

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4
5 By: Representative Rye
6

A Bill

HOUSE BILL 2085

For An Act To Be Entitled

8 AN ACT TO AMEND THE DISTRIBUTION AND USE OF SALES AND
9 USE TAX REVENUES; TO REPEAL PROVISIONS CONCERNING THE
10 USE OF SALES AND USE TAX COLLECTED FROM SELLERS THAT
11 DO NOT HAVE A PHYSICAL PRESENCE IN THE STATE; TO
12 DISTRIBUTE A PORTION OF THE SALES AND USE TAX
13 COLLECTED FROM SELLERS THAT DO NOT HAVE A PHYSICAL
14 PRESENCE IN THE STATE TO THE STATE HIGHWAY AND
15 TRANSPORTATION DEPARTMENT FUND; TO REPEAL PROVISIONS
16 THAT ARE CONTINGENT ON THE DIRECTOR OF THE DEPARTMENT
17 OF FINANCE AND ADMINISTRATION DETERMINING THAT
18 FEDERAL LAW AUTHORIZES THE STATE TO COLLECT SALES AND
19 USE TAX FROM SELLERS THAT DO NOT HAVE A PHYSICAL
20 PRESENCE IN THE STATE; AND FOR OTHER PURPOSES.
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Subtitle

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24 TO DISTRIBUTE A PORTION OF THE SALES AND
25 USE TAX COLLECTED FROM SELLERS THAT DO
26 NOT HAVE A PHYSICAL PRESENCE IN THE STATE
27 TO THE STATE HIGHWAY AND TRANSPORTATION
28 DEPARTMENT FUND.
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30
31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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33 SECTION 1. Arkansas Code § 26-51-201(e), concerning the income tax
34 levied on individuals, trusts, and estates, is repealed.

35 ~~(e) If the director determines that federal law authorizes the state~~
36 ~~to collect sales and use tax from sellers that do not have a physical~~



1 ~~presence in the state, then after the first twelve (12) months of collecting~~
 2 ~~sales and use tax from sellers that do not have a physical presence in the~~
 3 ~~state, the director shall:~~

4 ~~(1) After making the deductions required under § 19-5-~~
 5 ~~202(b)(2)(B)(i), certify to the Governor and the Office of Economic and Tax~~
 6 ~~Policy the amount of available net general revenues attributable to the~~
 7 ~~collection of sales and use tax from sellers that do not have a physical~~
 8 ~~presence in the state during the first twelve (12) months of collections;~~

9 ~~(2) Use any amount under subdivision (c)(1) of this section that~~
 10 ~~exceeds seventy million dollars (\$70,000,000) to reduce the rate of four and~~
 11 ~~five-tenths percent (4.5%) in the table contained in subdivision (a)(7) of~~
 12 ~~this section equally for all taxpayers subject to the rate of four and five-~~
 13 ~~tenths percent (4.5%);~~

14 ~~(3) Certify the amount of the reduction of the income tax rate~~
 15 ~~under this subsection to the Governor and the Office of Economic and Tax~~
 16 ~~Policy; and~~

17 ~~(4) Incorporate the reduced income tax rate into the table~~
 18 ~~prescribed under subsection (d) of this section, which shall be applicable~~
 19 ~~for each tax year thereafter.~~

20
 21 SECTION 2. Arkansas Code § 26-52-107 is amended to read as follows:

22 26-52-107. Disposition of taxes, interest, and penalties.

23 (a) All Except as provided in subsection (b) of this section, the
 24 taxes, interest, penalties, and costs received by the Director of the
 25 Department of Finance and Administration under the provisions of this chapter
 26 and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., shall be
 27 general revenues and shall be deposited into the State Treasury to the credit
 28 of the State Apportionment Fund. The Treasurer of State shall allocate and
 29 transfer the same to the various State Treasury funds participating in
 30 general revenues in the respective proportions to each as provided by, and to
 31 be used for the respective purposes set forth in, the Revenue Stabilization
 32 Law, § 19-5-101 et seq.

33 (b)(1) After making the deductions required under § 19-5-
 34 202(b)(2)(B)(i), the sales and use taxes, interest, penalties, and costs
 35 received by the director from sales by sellers who do not have a physical
 36 presence in this state shall be deposited as follows:

1 (A) The first fifteen million dollars (\$15,000,000) shall
 2 be deposited as general revenues into the State Apportionment Fund; and

3 (B) The remainder shall be deposited into the State
 4 Highway and Transportation Department Fund.

5
 6 SECTION 3. Arkansas Code § 26-52-317(a), concerning the sales tax
 7 levied on food and food ingredients, is amended to read as follows:

8 (a)(1)~~(A)~~ ~~The Director of the Department of Finance and Administration~~
 9 ~~shall determine the following conditions:~~

10 ~~(A) That federal law authorizes the state to collect sales~~
 11 ~~and use tax from some or all of the sellers that have no physical presence in~~
 12 ~~the State of Arkansas and that make sales of taxable goods and services to~~
 13 ~~Arkansas purchasers;~~

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

17 ~~(C)(i) That during a six-month consecutive period, the~~
 18 ~~amount of net available general revenues attributable to the collection of~~
 19 ~~sales and use tax from sellers that have no physical presence in the State of~~
 20 ~~Arkansas is equal to or greater than one hundred fifty percent (150%) of~~
 21 ~~sales and use tax collected under subsection (c) of this section and § 26-53-~~
 22 ~~145 on food and food ingredients.~~

