

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

State of Arkansas
91st General Assembly
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As Engrossed: H2/23/17
A Bill

HOUSE BILL 1512

By: Representatives Davis, Ballinger, Boyd, D. Meeks, Payton

For An Act To Be Entitled

AN ACT CONCERNING SALES BY SELLERS THAT DO NOT HAVE A PHYSICAL PRESENCE IN THE STATE TO PURCHASERS IN THIS STATE; TO REDUCE THE INCOME TAX RATES APPLICABLE TO INDIVIDUALS, TRUSTS, AND ESTATES USING THE REVENUES DERIVED FROM THE COLLECTION OF SALES AND USE TAX FROM SELLERS THAT DO NOT HAVE A PHYSICAL PRESENCE IN THE STATE; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO REDUCE THE INCOME TAX RATES APPLICABLE TO INDIVIDUALS, TRUSTS, AND ESTATES USING REVENUES DERIVED FROM SALES AND USE TAX FROM SELLERS THAT DO NOT HAVE A PHYSICAL PRESENCE IN THE STATE; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 26-51-201(e), concerning the income tax levied on individuals, trusts, and estates, is amended to read as follows:

(e) ~~If the director determines that federal law authorizes the state to collect sales and use tax from sellers that do not have a physical presence in the state, then after the first twelve (12) months of collecting sales and use tax from sellers that do not have a physical presence in the state, the~~ The director shall:

(1) After making the deductions required under § 19-5-



202(b)(2)(B)(i), certify to the Governor and the ~~Office of Economic and Tax Policy~~ Arkansas Tax Reform and Relief Legislative Task Force the amount of available net general revenues attributable to the collection of sales and use tax from July 1, 2017, through June 30, 2018, from sellers that: ~~do not~~ have a physical presence in the state during the first twelve (12) months of collections

(A) Do not have a physical presence in Arkansas;

(B) Made sales of taxable goods or services, or both, to Arkansas purchasers; and

(C) Began collecting and remitting Arkansas sales and use taxes on or after January 1, 2017;

(2) Use ~~any~~ the amount under subdivision (e)(1) of this section ~~that exceeds seventy million dollars (\$70,000,000) to reduce the rate of four and five-tenths percent (4.5%)~~ six and nine-tenths percent (6.9%) in the table contained in subdivision ~~(a)(7)~~ (a)(9) of this section equally for all taxpayers subject to the rate of ~~four and five-tenths percent (4.5%)~~ six and nine-tenths percent (6.9%);

(3) Certify the amount of the reduction of the income tax rate under this subsection to the Governor and the ~~Office of Economic and Tax Policy~~ Arkansas Tax Reform and Relief Legislative Task Force; and

(4) Incorporate the reduced income tax rate into the table prescribed under subsection (d) of this section, which shall be applicable for ~~each tax year thereafter~~ tax years beginning on and after January 1, 2019.

SECTION 2. Arkansas Code Title 26, Chapter 52, Subchapter 2, is amended to add an additional section to read as follows:

26-52-211. Inquiry regarding in-state presence.

The Department of Finance and Administration may inquire as to whether an applicant for or a holder of a permit under this chapter has a physical presence in this state for purposes of administering and collecting sales and use tax.

SECTION 3. Arkansas Code § 26-52-317(a), concerning the sales tax levied on food and food ingredients, is amended to read as follows:

(a)(1)(A) ~~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 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, § 6-62-701 et seq.;~~

~~(iii) Bonds issued under the Arkansas Higher Education Technology and Facility Improvement Act of 2005, § 6-62-1101 et seq.;~~

~~(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, § 15-20-1301 et seq.

(B)(i) In making the determination in this subdivision ~~(a)(2)~~ (a)(1), 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)~~ (a)(1)(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)~~ (a)(1) have not been met.

~~(3)~~ (2) When the director finds that ~~all of~~ the conditions in ~~either~~ subdivision (a)(1) of this section ~~or subdivision (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 calendar quarter that is at least thirty (30) days following the determination of the director.

SECTION 4. Arkansas Code § 26-53-145(a), concerning the compensating use tax levied on food and food ingredients, is amended to read as follows:

~~(a)(1)(A) 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~~ 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, § 6-62-701 et seq.;

(iii) Bonds issued under the Arkansas Higher Education Technology and Facility Improvement Act of 2005, § 6-62-1101 et seq.;

(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, § 15-20-1301 et seq.

(B)(i) In making the determination in this subdivision ~~(a)(2)~~ (a)(1), 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)~~ (a)(1)(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)~~ (a)(1) have not been met.

~~(3)~~ (2) When the director finds that ~~all of~~ the conditions in ~~either~~ subdivision (a)(1) ~~or subdivision (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 calendar quarter that is at least thirty (30) days following the determination of the director.

SECTION 5. DO NOT CODIFY. *Distribution of sales and use taxes collected by remote sellers.*

(a) As used in this section, "new remote seller" means a seller who:

(1) Does not have a physical presence in Arkansas;

(2) Made sales of taxable goods or services, or both, to Arkansas purchasers; and

(3) Began collecting and remitting Arkansas sales and use taxes on or after January 1, 2017.

(b) Beginning in July 2017, by July 31 and January 31 of each year, the Director of the Department of Finance and Administration shall certify the following information to the Governor and the Arkansas Tax Reform and Relief Legislative Task Force for the January-June and July-December time periods, respectively:

(1) The total number of new remote sellers; and

(2) After making the deductions required under § 19-5-202(b)(2)(B)(i), the total sales and use tax revenue collected and remitted by the new remote sellers.

(c) The director shall transfer the amount certified for each time period under subsection (b) of this section to the Treasurer of State to be deposited into the Long Term Reserve Fund.

(d) This section expires February 1, 2019.

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that income tax rates for Arkansas residents are too high in comparison to the income tax rates in surrounding states; that these burdensome income tax rates prevent Arkansas from being competitive with surrounding states in the region; that the state anticipates an increase in sales and use tax revenue from sellers that do not have a

physical presence in the state; that the increase in sales and use tax collections can be used to offset an income tax reduction without negatively affecting the state's fiscal health; and that this act is immediately necessary because it is in the best interests of the state to increase Arkansas's ability to compete in the region by dedicating as much funding as is economically possible and prudent to relieve the income tax burden suffered by taxpayers in 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/Davis