

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

State of Arkansas  
94th General Assembly  
Regular Session, 2023

# A Bill

HOUSE BILL 1661

By: Representative Underwood

## For An Act To Be Entitled

AN ACT TO REPEAL THE SALES AND USE TAX ON FOOD AND FOOD INGREDIENTS; TO EXEMPT FOOD AND FOOD INGREDIENTS FROM SALES AND USE TAX; TO MAKE CONFORMING CHANGES; AND FOR OTHER PURPOSES.

## Subtitle

TO REPEAL THE SALES AND USE TAX ON FOOD AND FOOD INGREDIENTS; AND TO EXEMPT FOOD AND FOOD INGREDIENTS FROM SALES AND USE TAX.

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

SECTION 1. Arkansas Code § 19-5-1103(b), concerning the Property Tax Relief Trust Fund, is amended to read as follows:

(b) The fund shall consist of such revenues as generated by §§ 26-52-302(c), ~~26-52-317(e)(1)(B)~~, 26-52-319(a)(2)(B), 26-53-107(c), ~~26-53-145(e)(1)(B)~~, 26-53-148(a)(2)(B), and 26-56-224(c)(2) and shall be used for such purposes as set out in § 26-26-310.

SECTION 2. Arkansas Code § 19-5-1227(b)(3), concerning the Educational Adequacy Fund, is amended to read as follows:

(3) The revenues generated by § 26-52-302(d), § 26-52-316, ~~§ 26-52-317(e)(1)(C)~~, § 26-52-319(a)(2)(C), § 26-53-107(d), ~~§ 26-53-145(e)(1)(C)~~, § 26-53-148(a)(2)(C), § 26-56-224(c)(3), and § 26-57-1002(d)(1)(A)(ii); and



SECTION 3. Arkansas Code § 19-6-201(58), concerning the enumeration of general revenues, is repealed.

~~(58) Seventy six and six tenths percent (76.6%) of all taxes, interest, penalties, and costs on taxes levied on the gross receipts or gross proceeds derived from the sale of food and food ingredients, § 26-52-317(c)(1)(A);~~

SECTION 4. Arkansas Code § 19-6-201(60), concerning the enumeration of general revenues, is repealed.

~~(60) Seventy six and six tenths percent (76.6%) of the taxes, interest, penalties, and costs received on taxes levied on the privilege of storing, using, distributing, or using food and food ingredients, § 26-53-145(c)(1)(A);~~

SECTION 5. The introductory language of Arkansas Code § 26-52-301, concerning the sales tax levied on the sale of certain products and services, is amended to read as follows:

Except for ~~food and food ingredients that are taxed under § 26-52-317~~ and ~~except for~~ used motor vehicles, trailers, and semitrailers that are taxed under § 26-52-324, there is levied an excise tax of three percent (3%) upon the gross proceeds or gross receipts derived from all sales to any person of the following:

SECTION 6. Arkansas Code § 26-52-302 is amended to read as follows:  
26-52-302. Additional taxes levied.

(a)(1) In addition to the excise tax levied upon the gross proceeds or gross receipts derived from all sales by this chapter, ~~except for food and food ingredients that are taxed under § 26-52-317 and~~ except for used motor vehicles, trailers, and semitrailers that are taxed under § 26-52-324, there is levied an excise tax of one percent (1%) upon all taxable sales of property, specified digital products, digital codes, and services subject to the tax levied in this chapter.

(2) This tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(3) In computing gross receipts or gross proceeds as defined in

§ 26-52-103, a deduction shall be allowed for bad debts resulting from the sale of tangible personal property.

(b)(1) In addition to the excise tax levied upon the gross proceeds or gross receipts derived from all sales by this chapter, ~~except for food and food ingredients that are taxed under § 26-52-317 and~~ except for used motor vehicles, trailers, and semitrailers that are taxed under § 26-52-324, there is hereby levied an excise tax of one-half of one percent (0.5%) upon all taxable sales of property, specified digital products, digital codes, and services subject to the tax levied in this chapter.

(2) This tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(3) However, in computing gross receipts or gross proceeds as defined in § 26-52-103, a deduction shall be allowed for bad debts resulting from the sale of tangible personal property.

