

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 293

By: Senator B. Sample

For An Act To Be Entitled

AN ACT CONCERNING SALES AND USE TAX CREDITS, REFUNDS, AND REBATES; TO AMEND THE CONFIDENTIALITY OF TAX RECORDS UNDER THE ARKANSAS TAX PROCEDURE ACT; TO ALLOW FOR THE DISCLOSURE OF INFORMATION CONCERNING SALES AND USE TAX CREDITS, REFUNDS, AND REBATES TO LOCAL GOVERNMENTS; TO REQUIRE TAXPAYERS CLAIMING CERTAIN SALES AND USE TAX CREDITS, REFUNDS, AND REBATES TO PROVIDE NOTIFICATION TO LOCAL GOVERNMENTS; AND FOR OTHER PURPOSES.

Subtitle

TO ALLOW FOR THE DISCLOSURE OF INFORMATION CONCERNING SALES AND USE TAX CREDITS, REFUNDS, AND REBATES TO LOCAL GOVERNMENTS; AND TO REQUIRE TAXPAYERS TO PROVIDE NOTIFICATION TO LOCAL GOVERNMENTS IN CERTAIN CIRCUMSTANCES.

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

SECTION 1. Arkansas Code § 26-18-303(b), as amended by Acts 2019, No. 866, § 3 and effective on and after May 1, 2021, concerning allowable disclosures of tax records maintained by the Department of Finance and Administration, is amended to add an additional subdivision to read as follows:

(26) Disclosure to an official of a city government or county government of information concerning a sales and use tax credit, refund, or



rebate obtained by a taxpayer under the following provisions for sales and use taxes paid to the relevant municipality or county:

- (A) Section 26-52-427;
- (B) Section 26-52-447;
- (C) Section 26-52-523;
- (D) Section 26-53-138; and
- (E) Section 26-53-149.

SECTION 2. Arkansas Code § 26-52-427(f), concerning the sales tax exemption for property purchased for use in the performance of a construction contract, is amended to read as follows:

(f)(1) The Secretary of the Department of Finance and Administration shall promulgate rules and prescribe forms for claiming a rebate as provided by this section.

(2) The forms required to be prescribed under subdivision (f)(1) of this section shall include a statement notifying taxpayers filing a claim for a rebate under this section that a taxpayer seeking a rebate under this section is required to provide a duplicate copy of the taxpayer's claim for a rebate under this section to the executive head of each municipality and county that levied a tax that is subject to rebate under this section.

SECTION 3. Arkansas Code § 26-52-447(f), concerning the sales tax exemption for partial replacement and repair of certain machinery and equipment, is amended to read as follows:

(f) A taxpayer may claim the benefit of the tax refund under this section only by using one (1) of the following methods:

(1)(A) Both:

(i) Obtaining a direct pay or a limited direct pay sales and use tax permit from the Department of Finance and Administration; and

(ii) Self-refunding:

(a) At the time the taxpayer files his or her original sales and use tax report; or

(b) By later filing an amended sales or use tax report with the department.

(B) The statutes of limitation stated in § 26-18-306 apply

to claims made under this subdivision (f)(1).

(C) Interest shall not accrue or be paid on a refund claimed under this subdivision (f)(1).

(D)(i) At the time of claiming a refund under this subdivision (f)(1), the taxpayer shall provide notification of the refund, including without limitation the amount of the refund, to the executive head of each municipality and county that levied a tax that is subject to refund under this section.

(ii) The taxpayer shall provide the notification required under subdivision (f)(1)(D)(i) of this section on a form prescribed by the department; or

(2)(A) ~~Beginning July 1, 2018, for~~ For a taxpayer that does not hold a direct pay or limited direct pay permit, holds an active Arkansas sales and use tax permit, and files sales and use tax reports with the department, filing a claim for a credit or rebate with the department.