23 ~~(ii) The director shall make the determination under~~
 24 ~~subdivision (a)(1)(C)(i) of this section on a monthly basis following the~~
 25 ~~determination that the conditions under subdivision (a)(1)(A) of this section~~
 26 ~~have been met.~~

27 ~~(2)(A) Beginning July 1, 2013, the director~~ The Director of the
 28 Department of Finance and Administration shall make a monthly determination
 29 as to whether the aggregate amount of deductions from net general revenues
 30 attributable to the following during the most recently ended six-month
 31 consecutive period, as compared with the same six-month period in the prior
 32 year, has declined by thirty-five million dollars (\$35,000,000) or more:

33 (i) The Educational Adequacy Fund;

34 (ii) Bonds issued under the Arkansas College Savings
 35 Bond Act of 1989, § 6-62-701 et seq.;

36 (iii) Bonds issued under the Arkansas Higher

1 Education Technology and Facility Improvement Act of 2005, § 6-62-1101 et
 2 seq.;

3 (iv) The City-County Tourist Facilities Aid Fund;
 4 (v) Amounts disbursed or approved to be disbursed by
 5 the Department of Education for desegregation expenses under any
 6 desegregation settlement agreement, as certified by the Treasurer of State
 7 and the Chief Fiscal Officer of the State under § 6-20-212; and

8 (vi) Bonds issued under the Arkansas Water, Waste
 9 Disposal and Pollution Abatement Facilities Financing Act of 1997 and the
 10 Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing
 11 Act of 2007, § 15-20-1301 et seq.

12 (B)(i) In making the determination in this subdivision
 13 ~~(a)(2)~~ (a)(1), the director shall consider all economic factors existing at
 14 the time of the determination that could potentially affect the decline in
 15 the aggregate amount of deductions, including without limitation pending
 16 litigation.

17 (ii) If the consideration of additional economic
 18 factors under subdivision ~~(a)(2)(B)(i)~~ (a)(1)(B)(i) of this section results
 19 in a determination that the decline in the aggregate amount of deductions is
 20 not likely to remain at that reduced level, the director shall conclude that
 21 the conditions in this subdivision ~~(a)(2)~~ (a)(1) have not been met.

22 ~~(3)~~ (2) When the director finds that ~~all of~~ the conditions in
 23 ~~either~~ subdivision (a)(1) of this section ~~or subdivision (a)(2) of this~~
 24 ~~section~~ have been met, then the gross receipts or gross proceeds taxes levied
 25 under subsection (c) of this section shall be levied at the rate of zero
 26 percent (0%) on the sale of food and food ingredients beginning on the first
 27 day of the calendar quarter that is at least thirty (30) days following the
 28 determination of the director.

29
 30 SECTION 4. Arkansas Code § 26-53-145(a), concerning the compensating
 31 use tax levied on food and food ingredients, is amended to read as follows:

32 (a)(1)(A) ~~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 that have no physical presence in~~
 36 ~~the State of Arkansas and that 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 that 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 subsection (c) of this section and § 26-52-~~
 10 ~~317 on food and food ingredients.~~

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

15 ~~(2)(A) Beginning July 1, 2013, the director~~ The Director of the
 16 Department of Finance and Administration shall make a monthly determination
 17 as to whether the aggregate amount of deductions from net general revenues
 18 attributable to the following during the most recently ended six-month
 19 consecutive period, as compared with the same six-month period in the prior
 20 year, has declined by thirty-five million dollars (\$35,000,000) or more:

21 (i) The Educational Adequacy Fund;

22 (ii) Bonds issued under the Arkansas College Savings
 23 Bond Act of 1989, § 6-62-701 et seq.;

24 (iii) Bonds issued under the Arkansas Higher
 25 Education Technology and Facility Improvement Act of 2005, § 6-62-1101 et
 26 seq.;

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

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

32 (vi) Bonds issued under the Arkansas Water, Waste
 33 Disposal and Pollution Abatement Facilities Financing Act of 1997 and the
 34 Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing
 35 Act of 2007, § 15-20-1301 et seq.

36 (B)(i) In making the determination in this subdivision

1 ~~(a)(2)~~ (a)(1), the director shall consider all economic factors existing at
 2 the time of the determination that could potentially affect the decline in
 3 the aggregate amount of deductions, including without limitation pending
 4 litigation.

5 (ii) If the consideration of additional economic
 6 factors under subdivision ~~(a)(2)(B)(i)~~ (a)(1)(B)(i) of this section results
 7 in a determination that the decline in the aggregate amount of deductions is
 8 not likely to remain at that reduced level, the director shall conclude that
 9 the conditions in this subdivision ~~(a)(2)~~ (a)(1) have not been met.

10 ~~(3)~~ (2) When the director finds that ~~all of~~ the conditions in
 11 ~~either~~ subdivision (a)(1) ~~or subdivision (a)(2)~~ of this section have been
 12 met, then the compensating use taxes levied under subsection (c) of this
 13 section shall be levied at the rate of zero percent (0%) on the sale of food
 14 and food ingredients beginning on the first day of the calendar quarter that
 15 is at least thirty (30) days following the determination of the director.

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 17 SECTION 5. EFFECTIVE DATE. Sections 1 through 4 of this act are
 18 effective on the first day of the calendar quarter following the effective
 19 date of this act.

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