(c)(1) Except for ~~food and food ingredients that are taxed under § 26-52-317 and~~ except for used motor vehicles, trailers, and semitrailers that are taxed under § 26-52-324, there is levied an additional excise tax of one-half of one percent (0.5%) upon all taxable sales of property, specified digital products, digital codes, and services subject to the tax levied by this chapter.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this chapter, for the collection, reporting, and payment of Arkansas gross receipts taxes.

(d)(1) Except for ~~food and food ingredients that are taxed under § 26-52-317 and~~ except for used motor vehicles, trailers, and semitrailers that are taxed under § 26-52-324, there is levied an additional excise tax of seven-eighths of one percent (0.875%) upon all taxable sales of property, specified digital products, digital codes, and services subject to the tax levied by this chapter.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as prescribed by this chapter, for the collection, reporting, and payment of Arkansas gross receipts taxes.

SECTION 7. Arkansas Code § 26-52-317 is repealed.

~~26-52-317. Food and food ingredients.~~

~~(a)(1) The Secretary 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 secretary 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) The secretary 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;~~  
and

~~(v) 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), the secretary 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) 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 secretary shall conclude that the conditions in this subdivision (a)(2) have not been met.~~

~~(3) — When the secretary finds that all of the conditions in either subdivision (a)(1) 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 secretary.~~

~~(b) — As used in this section:~~

~~(1) — “Food” and “food ingredients” mean the same as defined in § 26-52-103 except that “food” and “food ingredients” do not include prepared food; and~~

~~(2) — “Prepared food” means the same as defined in § 26-52-103 except that “prepared food” does not include:~~

~~(A) — Food that is only cut, repackaged, or pasteurized by the seller; or~~

~~(B) — Eggs, fish, meat, and poultry, and foods containing these raw animal foods requiring cooking by the consumer to prevent food-borne illnesses as recommended by the United States Food and Drug Administration in its 2005 Food Code, § 3-401.11, as it existed on January 1, 2007.~~

~~(c)(1) — Beginning July 1, 2011, in lieu of the gross receipts or gross proceeds taxes levied on food and food ingredients under §§ 26-52-301 and 26-52-302, there is levied a tax on the gross receipts or gross proceeds derived from the sale of food and food ingredients at the rate of one and three-eighths percent (1.375%), to be distributed as follows:~~

~~(A) — Seventy-six and six-tenths percent (76.6%) of the~~

~~taxes, interest, penalties, and costs received by the secretary under this subdivision (c)(1) shall be deposited as general revenues;~~

~~(B) Eight and five tenths percent (8.5%) of the taxes, interest, penalties, and costs received by the secretary under this subdivision (c)(1) shall be deposited into the Property Tax Relief Trust Fund; and~~

~~(C) Fourteen and nine tenths percent (14.9%) of the taxes, interest, penalties, and costs received by the secretary under this subdivision (c)(1) shall be deposited into the Educational Adequacy Fund.~~

~~(2) The gross receipts or gross proceeds taxes levied under subdivision (c)(1) of this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.~~

~~(d) The gross receipts or gross proceeds derived from the sale of food and food ingredients shall continue to be subject to the:~~

~~(1) Excise tax levied under Arkansas Constitution, Amendment 75, § 2; and~~

~~(2) All municipal and county gross receipts taxes.~~

~~(e) The Department of Finance and Administration shall promulgate rules to implement the provisions of this section.~~

SECTION 8. Arkansas Code § 26-52-323 is amended to read as follows:  
26-52-323. Application of tax to candy and soft drinks.

The Secretary of the Department of Finance and Administration shall either:

(1)(A) Publish a list of the Universal Product Codes for items that meet the definition of:

(i) A candy under § 26-52-103 or § 26-53-102; or

(ii) A soft drink under § 26-52-103 or § 26-53-102.

