

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: S4/3/17

A Bill

SENATE BILL 576

5 By: Senator K. Ingram
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE USE AND DISPOSITION OF SALES AND
9 USE TAX REVENUES; TO REPEAL PROVISIONS CONCERNING THE
10 *USE OF SALES AND USE TAX REVENUES; TO DECLARE AN*
11 *EMERGENCY; AND FOR OTHER PURPOSES.*
12
13

Subtitle

14 *TO AMEND THE USE AND DISPOSITION OF SALES*
15 *AND USE TAX REVENUES; AND TO DECLARE AN*
16 *EMERGENCY.*
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 *SECTION 1. Arkansas Code § 26-51-201(e), concerning the income tax*
23 *levied on individuals, trusts, and estates, is repealed.*

24 ~~*(e) If the director determines that federal law authorizes the state*~~
25 ~~*to collect sales and use tax from sellers that do not have a physical*~~
26 ~~*presence in the state, then after the first twelve (12) months of collecting*~~
27 ~~*sales and use tax from sellers that do not have a physical presence in the*~~
28 ~~*state, the director shall:*~~

29 ~~*(1) After making the deductions required under § 19-5-*~~
30 ~~*202(b)(2)(B)(i), certify to the Governor and the Office of Economic and Tax*~~
31 ~~*Policy the amount of available net general revenues attributable to the*~~
32 ~~*collection of sales and use tax from sellers that do not have a physical*~~
33 ~~*presence in the state during the first twelve (12) months of collections;*~~

34 ~~*(2) Use any amount under subdivision (e)(1) of this section that*~~
35 ~~*exceeds seventy million dollars (\$70,000,000) to reduce the rate of four and*~~
36 ~~*five tenths percent (4.5%) in the table contained in subdivision (a)(7) of*~~



~~1 this section equally for all taxpayers subject to the rate of four and five-~~
~~2 tenths percent (4.5%);~~

~~3 (3) Certify the amount of the reduction of the income tax rate~~
~~4 under this subsection to the Governor and the Office of Economic and Tax~~
~~5 Policy; and~~

~~6 (4) Incorporate the reduced income tax rate into the table~~
~~7 prescribed under subsection (d) of this section, which shall be applicable~~
~~8 for each tax year thereafter.~~

9
 10 SECTION 2. Arkansas Code § 26-52-107 is amended to read as follows:

11 26-52-107. Disposition of taxes, interest, and penalties.

12 (a) All Except as provided in subsection (b) of this section, all
 13 taxes, interest, penalties, and costs received by the Director of the
 14 Department of Finance and Administration under the provisions of this chapter
 15 and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., shall be
 16 general revenues and shall be deposited into the State Treasury to the credit
 17 of the State Apportionment Fund. The Treasurer of State shall allocate and
 18 transfer the same to the various State Treasury funds participating in
 19 general revenues in the respective proportions to each as provided by, and to
 20 be used for the respective purposes set forth in, the Revenue Stabilization
 21 Law, § 19-5-101 et seq.

22 (b) All revenues from the taxes levied in §§ 26-52-301, 26-52-
 23 302(a)(1), 26-52-302(b)(1), 26-52-317(c)(1)(A), 26-53-106(a), 26-53-
 24 107(a)(1), 26-53-107(b)(1), and 26-53-145(c)(1)(A) in excess of two billion
 25 four hundred forty-one million one hundred thousand dollars (\$2,441,100,000)
 26 in a fiscal year shall be deposited into the Internet Revenue subfund of the
 27 General Revenue Allotment Reserve Fund.

