

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007

A Bill

SENATE BILL 281

4
5 By: Senator Hill
6 By: Representative Maloch

For An Act To Be Entitled

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8
9
10 AN ACT TO PROVIDE CONSISTENCY WITH THE
11 STREAMLINED SALES AND USE TAX AGREEMENT; TO ALLOW
12 A REFUND REQUEST WHEN THE BAD DEBT DEDUCTION
13 EXCEEDS THE SALES TAX DUE; TO REPEAL THE SALES
14 TAX SOURCING RULES FOR FLORISTS; TO PROVIDE
15 RELIEF FOR SELLERS THAT FOLLOW THE REQUIREMENTS
16 OF THE DIRECTOR IN COLLECTING SALES AND USE TAX;
17 AND FOR OTHER PURPOSES.

Subtitle

18
19
20 TO PROVIDE CONSISTENCY WITH THE
21 STREAMLINED SALES AND USE TAX AGREEMENT;
22 TO ALLOW A REFUND REQUEST ON BAD DEBTS;
23 TO REPEAL THE SALES TAX SOURCING RULES
24 FOR FLORISTS; AND TO PROVIDE SALES TAX
25 COLLECTION RELIEF TO SELLERS.

26
27
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

29
30 SECTION 1. Arkansas Code § 26-21-103(5), concerning the definitions
31 for the Streamlined Sales Tax Administrative Act, is amended as follows:

32 (5)(A) "Entity-based exemption" means an exemption based on who
33 purchases the product or who sells the product;

34 (B) An exemption that is available to all individuals
35 shall not be considered an entity-based exemption.



1 SECTION 2. Arkansas Code § 26-21-103(12) and (13), concerning the
2 definitions for the Streamlined Sales Tax Administrative Act, are amended as
3 follows:

4 (12) "State" means any state of the United States, ~~and the~~
5 District of Columbia, and the Commonwealth of Puerto Rico; and

6 (13) "Use-based exemption" means an exemption based on a
7 specified use of the product by the purchaser ~~the purchaser's use of the~~
8 ~~product.~~

9
10 SECTION 3. Arkansas Code § 26-21-104 is amended to read as follows:

11 26-21-104. Seller registration.

12 (a) The Department of Finance and Administration shall participate in
13 an online sales and use tax registration system in cooperation with the
14 states that are members of the agreement.

15 (b) The Department of Finance and Administration shall not use a
16 seller's registration with the online sales and use tax registration system
17 as provided in subsection (a) of this section and any subsequent collection
18 of a sales or use tax in determining whether the seller has nexus with the
19 state for any tax at any time.

20
21 SECTION 4. Arkansas Code § 26-21-105 is amended as follows:

22 26-21-105. Taxing jurisdictions.

23 The Department of Finance and Administration shall ~~participate with the~~
24 ~~states that are members of the agreement in the development of an address-~~
25 ~~based system for assigning taxing jurisdictions.~~ develop a downloadable on-
26 line database system to assign state and local taxing jurisdictions,
27 boundaries, and sales and use tax rates.

28
29 SECTION 5. Arkansas Code § 26-21-106 is amended to read as follows:

30 26-21-106. Relief from certain liability.

31 (a) A Except as provided in subsection (c) of this section, a seller
32 or certified service provider using a database provided by the Department of
33 Finance and Administration shall not be liable to the State of Arkansas or
34 its local jurisdictions for charging and collecting the incorrect amount of
35 sales or use tax if the seller or the certified service provider relied on
36 erroneous data provided by the Department of Finance and Administration on

1 sales or use tax rates, boundaries, ~~or~~ taxing jurisdiction assignments, or
 2 the taxability matrix.

3 (b) The Department of Finance and Administration shall promulgate
 4 rules to provide a purchaser relief from a sales or use tax, penalties, and
 5 interest for failing to pay the correct amount of sales or use tax if
 6 erroneous information on sales or use tax rates, boundaries, or taxing
 7 jurisdiction assignments or in the taxability matrix provided by the
 8 department has been relied on by the purchaser, the purchaser's seller, or
 9 the purchaser's certified service provider.

10 (c)(1) If the Department of Finance and Administration provides an
 11 address-based boundary database for assigning taxing jurisdictions and their
 12 associated sales or use tax rates, the department may cease providing the
 13 relief from liability provided in subsections (a) and (b) of this section if
 14 the department gave the seller or the certified service provider adequate
 15 notice.

16 (2) If a seller demonstrates that requiring the use of the
 17 address-based database would create an undue hardship, the Department of
 18 Finance and Administration may extend the relief from liability to the seller
 19 for a designated period of time.

20
 21 SECTION 6. Arkansas Code § 26-21-107(b)(3), concerning the
 22 administration of sales and use tax exemptions, is amended to read as
 23 follows:

24 (3) The relief from liability provided in subdivision (b)(1) of
 25 this section does not apply to a seller that:

26 (A) ~~fraudulently~~ Fraudulently fails to collect the sales
 27 or use tax; ~~or~~

28 (B) ~~solicits~~ Solicits a purchaser to participate in the
 29 unlawful claim of an exemption; or

30 (C) Accepts an exemption certificate from a purchaser
 31 claiming an entity-based exemption when:

32 (i) The subject of the transaction sought to be
 33 covered by the exemption certificate is actually received by the purchaser at
 34 a location operated by the seller; and

35 (ii) The state where that location resides provides
 36 an exemption certificate that clearly and affirmatively indicates that the

1 claimed exemption is not available in that state.

2 (4)(A) A seller may obtain a fully completed exemption
 3 certificate or capture the relevant data elements required by the Department
 4 of Finance and Administration within ninety (90) days after the date of sale.

5 (B) If the seller has not obtained an exemption
 6 certificate or all relevant data elements and the Department of Finance and
 7 Administration makes a request for substantiation of the exemption, the
 8 seller has one-hundred twenty (120) days from the date of the request to
 9 prove by other means that the transaction was not subject to sales or use tax
 10 or to obtain in good faith a fully completed exemption certificate from the
 11 purchaser.

12 (c) A third party vendor may claim a resale exemption based on an
 13 exemption certificate provided by its customer or any other acceptable
 14 information available to the third party vendor evidencing qualification for
 15 a resale exemption regardless of whether the customer is registered with the
 16 Department of Finance and Administration to collect and remit sales or use
 17 tax.

18
 19 SECTION 7. Arkansas Code § 26-21-108 is amended to read as follows:
 20 26-21-108. Returns and remittance of funds.

21 (a) The Director of the Department of Finance and Administration shall
 22 promulgate rules to provide:

23 (1) ~~an~~ An alternative method for making payments if an electronic
 24 funds transfer fails on its due date; and

25 (2) A rounding algorithm for sales or use tax computation.

26 (b)(1) The Department of Finance and Administration shall develop a
 27 simplified tax reporting form to be used for all state and local sales and
 28 use taxes levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et
 29 seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

30 (2) The department shall provide a separate reporting form for
 31 any other special or miscellaneous excise taxes so as not to violate the
 32 agreement.

33 (3) The department may require additional information returns to
 34 be submitted not more frequently than every six (6) months.

35 (4) The department shall allow a Model 1, Model 2, or Model 3
 36 seller to submit its sales and use tax return in a simplified format.

1 (c) The Department of Finance and Administration shall allow a seller
 2 to elect to compute the sales or use tax due on a transaction on an item or
 3 an invoice basis and shall allow the rounding rule to be applied to the
 4 aggregated state and local sales or use taxes.

5
 6 SECTION 8. Arkansas Code § 26-21-110, concerning amnesty for
 7 registration, is amended to add a new subsection as follows:

8 (g) The director shall also provide amnesty to a seller for
 9 uncollected or unpaid sales or use tax if:

10 (1) The seller was already registered with the agreement at the
 11 time Arkansas became a full member of the agreement; and

12 (2) The seller was not registered to collect sales and use tax
 13 in Arkansas in the twelve-month period preceding the effective date of
 14 Arkansas' full membership in the agreement.

15
 16 SECTION 9. Arkansas Code § 26-21-111 is amended to read as follows:

17 26-21-111. Certification and payment of service providers and automated
 18 systems.

19 The Director of the Department of Finance and Administration may:

20 (1) Certify service providers and automated systems to aid in
 21 the administration of sales and use tax collections; ~~and~~

22 (2) Provide a monetary allowance to the certified service
 23 providers, ~~and the certified automated systems, and to sellers that do not~~
 24 have a requirement to register to collect the gross receipts tax levied by
 25 the Arkansas Gross Receipts Tax Act of 1941, § 26-52-101 et seq. or the
 26 compensating use tax levied by the Arkansas Compensating Tax Act of 1949, §
 27 26-53-101 et seq.; and

28 (3) Promulgate rules concerning the review and approval of
 29 certified automated system software and the relief from liability for
 30 certified service providers and certified automated systems that were relying
 31 on the certification provided by the department.

32
 33 SECTION 10. Arkansas Code § 26-25-107(a), concerning local ordinances,
 34 is amended to read as follows:

35 (a)(1) Every city or county that adopts an ordinance levying a local
 36 sales and use tax which is collected by the Director of the Department of

1 Finance and Administration shall submit the ordinance to the director at
 2 least forty-five (45) days prior to the election on the levy.

3 (2) The director shall review the ordinance to determine if the
 4 proposed levy complies with all statutory requirements and limitations,
 5 including ~~the existence of a single transaction definition~~, a separate levy
 6 of the sales and use tax, and an authorized sales or use tax rate.

7
 8 SECTION 11. Arkansas Code § 26-52-103 [Effective July 1, 2007], is
 9 amended to read as follows:

10 26-52-103. Definitions. [Effective ~~July 1, 2007~~ January 1, 2008.]

11 As used in this chapter:

12 (1) "Alcoholic beverage" means a beverage that is suitable for
 13 human consumption and contains one-half of one percent (0.5%) or more of
 14 alcohol by volume;

15 (2)(A) "Bundled transaction" means a retail sale of two (2) or
 16 more products, except real property and services to real property, in which:

17 (i) The products are otherwise distinct and
 18 identifiable; and

19 (ii) The products are sold for one (1) non-itemized
 20 price.

21 (B) "Bundled transaction" does not include the sale of any
 22 product in which the sales price varies or is negotiable based on the
 23 selection by the purchaser of the products included in the transaction.

24 (C) The Department of Finance and Administration shall
 25 promulgate rules to implement this subdivision (2);

26 ~~(1)(A)~~(3)(A) "Consumer", "purchaser" or "user" means the person
 27 to whom the taxable sale is made or to whom taxable services are furnished.

28 (B) All contractors are deemed to be consumers or users of
 29 all tangible personal property, including materials, supplies, and equipment
 30 used or consumed by them in performing any contract.

31 (C) The sales of all such tangible personal property to
 32 contractors are taxable sales within the meaning of this chapter;

33 ~~(2)~~(4) "Contract" means any agreement or undertaking to
 34 construct, manage, or supervise the construction, erection, alteration, or
 35 repair of any building or other improvement or structure affixed to real
 36 estate, including any of their component parts;

1 ~~(3)~~(5) "Contractor" means any person who contracts or undertakes
2 to construct, manage, or supervise the construction, erection, alteration, or
3 repair of any building or other improvement or structure affixed to real
4 estate, including any of their component parts;

5 (6)(A) "Delivery Charge" means a charge by a seller of tangible
6 personal property or services for preparation and delivery to a location
7 designated by the purchaser of the tangible personal property or services,
8 including without limitation transportation, shipping, postage, handling,
9 crating, and packing.

10 (B) If a shipment includes tax-exempt property and taxable
11 property, the seller shall pay the tax imposed by this chapter only on the
12 percentage of the delivery charge allocated to the taxable property by using:

13 (i) A percentage based on the total sales price of
14 the taxable property compared to the total sales price of all property in the
15 shipment; or

16 (ii) A percentage based on the total weight of the
17 taxable property compared to the total weight of all property in the
18 shipment;

19 ~~(4)(A)~~(7)(A) "Direct mail" means printed material delivered or
20 distributed by United States mail or other delivery service to a mass
21 audience or to addressees on a mailing list provided by the purchaser or at
22 the direction of the purchaser when the cost of the items is not billed
23 directly to the recipients.

24 (B) "Direct mail" includes tangible personal property
25 supplied directly or indirectly by the purchaser to the direct mail seller
26 for inclusion in the package containing the printed material.