(B)(i) The credit or rebate authorized under this subdivision (f)(2) shall be obtained only by offsetting the amount of the claimed credit or rebate against the state tax to be remitted with the taxpayer's sales and use tax reports.

(ii) If the total amount of the credit or rebate authorized under this subdivision (f)(2) is greater than the amount of the state tax to be remitted with the taxpayer's sales and use tax reports, the taxpayer is entitled to a refund of the difference between the amount of the tax owed and the amount of the credit or rebate authorized under this subdivision (f)(2).

(C) A taxpayer claiming a credit or rebate under this subdivision (f)(2) shall electronically file all sales and use tax reports.

(D) A claim for credit or rebate under this subdivision (f)(2) shall not be paid for a claim filed more than one (1) year following the date of the qualifying sale or more than one (1) year following the date of payment, whichever is later.

(E) Interest shall not accrue or be paid on an amount subject to a claim for a credit or rebate under this subdivision (f)(2).

(F)(i) At the time of claiming a credit or rebate under this subdivision (f)(2), the taxpayer shall provide notification of the credit or rebate, including without limitation the amount of the credit or

rebate, to the executive head of each municipality and county that levied a tax that is subject to credit or rebate under this section.

(ii) The taxpayer shall provide the notification required under subdivision (f)(2)(F)(i) of this section on a form prescribed by the department.

SECTION 4. Arkansas Code § 26-52-523(g), concerning the credit or rebate on local sales and use tax, is amended to read as follows:

(g)(1) The secretary may promulgate rules to administer this section, including without limitation providing an administratively feasible method for filing a claim for a credit or rebate and any necessary forms.

(2)(A) The secretary shall prescribe forms necessary to claim a credit or rebate under this section.

(B) The forms required to be prescribed under subdivision (g)(2)(A) of this section shall include a statement notifying taxpayers filing a claim for a credit or rebate under this section that a taxpayer seeking a credit or rebate under this section is required to provide a duplicate copy of the taxpayer's claim for a credit or rebate under this section to the executive head of each municipality and county that levied a tax that is subject to credit or rebate under this section.

SECTION 5. Arkansas Code Title 26, Chapter 52, Subchapter 5, is amended to add an additional section to read as follows:

26-52-524. Notification to local governments.

(a) A taxpayer seeking to claim a tax credit, refund, or rebate under § 26-52-427, § 26-52-447, § 26-52-523, § 26-53-138, or § 26-53-149 shall provide notification of the tax credit, refund, or rebate to each municipality and county that levied a tax that is subject to credit, refund, or rebate as required in § 26-52-427(f), § 26-52-447(f), § 26-52-523(g), § 26-53-138(f), and § 26-53-149(f).

(b)(1)(A) The first time the taxpayer fails to comply with the requirement stated under subsection (a) of this section, the taxpayer is subject to a penalty in an amount equal to thirty-three percent (33%) of the amount of the tax credit, refund, or rebate that the taxpayer claimed and failed to report under subsection (a) of this section.

(B) The second time the taxpayer fails to comply with the

requirement stated under subsection (a) of this section, the taxpayer is subject to a penalty in an amount equal to fifty percent (50%) of the amount of the tax credit, refund, or rebate that the taxpayer claimed and failed to report under subsection (a) of this section.

(C) The third time the taxpayer fails to comply with the requirement stated under subsection (a) of this section, the taxpayer is:

(i) Subject to a penalty in an amount equal to one hundred percent (100%) of the tax credit, refund, or rebate that the taxpayer claimed and failed to report under subsection (a) of this section; and

(ii) Ineligible to claim a tax credit, refund, or rebate under § 26-52-427, § 26-52-447, § 26-52-523, § 26-53-138, or § 26-53-149 for three (3) years.

(2) The penalties provided in subdivision (b)(1) of this section shall be levied by and paid to the municipalities and counties that were not notified as required in subsection (a) of this section, in the proportion in which the tax credit, refund, or rebate applied to the municipalities and counties.

