

ARKANSAS SENATE
91st General Assembly - Regular Session, 2017
Amendment Form

Subtitle of Senate Bill No. 120

TO AMEND ARKANSAS TAX LAW CONCERNING INCOME TAX, SALES AND USE TAXES, AND THE
SOFT DRINK TAX; AND TO SUPPLEMENT THE ARKANSAS MEDICAID PROGRAM TRUST FUND TO
OFFSET DECREASED DEPOSITS FROM TAX REVENUES.

Amendment No. 2 to Senate Bill No. 120

Amend Senate Bill No. 120 as originally introduced:

Add Senator J. Hendren as a cosponsor of the bill

AND

Page 1, line 21, delete "A MANUFACTURED OR MODULAR HOME" and substitute
"SPECIFIED DIGITAL PRODUCTS AND DIGITAL CODES"

AND

Page 1, line 22, delete "ACT" and substitute "ACT, AS AFFIRMED BY REFERRED
ACT 1 OF 1994,"

AND

Page 1, line 23, delete "ON SYRUPS"

AND

Page 2, delete line 8, and substitute the following:
"nine hundred fifty-four thousand five hundred dollars (\$2,954,500) shall
be:"

AND

Page 2, delete line 14, and substitute the following:
"five million nine hundred nine thousand dollars (\$5,909,000) shall be:"

AND

Delete SECTION 7 in its entirety, and substitute the following:
"SECTION 7. Arkansas Code § 26-52-103(13), concerning the definitions



to be used under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., is amended to read as follows:

(13)(A) "Gross receipts", "gross proceeds", or "sales price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property, specified digital products, a digital code, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without ~~any~~ a deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, any loss, any cost of transportation to the seller, any tax imposed on the seller, and any other expense of the seller;

(iii) ~~Any~~ A charge by the seller for any service necessary to complete the sale, other than a delivery charge or an installation charge;

(iv) Delivery charge;

(v)(a) Installation charge.

(b) Installation charges ~~will~~ shall not be included in the "gross receipts", "gross proceeds", or "sales price" if they are not a specifically taxable service under this chapter or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and the installation charges have been separately stated on the invoice, billing, or similar document given to the purchaser; or

(vi) Credit for any trade-in.

(B) "Gross receipts", "gross proceeds", or "sales price" does not include:

(i) A discount including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) ~~Interest~~ An interest, financing, or a carrying charge from credit extended on the sale of tangible personal property, specified digital products, a digital code, or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) ~~Any~~ A tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

SECTION 8. Arkansas Code § 26-52-103(19)(A) and (B), concerning the definition of "sale" to be used under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., are amended to read as follows:

(19)(A) "Sale" means the transfer of either the title or possession, except in the case of a lease or rental for a valuable consideration, of tangible personal property, specified digital products, or a digital code regardless of the manner, method, instrumentality, or device by which the transfer is accomplished.

(B) "Sale" includes the:

(i) Exchange, barter, lease, or rental of tangible personal property, specified digital products, or a digital code; or

(ii) Sale, ~~exchanging~~ exchange, or other disposition of admissions, dues, or fees to clubs, to places of amusement, or to recreational or athletic events or for the privilege of having access to or

the use of amusement, athletic, or entertainment facilities.

SECTION 9. Arkansas Code § 26-52-103(20) and (21), concerning the definitions to be used under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., are amended to read as follows:

(20) “Seller” means ~~every~~ a person making a sale, lease, or rental of tangible personal property, specified digital products, a digital code, or services;

(21)(A) “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses.

(B) “Tangible personal property” includes electricity, water, gas, steam, and prewritten computer software~~;~~.

(C) “Tangible personal property” does not include specified digital products or a digital code;

SECTION 10. Arkansas Code § 26-52-103, concerning the definitions to be used under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., is amended to add additional subdivisions to read as follows:

(25)(A) “Candy” means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces.

(B) “Candy” shall not include a preparation containing flour and shall require no refrigeration;

(26) “Digital audio works” means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones;

(27) “Digital audio-visual works” means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;

(28) “Digital books” means works that are generally recognized in the ordinary and usual sense as “books”;

(29) “Digital code” means a code that:

(A) Provides a purchaser with a right to obtain one (1) or more specified digital products; and

(B) May be obtained by any means, including email or tangible means, regardless of its designation as a song code, video code, or book code;

(30)(A) “End user” means a person who purchases specified digital products or the code for specified digital products for his or her own use or for the purpose of giving away the product or code.

(B) “End user” does not include a person who receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons;

(31) “Ringtones” means digitized sound files that:

(A) Are downloaded onto a device; and

(B) May be used to alert the customer with respect to a communication;

(32)(A) “Soft drink” means a nonalcoholic beverage that contains natural or artificial sweeteners.

(B) "Soft drink" does not include a beverage that contains milk or milk products, soy, rice, or similar milk substitutes, or that is greater than fifty percent (50%) of vegetable or fruit juice by volume;

(33) "Specified digital products" means the following when transferred electronically:

(A) Digital audio works;

(B) Digital audio-visual works; and

(C) Digital books; and

(34) "Transferred electronically" means obtained by the purchaser by means other than tangible storage media.