27 (C) "Direct mail" does not include multiple items of
28 printed material delivered to a single address;

29 ~~(5)~~(8) "Director" means the Director of the Department of
30 Finance and Administration or any of his or her authorized agents;

31 ~~(6)(A)~~(9)(A) "Doing business" or "engaging in business" includes
32 any and all local activity regularly and persistently pursued by any seller
33 or vendor through agents, employees, or representatives with the object of
34 gain, profit, or advantage and that results in a sale, delivery, or the
35 transfer of the physical position of any tangible personal property by the
36 vendor to the vendee at or from any point within Arkansas, whether from

1 warehouse, store, office, storage point, rolling store, motor vehicle,
 2 delivery conveyance, or by any method or device under the control of the
 3 seller effecting such a local delivery without regard to the terms of sale
 4 with respect to point of acceptance of the order, point of payment, or any
 5 other condition.

6 (B) As set out in this subdivision ~~(6)(9)~~, "doing
 7 business" or "engaging in business" is equally applicable to sellers of
 8 services as are made the subject matter of the tax imposed by this chapter.

9 (C)(i) The provisions of this subdivision ~~(6)(9)~~ shall be
 10 cumulative to the gross receipts tax law and shall not be construed as
 11 levying a tax on any receipts derived from personal or professional services
 12 not before made the subject matter and within the scope of the present gross
 13 receipts tax law, as amended.

14 (ii) The provisions of this subdivision ~~(6)(C)(9)(C)~~
 15 shall not be construed as repealing or modifying any of the provisions
 16 therein;

17 (10) "Dietary supplement" means any product, other than tobacco,
 18 intended to supplement the diet that:

19 (A) Contains one (1) or more of the following dietary
 20 ingredients:

21 (i) A vitamin;

22 (ii) A mineral;

23 (iii) An herb or other botanical;

24 (iv) An amino acid;

25 (v) A dietary substance for use by humans to
 26 supplement the diet by increasing the total dietary intake; or

27 (vi) A concentrate, metabolite, constituent,
 28 extract, or combination of any ingredient described in this subdivision
 29 (10)(A) and is intended for ingestion in tablet, capsule, powder, softgel,
 30 gelcap, or liquid form, or if not intended for ingestion in such a form, is
 31 not represented as conventional food and is not represented for use as a sole
 32 item of a meal or of the diet; and

33 (B) Is required to be labeled as a dietary supplement,
 34 identifiable by the "Supplemental Facts" box found on the label and as
 35 required pursuant to 21 C.F.R. § 101.36, as in effect on January 1, 2007;

36 ~~(7)(11)~~ "Established business" means any business operated or

1 conducted by any person in a continuous manner for any length of time from an
2 established place or in an established manner;

3 (12)(A) "Food and food ingredients" means substances, whether in
4 liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold
5 for ingestion or chewing by humans and are consumed for their taste or
6 nutritional value.

7 (B) "Food and food ingredients" does not include an
8 alcoholic beverage, tobacco, or a dietary supplement;

9 ~~(8)(A)(13)(A) "Gross receipts", or "gross proceeds", or "sales~~
10 ~~price" means the total amount of consideration for the sale of tangible~~
11 ~~personal property and such services as are specifically provided for in this~~
12 ~~section, whether the consideration is in money or otherwise, without any~~
13 ~~deduction on account of the cost of the properties sold, all taxes imposed on~~
14 ~~the seller, all costs of transportation to the seller, labor service~~
15 ~~performed, interest paid, losses, or any expenses whatsoever.~~

16 ~~(B) "Gross receipts" or "gross proceeds" includes the~~
17 ~~value of any goods, wares, merchandise, or property withdrawn or used from~~
18 ~~the established business or from the stock in trade of the established~~
19 ~~reserves for consumption or use in the business or by any other person.~~

20 ~~(C) "Gross receipts" or "gross proceeds" does not include:~~

21 ~~(i) The value of any goods, wares, merchandise, or~~
22 ~~property withdrawn or used from the established business or from the stock in~~
23 ~~trade of the established reserves for consumption or use in the business or~~
24 ~~by any other person if the goods, wares, merchandise, or property withdrawn~~
25 ~~or used is donated to National Guard members, emergency service workers, or~~
26 ~~volunteers providing services to a county that has been declared a disaster~~
27 ~~area by the Governor;~~

28 ~~(ii) Discounts, including cash, term, or coupons~~
29 ~~that are not reimbursed by a third party that are allowed by a seller and~~
30 ~~taken by a purchaser on a sale;~~

31 ~~(iii) Interest, financing, and carrying charges from~~
32 ~~credit extended on the sale of personal property or services if the amount is~~
33 ~~separately stated on the invoice; or~~

34 ~~(iv) Any taxes legally imposed directly on the~~
35 ~~consumer that are separately stated on the invoice, bill of sale, or similar~~
36 ~~document given to the purchaser; the total amount of consideration, including~~

1 cash, credit, property, and services, for which tangible personal property or
 2 services are sold, leased, or rented, valued in money, whether received in
 3 money or otherwise, without any deduction for the following:

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

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

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

11 (iv) Delivery charge;

12 (v)(a) Installation charge;

13 (b) Installation charges will not be included
 14 in the "gross receipts", "gross proceeds", or "sales price" if they are not a
 15 specifically taxable service under the Arkansas Gross Receipts Tax Act of
 16 1941, § 26-52-101 et seq. or the Arkansas Compensating Tax Act of 1949, § 26-
 17 53-101 et seq. and the installation charges have been separately stated on
 18 the invoice, billing, or similar document given to the purchaser.

19 (vi) The value of exempt tangible personal property
 20 given to the purchaser if taxable and exempt tangible personal property have
 21 been bundled together and sold by the seller as a single product or piece of
 22 merchandise; and

23 (vii) Credit for any trade-in.

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

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

29 (ii) Interest, financing, or a carrying charge from
 30 credit extended on the sale of tangible personal property or services, if the
 31 amount is separately stated on the invoice, bill of sale, or similar document
 32 given to the purchaser; and

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

36 ~~(9)(A)(i)~~(14)(A)(i) "Lease" or "rental" means any transfer of

1 possession or control of tangible personal property for a fixed or
2 indeterminate term for consideration.

3 (ii) A lease or rental may include future options to
4 purchase or extend.

5 (B) "Lease" or "rental" does not include:

6 (i) A transfer of possession or control of property
7 under a security agreement or deferred payment plan that requires the
8 transfer of title upon completion of the required payments;

9 (ii) A transfer of possession or control of property
10 under an agreement that requires the transfer of title upon completion of
11 required payments and payment of an option price that does not exceed the
12 greater of one hundred dollars (\$100) or one percent (1%) of the total
13 required payments;

14 (iii)(a) Providing tangible personal property along
15 with an operator for a fixed or indeterminate period of time.

16 (b) A condition of this exclusion in this
17 subdivision ~~(9)(B)(iii)~~ (14)(B)(iii) is that the operator is necessary for
18 the equipment to perform as designed.

19 (c) For the purpose of this subdivision
20 ~~(9)(B)(iii)~~ (14)(B)(iii), an operator must do more than maintain, inspect, or
21 set up the tangible personal property; or

22 (iv) Agreements covering motor vehicles and trailers
23 if the amount of consideration may be increased or decreased by reference to
24 the amount realized upon the sale or disposition of the property as defined
25 in 26 U.S.C. § 7701(h)(2), as in effect on January 1, 2007.

26 (C) This definition of "lease" or "rental" shall:

27 (i) Be used for sales and use tax purposes
28 regardless of whether a transaction is characterized as a lease or rental
29 under generally accepted accounting principles, the Internal Revenue Code, as
30 in effect on January 1, 2007, the Uniform Commercial Code, § 4-1-101 et seq.,
31 as in effect on January 1, 2007, or another provision of federal, state, or
32 local law;

33 (ii) Be applied only prospectively from the
34 effective date of this subdivision and shall have no retroactive impact on
35 existing leases or rentals; and

36 (iii) Impact neither any existing sale-leaseback

1 exemption nor exclusion;

2 ~~(10)~~(15) "Person" includes any individual, ~~company~~, partnership,
3 limited liability company, limited liability partnership, ~~joint venture~~,
4 ~~joint agreement~~, ~~association~~, ~~mutual or otherwise~~, corporation, estate,
5 trust, ~~business trust~~, fiduciary, ~~receiver~~, or ~~trustee appointed by any state~~
6 ~~or federal court or otherwise~~, ~~syndicate~~, ~~this state~~, ~~any county~~, ~~city~~,
7 ~~municipality~~, ~~school district~~, or any other political subdivision of the
8 ~~state or group or combination acting as a unit~~, or any other legal entity;

9 (16) "Prepared food" means:

10 (A) Food sold in a heated state or heated by the seller;

11 (B) Two (2) or more food ingredients mixed or combined by
12 the seller for sale as a single item; or

13 (C)(i) Food sold with an eating utensil provided by the
14 seller, including a plate, knife, fork, spoon, glass, cup, napkin, or straw.

15 (ii) As used in subdivision (16)(C)(i) of this
16 section, a plate does not include a container or packaging used to transport
17 the food;

18 ~~(11)~~(17) "Retail sale" or "sale at retail" means any sale,
19 lease, or rental for any purpose other than for resale, sublease, or subrent;

20 ~~(12)~~(A)(18)(A) "Sale" means the transfer of either the title or
21 possession except in the case of a lease or rental for a valuable
22 consideration of tangible personal property regardless of the manner, method,
23 instrumentality, or device by which the transfer is accomplished.

24 (B) "Sale" includes the:

25 (i) Exchange, barter, lease, or rental of tangible
26 personal property; or

27 (ii) Sale, giving away, exchanging, or other
28 disposition of admissions, dues, or fees to clubs, to places of amusement, or
29 to recreational or athletic events or for the privilege of having access to
30 or the use of amusement, athletic, or entertainment facilities.

31 (C) "Sale" does not include the:

32 (i) Furnishing or rendering of services except as
33 otherwise provided in this section; or

34 (ii) Transfer of title to a vehicle by the vehicle
35 owner to an insurance company as a result of the settlement of a claim for
36 damages to the vehicle+.

1 (D)(i) In the case of a lease or rental of tangible
 2 personal property, including motor vehicles and trailers for less than thirty
 3 (30) days, the tax shall be paid on the basis of rental or lease payments
 4 made to the lessor of the tangible personal property during the term of the
 5 lease or rental regardless of whether Arkansas gross receipts tax or
 6 compensating use tax was paid by the lessor at the time of the purchase of
 7 the tangible personal property.

8 (ii) In the case of a lease or rental of tangible
 9 personal property, including motor vehicles and trailers for thirty (30) days
 10 or more, the tax shall be paid on the basis of rental or lease payments made
 11 to the lessor of the tangible personal property during the term of the lease
 12 or rental unless Arkansas gross receipts tax or compensating use tax was paid
 13 by the lessor at the time of the purchase of the tangible personal property;

14 ~~(iii) Any person engaged in the business of leasing~~
 15 ~~or renting motor vehicles shall collect, report, and remit gross receipts tax~~
 16 ~~on the lease or rental payments in lieu of paying tax at the time of~~
 17 ~~registration.~~

18 ~~(13)(19)~~ "Seller" means every person making a sale, lease, or
 19 rental of tangible personal property or services in an established business;

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

23 (B) "Tangible personal property" includes electricity,
 24 water, gas, steam, and prewritten computer software;

25 ~~(14)(21)~~ "Tax period" or "taxable period" means either the
 26 calendar period or the taxpayer's fiscal period when a taxpayer has obtained
 27 a permit from the director or from any of his or her authorized agents to use
 28 a fiscal period in lieu of a calendar period; ~~and~~

29 ~~(15)(22)~~ "Taxpayer" means any person liable to remit a tax under
 30 this chapter or to make a report for the purpose of claiming any exemption
 31 from payment of a tax levied by this chapter; and

32 (23) "Tobacco" means a cigarette, cigar, chewing or pipe
 33 tobacco, or any other item that contains tobacco.

34
 35 SECTION 12. Arkansas Code § 26-52-304(a), pertaining to the tax levied
 36 on sales of computer software and maintenance of computer hardware, is

1 amended to read as follows:

2 (a) The excise tax levied by the Arkansas Gross Receipts Act, § 26-52-
 3 101 et seq., and by any act supplemental thereto, is levied on gross receipts
 4 or gross proceeds received from the following:

5 (1)(A) Sales of computer software, including prewritten computer
 6 software, which shall be taxed as sales of tangible personal property.
 7 ~~Software shall include tapes, disks, cards, or other devices or materials~~
 8 ~~which contain instructions for a computer and dictate different operations or~~
 9 ~~functions to be performed by the computer;~~

10 (B) As used in this section:

11 (i) "Computer" means an electronic device that
 12 accepts information in digital or similar form and manipulates it for a
 13 result based on a sequence of instructions;

14 (ii)(a) "Computer software" means a set of coded
 15 instructions designed to cause a computer or automatic data processing
 16 equipment to perform a task.

