

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 684

By: Senator Files

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS PERTAINING TO TAXES LEVIED ON TOBACCO PRODUCTS; TO CLARIFY THAT CURRENT LAW IMPOSES AN EXCISE TAX ON ALL TOBACCO PRODUCTS SOLD IN THE STATE; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAWS PERTAINING TO TAXES LEVIED ON TOBACCO PRODUCTS; TO CLARIFY THAT CURRENT LAW IMPOSES AN EXCISE TAX ON ALL TOBACCO PRODUCTS SOLD IN THE STATE; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 26-57-203(11), concerning the definitions to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as follows:

(11) "First sale" means ~~the~~:

(A) The first sale within this state of tobacco products made by a manufacturer or any other person to a licensed wholesaler and wholesaler, a licensed vendors vendor, or a licensed retailer; and

(B) The first possession of a tobacco product within this state that was purchased outside of this state and subsequently brought into this state by any person for the purpose of selling the tobacco product at retail to consumers in this state;



SECTION 2. Arkansas Code § 26-57-203(15), concerning the definitions to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as follows:

(15) "Invoice price" means ~~the~~:

(A) The price that a wholesaler or retailer of tobacco products pays to a manufacturer, importer, or distributor for, or any other seller to acquire tobacco products that the wholesaler or retailer purchaser subsequently sells in the state; or

(B) If a person possessing a tobacco product lacks proof of the price at which the tobacco product was purchased, the highest price, in the normal course of business and before any discount, at which the manufacturer or manufacturers of the tobacco product sell the tobacco product in question;

SECTION 3. Arkansas Code § 26-57-203(18), concerning the definitions to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as follows:

(18)(A) "Manufacturer" means a person that ~~produces or offers manufactures, fabricates, assembles, or processes~~ a tobacco product ~~for sale~~, including without limitation federally licensed importers and federally licensed distributors that deal in tobacco products ~~as manufacturers and that are required under this subchapter to sell only to licensed wholesalers or licensed retailers located in the state.~~

(B) "Manufacturer" includes a sales entity affiliate of the manufacturer and any other entity representing the manufacturer with regard to the sale of tobacco products produced by the manufacturer to wholesalers or licensed retailers;

SECTION 4. Arkansas Code § 26-57-203(35), concerning the definitions to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as follows:

(35) "Wholesaler" means a person other than a manufacturer or a person owned or operated by a manufacturer that:

(A) Does business within the state ~~and purchases unstamped or untaxed;~~

(B) Purchases cigarettes or other tobacco products

~~directly from manufacturers that distribute any source;~~

(C) Distributes or sells the cigarettes or other tobacco products in the state; and to other wholesalers, vendors, or retailers; and

(D) Does not distribute or sell the cigarettes or other tobacco products at retail to consumers.

~~(B) Sells to properly licensed cigarette or other tobacco product vendors or retailers.~~

SECTION 5. Arkansas Code § 26-57-208(2)(A)(i), concerning the rate of tax and levy of tax on tobacco products other than cigarettes, is amended to read as follows:

(2)(A)(i) ~~The An excise or privilege tax is levied on the first sale of tobacco products other than cigarettes ~~that are offered for sale in the state is~~ at the rate of sixteen percent (16%) of the invoice price ~~to a wholesaler or retailer~~, before discounts.~~

SECTION 6. Arkansas Code § 26-57-208(3), concerning the rate of tax and levy of tax on tobacco products, is amended to read as follows:

(3)(A)(i) The taxes levied by this section shall be reported and paid by wholesalers that shall be licensed ~~pursuant to~~ under § 26-57-214.

(ii) However, unless a retailer has confirmed and establishes by clear and convincing evidence that the tax levied under this section has been paid previously on the tobacco products, ~~retailers shall be the retailer is~~ liable for reporting and paying these taxes when ~~a~~ the retailer ~~purchases~~ obtains tobacco products ~~directly from a manufacturer or from a person other than~~ a wholesaler ~~or distributor not~~ licensed ~~pursuant to~~ under § 26-57-214.