SECTION 11. Arkansas Code § 26-52-110(b), concerning sellers and affiliated persons, is amended to read as follows:

(b) A seller is presumed to be engaged in the business of selling tangible personal property, specified digital products, a digital code, or taxable services for use in the state if an affiliated person is subject to the sales and use tax jurisdiction of the state and the:

(1) Seller sells a similar line of products as the affiliated person and sells the products under the same business name or a similar business name;

(2) Affiliated person uses its in-state employees or in-state facilities to advertise, promote, or facilitate sales by the seller to consumers;

(3) Affiliated person maintains an office, distribution facility, warehouse or storage place, or similar place of business to facilitate the delivery of property, specified digital products, a digital code, or services sold by the seller to the seller's business;

(4) Affiliated person uses trademarks, service marks, or trade names in the state that are the same or substantially similar to those used by the seller; or

(5) Affiliated person delivers, installs, assembles, or performs maintenance services for the seller's purchasers within the state.

SECTION 12. Arkansas Code § 26-52-110(d), concerning sellers and affiliated persons, is amended to read as follows:

(d)(1) If there is not an affiliated person with respect to a seller in the state, the seller is presumed to be engaged in the business of selling tangible personal property, specified digital products, a digital code, or taxable services for use in the state if the seller enters into an agreement with one (1) or more residents of the state under which the residents, for a commission or other consideration, directly or indirectly refer potential purchasers, whether by a link on an Internet website or otherwise, to the seller.

(2) However, subdivision (d)(1) of this section applies only if the cumulative gross receipts from sales by the seller to purchasers in the state who are referred to the seller by all residents according to the type of agreement described in subdivision (d)(1) of this section exceed ten thousand dollars (\$10,000) during the preceding twelve (12) months.

SECTION 13. Arkansas Code § 26-52-201(e), concerning the permit required to transact business in the state, is amended to read as follows:

(e) The director is authorized to establish types and classifications

of Arkansas gross receipts tax permits, including, ~~not by~~ without limitation, special permits for taxpayers whose principal line of business does not include the retail selling of tangible personal property, specified digital products, or a digital code or the performing of taxable services.

SECTION 14. Arkansas Code § 26-52-210(a)(2), concerning the automatic expiration of the permit required to transact business in the state, is amended to read as follows:

(2) This section ~~shall~~ does not apply to a permit that is issued ~~pursuant to~~ under § 26-52-201(e) to a taxpayer whose principal line of business does not include the retail selling of tangible personal property, specified digital products, or a digital code or the performing of taxable services.

SECTION 15. Arkansas Code § 26-52-301(1), concerning the levy of the gross receipts tax on sales of enumerated items and services, is amended to read as follows:

(1) The following items:

(A) Tangible personal property;

(B) Specified digital products sold:

(i) To a purchaser who is an end user; and

(ii) With the right of permanent use or less than

permanent use granted by the seller regardless of whether the use is conditioned on continued payment by the purchaser; and

(C) Digital codes;

SECTION 16. Arkansas Code § 26-52-301(3)(B)(viii)(b), concerning the gross receipts tax levied on certain sales, is amended to read as follows:

(b) A contractor is deemed to be a consumer or user of all tangible personal property, specified digital products, or digital codes used or consumed by the contractor in providing the nontaxable services, in the same manner as when performing any other contract.

SECTION 17. Arkansas Code § 26-52-302 is amended to read as follows:
26-52-302. Additional taxes levied.

(a)(1) In addition to the excise tax levied upon the gross proceeds or gross receipts derived from all sales by this chapter, except for food and food ingredients that are taxed under § 26-52-317, there is levied an excise tax of one percent (1%) upon all taxable sales of property, specified digital products, digital codes, and services subject to the tax levied in this chapter.

(2) This tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(3) In computing gross receipts or gross proceeds as defined in § 26-52-103, a deduction shall be allowed for bad debts resulting from the sale of tangible personal property.

(b)(1) In addition to the excise tax levied upon the gross proceeds or gross receipts derived from all sales by this chapter, except for food and food ingredients that are taxed under § 26-52-317, there is hereby levied an excise tax of one-half of one percent (0.5%) upon all taxable sales of property, specified digital products, digital codes, and services subject to

the tax levied in this chapter.

(2) This tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(3) However, in computing gross receipts or gross proceeds as defined in § 26-52-103, a deduction shall be allowed for bad debts resulting from the sale of tangible personal property.

(c)(1) Except for food and food ingredients that are taxed under § 26-52-317, there is levied an additional excise tax of one-half of one percent (0.5%) upon all taxable sales of property, specified digital products, digital codes, and services subject to the tax levied by this chapter.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this chapter, for the collection, reporting, and payment of Arkansas gross receipts taxes.

(d)(1) Except for food and food ingredients that are taxed under § 26-52-317, there is levied an additional excise tax of seven-eighths of one percent (0.875%) upon all taxable sales of property, specified digital products, digital codes, and services subject to the tax levied by this chapter.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as prescribed by this chapter, for the collection, reporting, and payment of Arkansas gross receipts taxes.

SECTION 18. Arkansas Code § 26-52-305 is amended to read as follows:
26-52-305. Financial institutions.

Sales of tangible personal property, specified digital products, a digital code, and services to financial institutions ~~shall be~~ are subject to the Arkansas gross receipts tax levied in this chapter the same as such sales to other business corporations.

SECTION 19. Arkansas Code § 26-52-307(a)(1), concerning contractors as consumer users, is amended to read as follows:

(a)(1) Sales of services, specified digital products, digital codes, and tangible personal property, including materials, supplies, and equipment, made to contractors who use them in the performance of ~~any a~~ contract are declared to be sales to consumers or users and not sales for resale.