17 (b) "Computer software" does not include
 18 software that is delivered electronically or by load and leave;

19 (iii) "Delivered electronically" means delivered to
 20 the purchaser by means other than tangible storage media;

21 (iv) "Electronic" means relating to technology
 22 having electrical, digital, magnetic, wireless, optical, electromagnetic, or
 23 similar capabilities;

24 (v) "Load and leave" means delivery to the purchaser
 25 by use of a tangible storage media in which the tangible storage media is not
 26 physically transferred to the purchaser; and

27 (vi) "Prewritten computer software" means computer
 28 software, including prewritten upgrades, which is designed and developed by
 29 the author or other creator to the specifications of a specific purchaser;
 30 and

31 (2) Service of repairing or maintaining computer equipment or
 32 hardware in any form.

33
 34 SECTION 13. Arkansas Code § 26-52-309 [Effective July 1, 2007], is
 35 amended to read as follows:

36 26-52-309. Deduction for bad debts generally. [Effective July 1, 2007

1 January 1, 2008.]

2 ~~(a)(1) In computing the amount of tax due under the Arkansas Gross~~
 3 ~~Receipts Act of 1941, § 26-52-101 et seq., and any act supplemental to the~~
 4 ~~Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., a taxpayer may~~
 5 ~~deduct a bad debt from the total amount upon which the tax is calculated on~~
 6 ~~the return for the period during which the bad debt is written off as~~
 7 ~~uncollectible in the taxpayer's books and records and is eligible to deduct~~
 8 ~~the bad debt for federal income tax purposes.~~

9 ~~(2) Any deduction taken or refund paid that is attributed to a~~
 10 ~~bad debt shall not include interest.~~

11 ~~(b)(1)(A) As used in this section, "bad debt" means any portion of a~~
 12 ~~debt for an amount that a taxpayer has reported as taxable which the taxpayer~~
 13 ~~legally claims as a bad debt deduction for federal income tax purposes.~~

14 ~~(B) A taxpayer who is not required to file federal income~~
 15 ~~tax returns may deduct a bad debt on a return filed for the period in which~~
 16 ~~the bad debt is written off as uncollectible in the taxpayer's books and~~
 17 ~~records and would be eligible for a bad debt deduction for federal income tax~~
 18 ~~purposes if the taxpayer was required to file a federal income tax return.~~

19 ~~(2) A bad debt includes, but is not limited to, a worthless~~
 20 ~~check, a worthless credit card payment, and an uncollectible credit account.~~

21 ~~(3) A bad debt does not include financing charges or interest,~~
 22 ~~an uncollectible amount on property that remains in the possession of the~~
 23 ~~taxpayer or vendor until the full purchase price is paid, an expense incurred~~
 24 ~~in attempting to collect any debt, a debt sold or assigned to a third party~~
 25 ~~for collection, and repossessed property.~~

26 ~~(c) A bad debt incurred for a sale made before November 9, 1983, shall~~
 27 ~~not be deducted.~~

28 ~~(d) A bad debt must be deducted within three (3) years of the date of~~
 29 ~~the sale for which the debt was incurred.~~

30 ~~(e) If a deduction is taken for a bad debt and the taxpayer~~
 31 ~~subsequently collects the debt in whole or in part, the tax on the amount so~~
 32 ~~collected shall be paid and reported on the return filed for the period in~~
 33 ~~which the collection is made.~~

34 ~~(f)(1) When the filing responsibilities have been assumed by a~~
 35 ~~certified service provider, as provided in the Uniform Sales and Use Tax~~
 36 ~~Administration Act, § 26-20-101 et seq., the certified service provider will~~

1 ~~be allowed to claim on behalf of the taxpayer any bad debt allowance provided~~
2 ~~by this section.~~

3 ~~(2) The certified service provider must credit or refund the~~
4 ~~full amount of any bad debt allowance or refund received to the taxpayer.~~

5 (a)(1) A taxpayer is allowed a deduction from taxable sales for a bad
6 debt.

7 (2) Any deduction taken under this section that is attributed to
8 a bad debt shall not include interest.

9 (b) The federal definition of "bad debt" in 26 U.S.C. § 166, as in
10 effect on January 1, 2007, is the basis for calculating a bad debt deduction
11 under this section except that the amount calculated pursuant to 26 U.S.C. §
12 166 shall be adjusted to exclude:

13 (1) A financing charge or interest;

14 (2) A sales or use tax charged on the purchase price;

15 (3) An uncollectible amount on property that remains in the
16 possession of the taxpayer or seller, until the full purchase price is paid;
17 and

18 (4) An expense incurred in attempting to collect any debt or
19 repossessed property.

20 (c)(1) A bad debt may be deducted on the sales and use tax return of a
21 taxpayer for the tax period during which:

22 (A) The bad debt is written off as uncollectible in the
23 taxpayer's books and records; and

24 (B) The taxpayer is eligible to deduct the bad debt for
25 federal income tax purposes if the taxpayer or seller kept accounts on a cash
26 basis or could be eligible to be claimed if the taxpayer or seller kept
27 accounts on an accrual basis.

28 (2) For purposes of this subsection, a taxpayer who is not
29 required to file a federal income tax return may deduct a bad debt on a sales
30 and use tax return filed for the period in which the bad debt is written off
31 as uncollectible in the taxpayer's books and records if the taxpayer would be
32 eligible for a bad debt deduction for federal income tax purposes if the
33 taxpayer were required to file a federal income tax return.

34 (d) If a bad debt deduction under this section is taken for a bad debt
35 and the debt is subsequently collected in whole or in part, the tax imposed
36 by this chapter on the amount collected shall be paid and reported on the

1 sales and use tax return filed for the tax period in which the collection is
2 made.

3 (e)(1) If the amount of bad debt exceeds the amount of taxable sales
4 for the tax period during which the bad debt is written off, the taxpayer may
5 file a claim for a refund.

6 (2) The refund claim shall be filed within three (3) years from
7 the due date of the sales and use tax return on which the bad debt could
8 first be claimed.

9 (f)(1) If filing responsibilities have been assumed by a certified
10 service provider, the certified service provider may claim, on behalf of the
11 taxpayer, any bad debt deduction provided by this section.

12 (2) The certified service provider shall credit or refund the
13 full amount of any bad debt deduction or refund received to the taxpayer.

14 (g) For the purposes of reporting a payment received on a previously
15 claimed bad debt, any payment made on a debt or account is applied first
16 proportionally to the taxable price of the tangible personal property or
17 service and the sales tax on the tangible personal property or service, and
18 secondly to interest, service charges, and any other charges.

19 (h) If the books and records of a taxpayer claiming a bad debt
20 deduction under this section support an allocation of the bad debt among the
21 states which are members of the Streamlined Sales and Use Tax Agreement, the
22 allocation is permitted.

23 (i) Except as provided in subsection (f), the only party entitled to a
24 bad debt deduction or refund pursuant to this section is the taxpayer that
25 originally reported and remitted the tax in question.

26
27 SECTION 14. Arkansas Code § 26-52-315 [Effective July 1, 2007], is
28 amended to read as follows:

29 26-52-315. Telecommunications and related services. [Effective ~~July~~
30 ~~1, 2007~~ January 1, 2008.]

31 ~~As provided in this section, the~~ The gross receipts or gross
32 proceeds derived from the sale of the following are subject to the gross
33 receipts tax levied by this chapter:

34 (1) Any intrastate, interstate, and international ~~taxable~~
35 telecommunications ~~services~~ service that is sourced in this state in
36 accordance with subsection (d) of this section;

1 (2) Any ancillary service; and

2 (3) Any installation, maintenance, or repair service of
3 telecommunication equipment.

4 ~~are subject to the Arkansas gross receipts tax levied by the Arkansas Gross~~
5 ~~Receipts Act of 1941, § 26-52-101 et seq., and by any act supplemental to the~~
6 ~~Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.~~

7 ~~(b) The following services are taxable telecommunications services:~~

8 ~~(1) Service by telephone, telecommunications, and telegraph~~
9 ~~companies to subscribers or users, including transmission of messages or~~
10 ~~images whether local or long distance;~~

11 ~~(2) Basic local service and rental charges, including all~~
12 ~~installation and construction charges and all service and rental charges~~
13 ~~having any connection with transmission of any message or image;~~

14 ~~(3) Except as provided in subsection (c) of this section,~~
15 ~~taxable long distance services shall include:~~

16 ~~(A) Long distance messages that originate and terminate~~
17 ~~within this state;~~

18 ~~(B) Interstate long distance messages that originate~~
19 ~~within this state or terminate outside this state and are billed to a place~~
20 ~~of primary use in this state;~~

21 ~~(C) All customer access line charges associated with or~~
22 ~~for access to the long distance network, except that access or other~~
23 ~~telecommunication services provided to telephone, telegraph, or~~
24 ~~telecommunications companies that will be used to provide telecommunications~~
25 ~~services shall not be subject to this tax; and~~

26 ~~(D) Long distance messages that originate and terminate~~
27 ~~outside this state made by mobile telecommunications service that are charged~~
28 ~~to a customer who maintains a place of primary use in this state; and~~

29 ~~(4) The one way or two way transmission of messages, voice~~
30 ~~messages, images, or other real time or essentially real time communications~~
31 ~~whether accomplished by any means including wire, cable, fiber optics, laser,~~
32 ~~microwave, radio, satellite, voice over Internet protocol, or similar~~
33 ~~facilities.~~

34 ~~(e)(b)~~ The following services shall not be taxable under this section:

35 (1) Any interstate or international private communications
36 service that is not accessible by the public;

1 (2) Any ~~interstate service that allows access to private~~
2 ~~telephone lines and that is not accessible by the public;~~

3 ~~(3) Any interstate wide area telecommunications service or other~~
4 ~~similar service that entitles the subscriber to make or receive an unlimited~~
5 ~~number of communications to or from persons having telecommunications service~~
6 ~~in a specified area that is outside the state in which the station provided~~
7 ~~with this service is located interstate or international 800 service or 900~~
8 ~~service; or~~

9 ~~(4)(3)(A) Any prepaid calling service telephone or~~
10 ~~telecommunication services paid by using a prepaid telephone calling card or~~
11 ~~prepaid authorization number as provided in § 26-52-314.~~

12 (B) However, prepaid calling service is taxed under § 26-
13 52-314.

14 ~~(d)(1)(A)(c)(1)(A)~~ The Mobile Telecommunications Sourcing Act, Pub. L.
15 No. 106-252, 4 U.S.C. §§ 116-126, as in effect on ~~January 1, 2001~~ January 1,
16 2007, is adopted in its entirety.

17 (B) All charges for mobile telecommunications services are
18 deemed to be provided by the customer's home service provider and sourced to
19 the customer's place of primary use and are subject to gross receipts tax
20 based upon the customer's place of primary use as determined by the Mobile
21 Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. §§ 116-126, as
22 in effect on January 1, 2007.

23 (2)(A)(i) Any customer who alleges that an amount of tax,
24 charge, or fee or that the assignment of the place of primary use or taxing
25 jurisdiction included on a billing is erroneous shall notify the home service
26 provider in writing.

27 (ii) The customer must include the street address
28 for the customer's place of primary use, the account name and number for
29 which the correction of tax assignment is sought, a description of the
30 alleged error, and any other information requested by the home service
31 provider necessary to process the request.

32 (B)(i) The home service provider shall conduct a review of
33 its records and the electronic database or enhanced zip code used to
34 determine the place of primary use within sixty (60) days of receiving the
35 notice from its customer.

36 (ii) If it is determined that the amount of the tax,

1 charge, or fee or that the assignment of the place of primary use or taxing
2 jurisdiction is in error, the home service provider shall correct the error
3 and refund or credit the amount of tax, charge, or fee erroneously collected
4 from the customer for a period of up to three (3) years.

5 (iii) If it is determined that the amount of the
6 tax, charge, or fee or assignment of the place of primary use or taxing
7 jurisdiction is correct, the home service provider shall provide a written
8 explanation to the customer.

9 (C) A customer seeking correction of assignment of place
10 of primary use or taxing jurisdiction or a refund or credit of taxes,
11 charges, or fees erroneously collected by the home service provider must seek
12 to have the error corrected under subdivision ~~(d)(2)(A)~~(c)(2)(A) of this
13 section before any cause of action arises as a result of the error.

14 (3)(A) Charges for nontaxable services that are aggregated with
15 other charges for communications services that are taxable and are not
16 separately stated on the bill or invoice shall not be subject to the gross
17 receipts tax if the seller can reasonably identify the nontaxable charges on
18 the seller's books and records kept in the regular course of business.