(B)(i) ~~Any~~ A taxpayer ~~who~~ that fails to report and remit the tobacco tax due on tobacco products ~~purchased~~ obtained from ~~manufacturers, distributors, or wholesalers who are not~~ any person other than a wholesaler that is licensed under § 26-57-214 ~~shall be~~ is subject to the following penalties:

(a) Five percent (5%) of the total tobacco tax due for the first offense;

(b) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(c) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(ii) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(C) ~~The provisions of this~~ This subdivision (3) ~~shall~~ does not affect ~~the provisions of~~ § 26-57-228; and

SECTION 7. Arkansas Code § 26-57-209(a), concerning exemptions from the tax levied on tobacco products, is amended to read as follows:

(a) The following are not subject to the taxes imposed under § 26-57-208:

(1) Tobacco products sold to military departments of the United States or the state for resale on military bases within the state; ~~and~~

(2) Tobacco products sold and delivered to authorized purchasers outside the state for resale ~~and to other wholesalers licensed under this subchapter; and~~

(3) Cigarettes sold and delivered to other wholesalers licensed under this subchapter.

SECTION 8. Arkansas Code § 26-57-803(b), concerning an additional tax on tobacco products, is amended to read as follows:

(b)(1) In addition to ~~the tax imposed by § 26-57-208(2)~~ other taxes imposed by law, there is levied an additional excise or privilege tax on the first sale of tobacco products other than cigarettes ~~that are offered for sale in the state at the rate of seven percent (7%) of the invoice price to a wholesaler or retailer~~, before discounts.

(2) However, the excise or privilege tax levied under subdivision (b)(1) of this section is subject to the limitation stated in § 26-57-208(2)(B).

(3) As used in this subsection, "invoice price" means the same as defined in § 26-57-203.

SECTION 9. Arkansas Code § 26-57-803(c), concerning an additional tax on tobacco products, is amended to read as follows:

(c)(1)(A) The taxes levied by this section shall be reported and paid

by wholesalers that shall be licensed pursuant to under § 26-57-214.

(B) However, unless a retailer has confirmed and establishes by clear and convincing evidence that the tax levied under this section has been paid previously on the tobacco products, retailers shall be the retailer is liable for reporting and paying these taxes when a the retailer ~~purchases~~ obtains tobacco products ~~directly from a manufacturer or from a person other than~~ a wholesaler ~~or distributor not licensed pursuant to~~ under § 26-57-214.

(2)(A) ~~Any A taxpayer who~~ that fails to report and remit the tobacco tax due on tobacco products ~~purchased~~ obtained from ~~manufacturers, distributors, or wholesalers who are not~~ any person other than a wholesaler that is licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(3) ~~The provisions of this~~ This subsection ~~shall~~ does not affect the provisions of § 26-57-228.

SECTION 10. Arkansas Code § 26-57-805(a) and (b), concerning an additional tax on tobacco products other than cigarettes, are amended to read as follows:

(a)(1) In addition to ~~the excise or privilege taxes levied under §§ 26-57-208, 26-57-803, and 26-57-1102~~ other taxes imposed by law, there is levied an additional excise or privilege tax on the first sale of tobacco products other than cigarettes ~~that are offered for sale in the state at the~~ rate of seven percent (7%) of the invoice price to a wholesaler or retailer, before discounts.

(2) However, the excise or privilege tax levied under subdivision (a)(1) of this section is subject to the limitation stated in §

26-57-208(2)(B).

(3) As used in this subsection, "invoice price" means the same as defined in § 26-57-203.

(b)(1) The tax levied by this section shall be reported and paid by wholesalers that shall be licensed pursuant to ~~under~~ § 26-57-214.

(2) However, unless a retailer has confirmed and establishes by clear and convincing evidence that the tax levied under this section has been paid previously on the tobacco products, retailers shall be the retailer is ~~retailers shall be the~~ retailer is liable for reporting and paying this tax when a the retailer ~~purchases~~ obtains tobacco products ~~directly from a manufacturer or from a person other than~~ a wholesaler ~~or distributor not~~ licensed pursuant to under § 26-57-214.

SECTION 11. Arkansas Code § 26-57-805, concerning an additional tax on tobacco products other than cigarettes, is amended to add an additional subsection to read as follows:

(f)(1) A taxpayer that fails to report and remit the tobacco tax due on tobacco products obtained from a person other than a wholesaler that is licensed under § 26-57-214 is subject to the following penalties:

(A) For the first offense, five percent (5%) of the total tobacco tax due;

(B) For the second offense, twenty percent (20%) of the total tobacco tax due; and

(C) For the third and any subsequent offenses, twenty-five percent (25%) of the total tobacco tax due.

