

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: S4/3/17
A Bill

SENATE BILL 576

By: Senator K. Ingram

For An Act To Be Entitled

AN ACT TO AMEND THE USE AND DISPOSITION OF SALES AND
USE TAX REVENUES; TO REPEAL PROVISIONS CONCERNING THE
*USE OF SALES AND USE TAX REVENUES; TO DECLARE AN
EMERGENCY; AND FOR OTHER PURPOSES.*

Subtitle

*TO AMEND THE USE AND DISPOSITION OF SALES
AND USE TAX REVENUES; 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levied on individuals, trusts, and estates, is repealed.*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 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, all 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) 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) in a fiscal year shall be deposited into the Internet Revenue subfund of the General Revenue Allotment Reserve Fund.

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. 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.

/s/K. Ingram