19 (B) If the nontaxable charges cannot reasonably be
20 identified, the gross receipts from the sales of both taxable and nontaxable
21 communications services billed on a combined basis shall be attributed to the
22 taxable communications services.

23 (C) The burden of proving nontaxable receipts or charges
24 is on the seller of the communications services.

25 ~~(e)(1)~~(d)(1) Except for the telecommunication services in subdivision
26 ~~(e)(3)~~(d)(3) of this section, the sale of telecommunication services sold on
27 a call-by-call basis shall be sourced to:

28 (A) Each state, county, or city jurisdiction where the
29 call originates and terminates in that jurisdiction; or

30 (B) Each state, county, or city where the call either
31 originates or terminates and in which the service address is also located.

32 (2) Except for the telecommunication services in subdivision
33 ~~(e)(3)~~(d)(3) of this section, a sale of telecommunications services sold on a
34 basis other than a call-by-call basis is sourced to the customer's place of
35 primary use.

36 (3) The sale of the following telecommunication services shall

1 be sourced to each state, county, or city as follows:

2 (A) A sale of mobile telecommunications services other
3 than air-to-ground radiotelephone service and prepaid calling service is
4 sourced to the customer's place of primary use as required by the Mobile
5 Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. §§ 116-126, as
6 in effect on January 1, 2007;

7 (B) A sale of postpaid calling service is sourced to the
8 origination point of the telecommunications signal as first identified by
9 either:

10 (i) The seller's telecommunications system; or

11 (ii) Information received by the seller from its
12 service provider if the system used to transport the signals is not that of
13 the seller;

14 (C)(i) A sale of prepaid calling service or a sale of a
15 prepaid wireless calling service is sourced in accordance with § 26-52-
16 521(b).

17 (ii) Except for a sale of ~~mobile telecommunications~~
18 prepaid wireless calling service that is a prepaid telecommunications
19 service, the rule provided in § 26-52-521(b)(5) shall include as an option
20 the location associated with the mobile telephone number; or

21 (D) A sale of a private communication service is sourced
22 as follows:

23 (i) Service for a separate charge related to a
24 customer channel termination point is sourced to each state, county, or city
25 in which the customer channel termination point is located;

26 (ii) Service where all customer termination points
27 are located entirely within one (1) jurisdiction or levels of jurisdiction is
28 sourced in the state, county, and city in which the customer channel
29 termination points are located;

30 (iii) Service for segments of a channel between two
31 (2) customer channel termination points located in different jurisdictions
32 and which segments of a channel are separately charged is sourced fifty
33 percent (50%) in each state, county, and city in which the customer channel
34 termination points are located; or

35 (iv) Service for segments of a channel located in
36 more than one (1) jurisdiction or levels of jurisdiction and which segments

1 are not separately billed is sourced in each jurisdiction based on the
 2 percentage determined by dividing the number of customer channel termination
 3 points in the jurisdiction by the total number of customer channel
 4 termination points.

5 (4) The sale of an ancillary service is sourced to the
 6 customer's place of primary use.

7 ~~(f)~~(e) As used in this section:

8 (1) "Air-to-ground radiotelephone service" means a radio
 9 service, as that term is defined in 47 C.F.R. 22.99, as in effect on January
 10 1, 2007, in which common carriers are authorized to offer and provide radio
 11 telecommunications service for hire to subscribers in aircraft;

12 (2) "Ancillary service" means a service that is associated with
 13 or incidental to the provision of "telecommunications services", including
 14 without limitation detailed telecommunications billing, directory assistance,
 15 vertical service, and voice mail services;

16 ~~(2)~~(3) "Call-by-call basis" means any method of charging for
 17 telecommunications services when the price is measured by individual calls;

18 ~~(3)~~(4) "Communications channel" means a physical or virtual path
 19 of communications over which signals are transmitted between or among
 20 customer channel termination points;

21 ~~(4)(A)~~(5)(A) "Customer" means the person or entity that
 22 contracts with the seller of telecommunications services.

23 (B) If the end user of telecommunications services is not
 24 the contracting party, the end user of the telecommunications service is the
 25 customer of the telecommunication service, but this subdivision
 26 ~~(f)~~(4)(B)(e)(5)(B) only applies for the purpose of sourcing sales of
 27 telecommunications services under subsection ~~(e)~~(d) of this section.

28 (C) "Customer" does not include a reseller of
 29 telecommunications service or for mobile telecommunications service of a
 30 serving carrier under an agreement to serve the customer outside the home
 31 service provider's licensed service area;

32 ~~(5)~~(6) "Customer channel termination point" means the location
 33 where the customer either inputs or receives the communications;

34 ~~(6)(A)~~(7)(A) "End user" means the person who utilizes the
 35 telecommunication service.

36 (B) In the case of an entity, "end user" means the

1 individual who utilizes the service on behalf of the entity;

2 ~~(7)~~(8) "Home service provider" means the same as that term is
3 defined in the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4
4 U.S.C. § 124(5), as in effect on January 1, 2007;

5 (9)(A) "International" means a telecommunications service that
6 originates or terminates in the United States and terminates or originates
7 outside the United States respectively.

8 (B) United States includes the District of Columbia or a
9 United States territory or possession;

10 (10) "Interstate" means a telecommunications service that
11 originates in one (1) United States state, or a United States territory or
12 possession, and terminates in a different United States state or a United
13 States territory or possession;

14 (11) "Intrastate" means a telecommunications service that
15 originates in one (1) United States state or a United States territory or
16 possession and terminates in the same United States state or a United States
17 territory or possession;

18 ~~(8)~~(12) "Mobile telecommunications service" means the same as
19 that term is defined in the Mobile Telecommunications Sourcing Act, Pub. L.
20 No. 106-252, 4 U.S.C. § 124(7), as in effect on January 1, 2007;

21 ~~(9)(A)~~(13)(A) "Place of primary use" means the street address
22 representative of where the customer's use of the telecommunications service
23 primarily occurs, which must be the residential street address or the primary
24 business street address of the customer.

25 (B) In the case of mobile telecommunications services,
26 "place of primary use" must be within the licensed service area of the home
27 service provider;

28 ~~(10)(A)~~(14)(A) "Postpaid calling service" means the
29 telecommunications service obtained by making a payment on a call-by-call
30 basis either through the use of a credit card or payment mechanism such as a
31 bank card, travel card, credit card, or debit card or by charge made to which
32 a telephone number which is not associated with the origination or
33 termination of the telecommunications service.

34 (B) "Postpaid calling service" includes a
35 telecommunications service, except a prepaid wireless calling service, that
36 would be a prepaid calling service except it is not exclusively a

1 telecommunication service;

2 ~~(11)~~(15) "Prepaid calling service" means the right to access
3 exclusively telecommunications services, which must be paid for in advance
4 and which enables the origination of calls using an access number or
5 authorization code, whether manually or electronically dialed, and that is
6 sold in predetermined units or dollars of which the number declines with use
7 in a known amount;

8 (16) "Prepaid wireless calling service" means a
9 telecommunications service that provides the right to utilize mobile wireless
10 service as well as other non-telecommunications services, including the
11 downloading of digital products delivered electronically, content, and
12 ancillary services that must be paid for in advance and that is sold in
13 predetermined units or dollars of which the number declines with use in a
14 known amount;

15 ~~(12)~~(17) "Private communication service" means a
16 telecommunication service that entitles the customer to exclusive or priority
17 use of a communications channel or group of channels between or among
18 termination points regardless of the manner in which the channel or channels
19 are connected and includes switching capacity, extension lines, stations, and
20 any other associated services that are provided in connection with the use of
21 the channel or channels; ~~and~~

22 ~~(13)(A)~~(18)(A) "Service address" means the location of the
23 telecommunications equipment to which a customer's call is charged and from
24 which the call originates or terminates regardless of where the call is
25 billed or paid.

26 (B) If the location in subdivision ~~(f)~~(13)(A)(e)(18)(A) of
27 this section is not known, "service address" means the origination point of
28 the signal of the telecommunications services first identified by either the
29 seller's telecommunications system or in information received by the seller
30 from its service provider if the system used to transport the signals is not
31 that of the seller.

32 (C) If the location in subdivisions ~~(f)~~(13)(A) ~~and (B)~~
33 (e)(18)(A) and (B) of this section is not known, "service address" means the
34 location of the customer's place of primary use;
35

36 (19)(A) "Telecommunications service" means the electronic
transmission, conveyance, or routing of voice, data, audio, video, or any

1 other information or signals to a point, or between or among points.

2 (B) The term "telecommunications service" includes such
3 transmission, conveyance, or routing in which computer processing
4 applications are used to act on the form, code, or protocol of the content
5 for purposes of transmission, conveyance, or routing without regard to
6 whether such service is referred to as voice over Internet protocol services
7 or is classified by the Federal Communications Commission as enhanced or
8 value added.

9 (C) "Telecommunications service" does not include:

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

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

17 (iii) Tangible personal property;

18 (iv) Advertising, including but not limited to
19 directory advertising;

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

22 (vi) Internet access service;

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

27 (b) Radio and television audio and video
28 programming services shall include but not be limited to cable service as
29 defined in 47 USC 522(6), as in effect on January 1, 2007, and audio and
30 video programming services delivered by commercial mobile radio service
31 providers, as defined in 47 CFR 20.3, as in effect on January 1, 2007;

32 (viii) Ancillary services; or

33 (ix) A digital product delivered electronically,
34 including but not limited to software, music, video, reading material, or a
35 ring tone;

36 (20) "800 service" means a telecommunications service that

1 allows a caller to dial a toll-free number without incurring a charge for the
 2 call; and

3 (21)(A) "900 service" means an inbound toll telecommunications
 4 service purchased by a subscriber that allows the subscriber's customers to
 5 call in to the subscriber's prerecorded announcement or live service.

6 (B) "900 service" does not include:

7 (i) The charge for collection services provided by
 8 the seller of the telecommunications services to the subscriber; or

9 (ii) Service or product sold by the subscriber to
 10 the subscriber's customer.

11 (f) The Department of Finance and Administration shall promulgate
 12 rules to implement this section.

13
 14 SECTION 15. Arkansas Code § 26-52-401(3), concerning the exemption for
 15 charitable organizations, is amended to read as follows:

16 (3) Gross receipts or gross proceeds derived from the sale of food or
 17 food ingredients in public, common, high school, or college cafeterias and
 18 lunch rooms operated primarily for teachers and pupils, not operated
 19 primarily for the public and not operated for profit;

20
 21 SECTION 16. Arkansas Code § 26-52-401(7), concerning the exemption for
 22 the Girl Scouts or Boy Scouts of America, is amended to read as follows:

23 (7) Gross receipts or gross proceeds derived from the sale of tangible
 24 personal property including but not limited to office supplies; office
 25 equipment; program items at camp such as bows, arrows, and rope; rifles for
 26 rifle range and other rifle items; food or food ingredients or prepared food
 27 for camp; lumber and supplies used in camp maintenance; camp equipment; first
 28 aid supplies for camp; the leasing of cars used in promoting scouting; or
 29 services to the Boy Scouts of America chartered by the United States Congress
 30 in 1916 or the Girl Scouts of the United States of America chartered by the
 31 United States Congress in 1950 or any of the scout councils in the State of
 32 Arkansas;

33
 34 SECTION 17. Arkansas Code § 26-52-401(19), concerning the exemptions
 35 for governmental agencies, is amended to read as follows:

36 (19) Gross receipts or gross proceeds derived from the sale of

1 ~~foodstuffs~~ food or food ingredients or prepared food to governmental agencies
 2 for free distribution to any public, penal, and eleemosynary institutions or
 3 for free distribution to the poor and needy;

4
 5 SECTION 18. Arkansas Code § 26-52-401(27)(A)(iii), concerning the
 6 exemptions from sales tax for purchases made under certain food programs, is
 7 amended to read as follows:

8 (iii) Food or food ingredients purchased through
 9 bids under the Special Supplemental Food Program for Women, Infants and
 10 Children.

11
 12 SECTION 19. Arkansas Code § 26-52-401, concerning exemptions from
 13 gross receipts tax, is amended to add the following subdivision:

14 (39) Gross receipts or gross proceeds from the sale of any good,
 15 ware, merchandise, or tangible personal property withdrawn or used from an
 16 established business or from the stock in trade of the established reserves
 17 for consumption or use in an established business or by any other person if
 18 the good, ware, merchandise, or tangible personal property withdrawn or used
 19 is donated to a National Guard member, emergency service worker, or volunteer
 20 providing services to a county which has been declared a disaster area by the
 21 Governor.

