

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

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H3/14/17

A Bill

HOUSE BILL 2062

By: Representative Hammer

For An Act To Be Entitled

AN ACT TO EASE THE BURDEN ON TAXPAYERS; TO OFFSET EXCESS REVENUES AVAILABLE TO THE STATE; TO AMEND THE USE AND DISTRIBUTION OF CERTAIN REVENUES; AND FOR OTHER PURPOSES.

Subtitle

TO EASE THE BURDEN ON TAXPAYERS; TO OFFSET EXCESS REVENUES AVAILABLE TO THE STATE; AND TO AMEND THE USE AND DISTRIBUTION OF CERTAIN REVENUES.

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

SECTION 1. Arkansas Code Title 19, Chapter 5, Subchapter 4, is amended to add an additional section to read as follows:

19-5-407. Transfer of excess revenues.

(a) At the end of each fiscal year, the Chief Fiscal Officer of the State shall certify to the Treasurer of State the total amount of:

(1) Unallocated and recoverable general revenues; and

(2) Available net general revenues enumerated in § 19-6-201(1) and (2) for the fiscal year, in excess of fifteen million dollars (\$15,000,000) that are attributable to the collection of sales and use taxes from sellers that:

(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.

(b) The Treasurer of State shall distribute the amount certified under subsection (a) of this section as follows:

(1) Twenty-five percent (25%) to the County Aid Fund;

(2) Twenty-five percent (25%) to the Municipal Aid Fund;

(3) Twenty-five percent (25%) to the General Revenue Allotment Reserve Fund; and

(4) Twenty-five percent (25%) to the State Highway and Transportation Department Fund.

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 Arkansas Code § 26-51-201(e), concerning the income tax levied on individuals, trusts, and estates, is repealed.

~~(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 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 (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%) 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~~ The Director of the Department of Finance and Administration 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~~ The Director of the Department of Finance and Administration 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. EFFECTIVE DATE. Sections 1 through 4 of this act are effective on the first day of the calendar quarter following the effective date of this act.

/s/Hammer