SECTION 20. Arkansas Code § 26-52-315(e)(2), concerning the definition of "ancillary service" to be used regarding the sales tax on telecommunications and related services, is amended to read as follows:

(2)(A) "Ancillary service" means a service that is associated with or incidental to the provision of a telecommunications service, including without limitation detailed telecommunications billing, directory assistance, vertical service, and voice mail services~~†.~~

(B) "Ancillary service" does not include specified digital products or a digital code;

SECTION 21. Arkansas Code § 26-52-315(e)(19)(C), concerning items excluded from the definition of "telecommunications service" to be used regarding the sales tax on telecommunications and related services, is amended to read as follows:

(C) "Telecommunications service" does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser when the purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising, including ~~but not limited to~~ without limitation directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii)(a) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of the services by the programming service provider.

(b) Radio and television audio and video programming services ~~shall include but not be limited to, including without limitation~~ cable service as defined in 47 U.S.C. § 522(6), as in effect on January 1, 2007, and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3, as in effect on January 1, 2007;

(viii) Ancillary services; ~~or~~

(ix) A digital product delivered electronically, including ~~but not limited to~~ without limitation software, music, video, reading material, or a ring tone;

(x) Specified digital products; or

(xi) A digital code;

SECTION 22. Arkansas Code § 26-52-401(1) and (2), concerning sales tax exemptions for various products and services, are amended to read as follows:

(1) The gross receipts or gross proceeds derived from the sale of tangible personal property, specified digital products, a digital code, or services by churches, except when the organizations may be engaged in business for profit;

(2) The gross receipts or gross proceeds derived from the sale of tangible personal property, specified digital products, a digital code, or service by charitable organizations, except when the organizations may be engaged in business for profit;

SECTION 23. Arkansas Code § 26-52-401(7)-(10), concerning sales tax exemptions for various products and services, are amended to read as follows:

(7) Gross receipts or gross proceeds derived from the sale of specified digital products, a digital code, tangible personal property, including ~~but not limited to~~ without limitation office supplies; office equipment; program items at camp such as bows, arrows, and rope; rifles for rifle range and other rifle items; food, food ingredients, or prepared food for camp; lumber and supplies used in camp maintenance; camp equipment; first aid supplies for camp; the leasing of cars used in promoting scouting; or services to the Boy Scouts of America chartered by the United States Congress in 1916 or the Girl Scouts of the United States of America chartered by the

United States Congress in 1950 or any of the scout councils in the State of Arkansas;

(8) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to the Boys & Girls Club of America;

(9) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to the Poets' Roundtable of Arkansas;

(10) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to 4-H clubs and FFA clubs in this state, to the Arkansas 4-H Foundation, the Arkansas Future Farmers of America Foundation, and the Arkansas Future Farmers of America Association;

SECTION 24. Arkansas Code § 26-52-401(21)(A), concerning sales tax exemptions for various products and services, is amended to read as follows:

(21)(A) Gross receipts or gross proceeds derived from the sale of ~~any~~ tangible personal property, specified digital products, a digital code, or services as specifically provided in this subdivision (21) to ~~any~~ a hospital or sanitarium operated for charitable and nonprofit purposes or ~~any~~ a nonprofit organization whose sole purpose is to provide temporary housing to the family members of patients in a hospital or sanitarium.

SECTION 25. Arkansas Code § 26-52-401(29), concerning sales tax exemptions for various products and services, is amended to read as follows:

(29) Gross receipts or gross proceeds derived from the sale of ~~any~~ tangible personal property, specified digital products, or a digital code specifically exempted from taxation by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.;

SECTION 26. Arkansas Code § 26-52-401(31), concerning sales tax exemptions for various products and services, is amended to read as follows:

(31) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to Habitat for Humanity;

SECTION 27. Arkansas Code § 26-52-401(33) and (34), concerning sales tax exemptions for various products and services, are amended to read as follows:

(33) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to The Salvation Army;

(34) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, and services to Heifer International, Inc.;

SECTION 28. Arkansas Code § 26-52-401(37), concerning sales tax exemptions for various products and services, is amended to read as follows:

(37) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to the Arkansas Symphony Orchestra Society, Inc.;

SECTION 29. Arkansas Code § 26-52-401(39), concerning sales tax exemptions for various products and services, is amended to read as follows:

(39) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to the Arkansas Black Hall of Fame Foundation, Inc.

SECTION 30. Arkansas Code § 26-52-430(a), concerning the sales tax exemption for sales by charitable organizations, is amended to read as follows:

(a) The exemptions ~~set forth~~ stated in this subchapter for a charitable organization shall not extend to sales of new tangible personal property, specified digital products, or a digital code by the charitable organization if the sales compete with sales by for-profit businesses.

SECTION 31. Arkansas Code § 26-52-437(a)(1), concerning the definition of "instructional materials" for purposes of the sales tax exemption for textbooks and instructional materials for public schools, is amended to add an additional subdivision to read as follows:

(G) Specified digital products and a digital code that contains instructional information designed to be presented to students as part of a course of study.

SECTION 32. Arkansas Code § 26-52-440(b)(1), concerning the sales tax exemption for sales to qualified museums, is amended to read as follows:

(b)(1) The gross receipts or gross proceeds derived from the sale of ~~any~~ tangible personal property, specified digital products, a digital code, or services to a qualified museum are exempt from this chapter.