22
 23 SECTION 20. Arkansas Code § 26-52-403(c), concerning the exemption
 24 claimed for farm equipment and machinery, is amended to read as follows:

25 ~~(c)(1) Each purchaser of farm equipment and machinery shall certify,~~
 26 ~~in writing, on the copy of the invoice or sales ticket to be retained by the~~
 27 ~~seller that he or she is engaged in farming and that the farm equipment and~~
 28 ~~machinery will be used only in farming.~~

29 ~~(2) The seller shall certify to the Department of Finance and~~
 30 ~~Administration that the contract price of the farm equipment and machinery~~
 31 ~~has been reduced to grant the full benefit of the exemption.~~

32 ~~(3) Violation of this subsection by the purchaser or seller~~
 33 ~~shall be a Class A misdemeanor and upon violation or conviction for a second~~
 34 ~~offense the Director of the Department of Finance and Administration shall~~
 35 ~~revoke the seller's sales tax permit.~~

36 (c) The Director of the Department of Finance and Administration shall

1 promulgate rules and prescribe forms for claiming the exemption provided by
 2 this section.

3
 4 SECTION 21. Arkansas Code § 26-52-421 is amended to read as follows:
 5 26-52-421. Nonprofit food distribution agencies.

6 The gross receipts or gross proceeds derived from the sale of
 7 ~~foodstuffs~~ food and food ingredients to nonprofit agencies organized under
 8 the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., for free
 9 distribution to the poor and needy shall be exempt from the Arkansas gross
 10 receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101
 11 et seq.

12
 13 SECTION 22. Arkansas Code § 26-52-427 is amended to read as follows:
 14 26-52-427. Property purchased for use in performance of construction
 15 contract.

16 (a) ~~Tangible~~ A contractor that purchases tangible personal property
 17 which becomes a recognizable part of a completed structure or improvement to
 18 real property and which is purchased for use or consumption in the
 19 performance of construction contracts shall be ~~exempt from~~ entitled to a
 20 rebate on any additional gross receipts tax or compensating (use) tax levied
 21 by the state or any city or county if:

22 (1) ~~when the~~ The construction contract for which the tangible
 23 personal property was purchased is entered into prior to the effective date
 24 of the levy of the additional state, city, or county gross receipts tax or
 25 compensating (use) tax; and

26 (2) The contractor paid the additional gross receipts or
 27 compensating use tax to the seller.

28 (b) For the purposes of this section, "construction contract" means a
 29 contract to construct, manage, or supervise the construction, erection, or
 30 substantial modification of a building or other improvement or structure
 31 affixed to real property. The term "construction contract" shall not mean
 32 contract to produce tangible personal property.

33 (c) The ~~exemption~~ rebate provided by this section shall apply to
 34 tangible personal property purchased within five (5) years from the effective
 35 date of the levy of the additional state, city, or county gross receipts tax
 36 or compensating (use) tax.

1 (d) ~~The exemption~~ rebate provided by this section shall not apply to
 2 cost-plus contracts which allow the contractor to pass any additional tax on
 3 to the principal as a part of the contractor's costs.

4 (e) Interest shall not accrue or be paid on an amount subject to a
 5 claim for rebate pursuant to this section.

6 (f) The Director of the Department of Finance and Administration shall
 7 promulgate rules and prescribe forms for claiming a rebate as provided by
 8 this section.

9
 10 SECTION 23. Arkansas Code § 26-52-433 [Effective July 1, 2007], is
 11 amended as follows:

12 26-52-433. Durable medical equipment, mobility-enhancing equipment,
 13 prosthetic devices, and disposable medical supplies. [Effective ~~July 1, 2007~~
 14 January 1, 2008.]

15 (a)(1) Gross receipts or gross proceeds derived from the rental, sale,
 16 or repair of durable medical equipment prescribed by a physician, mobility-
 17 enhancing equipment prescribed by a physician, a prosthetic device prescribed
 18 by a physician, and disposable medical supplies prescribed by a physician
 19 shall be exempt from all state and local sales and use taxes.

20 (2) This exemption shall apply only to durable medical
 21 equipment, mobility-enhancing equipment, prosthetic device, and disposable
 22 medical supplies ~~prescribed~~ sold to a specific patient pursuant to a
 23 prescription written for a specific patient before the sale.

24 ~~(3) This exemption shall not apply to items purchased by~~
 25 ~~physicians, hospitals, nursing homes, or long term care facilities for use by~~
 26 ~~their patients or residents.~~

27 (b) As used in this section:

28 ~~(1) "Durable medical equipment", "mobility enhancing equipment",~~
 29 ~~and "disposable medical supplies" include, but are not limited to, the~~
 30 ~~following:~~

- 31 ~~(A) Wheelchairs;~~
- 32 ~~(B) Leg braces;~~
- 33 ~~(C) Wheelchair lifts;~~
- 34 ~~(D) Ostomy, urostomy, and colostomy supplies;~~
- 35 ~~(E) Raised toilet seats;~~
- 36 ~~(F) Catheters;~~

- ~~(G) Wheelchair batteries, tires, cushions, and supplies;~~
- ~~(H) Enemas, suppositories, and laxatives used in routine bowel care;~~
- ~~(I) Flexor wrist splints;~~
- ~~(J) Trapeze bars;~~
- ~~(K) Grab bars and hand rails;~~
- ~~(L) Wheelchair adaptive devices;~~
- ~~(M) Hospital beds and adaptive devices;~~
- ~~(N) Patient lifts;~~
- ~~(O) Orthopedic shoes and devices such as shoe lifts and inserts;~~
- ~~(P) Walkers;~~
- ~~(Q) Crutches;~~
- ~~(R) Automobile hand controls;~~
- ~~(S) Shower benches and chairs;~~
- ~~(T) Disposable undergarments and linen savers;~~
- ~~(U) Prosthetics;~~
- ~~(V) Braille writers, large print aids, and visual and communication aids for those who are legally blind;~~
- ~~(W) Hearing aids;~~
- ~~(X) Telecommunications devices and other communication devices for the deaf, hearing impaired, and others with communicative disorders; and~~
- ~~(Y) Speech devices for those with laryngectomies;~~

(1) "Disposable medical supplies" includes without limitation the following:

- (A) Ostomy, urostomy, and colostomy supplies;
- (B) Catheters;
- (C) Enemas, suppositories, and laxatives used in routine bowel care; and
- (D) Disposable undergarments and linen savers;

(2)(A) "Durable medical equipment" means equipment, including repair and replacement parts for the equipment that:

- ~~(A)(i)~~ Can withstand repeated use;
- ~~(B)(ii)~~ Is primarily and customarily used to serve a medical purpose;

1 ~~(C)~~(iii) Generally is not useful to a person in the
2 absence of illness or injury; and

3 ~~(D)~~(iv) Is not worn in or on the body~~+~~.

4 (B) "Durable medical equipment" does not include mobility-
5 enhancing equipment;

6 (3)(A) "Mobility-enhancing equipment" means equipment, including
7 repair and replacement parts for the equipment~~+~~, that:

8 ~~(B) "Mobility-enhancing equipment" does not include~~
9 ~~durable medical equipment that:~~

10 (i) Is primarily and customarily used to provide or
11 increase the ability to move from one (1) place to another and which is
12 appropriate for use either in a home or a motor vehicle;

13 (ii) Is not generally used by a person with normal
14 mobility; and

15 (iii) Does not include any motor vehicle or
16 equipment on a motor vehicle normally provided by a motor vehicle
17 manufacturer~~+~~.

18 (B) "Mobility-enhancing equipment" does not include
19 durable medical equipment;

20 (4) "Physician" means a person licensed under § 17-95-401 et
21 seq.; ~~and~~

22 (5) "Prescription" means an order, formula, or recipe issued in
23 any form and transmitted by an oral, written, electronic, or other means of
24 transmission by a duly licensed physician or practitioner authorized to issue
25 prescriptions under Arkansas law; and

26 ~~(5)(A)~~(6)(A) ~~"Prosthetics" means~~ "Prosthetic device" means a
27 replacement, corrective, or supportive ~~devices~~ device, including repair and
28 replacement parts for ~~prosthetics~~ the device, worn on or in the body to:

29 (i) Artificially replace a missing portion of the
30 body;

31 (ii) Prevent or correct physical deformity or
32 malfunction; or

33 (iii) Support a weak or deformed portion of the
34 body.

35 (B) ~~"Prosthetics"~~ "Prosthetic device" does not include
36 corrective eyeglasses, contact lenses, and dental prostheses.

1
 2 SECTION 24. Arkansas Code § 26-52-501(b), pertaining to the
 3 preparation of returns and payment of tax, is amended as follows:

4 (b)(1) For the purpose of ascertaining the amount of tax payable under
 5 the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., it shall be the
 6 duty of all taxpayers on or before the twentieth day of each month to deliver
 7 to the director, upon forms prescribed and furnished by the director, returns
 8 ~~under oath~~ showing the total ~~combined gross receipts or gross proceeds~~ tax
 9 due derived from all taxable sales ~~and the total combined gross receipts or~~
 10 ~~gross proceeds derived from all nontaxable sales~~ during the preceding
 11 ~~ealender~~ calendar month.

12 (2) The returns shall show such further information as the
 13 director may require to enable the director to compute correctly and collect
 14 the tax levied.

15 (3) Whether an individual, corporation, partnership, limited
 16 liability company, or other entity, every taxpayer shall file a single report
 17 combining all ~~gross receipts or gross proceeds~~ taxes due derived from sales
 18 made from all Arkansas locations of the taxpayer's business which are
 19 registered and permitted with the director under the same federal employer's
 20 identification number or social security number.

21
 22 SECTION 25. Effective January 1, 2008, Arkansas Code § 26-52-507 is
 23 repealed.

24 ~~26-52-507. Florists transmitting orders.~~

25 ~~(a) The gross receipts tax levied by this state shall be due and~~
 26 ~~collected by all florists who transmit any order by telegraph, telephone, or~~
 27 ~~other means of communication for flowers, floral arrangements, potted plants,~~
 28 ~~or any other article common to the florist business for delivery to any other~~
 29 ~~place within or without this state.~~

30 ~~(b) The gross receipts tax collected by the florist transmitting the~~
 31 ~~order by telegraph, telephone, or other means of communication shall be the~~
 32 ~~only tax collected on that order regardless of whether the order originated~~
 33 ~~within or without this state.~~

34
 35 SECTION 26. Arkansas Code § 26-52-508(d)[Effective July 1, 2007],
 36 concerning the issuance of tokens for the collection of tax by sellers or

1 admissions collectors, is repealed.

2 ~~(d)(1) In order to make the collections convenient, the director may~~
 3 ~~issue tokens in the denominations of one tenth of one cent (1/10 of 1) and~~
 4 ~~five tenths of one cent (5/10 of 1) in such quantity as he or she deems~~
 5 ~~necessary.~~

6 ~~(2)(A) Tax tokens shall not be accepted by the state in payment~~
 7 ~~of taxes due.~~

8 ~~(B) Tax tokens shall be redeemed at face value by the~~
 9 ~~director at Little Rock, Arkansas, and at such other points as he or she may~~
 10 ~~designate.~~

11

12 SECTION 27. Arkansas Code § 26-52-517 is amended to read as follows:

13 26-52-517. Resale Exemption certificates.

14 (a)~~(1)~~ The sales tax liability for all sales of tangible personal
 15 property and taxable services is upon the seller unless, ~~at or before the~~
 16 ~~time of sale, the seller takes in good faith a certificate of resale from the~~
 17 ~~holder of a valid retailer's permit who is regularly engaged in the~~
 18 ~~established business of reselling property of the type being purchased.~~

19 ~~(2) The resale certificate must:~~

20 ~~(A) Contain the purchaser's sales tax permit number;~~

21 ~~(B) State that the purchase is for resale; and~~

22 ~~(C) Contain any additional information as the director may~~
 23 ~~require. the purchaser claims an exemption and the seller obtains identifying~~
 24 ~~information of the purchaser and the reason the purchaser is claiming the~~
 25 ~~exemption in the manner prescribed by the Director of the Department of~~
 26 ~~Finance and Administration.~~

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

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

36 (c)(1) The director may provide sale for resale certificates to assist

1 retailers in properly accounting for nontaxable sales of tangible personal
2 property or taxable services.

3 (2) Such certificates must be completed as to the information
4 required in order to be valid and cannot be used to establish any other
5 exemption from sales or use tax.

6 (d) Any person repeatedly selling the same type of property to the
7 same purchaser for resale may accept a blanket certificate covering more than
8 one (1) transaction.

