

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

*As Engrossed: H3/22/17*

# 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.

## Subtitle

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23 TO DISTRIBUTE A PORTION OF THE SALES AND  
24 USE TAX COLLECTED FROM SELLERS THAT DO  
25 NOT HAVE A PHYSICAL PRESENCE IN THE STATE  
26 TO THE STATE HIGHWAY AND TRANSPORTATION  
27 DEPARTMENT FUND.  
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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34 levied on individuals, trusts, and estates, is repealed.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 distributed 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 distributed under the Arkansas  
4 Highway Revenue Distribution Law, § 27-70-201 et seq.

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.

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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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21 /s/Rye  
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