food and food ingredients, is amended to read as follows:

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

15 (A) That federal law authorizes the state to collect sales  
16 and use tax from some or all of the sellers that have no physical presence in  
17 the State of Arkansas and that make sales of taxable goods and services to  
18 Arkansas purchasers;

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

22 (C)(i) That during a six-month consecutive period, the  
23 amount of net available general revenues attributable to the collection of  
24 sales and use tax from sellers that have no physical presence in the State of  
25 Arkansas is equal to or greater than one hundred fifty percent (150%) of  
26 sales and use tax collected under subsection (c) of this section and § 26-52-  
27 317 on food and food ingredients.

28 (ii) The director shall make the determination under  
29 subdivision (a)(1)(C)(i) of this section on a monthly basis following the  
30 determination that the conditions under subdivision (a)(1)(A) of this section  
31 have been met.

32 (2)(A) Beginning July 1, 2013, the director shall make a monthly  
33 determination as to whether the aggregate amount of deductions from net  
34 general revenues attributable to the following during the most recently ended  
35 six-month consecutive period, as compared with the same six-month period in  
36 the prior year, has declined by thirty-five million dollars (\$35,000,000) or

1 more:

- 2 (i) The Educational Adequacy Fund;  
3 (ii) Bonds issued under the Arkansas College Savings  
4 Bond Act of 1989;  
5 (iii) Bonds issued under the Arkansas Higher  
6 Education Technology and Facility Improvement Act of 2005;  
7 (iv) The City-County Tourist Facilities Aid Fund;  
8 (v) Amounts disbursed or approved to be disbursed by  
9 the Department of Education for desegregation expenses under any  
10 desegregation settlement agreement, as certified by the Treasurer of State  
11 and the Chief Fiscal Officer of the State under § 6-20-212; and  
12 (vi) Bonds issued under the Arkansas Water, Waste  
13 Disposal and Pollution Abatement Facilities Financing Act of 1997 and the  
14 Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing  
15 Act of 2007.

16 (B)(i) In making the determination in this subdivision  
17 (a)(2), the director shall consider all economic factors existing at the time  
18 of the determination that could potentially affect the decline in the  
19 aggregate amount of deductions, including without limitation pending  
20 litigation.

21 (ii) If the consideration of additional economic  
22 factors under subdivision (a)(2)(B)(i) of this section results in a  
23 determination that the decline in the aggregate amount of deductions is not  
24 likely to remain at that reduced level, the director shall conclude that the  
25 conditions in this subdivision (a)(2) have not been met.

26 ~~(2)~~ (3) When the director finds that all of the conditions in  
27 either subdivision (a)(1) or (a)(2) of this section have been met, then the  
28 compensating use taxes levied under subsection (c) of this section shall be  
29 levied at the rate of zero percent (0%) on the sale of food and food  
30 ingredients beginning on the first day of the ~~second calendar month~~ calendar  
31 quarter that is at least thirty (30) days following the determination of the  
32 director.

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34 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
35 General Assembly of the State of Arkansas that the unemployment level in  
36 Arkansas is unacceptable; that this unemployment level results in an increase

1 in the number of Arkansans unable to afford basic necessities; and that this  
2 act is necessary because the state sales and use tax on food and food  
3 ingredients should be eliminated as soon as it is economically feasible to do  
4 so in order to aid Arkansans. Therefore, an emergency is declared to exist,  
5 and this act being necessary for the preservation of the public peace,  
6 health, and safety shall become effective on July 1, 2013.

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