9 ~~(e) The liability for the tax is not transferred from the seller to~~
10 ~~the purchaser if the seller has not accepted a valid exemption certificate in~~
11 ~~good faith.~~ A seller that follows the exemption requirements as prescribed
12 by the Director of the Department of Finance and Administration is relieved
13 from any tax otherwise applicable if it is determined that the purchaser
14 improperly claimed an exemption.

15 ~~(f) If the seller has actual knowledge of information or circumstances~~
16 ~~indicating that it is unlikely that the property will be resold, then, in~~
17 ~~order to act in good faith, the seller must make further inquiry to determine~~
18 ~~the facts supporting the certificate of resale.~~ The relief from liability
19 provided in subsection (e) of this section does not apply to a seller that:

20 (1) Fraudulently fails to collect the sales tax;

21 (2) Solicits a purchaser to participate in the unlawful claim of
22 an exemption; or

23 (3) Accepts an exemption certificate from a purchaser claiming
24 an entity-based exemption if:

25 (A) The subject of the transaction sought to be covered by
26 the exemption certificate is actually received by the purchaser at a location
27 operated by the seller; and

28 (B) The Department of Finance and Administration provides
29 an exemption certificate that clearly and affirmatively indicates that the
30 claimed exemption is not available in Arkansas.

31 (g)(1) A seller may obtain a fully completed exemption certificate or
32 capture the relevant data elements required by the Department of Finance and
33 Administration within ninety (90) days after the date of sale.

34 (2) If the seller has not obtained an exemption certificate or
35 all relevant data elements and the Department of Finance and Administration
36 makes a request for substantiation of the exemption, the seller has one

1 hundred twenty (120) days from the date of the request to prove by other
 2 means that the transaction was not subject to sales or use tax or to obtain
 3 in good faith a fully completed exemption certificate from the purchaser.
 4

5 SECTION 28. Arkansas Code § 26-52-519 [As enacted by Acts 1997, No.
 6 391] is repealed.

7 ~~26-52-519. Liability of sellers for collection of tax—Good Faith~~
 8 ~~reliance on claim or documentation of purchaser. [As enacted by Acts 1997,~~
 9 ~~No. 391.]~~

10 ~~(a) The sales tax liability for all sales of tangible personal~~
 11 ~~property or taxable services is upon the seller unless, at or before the time~~
 12 ~~of sale, the seller relies in good faith on a claim by the purchaser or~~
 13 ~~documentation provided by the purchaser that the purchaser is entitled to a~~
 14 ~~sales tax exemption.~~

15 ~~(b) If the seller has actual knowledge of information or circumstances~~
 16 ~~indicating that it is unlikely that the purchaser is entitled to a sales tax~~
 17 ~~exemption and exempts the purchase, the seller has not acted in good faith.~~

18 ~~(c) If the seller has acted in good faith, the liability for the tax~~
 19 ~~is transferred to the purchaser who shall be liable for tax, penalty and~~
 20 ~~interest due on the purchase.~~

21
 22 SECTION 29. Arkansas Code § 26-52-605(a), concerning the border city
 23 tax, is amended to read as follows:

24 (a) The governing body of an Arkansas border city or town, as
 25 described in § 26-52-602, by ordinance, may call a special election, or, upon
 26 petition of not less than ten percent (10%) of the qualified electors of the
 27 Arkansas border city or town, as determined by the number of votes cast in
 28 the Arkansas border city or town for all candidates for election to the
 29 Office of Governor of Arkansas in the immediately preceding general election,
 30 filed with the city clerk of the city or town petitioning that a special
 31 election be called, a special election shall be called in the city or town on
 32 the question of the imposition of an additional state tax of one percent (1%)
 33 to be administered and collected as a local sales tax upon the gross receipts
 34 or gross proceeds derived from taxable sales within the border city or town
 35 under the provisions of the Arkansas Gross Receipts Act of 1941, § 26-52-101
 36 et seq., and the proceeds derived therefrom shall benefit the State of

1 Arkansas in lieu of the state income tax law applying to the net taxable
2 income derived by individuals who are residents of the border city or town.

3
4 SECTION 30. Arkansas Code § 26-52-607 is amended to read as follows:
5 26-52-607. Levy of use tax.

6 In all cities in this state divided by a street state line from an
7 incorporated city or town in an adjoining state which does not impose an
8 income tax that have adopted a one percent (1%) state sales tax pursuant to §
9 26-52-601, et seq., there is also levied an additional one percent (1%) state
10 use tax which shall be administered and collected as a local tax, and
11 enforced in accordance with § 26-53-101, et seq.

12
13 SECTION 31. Arkansas Code § 26-53-102 [Effective July 1, 2007], is
14 amended to read as follows:

15 26-53-102. Definitions. [~~Effective July 1, 2007~~ January 1, 2008.]

16 As used in this subchapter:

17 (1) "Alcoholic beverage" means a beverage that is suitable for
18 human consumption and contains one-half of one percent (0.5%) or more of
19 alcohol by volume;

20 (2)(A) "Bundled transaction" means a retail sale of two (2) or
21 more products, except real property and services to real property, in which:

22 (i) The products are otherwise distinct and
23 identifiable; and

24 (ii) The products are sold for one (1) non-itemized
25 price.

26 (B) "Bundled transaction" does not include the sale of any
27 product in which the sales price varies or is negotiable based on the
28 selection by the purchaser of the products included in the transaction.

29 (C) The Department of Finance and Administration shall
30 promulgate rules to implement this subdivision (2);

31 (3) "Dietary supplement" means any product, other than tobacco,
32 intended to supplement the diet that:

33 (A) Contains one (1) or more of the following dietary
34 ingredients:

35 (i) A vitamin;

36 (ii) A mineral;

1 (iii) An herb or other botanical;
 2 (iv) An amino acid;
 3 (v) A dietary substance for use by humans to
 4 supplement the diet by increasing the total dietary intake; or
 5 (vi) A concentrate, metabolite, constituent,
 6 extract, or combination of any ingredient described in this subdivision
 7 (3)(A) and is intended for ingestion in tablet, capsule, powder, softgel,
 8 gelcap, or liquid form, or if not intended for ingestion in such a form, is
 9 not represented as conventional food and is not represented for use as a sole
 10 item of a meal or of the diet; and

11 (B) Is required to be labeled as a dietary supplement,
 12 identifiable by the "Supplemental Facts" box found on the label and as
 13 required pursuant to 21 C.F.R. § 101.36, as in effect on January 1, 2007;

14 ~~(1)(4)~~ "Director" means the Director of the Department of
 15 Finance and Administration;

16 (5)(A) "Food and food ingredients" means substances, whether in
 17 liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold
 18 for ingestion or chewing by humans and are consumed for their taste or
 19 nutritional value.

20 (B) "Food and food ingredients" does not include an
 21 alcoholic beverage, tobacco, or a dietary supplement;

22 ~~(2)(6)~~ "In this state" or "in the state" or "within this state"
 23 means within the exterior limits of the State of Arkansas and includes all
 24 territory within those limits owned by or ceded to the United States of
 25 America;

26 ~~(3)(A)(7)(A)~~ "Person" means any individual, ~~company,~~
 27 partnership, limited liability company, limited liability partnership, joint
 28 venture, ~~joint agreement, association, mutual or otherwise,~~ corporation,
 29 estate, trust, ~~business trust,~~ fiduciary, ~~receiver, or trustee appointed by~~
 30 ~~any state or federal court or otherwise, syndicate, this state, any county,~~
 31 ~~city, municipality, school district, or any other political subdivision of~~
 32 ~~the state, or group or combination acting as a unit,~~ or any other legal
 33 entity.

34 (B) It is the purpose and intent of the General Assembly
 35 in passing this subdivision ~~(3)~~ (7) to provide the same definition for the
 36 word "person" in this subchapter as that word is defined in the Arkansas

1 Gross Receipts Act of 1941, § 26-52-101 et seq., and the exclusion of any
 2 wording formerly appearing in the definition of the word "person" in this
 3 subchapter shall by no means be construed by the courts or by administrative
 4 officials as an intention of the General Assembly to grant any additional
 5 exclusion or exemption from the provisions of this subchapter;

6 (8) "Prepared food" means:

7 (A) Food sold in a heated state or heated by the seller;

8 (B) Two (2) or more food ingredients mixed or combined by
 9 the seller for sale as a single item; or

10 (C)(i) Food sold with an eating utensil provided by the
 11 seller, including a plate, knife, fork, spoon, glass, cup, napkin, or straw.

12 (ii) As used in subdivision (8)(C)(i) of this
 13 section, a plate does not include a container or packaging used to transport
 14 the food;

15 ~~(4)(A)(9)(A)~~ "Purchase" means the sale of tangible personal
 16 property or taxable services by a vendor to a person for the purpose of
 17 storage, use, distribution, or consumption in this state.

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

22 (ii) In such an event, the tax shall be computed on
 23 the value of the tangible personal property at the time it is brought into
 24 this state.

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

30 ~~(5)(10)~~ "Purchaser" means ~~any person who is the recipient of any~~
 31 ~~sale of tangible personal property or taxable services for a valuable~~
 32 ~~consideration acquired for use, storage, distribution, or consumption in this~~
 33 ~~state~~ a person to whom a sale of tangible personal property is made or to
 34 whom a taxable service is furnished;

35 ~~(6)(A)(11)(A)~~ "Sale" means any transfer, barter, or exchange of
 36 the title or ownership of tangible personal property or taxable services or

1 the right to use, store, distribute, or consume the tangible personal
 2 property or taxable services for a consideration paid or to be paid in
 3 installments or otherwise and includes any transaction whether called leases,
 4 rentals, bailments, loans, conditional sales, or otherwise, notwithstanding
 5 that the title or possession of the property, or both, is retained for
 6 security.

7 (B) For the purpose of this subchapter, the sale of
 8 tangible personal property or taxable services shall be sourced according to
 9 §§ 26-52-521, 26-52-522, and 26-52-523;

10 ~~(7)(A)(i) "Sales price" means the consideration paid or given or~~
 11 ~~contracted to be paid or given by the purchaser to the vendor for taxable~~
 12 ~~services or the article of the tangible personal property, including any~~
 13 ~~services that are a part of the sale valued in money whether paid in money or~~
 14 ~~otherwise and includes any amount for which credit is given to the purchaser~~
 15 ~~by the vendor without any deduction therefrom on account of the cost of the~~
 16 ~~property sold, the cost of materials used, labor or service cost, interest~~
 17 ~~charged, losses, or any other expenses whatsoever.~~

18 ~~(ii) However, discounts, including cash, term, or~~
 19 ~~coupons that are not reimbursed by a third party, allowed and taken on sales~~
 20 ~~shall not be included.~~

21 ~~(B) "Sales price" shall not include:~~

22 ~~(i) Any interest, financing, or carrying charges~~
 23 ~~from credit extended on the sale or any taxes legally imposed directly on the~~
 24 ~~consumer that are separately stated on the invoice, bill of sale, or similar~~
 25 ~~document given to the purchaser; or~~

26 ~~(ii) The amount charged for property returned by~~
 27 ~~customers upon rescission of the contract of sales when the entire amount~~
 28 ~~charged for the property is refunded either in cash or credit, or the amount~~
 29 ~~charged for labor or services rendered in installing or applying the property~~
 30 ~~sold, the use, storage, distribution, or consumption of which is taxable~~
 31 ~~under this subchapter.~~

32 ~~(C) In addition to the consideration paid or given or~~
 33 ~~contracted to be paid or given, "sales price" shall include the amount of any~~
 34 ~~tariff or duty paid with respect to the importation of the taxable service or~~
 35 ~~article stored, used, distributed, or consumed in this state;~~

36 (12)(A) "Sales price" or "purchase price" means the total amount

1 of consideration, including cash, credit, property, and services, for which
2 tangible personal property or services are sold, leased, or rented, valued in
3 money, whether received in money or otherwise, without any deduction for the
4 following:

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

6 (ii) The cost of materials used, labor or service
7 cost, interest, losses, all costs of transportation to the seller, all taxes
8 imposed on the seller, and any other expense of the seller;

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

11 (iv) Delivery charge;

12 (v)(a) Installation charge.

13 (b) However, installation charges will not be
14 included in the "sales price" if they are not a specifically taxable service
15 under the Arkansas Gross Receipts Tax Act of 1941, § 26-52-101 et seq. or the
16 Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq. and the
17 installation charges have been separately stated on the invoice, billing, or
18 similar document given to the purchaser;

19 (vi) The value of exempt personal property given to
20 the purchaser where taxable and exempt personal property have been bundled
21 together and sold by the seller as a single product or piece of merchandise;
22 and

23 (vii) Credit for any trade-in.