SECTION 33. Arkansas Code § 26-52-443 is amended to read as follows:

26-52-443. Exemption for Arkansas Search Dog Association, Inc.

The gross receipts or gross proceeds from the sale of tangible personal property, specified digital products, a digital code, or a service to the Arkansas Search Dog Association, Inc., are exempt from the gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

SECTION 34. Arkansas Code § 26-52-449(a), concerning the sales tax exemption for nonprofit blood donation organizations, is amended to read as follows:

(a) The gross receipts or gross proceeds from the sale of tangible personal property, specified digital products, a digital code, or a service to a nonprofit blood donation organization are exempt from the gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

SECTION 35. Arkansas Code § 26-52-501(j), concerning the preparation of returns and payment of sales tax, is amended to read as follows:

(j) The director may establish by regulation separate requirements for filing reports and returns and paying the tax levied under this chapter for taxpayers whose principal line of business does not include the retail selling of tangible personal property, specified digital products, or a digital code or performing taxable services.

SECTION 36. Arkansas Code § 26-52-508(a), concerning the collection of sales tax by sellers or admissions collectors, is amended to read as follows:

(a) The tax levied by this chapter shall be paid to the Director of the Department of Finance and Administration by:

(1) The seller of tangible personal property, specified digital products, or a digital code;

(2) The seller or collector of admissions to places of amusement, recreational, or athletic events;

(3) The seller of privileges of access to or the use of amusement, entertainment, athletic, or recreational facilities; and

(4) Any other person furnishing any service subject to the provisions of this chapter.

SECTION 37. Arkansas Code § 26-52-517(a) and (b), concerning exemption certificates, are amended to read as follows:

(a) The sales tax liability for all sales of tangible personal property, specified digital products, digital codes, and taxable services is upon the seller unless the purchaser claims an exemption and the seller obtains identifying information of the purchaser and the reason the purchaser is claiming the exemption in the manner prescribed by the Director of the Department of Finance and Administration.

(b)(1) When tangible personal property, specified digital products, a digital code, or taxable services are purchased ~~tax-free pursuant to tax-free under~~ subsection (a) of this section and the tangible personal property, specified digital products, digital code, or taxable service is not resold by the purchaser, the purchaser is solely liable for reporting and remitting to the director any tax which should have been paid at the time of purchase.

(2) Use or disposition of the property other than for resale shall be deemed a withdrawal from stock for all purposes, including reporting and remittance of the tax due, and the tax shall be due from the purchaser at the time of the withdrawal from stock.

SECTION 38. Arkansas Code § 26-52-518(b), concerning the remittance of sales tax from special events, is amended to read as follows:

(b)(1) Special event vendors shall collect sales tax from purchasers of tangible personal property, specified digital products, or a digital code and remit the tax daily, along with a daily sales tax report, to the promoter or organizer.

(2) The isolated sale exemption found in § 26-52-401(17) shall not apply to sales of tangible personal property, specified digital products, or a digital code at special events.

SECTION 39. Arkansas Code § 26-52-521(b)(5), concerning the sources of sales for sales tax purposes, is amended to read as follows:

(5) If none of the previous rules of subdivisions (b)(1)-(4) of this section apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, the location will be determined by the address from which tangible personal property was shipped, from which the specified digital products or the digital code was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided

the digital transfer of the product sold.

SECTION 40. The introductory language of Arkansas Code § 26-52-521(c), concerning the sources of sales for sales tax purposes, is amended to read as follows:

(c) The lease or rental of tangible personal property, specified digital products, or a digital code other than property identified in subsection (d) or subsection (e) of this section shall be sourced as follows:

SECTION 41. Arkansas Code § 26-52-521(f), concerning the sources of sales for sales tax purposes, is amended to read as follows:

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

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

(A) Taking possession of tangible personal property, specified digital products, or a digital code; or

(B) Making first use of services; and

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

SECTION 42. Arkansas Code § 26-52-522(a)(5), concerning the definition of "product" to be used in relation to direct mail sourcing, is amended to read as follows:

(5) "Product" means tangible personal property, specified digital products, a digital code, a product transferred electronically, or a service.

SECTION 43. Arkansas Code § 26-52-523(a) and (b), concerning the credit or rebate of local sales and use tax for certain purchases, is amended to read as follows:

(a) As used in this section:

(1) "Qualifying purchase" means a purchase of tangible personal property, specified digital products, a digital code, or a taxable service:

(A) For which the purchaser may take a business expense deduction pursuant to 26 U.S.C. § 162, as in effect on January 1, 2007;

(B) For which the purchaser may take a depreciation deduction pursuant to 26 U.S.C. § 167, as in effect on January 1, 2007;

(C) By an exempt organization under 26 U.S.C. § 501, as in effect on January 1, 2007, if the purchase would be subject to a business expense deduction or depreciation deduction if the purchaser were not an exempt organization under 26 U.S.C. § 501, as in effect on January 1, 2007; or

(D) By a state, or ~~any~~ a county, city, municipality, school district, state-supported college or university, or any other political subdivision of a state, if the purchase would be subject to a business expense deduction or depreciation deduction if the purchaser were not one of the entities enumerated in this subdivision (a)(1)(D);

(2) "Single transaction" means ~~any~~ a sale of tangible personal property, specified digital products, a digital code, or a taxable service reflected on a single invoice, receipt, or statement for which an aggregate sales or use tax amount has been reported and remitted to the state for a single local taxing jurisdiction; and

(3) "Travel trailer" means a trailer that:

- (A) Provides temporary living quarters for travel, recreation, or camping;
- (B) Includes a chassis having wheels and a trailer hitch or fifth wheel for towing; and
- (C) Is required to be licensed for highway use under Arkansas law.