28
 29 SECTION 3. Arkansas Code § 26-52-317(a), concerning the sales tax
 30 levied on food and food ingredients, is amended to read as follows:

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

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

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

4 ~~(C)(i) That during a six month consecutive period, the~~
5 ~~amount of net available general revenues attributable to the collection of~~
6 ~~sales and use tax from sellers that have no physical presence in the State of~~
7 ~~Arkansas is equal to or greater than one hundred fifty percent (150%) of~~
8 ~~sales and use tax collected under subsection (c) of this section and § 26-53-~~
9 ~~145 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)(A) Beginning July 1, 2013, the director shall make a monthly~~
15 ~~determination as to whether the aggregate amount of deductions from net~~
16 ~~general revenues attributable to the following during the most recently ended~~
17 ~~six-month consecutive period, as compared with the same six-month period in~~
18 ~~the prior year, has declined by thirty-five million dollars (\$35,000,000) or~~
19 ~~more:~~

20 (i) The Educational Adequacy Fund;

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

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

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

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

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

35 (B)(i) In making the determination in this subdivision
36 ~~(a)(2)~~ (a)(1), the director shall consider all economic factors existing at

1 the time of the determination that could potentially affect the decline in
 2 the aggregate amount of deductions, including without limitation pending
 3 litigation.

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

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

16
 17 SECTION 4. Arkansas Code § 26-53-145(a), concerning the compensating
 18 use tax levied on food and food ingredients, is amended to read as follows:

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

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

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

28 ~~(C)(i) That during a six-month consecutive period, the~~
 29 ~~amount of net available general revenues attributable to the collection of~~
 30 ~~sales and use tax from sellers that have no physical presence in the State of~~
 31 ~~Arkansas is equal to or greater than one hundred fifty percent (150%) of~~
 32 ~~sales and use tax collected under subsection (c) of this section and § 26-52-~~
 33 ~~317 on food and food ingredients.~~

34 ~~(ii) The director shall make the determination under~~
 35 ~~subdivision (a)(1)(C)(i) of this section on a monthly basis following the~~
 36 ~~determination that the conditions under subdivision (a)(1)(A) of this section~~

1 ~~have been met.~~

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

8 (i) The Educational Adequacy Fund;

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

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

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

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

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

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

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

33 ~~(3)~~ (2) When the director finds that ~~all of~~ the conditions in
34 ~~either~~ subdivision (a)(1) ~~or subdivision (a)(2)~~ of this section have been
35 met, then the compensating use taxes levied under subsection (c) of this
36 section shall be levied at the rate of zero percent (0%) on the sale of food

1 and food ingredients beginning on the first day of the calendar quarter that
2 is at least thirty (30) days following the determination of the director.

3
4 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
5 General Assembly of the State of Arkansas that the state has many needs,
6 including without limitation the need to reduce taxes to make the state more
7 competitive with surrounding states and the need to invest in a variety of
8 programs for the wellbeing of the state's citizens; that as a result of
9 federal and state law changes, Arkansas may soon receive additional state
10 sales and use tax collections from sellers that do not have a physical
11 presence in this state; that the additional tax collections from sellers that
12 do not have a physical presence in this state are in addition to the tax
13 collections Arkansas might otherwise have anticipated receiving from ordinary
14 growth of the state's economy; that it is currently impossible to determine
15 the amount of additional tax collections the state might receive from sellers
16 that do not have a physical presence in this state; that state law currently
17 contains competing provisions regarding the use of the anticipated tax
18 collections from sellers that do not have a physical presence in this state;
19 that unless a clear method is established to set aside and use the additional
20 tax collections from sellers that do not have a physical presence in this
21 state, the citizens of this state will be adversely affected by the inability
22 to use these additional revenues in the best manner possible for the benefit
23 of our citizens; and that this act is immediately necessary to avoid any
24 adverse effect on the citizens of Arkansas by providing an orderly method to
25 identify the additional collections from sellers that do not have a physical
26 presence in this state and provide for their use in a manner that provides
27 the greatest benefit to the citizens of this state in the most efficient
28 manner possible. Therefore, an emergency is declared to exist, and this act
29 being immediately necessary for the preservation of the public peace, health,
30 and safety shall become effective on:

31 (1) The date of its approval by the Governor;

32 (2) If the bill is neither approved nor vetoed by the Governor,
33 the expiration of the period of time during which the Governor may veto the
34 bill; or

35 (3) If the bill is vetoed by the Governor and the veto is
36 overridden, the date the last house overrides the veto.

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/s/K. Ingram