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

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

28 (ii) Interest, financing, and carrying charges from
29 credit extended on the sale of tangible personal property or services, if the
30 amount is separately stated on the invoice, bill of sale or similar document
31 given to the purchaser; and

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

35 (13) "Seller" means a person making a sale, lease, or rental of
36 tangible personal property or services;

1 ~~(8)~~(14) "Storage" means any keeping or retention in this state
2 of tangible personal property or taxable services purchased from a vendor for
3 any purpose except sale or subsequent use solely outside this state;

4 ~~(9)(A)~~(15)(A) "Tangible personal property" means personal
5 property that may be seen, weighed, measured, felt, or touched or is in any
6 other manner perceptible to the senses.

7 (B) "Tangible personal property" includes electricity,
8 water, gas, steam, and prewritten computer software;

9 ~~(10)~~(16) "Taxable service" means a service that is taxable under
10 this subchapter or the Arkansas Gross Receipts Act of 1941, § 26-52-101 et
11 seq.;

12 ~~(11)~~(17) "Taxpayer" means any person remitting the tax or who
13 should remit the tax or should have remitted the tax levied by this
14 subchapter;

15 (18) "Tobacco" means a cigarette, cigar, chewing or pipe
16 tobacco, or any other item that contains tobacco;

17 ~~(12)(A)~~(19)(A) "Use", with respect to tangible personal
18 property, means the exercise of any right or power over tangible personal
19 property incident to the ownership or control of that tangible personal
20 property except that it shall not include the sale of that tangible personal
21 property in the regular course of business.

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

27 ~~(13)(A)(i)~~(20)(A)(i) "Vendor" means every person engaged in
28 making sales of tangible personal property or taxable services by mail order,
29 by advertising, or by agent, by peddling tangible personal property or
30 taxable services, by soliciting, or by taking orders for such sales for
31 storage, use, distribution, or consumption in this state.

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

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

6
 7 SECTION 32. Arkansas Code § 26-53-109(a), pertaining to the tax on the
 8 use, storage, or distribution of computer software, is amended to read as
 9 follows:

10 (a) The excise tax levied by the Arkansas Compensating Tax Act, § 26-
 11 53-101 et seq., and by any act supplemental thereto, is levied on the
 12 privilege of storing, using, distributing, or consuming within this state any
 13 of the following:

14 (1)(A) ~~computer~~ Computer software, including prewritten computer
 15 software, which shall be treated as a use, storage, distribution, or
 16 consumption of tangible personal property for purposes of tax. ~~Computer~~
 17 ~~software shall include tapes, disks, cards, or other devices or materials~~
 18 ~~which contain instructions for a computer and dictate different operations or~~
 19 ~~functions to be performed by the computer.~~

20 (B) As used in this section:

21 (i) "Computer" means an electronic device that
 22 accepts information in digital or similar form and manipulates it for a
 23 result based on a sequence of instructions;

24 (ii)(a) "Computer software" means a set of coded
 25 instructions designed to cause a computer or automatic data processing
 26 equipment to perform a task.

27 (b) "Computer software" does not include
 28 software that is delivered electronically or by load and leave;

29 (iii) "Delivered electronically" means delivered to
 30 the purchaser by means other than tangible storage media;

31 (iv) "Electronic" means relating to technology
 32 having electrical, digital, magnetic, wireless, optical, electromagnetic, or
 33 similar capabilities;

34 (v) "Load and leave" means delivery to the purchaser
 35 by use of a tangible storage media in which the tangible storage media is not
 36 physically transferred to the purchaser; and

1 (vi) "Prewritten computer software" means computer
 2 software, including prewritten upgrades, which is designed and developed by
 3 the author or other creator to the specifications of a specific purchaser;
 4 and

5 (2) Service of repairing or maintaining computer equipment or
 6 hardware in any form.

7
 8 SECTION 33. Arkansas Code 26-53-111 [Effective July 1, 2007], is
 9 amended to read as follows:

10 26-53-111. Deduction for bad debts. [Effective ~~July 1, 2007~~ January 1, 2008.]

11 ~~(a)(1) In computing the amount of tax due under this subchapter and~~
 12 ~~any act supplemental to this subchapter, a taxpayer may deduct a bad debt~~
 13 ~~from the total amount upon which the tax is calculated on the return for the~~
 14 ~~period during which the bad debt is written off as uncollectible in the~~
 15 ~~taxpayer's books and records and is eligible to be deducted for federal~~
 16 ~~income tax purposes.~~

17 ~~(2) Any deduction taken or refund paid that is attributed to a~~
 18 ~~bad debt shall not include interest.~~

19 ~~(b)(1)(A) As used in this section, "bad debt" means any portion of a~~
 20 ~~debt for an amount that a taxpayer has reported as taxable which the taxpayer~~
 21 ~~legally claims as a bad debt deduction for federal income tax purposes.~~

22 ~~(B) A taxpayer that is not required to file federal income~~
 23 ~~tax returns may deduct a bad debt on a return filed for the period in which~~
 24 ~~the bad debt is written off as uncollectible in the taxpayer's books and~~
 25 ~~records and would be eligible for a bad debt deduction for federal income tax~~
 26 ~~purposes if the taxpayer was required to file a federal income tax return.~~

27 ~~(2) A bad debt includes, but is not limited to, a worthless~~
 28 ~~check, a worthless credit card payment, and an uncollectible credit account.~~

29 ~~(3) A bad debt does not include financing charges or interest,~~
 30 ~~an uncollectible amount on property that remains in the possession of the~~
 31 ~~taxpayer or vendor until the full purchase price is paid, expenses incurred~~
 32 ~~in attempting to collect any debt, a debt sold or assigned to a third party~~
 33 ~~for collection, and repossessed property.~~

34 ~~(c) A bad debt incurred for a sale made prior to November 9, 1983,~~
 35 ~~shall not be deducted.~~

36 ~~(d) A bad debt must be deducted within three (3) years of the date of~~

1 ~~the sale for which the debt was incurred.~~

2 ~~(e) If a deduction is taken for a bad debt and the taxpayer~~
 3 ~~subsequently collects the debt in whole or in part, the tax on the amount so~~
 4 ~~collected shall be paid and reported on the return filed for the period in~~
 5 ~~which the collection is made.~~

6 ~~(f)(1) When the filing responsibilities have been assumed by a~~
 7 ~~certified service provider, as provided in the Uniform Sales and Use Tax~~
 8 ~~Administration Act, § 26-20-101 et seq., the certified service provider will~~
 9 ~~be allowed to claim on behalf of the taxpayer any bad debt allowance provided~~
 10 ~~by this section.~~

11 ~~(2) The certified service provider must credit or refund the~~
 12 ~~full amount of any bad debt allowance or refund received to the taxpayer.~~

13 A bad debt deduction from a taxable sale under this subchapter is
 14 allowed and shall be taken in the same manner as provided in § 26-52-309.

15
 16 SECTION 34. Arkansas Code § 26-53-121 [Effective July 1, 2007], is
 17 amended as follows:

18 26-53-121. Registration of vendors - Out-of-state vendors. [Effective
 19 ~~July 1, 2007~~ January 1, 2008.]

20 Every vendor selling tangible personal property or taxable services for
 21 storage, use, distribution, or consumption in this state shall:

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

24 ~~(2) Provide the names and addresses of all agents operating in~~
 25 ~~this state;~~

26 ~~(3)~~(2) Provide the location of any and all distribution or sales
 27 houses or offices of other places of business in this state; and

28 ~~(4)~~(3) Provide such other information as the director may
 29 require.

30
 31 SECTION 35. Arkansas Code § 26-53-125(a) and (b), concerning returns
 32 and payments of use tax, is amended to read as follows:

33 (a)(1)(A) The tax imposed by this subchapter shall be due and payable
 34 to the Director of the Department of Finance and Administration monthly on or
 35 before the twentieth day of each month except as provided in this subchapter.

36 (B) When a taxpayer has become liable to file a report

1 with the director, the taxpayer must continue to file a report, even though
 2 no tax is due, until the taxpayer notifies the director in writing that the
 3 taxpayer is no longer liable for those reports.

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

9 (A) The total ~~combined sales price of~~ tax levied by this
 10 subchapter due on all tangible personal property or taxable services sold by
 11 the vendor during the preceding monthly period, the storage, use,
 12 distribution, or consumption of which is subject to the tax levied by this
 13 subchapter; and

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

16 (3) The return shall be accompanied by remittance of the amount
 17 of the tax required by this subchapter to be collected by the vendor during
 18 the period covered by the return.

19 (4)(A) A return shall be signed by the vendor or the vendor's
 20 duly authorized agent but need not be verified by oath.

21 (B) A return filed electronically ~~will~~ does not need to be
 22 signed.

23 (b)(1) Every person purchasing tangible personal property or taxable
 24 services of which the storage, use, distribution, or consumption is subject
 25 to the tax levied by this subchapter and who has not paid the tax due with
 26 respect to the tangible personal property or taxable services to a vendor
 27 registered in accordance with the provisions of §§ 26-53-121 and 26-53-122
 28 shall file a return with the director on or before the twentieth day of each
 29 month for the preceding monthly period in such a form as may be prescribed by
 30 the director showing:

31 (A) The total ~~sales price of~~ tax levied by this subchapter
 32 due on the tangible personal property or taxable services purchased during
 33 the preceding monthly period; and

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

36 (2) The return shall be accompanied by a remittance of the

1 amount of the tax required by this subchapter to be paid by the person
 2 purchasing the tangible personal property or taxable services during the
 3 period covered by the return.

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

6 (B) A return filed electronically ~~will~~ does not need to be
 7 signed.

8

9 SECTION 36. Arkansas Code § 26-53-127 is amended to read as follows:
 10 26-53-127. Refunds to governmental agencies.

11 A governmental agency may apply to the director for refund of the
 12 amount of the tax levied and paid upon sales to it for ~~foodstuffs~~ food and
 13 food ingredients used for free distribution to the poor and needy or to
 14 public penal and eleemosynary institutions, as provided by law.

15

16 SECTION 37. Arkansas Code § 26-53-136 is amended to read as follows:
 17 26-53-136. Exemption for nonprofit food distribution agencies.

18 The gross receipts or gross proceeds derived from the sale of
 19 ~~foodstuffs~~ food and food ingredients to nonprofit agencies organized under
 20 the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., for free
 21 distribution to the poor and needy shall be exempt from the Arkansas gross
 22 receipts tax levied by this subchapter.

23

24 SECTION 38. Arkansas Code § 26-53-138 is amended to read as follows:
 25 26-53-138. Exemption for property purchased for use in performance of
 26 construction contract.

27 (a) ~~Tangible~~ A contractor that purchases tangible personal property
 28 which becomes a recognizable part of a completed structure or improvement to
 29 real property and which is purchased for use or consumption in the
 30 performance of construction contracts shall be ~~exempt from~~ entitled to a
 31 rebate on any additional gross receipts tax or compensating (use) tax levied
 32 by the state or any city or county if:

33 (1) ~~when the~~ The construction contract for which the tangible
 34 personal property was purchased is entered into prior to the effective date
 35 of the levy of the additional state, city, or county gross receipts tax or
 36 compensating (use) tax; and

1 (2) The contractor paid the additional gross receipts or
 2 compensating use tax to the seller.

3 (b) For the purposes of this section, "construction contract" means a
 4 contract to construct, manage, or supervise the construction, erection, or
 5 substantial modification of a building or other improvement or structure
 6 affixed to real property. The term "construction contract" shall not mean
 7 contract to produce tangible personal property.

8 (c) The ~~exemption~~ rebate provided by this section shall apply to
 9 tangible personal property purchased within five (5) years from the effective
 10 date of the levy of the additional state, city, or county gross receipts tax
 11 or compensating (use) tax.

12 (d) The ~~exemption~~ rebate provided by this section shall not apply to
 13 cost-plus contracts which allow the contractor to pass any additional tax on
 14 to the principal as a part of the contractor's costs.

15 (e) Interest shall not accrue or be paid on an amount subject to a
 16 claim for rebate pursuant to this section.

17 (f) The Director of the Department of Finance and Administration shall
 18 promulgate rules and prescribe forms for claiming a rebate as provided by
 19 this section.

20
 21 SECTION 39. Arkansas Code § 26-53-141 [Effective July 1, 2007], is
 22 amended as follows:

23 26-53-141. Durable medical equipment, mobility-enhancing equipment,
 24 prosthetic devices, and disposable medical supplies. [Effective ~~July 1, 2007~~
 25 January 1, 2008.]