(b)(1) A purchaser that pays any municipal sales or use tax in excess of the tax due on the first two thousand five hundred dollars (\$2,500) of gross receipts or gross proceeds from the purchase of a travel trailer or from a qualifying purchase of tangible personal property, specified digital products, a digital code, or a taxable service in a single transaction is entitled to a credit or rebate of the excess amount of municipal sales or use tax paid on each single transaction.

(2) A purchaser that pays any county sales or use tax in excess of the tax due on the first two thousand five hundred dollars (\$2,500) of gross receipts or gross proceeds from the purchase of a travel trailer or from a qualifying purchase of tangible personal property, specified digital products, a digital code, or a taxable service in a single transaction is entitled to a credit or rebate of the excess amount of county sales or use tax paid on each single transaction."

AND

Delete SECTIONS 9 and 10 in their entirety, and substitute the following:

"SECTION 45. Arkansas Code § 26-53-102(10)-(16), concerning the definitions to be used under the Arkansas Compensating Tax Act of 1949, are amended to read as follows:

(10)(A) "Purchase" means the sale of tangible personal property, specified digital products, a digital code, or taxable services by a vendor to a person for the purpose of storage, use, distribution, or consumption in this state.

(B)(i) "Purchase" also includes any withdrawal of tangible personal property, specified digital products, or a digital code from a stock or reserve maintained outside of the state by ~~any~~ a person and subsequently brought into this state and thereafter stored, consumed, distributed, or used by that person or by any other person.

(ii) In such an event, the tax shall be computed on the value of the tangible personal property, specified digital products, or digital code at the time it is brought into this state.

(C) No tax shall be computed to the extent that a withdrawal consists of carbonaceous materials such as petroleum coke or carbon anodes that are to be directly used or consumed in the electrolytic reduction process of producing tangible personal property for ultimate sale at retail;

(11) "Purchaser" means a person to whom a sale of tangible personal property, specified digital products, or a digital code is made or to whom a taxable service is furnished;

(12)(A) "Sale" means ~~any~~ a transfer, barter, or exchange of the title or ownership of tangible personal property, specified digital products, a digital code, or taxable services or the right to use, store, distribute, or consume the tangible personal property, specified digital products, a digital code, or taxable services for a consideration paid or to be paid in

installments or otherwise and includes any transaction whether called leases, rentals, bailments, loans, conditional sales, or otherwise, notwithstanding that the title or possession of the property, or both, is retained for security.

(B) For the purpose of this subchapter, the sale of tangible personal property, specified digital products, a digital code, or taxable services shall be sourced according to §§ 26-52-521, 26-52-522, and 26-52-523;

(13)(A) "Sales price" or "purchase price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property, specified digital products, a digital code, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (i) The seller's cost of the property sold;
- (ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (iii) A charge by the seller for any service necessary to complete the sale, other than a delivery or installation charge;
- (iv) Delivery charge;
- (v)(a) Installation charge.

(b) However, installation charges ~~will~~ shall not be included in the "sales price" if they are not a specifically taxable service under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or this subchapter and the installation charges have been separately stated on the invoice, billing, or similar document given to the purchaser; or

- (vi) Credit for any trade-in.

(B) "Sales price" or "purchase price" ~~shall~~ does not include:

- (i) A discount, including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;
- (ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property, specified digital products, a digital code, or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and
- (iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(14) "Seller" means a person making a sale, lease, or rental of tangible personal property, specified digital products, a digital code, or services;

(15) "Storage" means any keeping or retention in this state of tangible personal property, specified digital products, a digital code, or taxable services purchased from a vendor for any purpose except sale or subsequent use solely outside this state;

(16)(A) "Tangible personal property" means personal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses.

(B) "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software+.

(C) "Tangible personal property" does not include

specified digital products or digital codes;

SECTION 46. Arkansas Code § 26-53-102(20)-(21), concerning the definitions to be used under the Arkansas Compensating Tax Act of 1949, are amended to read as follows:

(20)(A) "Use", with respect to tangible personal property, specified digital products, or a digital code, means the exercise of any right or power over tangible personal property, specified digital products, or a digital code incident to the ownership or control of that tangible personal property, specified digital product, or digital code except that it ~~shall~~ does not include the sale of that tangible personal property, specified digital product, or digital code in the regular course of business.

(B) With respect to a taxable service, "use" means the privilege of using the service, enjoyment of the service, or the first act within this state by which the purchaser takes or assumes dominion or control over the service or the ~~article~~ of tangible personal property, specified digital products, or digital code upon which the service was performed; and

(21)(A)(i) "Vendor" means ~~every~~ a person engaged in making sales of tangible personal property, specified digital products, digital codes, or taxable services by mail order, by advertising, or by agent, by peddling tangible personal property, specified digital products, a digital code, or taxable services, by soliciting, or by taking orders for such sales for storage, use, distribution, or consumption in this state.

