

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: H3/22/17
A Bill

HOUSE BILL 2085

By: Representative Rye

For An Act To Be Entitled

AN ACT TO AMEND THE DISTRIBUTION AND USE OF SALES AND USE TAX REVENUES; TO REPEAL PROVISIONS CONCERNING THE USE OF SALES AND USE TAX COLLECTED FROM SELLERS THAT DO NOT HAVE A PHYSICAL PRESENCE IN THE STATE; TO DISTRIBUTE A PORTION OF THE SALES AND USE TAX COLLECTED FROM SELLERS THAT DO NOT HAVE A PHYSICAL PRESENCE IN THE STATE TO THE STATE HIGHWAY AND TRANSPORTATION DEPARTMENT FUND; TO REPEAL PROVISIONS THAT ARE CONTINGENT ON THE DIRECTOR OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION DETERMINING THAT FEDERAL LAW AUTHORIZES THE STATE TO COLLECT SALES AND USE TAX FROM SELLERS THAT DO NOT HAVE A PHYSICAL PRESENCE IN THE STATE; AND FOR OTHER PURPOSES.

Subtitle

TO DISTRIBUTE A PORTION OF THE SALES AND USE TAX COLLECTED FROM SELLERS THAT DO NOT HAVE A PHYSICAL PRESENCE IN THE STATE TO THE STATE HIGHWAY AND TRANSPORTATION DEPARTMENT FUND.

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 Arkansas Code § 26-51-201(e), concerning the income tax levied on individuals, trusts, and estates, is repealed.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 (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 2. Arkansas Code § 26-52-107 is amended to read as follows:

26-52-107. Disposition of taxes, interest, and penalties.

(a) All Except as provided in subsection (b) of this section, the taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration under the provisions of this chapter and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., shall be general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund. The Treasurer of State shall allocate and transfer the same to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by, and to be used for the respective purposes set forth in, the Revenue Stabilization Law, § 19-5-101 et seq.

(b)(1) After making the deductions required under § 19-5-202(b)(2)(B)(i), the sales and use taxes, interest, penalties, and costs received by the director from sales by sellers who do not have a physical presence in this state shall be distributed as follows:

(A) The first fifteen million dollars (\$15,000,000) shall be deposited as general revenues into the State Apportionment Fund; and

(B) The remainder shall be distributed under the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

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/Rye