

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
Regular Session, 2013

As Engrossed: S4/1/13  
**A Bill**

SENATE BILL 135

By: Senators Rapert, *E. Cheatham, Elliott, J. English, Holland, K. Ingram, U. Lindsey, Maloch, B. Pierce, Teague, R. Thompson, D. Wyatt*

By: Representative Williams

### **For An Act To Be Entitled**

AN ACT TO REDUCE THE STATE SALES AND USE TAX ON FOOD  
AND FOOD INGREDIENTS IF CERTAIN FUND BALANCES EXIST;  
TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

### **Subtitle**

TO REDUCE THE STATE SALES AND USE TAX ON  
FOOD AND FOOD INGREDIENTS IF CERTAIN FUND  
BALANCES EXIST; AND TO DECLARE AN  
EMERGENCY.

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

SECTION 1. Arkansas Code § 26-52-317(a), concerning the sales tax levied on food and food ingredients, is amended to read as follows:

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

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

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

(C)(i) That during a six-month consecutive period, the amount of net available general revenues attributable to the collection of



sales and use tax from sellers that have no physical presence in the State of Arkansas is equal to or greater than one hundred fifty percent (150%) of sales and use tax collected under subsection (c) of this section and § 26-53-145 on food and food ingredients.

(ii) The director shall make the determination under subdivision (a)(1)(C)(i) of this section on a monthly basis following the determination that the conditions under subdivision (a)(1)(A) of this section have been met.

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

(i) The Educational Adequacy Fund;

(ii) Bonds issued under the Arkansas College Savings Bond Act of 1989;

(iii) Bonds issued under the Arkansas Higher Education Technology and Facility Improvement Act of 2005;

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

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

(vi) Bonds issued under the Arkansas Water, Waste Disposal and Pollution Abatement Facilities Financing Act of 1997 and the Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing Act of 2007.

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

(ii) If the consideration of additional economic factors under subdivision (a)(2)(B)(i) of this section results in a determination that the decline in the aggregate amount of deductions is not

likely to remain at that reduced level, the director shall conclude that the conditions in this subdivision (a)(2) have not been met.

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

SECTION 2. Arkansas Code § 26-53-145(a), concerning the compensating use tax on food and food ingredients, is amended to read as follows:

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

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

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

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

(ii) The director shall make the determination under subdivision (a)(1)(C)(i) of this section on a monthly basis following the determination that the conditions under subdivision (a)(1)(A) of this section have been met.

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

more:

(i) The Educational Adequacy Fund;

(ii) Bonds issued under the Arkansas College Savings Bond Act of 1989;

(iii) Bonds issued under the Arkansas Higher Education Technology and Facility Improvement Act of 2005;

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

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

(vi) Bonds issued under the Arkansas Water, Waste Disposal and Pollution Abatement Facilities Financing Act of 1997 and the Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing Act of 2007.

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

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

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

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the unemployment level in Arkansas is unacceptable; that this unemployment level results in an increase

in the number of Arkansans unable to afford basic necessities; and that this act is necessary because the state sales and use tax on food and food ingredients should be eliminated as soon as it is economically feasible to do so in order to aid Arkansans. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013.

*/s/Rapert*