(ii) "Vendor" includes all salespersons, solicitors, hawkers, representatives, consignees, peddlers, or canvassers as agents of the dealers, distributors, consignors, supervisors, principals, or employers under whom they operate or from whom they obtain the tangible personal property, specified digital products, digital code, or taxable services sold by them.

(B) Regardless of whether a person is making sales on his or her own behalf or on behalf of dealers, distributors, consignors, supervisors, principals, or employers, the person must be regarded as a vendor, and the dealers, distributors, consignors, supervisors, principals, or employers must be regarded as vendors for purposes of this subchapter.

SECTION 47. Arkansas Code § 26-53-102, concerning the definitions used in the Arkansas Compensating Tax Act of 1949, is amended to add additional subdivisions to read as follows:

(22)(A) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces.

(B) "Candy" shall not include a preparation containing flour and shall require no refrigeration;

(23) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones;

(24) "Digital audio-visual works" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;

(25) "Digital books" means works that are generally recognized in the ordinary and usual sense as "books";

(26) "Digital code" means a code that:

(A) Provides a purchaser with a right to obtain one (1) or more specified digital products; and

(B) May be obtained by any means, including email or tangible means, regardless of its designation as a song code, video code, or book code;

(27)(A) "End user" means a person who purchases specified digital products or the code for specified digital products for his or her own use or for the purpose of giving away the product or code.

(B) "End user" does not include a person who receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons;

(28) "Ringtones" means digitized sound files that:

(A) Are downloaded onto a device; and

(B) May be used to alert the customer with respect to a communication;

(29)(A) "Soft drink" means a nonalcoholic beverage that contains natural or artificial sweeteners.

(B) "Soft drink" does not include a beverage that contains milk or milk products, soy, rice, or similar milk substitutes, or that is greater than fifty percent (50%) of vegetable or fruit juice by volume;

(30) "Specified digital products" means the following when transferred electronically:

(A) Digital audio works;

(B) Digital audio-visual works; and

(C) Digital books; and

(31) "Transferred electronically" means obtained by the purchaser by means other than tangible storage media.

SECTION 48. Arkansas Code §§ 26-53-106 and 26-53-107 are amended to read as follows:

26-53-106. Imposition and rate of tax generally – Presumptions.

(a) There is levied and there shall be collected from every person in this state a tax or excise for the privilege of storing, using, distributing, or consuming within this state ~~any article of~~ specified digital products, a digital code, or a taxable service purchased for storage, use, distribution, or consumption in this state at the rate of three percent (3%) of the sales price of the tangible personal property, specified digital products, digital code, or taxable service except for food and food ingredients that are taxed under § 26-53-145.

(b) This tax ~~will~~ does not apply with respect to the storage, use, distribution, or consumption of ~~any article of~~ specified digital products, or a digital code purchased, produced, or manufactured outside this state until the transportation of the ~~article of~~ tangible personal property, specified digital products, or digital code has finally come to rest within this state or until the ~~article of~~ tangible personal property, specified digital products, or digital code has become commingled with the general mass of property of this state.

(c) This tax applies to use, storage, distribution, or consumption of ~~every article of~~ specified digital products, a digital code, or taxable service except as provided in this subchapter

irrespective of whether the ~~article of~~ tangible personal property, ~~or~~ similar articles of tangible personal property, specified digital products, digital code, or the taxable service is manufactured within the State of Arkansas, ~~or~~ is available for purchase within the State of Arkansas, ~~and irrespective of~~ or any other condition.

(d)(1)(A) For the purpose of the proper administration of this subchapter and to prevent evasion of the tax and the duty to collect the tax imposed in this section, it ~~shall be~~ is presumed that tangible personal property, specified digital products, a digital code, or taxable services sold by any vendor for delivery in this state or transportation to this state are sold for storage, use, distribution, or consumption in this state unless the vendor selling the tangible personal property, specified digital products, digital code, or taxable service has taken from the purchaser a resale certificate signed by and bearing the name, address, and sales tax permit number of the purchaser certifying that the property or taxable service was purchased for resale, except that sales made electronically ~~will~~ shall not require the purchaser's signature.

(B) The use by the purchaser of a resale certificate and any resulting liability for, or exemption from, use tax in a transaction involving a resale certificate shall be governed in all respects by the terms of § 26-52-517.

(2) It is further presumed that tangible personal property, specified digital products, a digital code, or taxable services shipped, mailed, expressed, transported, or brought to this state by the purchaser were purchased from a vendor for storage, use, distribution, or consumption in this state.

26-53-107. Additional taxes levied.

(a)(1) In addition to the excise tax levied upon the privilege of storing, using, distributing, or consuming tangible personal property, specified digital products, a digital code, and taxable services within this state by this subchapter, there is levied an excise tax of one percent (1%) upon all tangible personal property, specified digital products, digital codes, and taxable services subject to the tax levied in this subchapter except for food and food ingredients that are taxed under § 26-53-145.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of state compensating taxes.

(b)(1) In addition to the excise tax levied upon the privilege of storing, using, distributing, or consuming tangible personal property, specified digital products, a digital code, and taxable services within the state by this subchapter, there is levied an excise tax of one-half of one percent (0.5%) upon all tangible personal property, specified digital products, digital codes, and taxable services subject to the tax levied in this subchapter except for food and food ingredients that are taxed under § 26-53-145.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of Arkansas compensating taxes.