26 (a)(1) Gross receipts or gross proceeds derived from the rental, sale,
 27 or repair of durable medical equipment prescribed by a physician, mobility-
 28 enhancing equipment prescribed by a physician, a prosthetic device prescribed
 29 by a physician, and disposable medical supplies prescribed by a physician
 30 shall be exempt from all state and local sales and use taxes.

31 (2) This exemption shall apply only to durable medical
 32 equipment, mobility-enhancing equipment, prosthetic device, and disposable
 33 medical supplies ~~prescribed~~ sold to a specific patient pursuant to a
 34 prescription written for a specific patient before the sale.

35 ~~(3) This exemption shall not apply to items purchased by~~
 36 ~~physicians, hospitals, nursing homes, or long-term care facilities for use by~~

1 ~~their patients or residents.~~

2 (b) As used in this section:

3 ~~(1) "Durable medical equipment", "mobility enhancing equipment",~~
 4 ~~and "disposable medical supplies" include, but are not limited to, the~~
 5 ~~following:~~

6 ~~(A) Wheelchairs;~~

7 ~~(B) Leg braces;~~

8 ~~(C) Wheelchair lifts;~~

9 ~~(D) Ostomy, urostomy, and colostomy supplies;~~

10 ~~(E) Raised toilet seats;~~

11 ~~(F) Catheters;~~

12 ~~(G) Wheelchair batteries, tires, cushions, and supplies;~~

13 ~~(H) Enemas, suppositories, and laxatives used in routine~~
 14 ~~bowel care;~~

15 ~~(I) Flexor wrist splints;~~

16 ~~(J) Trapeze bars;~~

17 ~~(K) Grab bars and hand rails;~~

18 ~~(L) Wheelchair adaptive devices;~~

19 ~~(M) Hospital beds and adaptive devices;~~

20 ~~(N) Patient lifts;~~

21 ~~(O) Orthopedic shoes and devices such as shoe lifts and~~
 22 ~~inserts;~~

23 ~~(P) Walkers;~~

24 ~~(Q) Crutches;~~

25 ~~(R) Automobile hand controls;~~

26 ~~(S) Shower benches and chairs;~~

27 ~~(T) Disposable undergarments and linen savers;~~

28 ~~(U) Prosthetics;~~

29 ~~(V) Braille writers, large print aids, and visual and~~
 30 ~~communication aids for those who are legally blind;~~

31 ~~(W) Hearing aids;~~

32 ~~(X) Telecommunications devices and other communication~~
 33 ~~devices for the deaf, hearing impaired, and others with communicative~~
 34 ~~disorders; and~~

35 ~~(Y) Speech devices for those with laryngectomies;~~

36 (1) "Disposable medical supplies" includes without limitation

1 the following:

2 (A) Ostomy, urostomy, and colostomy supplies;

3 (B) Catheters;

4 (C) Enemas, suppositories, and laxatives used in routine
 5 bowel care; and

6 (D) Disposable undergarments and linen savers;

7 (2)(A) "Durable medical equipment" means equipment including
 8 repair and replacement parts for the equipment that:

9 ~~(A)(i)~~ Can withstand repeated use;

10 ~~(B)(ii)~~ Is primarily and customarily used to serve a
 11 medical purpose;

12 ~~(C)(iii)~~ Generally is not useful to a person in the
 13 absence of illness or injury; and

14 ~~(D)(iv)~~ Is not worn in or on the body+.

15 (B) "Durable medical equipment" does not include mobility-
 16 enhancing equipment;

17 (3)(A) "Mobility-enhancing equipment" means equipment, including
 18 repair and replacement parts for the equipment+, that:

19 ~~(B) "Mobility-enhancing equipment" does not include~~
 20 ~~"durable medical equipment," that+:~~

21 (i) Is primarily and customarily used to provide or
 22 increase the ability to move from one (1) place to another and which is
 23 appropriate for use either in a home or a motor vehicle;

24 (ii) Is not generally used by a person with normal
 25 mobility; and

26 (iii) Does not include any motor vehicle or
 27 equipment on a motor vehicle normally provided by a motor vehicle
 28 manufacturer+.

29 (B) "Mobility-enhancing equipment" does not include
 30 "durable medical equipment";

31 (4) "Physician" means a person licensed under § 17-95-401 et
 32 seq.; ~~and~~

33 (5) "Prescription" means an order, formula, or recipe issued in
 34 any form and transmitted by an oral, written, electronic, or other means of
 35 transmission by a duly licensed physician or practitioner authorized to issue
 36 prescriptions under Arkansas law; and

1 ~~(5)(A)(6)(A)~~ "Prosthetics" means "Prosthetic device" means a
 2 replacement, corrective, or supportive ~~devices~~ device, including repair and
 3 replacement parts for ~~prosthetics~~ the device, worn on or in the body to:

- 4 (i) Artificially replace a missing portion of the
- 5 body;
- 6 (ii) Prevent or correct physical deformity or
- 7 malfunction; or
- 8 (iii) Support a weak or deformed portion of the
- 9 body.

10 (B) "Prosthetics" "Prosthetic device" does not include
 11 corrective eyeglasses, contact lenses, and dental prostheses.

12
 13 SECTION 40. Arkansas Code § 26-73-105(a), concerning the collection of
 14 local taxes, is amended to read as follows:

15 (a) ~~A tax levied under the authority of this subchapter may be~~
 16 ~~collected in one (1) of two (2) ways:~~

17 ~~(1) The local government may collect the tax utilizing its own~~
 18 ~~personnel or in cooperation with other local governments; or~~

19 ~~(2) The director~~ Director of the Department of Finance and
 20 Administration shall collect the tax levied under this subchapter and ~~upon~~
 21 ~~request of a local government, in which event the director~~ shall perform all
 22 functions incident to the administration, collection, enforcement, and
 23 operation of the taxes in the manner and following the procedures that are
 24 prescribed for the corresponding state taxes.

25
 26 SECTION 41. Arkansas Code § 26-74-212 is amended to read as follows:

27 26-74-212. Applicability of tax. [Effective ~~July 1, 2007~~ January 1,
 28 2008.]

29 (a) A county sales tax levied under this subchapter or in § 26-74-301
 30 et seq. shall be applicable to sales of items and services sold by a
 31 business, and the tax shall be administered under the Arkansas Gross Receipts
 32 Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of
 33 1949, § 26-53-101 et seq.

34 (b) When a direct pay permit holder purchases tangible personal
 35 property or taxable services either from an Arkansas or out-of-state vendor
 36 for use, storage, consumption, or distribution in Arkansas, the permit holder

1 shall accrue and remit the county sales or use tax, if any, ~~of the county~~
 2 ~~where the property or services are first used, stored, consumed, or~~
 3 ~~distributed pursuant to the sourcing rules in §§ 26-52-521 and 26-52-522.~~

4
 5 SECTION 42. Arkansas Code § 26-75-216 is amended to read as follows:

6 26-75-216. Applicability of tax. [Effective ~~July 1, 2007~~ January 1,
 7 2008.]

8 (a) A city sales and use tax levied pursuant to the authority granted
 9 in this subchapter or in § 26-75-301 et seq. shall be applicable to sales of
 10 items and services sold by a business and shall be administered in accordance
 11 with the Arkansas Gross Receipts Tax Act of 1941, § 26-52-101 et seq., and
 12 the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

13 (b) When a direct pay permit holder purchases tangible personal
 14 property or taxable services either from an Arkansas or out-of-state vendor
 15 for use, storage, consumption, or distribution in Arkansas, the permit holder
 16 shall accrue and remit the city sales and use tax, if any, ~~of the city where~~
 17 ~~the property or services are first used, stored, consumed, or distributed~~
 18 pursuant to the sourcing rules in §§ 26-52-521 and 26-52-522.

19
 20 SECTION 43. Arkansas Code § 26-74-608 [Effective July 1, 2007], is
 21 amended as follows:

22 26-74-608. Applicability of tax. [Effective ~~July 1, 2007~~ January 1,
 23 2008.]

24 (a)(1) A tax levied pursuant to the authority granted in this
 25 subchapter shall be applicable to sales of items and services sold by a
 26 business, and the tax shall be administered under the Arkansas Gross Receipts
 27 Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of
 28 1949, § 26-53-101 et seq.

29 (b) When a direct pay permit holder purchases tangible personal
 30 property or taxable services either from an Arkansas or out-of-state vendor
 31 for use, storage, consumption, or distribution in Arkansas, the permit holder
 32 shall accrue and remit the county sales or use tax, if any, ~~of the county~~
 33 ~~where the property or services are first used, stored, consumed, or~~
 34 ~~distributed pursuant to the sourcing rules in §§ 26-52-521 and 26-52-522.~~

35
 36 SECTION 44. Arkansas Code § 26-52-314 is amended as follows:

1
 2 26-52-314. Prepaid telephone calling cards service and prepaid wireless
 3 calling service.

4 (a) Sales of ~~prepaid telephone calling cards or prepaid authorization~~
 5 ~~numbers~~ a prepaid calling service or a prepaid wireless calling service and
 6 the recharge of ~~prepaid telephone calling cards or prepaid authorization~~
 7 ~~numbers~~ a prepaid calling service or a prepaid wireless calling service shall
 8 be subject to the Arkansas gross receipts tax levied by the ~~Arkansas Gross~~
 9 ~~Receipts Act of 1941, § 26-52-101 et seq., and by any act supplemental to the~~
 10 Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the
 11 compensating use tax levied by the Arkansas Compensating Tax Act of 1949, §
 12 26-53-101 et seq.

13 (b) As used in this subchapter:

14 (1) "Prepaid calling service" means the right to exclusively
 15 access a telecommunication service, which must be paid for in advance and
 16 which enables the origination of calls using an access number or
 17 authorization code, whether manually or electronically dialed and that is
 18 sold in predetermined units or dollars of which the number declines with use
 19 in a known amount;

20 ~~(1)~~(2) "Prepaid telephone calling card" or "prepaid
 21 authorization number" mean the exclusive purchase of telephone or
 22 telecommunications services, paid for in advance, which enables the
 23 origination of calls using an access number or authorization code, whether
 24 manually or electronically dialed; ~~and~~

25 (3) "Prepaid wireless calling service" means a telecommunication
 26 service that provides the right to utilize a mobile wireless service as well
 27 as other non-telecommunications services, including the download of a digital
 28 product delivered electronically and content and ancillary services, which
 29 must be paid for in advance and that is sold in predetermined units of
 30 dollars of which the number declines with use in a known amount; and

31 ~~(2)~~(4) "Recharge" means the purchase of additional telephone or
 32 telecommunication services ~~without having to acquire a different prepaid~~
 33 ~~telephone calling card or prepaid authorization number.~~ for a previously
 34 purchased prepaid calling service or prepaid wireless calling service.

35 (c)(1) A sale of a prepaid ~~telephone calling card or a prepaid~~
 36 ~~authorization number~~ calling service or a prepaid wireless calling service or

1 the recharge of a prepaid ~~telephone calling card or prepaid authorization~~
 2 ~~number~~ calling service or a prepaid wireless calling service is subject to
 3 gross receipts tax at the point of sale by the retail vendor.

4 (2) If the sale or recharge of a prepaid ~~telephone calling card~~
 5 ~~or prepaid authorization number~~ calling service or a prepaid wireless calling
 6 service does not take place at the retail vendor's place of business, it
 7 shall be ~~conclusively determined to take place at the customer's shipping~~
 8 ~~address, or if there is no item shipped, then it shall be the customer's~~
 9 ~~billing address or the location associated with the customer's mobile~~
 10 ~~telephone number~~ sourced in accordance with § 26-52-521(b).

11 (d)(1) The gross receipts tax levied by this section on the sale of a
 12 prepaid ~~telephone calling card, prepaid authorization number,~~ calling service
 13 or a prepaid wireless calling service and the recharge of a prepaid ~~telephone~~
 14 ~~ealling card or prepaid authorization number~~ calling service or a prepaid
 15 wireless calling service shall be due on all such sales occurring on or after
 16 July 1, 1999.

17 (2) However, for the months of July and August of 1999, in
 18 addition to the tax levied by this section on the sale of a prepaid telephone
 19 calling card and a prepaid authorization number, each telephone,
 20 telecommunication, and telegraph company must continue to collect gross
 21 receipts tax on any telephone or telecommunication services provided to a
 22 customer who obtains the service through the use of a prepaid telephone
 23 calling card or prepaid authorization number.

24 (e) The Director of the Department of Finance and Administration shall
 25 promulgate rules to implement this section.

26
 27 SECTION 45. Section 1 through 43 of this act are effective on January
 28 1, 2008.