(2) In addition, a taxpayer's cigarette or tobacco permit shall be revoked for a period of ninety (90) days for the third and subsequent offenses.

SECTION 12. Arkansas Code § 26-57-807(a) and (b), concerning an additional tax on tobacco products other than cigarettes, are amended to read as follows:

(a)(1) In addition to ~~the excise or privilege taxes levied under §§ 26-57-208, 26-57-803, 26-57-805, and 26-57-1102~~ other taxes imposed by law, there is levied an additional excise or privilege tax on the first sale of tobacco products ~~that are offered for sale in the state~~ other than cigarettes at the rate of thirty-six percent (36%) of the invoice price to a wholesaler

or retailer, before discounts.

(2) However, the excise or privilege tax levied under subdivision (a)(1) of this section is subject to the limitation stated in § 26-57-208(2)(B).

(3) As used in this subsection, "invoice price" means the same as defined in § 26-57-203.

(b)(1) The tax levied by this section shall be reported and paid by wholesalers that shall be licensed pursuant to ~~under~~ § 26-57-214.

(2) However, unless a retailer has confirmed and establishes by clear and convincing evidence that the tax levied under this section has been paid previously on the tobacco products, ~~retailers shall be~~ the retailer is liable for reporting and paying this tax when ~~a~~ the retailer ~~purchases~~ obtains tobacco products ~~directly from a manufacturer or from a person other than~~ a wholesaler ~~or distributor not licensed pursuant to~~ under § 26-57-214.

SECTION 13. Arkansas Code § 26-57-807, concerning an additional tax on tobacco products other than cigarettes, is amended to add an additional subsection to read as follows:

(g)(1) A taxpayer that fails to report and remit the tobacco tax due on tobacco products obtained from a person other than a wholesaler that is licensed under § 26-57-214 is subject to the following penalties:

(A) For the first offense, five percent (5%) of the total tobacco tax due;

(B) For the second offense, twenty percent (20%) of the total tobacco tax due; and

(C) For the third and any subsequent offenses, twenty-five percent (25%) of the total tobacco tax due.

(2) In addition, a taxpayer's cigarette or tobacco permit shall be revoked for a period of ninety (90) days for the third and subsequent offenses.

SECTION 14. Arkansas Code § 26-57-1102(a) and (b), concerning an additional tax on tobacco products other than cigarettes, are amended to read as follows:

(a) In addition to ~~the tax imposed by § 26-57-208(2)~~ other taxes imposed by law, there is levied an additional excise or privilege tax on the

first sale of tobacco products other than cigarettes ~~that are offered for sale in the state~~ at the rate of two percent (2%) of the invoice price to a wholesaler or retailer, before discounts.

(b)(1)(A) The taxes levied by this section and § 26-57-1101 shall be reported and paid by wholesalers that shall be licensed pursuant to ~~under~~ § 26-57-214.

(B) However, unless a retailer has confirmed and establishes by clear and convincing evidence that the tax levied under this section has been paid previously on the tobacco products, ~~retailers shall be the retailer is~~ liable for reporting and paying these taxes when a the retailer ~~purchases~~ obtains tobacco products ~~directly from a manufacturer or from a person other than~~ a wholesaler ~~or distributor not licensed pursuant to~~ under § 26-57-214.

(2)(A) ~~Any~~ A taxpayer ~~who~~ that fails to report and remit the tobacco tax due on tobacco products ~~purchased~~ obtained from ~~manufacturers, distributors, or wholesalers who are not~~ any person other than a wholesaler that is licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(3) ~~The provisions of this~~ This subsection ~~shall~~ does not affect the provisions of § 26-57-228.

SECTION 15. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that recent changes enacted with regard to state law imposing excise taxes on tobacco products other than cigarettes have resulted in confusion among tobacco product wholesalers; that the excise taxes collected on tobacco products are necessary to fund the essential activities of state government; that without these revenues,

citizens of this state will not receive the services essential to their well-being; and that this act is immediately necessary to eliminate the confusion created by current law and to ensure that the essential revenues from the taxes levied on tobacco products continue to be collected. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

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

APPROVED: 04/06/2015