(c)(1) There is levied an additional excise tax of one-half of one percent (0.5%) upon all tangible personal property, specified digital products, digital codes, and taxable services subject to the tax levied by

this subchapter except for food and food ingredients that are taxed under § 26-53-145.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this subchapter for the collection, reporting, and payment of Arkansas compensating taxes.

(d)(1) There is levied an additional excise tax of seven-eighths of one percent (0.875%) upon all tangible personal property, specified digital products, digital codes, and taxable services subject to the tax levied by this subchapter except for food and food ingredients that are taxed under § 26-53-145.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this subchapter for the collection, reporting, and payment of Arkansas compensating taxes.

SECTION 49. Arkansas Code § 26-53-110 is amended to read as follows:
26-53-110. Financial institutions.

Sales of tangible personal property, specified digital products, a digital code, and services to financial institutions ~~shall be~~ are subject to the state compensating tax levied in this subchapter, the same as such sales to other business corporations.

SECTION 50. Arkansas Code § 26-53-112 is amended to read as follows:
26-53-112. Exemptions generally.

There are specifically exempted from the taxes levied in this subchapter:

(1) Property or services, the storage, use, distribution, or consumption of which this state is prohibited from taxing under the United States Constitution or laws or the Arkansas Constitution or laws; and

(2) Sales of tangible personal property, specified digital products, a digital code, or services on which the tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., is levied and any tangible personal property, specified digital products, digital codes, or services specifically exempted from taxation by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and legislation enacted subsequent to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

SECTION 51. Arkansas Code §§ 26-53-121 and 26-53-122 are amended to read as follows:

26-53-121. Registration of vendors – Out-of-state vendors.

Every vendor selling tangible personal property, specified digital products, a digital code, or taxable services for storage, use, distribution, or consumption in this state shall:

(1) Register with the Director of the Department of Finance and Administration;

(2) Provide the location of any ~~and all~~ distribution or sales houses or offices of other places of business in this state; and

(3) Provide ~~such~~ other information as the director may require.

26-53-122. Agents furnished statements of compliance.

Every vendor selling tangible personal property, specified digital products, a digital code, or taxable services for storage, use, distribution, or consumption in this state shall furnish all agents with a statement to the

effect that the agent's principal has been and is complying with the provisions of this subchapter.

SECTION 52. Arkansas Code § 26-53-123(a), concerning liability for the compensating use tax, is amended to read as follows:

(a) Every person storing, using, distributing, or consuming in this state tangible personal property, specified digital products, a digital code, or taxable services purchased from a vendor shall be liable for the tax imposed by this subchapter, and the liability shall not be extinguished until the tax has been paid to this state.

SECTION 53. Arkansas Code § 26-53-124(a)(1), concerning the collection of the compensating use tax by a vendor, is amended to read as follows:

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

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

(C) The sale of tangible personal property, specified digital products, a digital code, or taxable services ~~will~~ shall be sourced according to §§ 26-52-521 – 26-52-523.

SECTION 54. Arkansas Code § 26-53-125(a)(2), concerning the return and payment of the compensating use tax, is amended to read as follows:

(2) Every vendor selling tangible personal property, specified digital products, a digital code, or taxable services for storage, use, distribution, or consumption in this state shall file with the director on or before the twentieth day of each month a sales and use tax return for the preceding monthly period in such form as may be prescribed by the director, showing:

(A) The total tax levied by this subchapter due on all tangible personal property, specified digital products, digital codes, or taxable services sold by the vendor during the preceding monthly period, the storage, use, distribution, or consumption of which is subject to the tax levied by this subchapter; and

(B) Such other information as the director may deem necessary for the proper administration of this subchapter.

SECTION 55. Arkansas Code § 26-53-125(b), concerning the return and payment of the compensating use tax, is amended to read as follows:

(b)(1) Every person purchasing tangible personal property, specified digital products, a digital code, or taxable services of which the storage, use, distribution, or consumption is subject to the tax levied by this subchapter and who has not paid the tax due with respect to the tangible personal property, specified digital products, digital code, or taxable services to a vendor registered in accordance with the provisions of §§ 26-53-121 and 26-53-122 shall file a return with the director on or before the

twentieth day of each month for the preceding monthly period in such a form as may be prescribed by the director showing:

(A) The tax levied by this subchapter due on the tangible personal property, specified digital products, digital code, or taxable services purchased during the preceding monthly period; and

(B) Such other information as the director may deem necessary for the proper administration of this subchapter.

(2) The return shall be accompanied by a remittance of the amount of the tax required by this subchapter to be paid by the person purchasing the tangible personal property, specified digital products, digital code, or taxable services during the period covered by the return.

(3)(A) A return shall be signed by the person liable for the tax or the person's authorized agent but need not be verified by oath.

(B) A return filed electronically does not need to be signed.

SECTION 56. Arkansas Code § 26-53-131(a), concerning credit for the tax paid in another state, is amended to read as follows:

(a)(1)(A)(i) ~~The provisions of this~~ This subchapter shall does not apply to any tangible personal property, specified digital products, a digital code, or taxable services used, consumed, distributed, or stored in this state upon which a like tax equal to or greater than the tax imposed by this subchapter has been paid in another state.

(ii) Proof of payment of such a tax shall be made according to the rules and regulations promulgated by the Director of the Department of Finance and Administration.

(B) If the amount of tax paid in another state is less than the amount of Arkansas compensating tax imposed on the property or services by this subchapter, then the taxpayer shall pay to the director an amount of Arkansas compensating tax sufficient to make the combined amount of tax paid in the other state and this state equal to the total amount of Arkansas compensating tax that would be due if no tax on the property or services had been paid to any other state.