SECTION 6. Arkansas Code § 26-53-138(f), concerning the use tax exemption for property purchased for use in the performance of a construction contract, is amended to read as follows:

(f)(1) The Secretary of the Department of Finance and Administration shall promulgate rules and prescribe forms for claiming a rebate as provided by this section.

(2) The forms required to be prescribed under subdivision (f)(1) of this section shall include a statement notifying taxpayers filing a claim for a rebate under this section that a taxpayer seeking a rebate under this section is required to provide a duplicate copy of the taxpayer's claim for a rebate under this section to the executive head of each municipality and county that levied a tax that is subject to rebate under this section.

SECTION 7. Arkansas Code § 26-53-149(f), concerning the use tax exemption for partial replacement and repair of certain machinery and equipment, is amended to read as follows:

(f) A taxpayer may claim the benefit of the tax refund under this section only by using one (1) of the following methods:

(1)(A) Both:

(i) Obtaining a direct pay or a limited direct pay sales and use tax permit from the Department of Finance and Administration; and

(ii) Self-refunding:

(a) At the time the taxpayer files his or her original sales and use tax report; or

(b) By later filing an amended sales or use tax report with the department.

(B) The statutes of limitation stated in § 26-18-306 apply to claims made under this subdivision (f)(1).

(C) Interest shall not accrue or be paid on a refund claimed under this subdivision (f)(1).

(D)(i) At the time of claiming a refund under this subdivision (f)(1), the taxpayer shall provide notification of the refund, including without limitation the amount of the refund, to the executive head of each municipality and county that levied a tax that is subject to refund under this section.

(ii) The taxpayer shall provide the notification required under subdivision (f)(1)(D)(i) of this section on a form prescribed by the department; or

(2)(A) ~~Beginning July 1, 2018, for~~ For a taxpayer that does not hold a direct pay or limited direct pay permit, holds an active Arkansas sales and use tax permit, and files sales and use tax reports with the department, filing a claim for the credit or rebate with the department.

(B)(i) The credit or rebate authorized under this subdivision (f)(2) shall be obtained only by offsetting the amount of the claimed credit or rebate against the state tax to be remitted with the taxpayer's sales and use tax reports.

(ii) If the total amount of the credit or rebate authorized under this subdivision (f)(2) is greater than the amount of the state tax to be remitted with the taxpayer's sales and use tax reports, the taxpayer is entitled to a refund of the difference between the amount of the tax owed and the amount of the credit or rebate authorized under this subdivision (f)(2).

(C) A taxpayer claiming a credit or rebate under this

subdivision (f)(2) shall electronically file all sales and use tax reports.

(D) A claim for credit or rebate under this subdivision (f)(2) shall not be paid for a claim filed more than one (1) year following the date of the qualifying purchase or more than one (1) year following the date of payment, whichever is later.

(E) Interest shall not accrue or be paid on an amount subject to a claim for a credit or rebate under this subdivision (f)(2).

(F)(i) At the time of claiming a credit or rebate under this subdivision (f)(2), the taxpayer shall provide notification of the credit or rebate, including without limitation the amount of the credit or rebate, to the executive head of each municipality and county that levied a tax that is subject to credit or rebate under this section.

(ii) The taxpayer shall provide the notification required under subdivision (f)(2)(F)(i) of this section on a form prescribed by the department.

SECTION 8. DO NOT CODIFY. Rules.

(a) When adopting the initial rules required under this act, the Department of Finance and Administration shall file the final rules with the Secretary of State for adoption under § 25-15-204(f):

(1) On or before October 1, 2021; or

(2) If approval under § 10-3-309 has not occurred by October 1, 2021, as soon as practicable after approval under § 10-3-309.

(b) The department shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of October 1, 2021, so that the Legislative Council may consider the rules for approval before October 1, 2021.

SECTION 9. EFFECTIVE DATE. Sections 1-7 of this act are effective on the first day of the calendar quarter following the effective date of this act.