

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: S3/5/13 S3/6/13  
**A Bill**

SENATE BILL 540

By: Senator Maloch

### **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 OFFERED FOR SALE 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 OFFERED FOR SALE 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(10), concerning the definitions to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as follows:

(10) "First sale" means the sale of tobacco products made by a manufacturer to licensed wholesalers and licensed vendors or a licensed retailer ~~only~~;

SECTION 2. Arkansas Code § 26-57-203(16)(A), concerning the definitions to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as follows:

(16)(A) "Manufacturer" means a person that produces or offers a tobacco product for sale, including without limitation importers and



*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.*

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

(26)(A) "Sales entity affiliate" means an entity that:

- (i) Sells cigarettes or other tobacco products that the entity acquires directly from a manufacturer or importer; and
- (ii) Is affiliated with the manufacturer or importer from which the entity acquires the cigarettes or other tobacco products.

SECTION 4. Arkansas Code § 26-57-203(33)(A), concerning the definitions to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as follows:

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

- (i) Does business within the state ~~at or from an established place of business that~~ and purchases unstamped or untaxed cigarettes or other tobacco products directly from manufacturers that distribute tobacco products in the state; and
- (ii) Sells to properly licensed cigarette or other tobacco product vendors or retailers.

SECTION 5. Arkansas Code § 26-57-203, concerning the definitions to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to add an additional subdivision to read as follows:

(34) "Invoice price" means the price that a wholesaler or retailer of tobacco products pays to a manufacturer, importer, or distributor for tobacco products that the wholesaler or retailer subsequently sells in the state.

SECTION 6. Arkansas Code § 26-57-208(2), concerning the levy and computation of tax on sales of tobacco products other than cigarettes, is amended to read as follows:

~~(2)(A) The excise or privilege tax levied on tobacco products other than cigarettes ~~on the sale by wholesalers to retailers, or by licensed retailers to the Director of the Department of Finance and Administration within the state~~ that are offered for sale in the state is sixteen percent (16%) of the ~~manufacturer's selling price,~~ invoice price to a wholesaler or retailer, before discounts;~~

~~(B) The tax shall be computed on the actual manufacturer's invoice price before discounts;~~

SECTION 7. Arkansas Code § 26-57-803(b), concerning the levy of tax on the sale of tobacco products other than cigarettes, is amended to read as follows:

(b) In addition to the tax imposed by § 26-57-208(2), there is levied an additional excise or privilege tax on ~~the sale of~~ tobacco products other than cigarettes ~~by wholesalers to retailers or by licensed retailers to the Director of the Department of Finance and Administration~~ that are offered for sale in the state at seven percent (7%) of the ~~manufacturer's selling price.~~ The tax shall be computed before discounts invoice price to a wholesaler or retailer, before discounts.

SECTION 8. Arkansas Code § 26-57-805(a), concerning the levy of tax on tobacco products other than cigarettes, is 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, there is levied an additional tax on tobacco products other than cigarettes ~~on the first sale to wholesalers or retailers within~~ that are offered for sale in the state at seven percent (7%) of the ~~manufacturer's selling price~~ invoice price to a wholesaler or retailer, before discounts.

~~(2) The tax shall be computed on the manufacturer's actual invoice price before discounts and deals.~~

SECTION 9. Arkansas Code § 26-57-807(a), concerning the levy of tax on tobacco products other than cigarettes, is 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, there is levied an additional tax on tobacco products other than cigarettes ~~on the first sale to~~

~~wholesalers or retailers within~~ that are offered for sale in the state at thirty-six percent (36%) of the manufacturer's selling price invoice price to a wholesaler or retailer, before discounts.

~~(2) The tax shall be computed on the manufacturer's actual invoice price before discounts and deals.~~

SECTION 10. Arkansas Code § 26-57-1102(a), concerning the computation of tax levied on tobacco products other than cigarettes, is amended to read as follows:

(a)~~(1)~~ In addition to the tax imposed by § 26-57-208(2), there is ~~imposed~~ levied an additional excise or privilege tax on tobacco products other than cigarettes ~~on the first sale to wholesalers or retailers within~~ that are offered for sale in the state at two percent (2%) of the manufacturer's selling price invoice price to a wholesaler or retailer, before discounts.

~~(2) The tax shall be computed on the actual manufacturer's invoice price before discounts and deals.~~

SECTION 11. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that it is the intent of the General Assembly to clarify that each excise tax on tobacco products levied under current law is applicable to all tobacco products offered for sale within the State of Arkansas; that revenues from excise taxes under current law on all tobacco products offered for sale within the state are vital to protect the health and welfare of the citizens of this state; and that this act is immediately necessary to ensure and maintain the efficient administration and collection of revenues levied under current law on tobacco products sold within the state. 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.

*/s/Maloch*