(2) No credit shall be given under this section for taxes paid on the property or services in another state if that state does not grant credit for taxes paid on similar tangible personal property, specified digital products, digital codes, or services in this state.

SECTION 57. Arkansas Code § 26-53-146(b)(1), concerning the exemption from the compensating use tax for qualified museums, is amended to read as follows:

(b)(1) The storage, use, distribution, or consumption of ~~any~~ tangible personal property, specified digital products, or a digital code by a qualified museum is exempt from this subchapter.

SECTION 58. Arkansas Code § 26-53-201 is amended to read as follows:
26-53-201. Definition.

As used in this subchapter, "contractors" mean consumers of ~~all~~ tangible personal property, specified digital products, or a digital code used or consumed in the performance of a contract in this state and of ~~all~~ tangible personal property, specified digital products, or a digital code stored for use or upon which the contractor may exercise any right or power

in this state.

SECTION 59. Arkansas Code § 26-53-203 is amended to read as follows:

26-53-203. Tangible personal property, specified digital products, or a digital code procured from outside state for use by contractors.

(a)(1) All tangible personal property ~~which is, specified digital products, and digital codes that are~~ procured from without this state for use, storage, distribution, or consumption, including machinery, equipment, repair or replacement parts, materials, and supplies used, stored, distributed, or consumed by a contractor in the performance of a contract in this state, ~~shall be~~ are subject to the compensating tax of four and five-tenths percent (4.5%) of the purchase price as provided by the Arkansas Compensating Tax Act, § 26-53-101 et seq., or four and five-tenths percent (4.5%) of its market or book value, whichever is greater, if the property has been subjected to prior use before coming to rest for use, storage, distribution, or consumption within this state. The four and five-tenths percent (4.5%) compensating tax ~~shall be~~ is in addition to any other compensating taxes levied by the State of Arkansas.

(2) The tax ~~shall be~~ is due and payable regardless of whether or not any right, title, or interest in the tangible personal property, specified digital products, or digital code becomes vested in the contractor.

(b) In the case of leases or rentals of tangible personal property, specified digital products, or a digital code by a contractor for use, storage, distribution, or consumption in this state, the contractor shall report and remit the compensating tax on the basis of rental or lease payments made to the lessor of the tangible personal property, specified digital products, or digital code during the term of the lease or rental, which lease rentals shall be in accordance with written contracts between lessor and lessee furnished to the Director of the Department of Finance and Administration.

(c)(1) ~~The provisions of this~~ This subchapter ~~shall~~ does not apply in respect to the use, consumption, distribution, or storage of tangible personal property, specified digital products, or a digital code as defined in this ~~subchapter~~ chapter for use or consumption in this state upon which a like tax equal to or greater than the amount imposed by this subchapter has been paid in another state, the proof of payment of the tax to be according to rules and regulations made by the director.

(2) If the amount of tax paid in another state is not at least equal to or greater than the amount of tax imposed by the Arkansas Compensating Tax Act, § 26-53-101 et seq., then the contractor shall pay to the director an amount sufficient to make the tax paid in the other state and this state equal to the total amount of tax due under Arkansas law.

(3) No credit shall be given under this section for taxes paid on the property in another state if that state does not grant credit for taxes paid on similar tangible personal property, specified digital products, or digital codes in this state.

SECTION 60. Arkansas Code § 26-53-301 is amended to read as follows:

26-53-301. Authorization to enter.

(a) When in the judgment of the Director of the Department of Finance and Administration it is necessary in order to secure the collection of any tax, penalties, or interest due or to become due under this subchapter, the

director may negotiate agreements with the tax departments of other states in respect to the collecting, reporting, payment, and enforcement of tax on sales of tangible personal property, specified digital products, a digital code, or taxable services to residents of Arkansas by a retailer maintaining a place of business in the other state.

(b) In consideration of the agreement, the director may make similar agreements for the collecting, reporting, payment, and enforcement of tax as imposed by the other states on sales of tangible personal property, specified digital products, a digital code, or taxable services to residents of other states by retailers maintaining places of business in Arkansas."

AND

Page 6, line 36, delete "26-57-904(a)(1)" and substitute "26-57-904(a)"

AND

Page 7, delete line 5, and substitute the following:

"offered for sale in the State of Arkansas;

(2) ~~Twenty one cents (21¢)~~ Twenty and six-tenths cents (20.6¢) per gallon for each gallon of bottled soft drinks sold or offered for sale in the State of Arkansas; and

(3)(A) When a package or container of powder or other base product, other than a syrup or simple syrup, is sold or offered for sale in Arkansas, and the powder is for the purpose of producing a liquid soft drink, then the tax on the sale of each package or container shall be equal to ~~twenty one cents (21¢)~~ twenty and six-tenths cents (20.6¢) for each gallon of soft drink which may be produced from each package or container by following the manufacturer's directions.

(B) This tax applies when the sale of the powder or other base is sold to a retailer for sale to the ultimate consumer after the liquid soft drink is produced by the retailer."

AND

Page 7, line 12, delete "12" and substitute "62"

AND

Appropriately renumber the sections of the bill

The Amendment was read the first time, rules suspended and read the second time and _____
By: Senator J. English
JLL/JLL - 01-23-2017 10:39:20
JLL143

Secretary