

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

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 1965

By: Representative Jett

For An Act To Be Entitled

AN ACT TO AMEND THE PROVISIONS OF LAW PROVIDING FOR THE DISTRIBUTION AND USE OF CERTAIN SALES AND USE TAX REVENUES; TO REPEAL PROVISIONS OF LAW DIRECTING HOW SALES AND USE TAX REVENUES FROM REMOTE SELLERS ARE TO BE USED; TO DEPOSIT SALES AND USE TAX REVENUES RECEIVED FROM REMOTE SELLERS INTO A FUND TO BE USED BY THE GENERAL ASSEMBLY; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO REPEAL PROVISIONS REGARDING THE USE OF SALES AND USE TAX REVENUES FROM REMOTE SELLERS; TO DEPOSIT SALES AND USE TAX REVENUES FROM REMOTE SELLERS INTO A FUND TO BE USED BY THE GENERAL ASSEMBLY; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code Title 19, Chapter 5, Subchapter 12, is amended to add an additional section to read as follows:

19-5-1258. Arkansas 21st Century Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous fund to be known as the "Arkansas 21st Century Fund".

(b) The fund shall consist of:

(1) Any funds authorized or provided by law; and



(2) Any remaining fund balance carried forward from year to year.

(c) The fund shall be used by the General Assembly for any purposes determined appropriate by the General Assembly.

(d) Moneys remaining in the fund at the end of each fiscal year shall carry forward and be made available for the purposes stated in this section in the next fiscal year.

SECTION 2. Arkansas Code § 26-51-201(e), concerning the income tax levied on individuals, trusts, and estates, is repealed.

~~(c) 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 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 the amount of available net general revenues attributable to the collection of sales and use tax from sellers that do not have a physical presence in the state during the first twelve (12) months of collections;~~

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

~~(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; 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.~~

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 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 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. Deposit of funds into the Arkansas 21st Century Fund.

For the fiscal year beginning July 1, 2017, and ending June 30, 2018, all revenues from the taxes levied in §§ 26-52-301, 26-52-302(a)(1), 26-52-302(b)(1), 26-52-317(c)(1)(A), 26-53-106(a), 26-53-107(a)(1), 26-53-107(b)(1), and 26-53-145(c)(1)(A) in excess of two billion four hundred forty-one million one hundred thousand dollars (\$2,441,100,000) shall be deposited into the Arkansas 21st Century Fund to be used for any purposes determined appropriate by the General Assembly.

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the state has many needs, including without limitation the need to reduce taxes to make the state more competitive with surrounding states and the need to invest in a variety of programs for the wellbeing of the state's citizens; that as a result of federal and state law changes, Arkansas may soon receive additional state sales and use tax collections from sellers that do not have a physical presence in this state; that the additional tax collections from sellers that do not have a physical presence in this state are in addition to the tax collections Arkansas might otherwise have anticipated receiving from ordinary growth of the state's economy; that it is currently impossible to determine the amount of additional tax collections the state might receive from sellers that do not have a physical presence in this state; that state law currently contains competing provisions regarding the use of the anticipated tax collections from sellers that do not have a physical presence in this state; that unless a clear method is established to set aside and use the additional tax collections from sellers that do not have a physical presence in this state, the citizens of this state will be adversely affected by the inability to use these additional revenues in the best manner possible for the benefit

of our citizens; and that this act is immediately necessary to avoid any adverse effect on the citizens of Arkansas by providing an orderly method to identify the additional collections from sellers that do not have a physical presence in this state and provide for their use in a manner that provides the greatest benefit to the citizens of this state in the most efficient manner possible. 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.