(B) The list published by the secretary under subdivision (1)(A) of this section shall provide guidance to retailers, sellers, and vendors regarding which items are defined as a candy or a soft drink but not defined as food and food ingredients under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(C) The list published by the secretary under subdivision (1)(A) of this section is exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; or

(2) Not subject a retailer, seller, or vendor to the penalties under § 26-18-201, § 26-18-202, § 26-18-208, § 26-18-209, § 26-52-512, or § 26-53-125 if the retailer, seller, or vendor:

(A) ~~Collects and remits~~ Does not collect or remit tax payments to the Department of Finance and Administration on the gross receipts and gross proceeds derived from the sale of items that meet the definition of:

(i) A candy under § 26-52-103 or § 26-53-102 ~~at the taxable rate for food and food ingredients under § 26-52-317 or § 26-53-145;~~ or

(ii) A soft drink under § 26-52-103 or § 26-53-102 ~~at the taxable rate for food and food ingredients under § 26-52-317 or § 26-53-145;~~ and

(B) Demonstrates a good faith effort to collect and remit tax payments to the department on the gross receipts and gross proceeds derived from the sale of items that meet the definition of:

(i) A candy under § 26-52-103 or § 26-53-102 at the taxable rate under § 26-52-301, § 26-52-302, § 26-53-106, or § 26-53-107; or

(ii) A soft drink under § 26-52-103 or § 26-53-102 at the taxable rate under § 26-52-301, § 26-52-302, § 26-53-106, or § 26-53-107.

SECTION 9. Arkansas Code Title 26, Chapter 52, Subchapter 4, is amended to add an additional section to read as follows:

26-52-455. Food and food ingredients.

(a) As used in this section:

(1) "Food" and "food ingredients" mean the same as defined in § 26-52-103 except that "food" and "food ingredients" do not include prepared food; and

(2) "Prepared food" means the same as defined in § 26-52-103 except that "prepared food" does not include:

(A) Food that is only cut, repackaged, or pasteurized by the seller; or

(B) Eggs, fish, meat, and poultry, and foods containing

these raw animal foods requiring cooking by the consumer to prevent food-borne illnesses as recommended by the United States Food and Drug Administration in its 2005 Food Code, § 3-401.11, as it existed on January 1, 2007.

(b) The gross receipts or gross proceeds derived from the sale of food and food ingredients are exempt from the gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

SECTION 10. Arkansas Code § 26-53-106(a), concerning the imposition and rate of the compensating use tax, is amended to read as follows:

(a) There is levied and there shall be collected from every person in this state a tax or excise for the privilege of storing, using, distributing, or consuming within this state tangible personal property, specified digital products, a digital code, or a taxable service purchased for storage, use, distribution, or consumption in this state at the rate of three percent (3%) of the sales price of the tangible personal property, specified digital products, digital code, or taxable service ~~except for food and food ingredients that are taxed under § 26-53-145 and~~ except for used motor vehicles, trailers, and semitrailers that are taxed under § 26-53-150.

SECTION 11. Arkansas Code § 26-53-107 is amended to read as follows:  
26-53-107. Additional taxes levied.

(a)(1) In addition to the excise tax levied upon the privilege of storing, using, distributing, or consuming tangible personal property, specified digital products, a digital code, and taxable services within this state by this subchapter, there is levied an excise tax of one percent (1%) upon all tangible personal property, specified digital products, digital codes, and taxable services subject to the tax levied in this subchapter ~~except for food and food ingredients that are taxed under § 26-53-145 and~~ except for used motor vehicles, trailers, and semitrailers that are taxed under § 26-53-150.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of state compensating taxes.

(b)(1) In addition to the excise tax levied upon the privilege of

storing, using, distributing, or consuming tangible personal property, specified digital products, a digital code, and taxable services within the state by this subchapter, there is levied an excise tax of one-half of one percent (0.5%) upon all tangible personal property, specified digital products, digital codes, and taxable services subject to the tax levied in this subchapter ~~except for food and food ingredients that are taxed under § 26-53-145~~ and except for used motor vehicles, trailers, and semitrailers that are taxed under § 26-53-150.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of Arkansas compensating taxes.

(c)(1) There is levied an additional excise tax of one-half of one percent (0.5%) upon all tangible personal property, specified digital products, digital codes, and taxable services subject to the tax levied by this subchapter ~~except for food and food ingredients that are taxed under § 26-53-145~~ and except for used motor vehicles, trailers, and semitrailers that are taxed under § 26-53-150.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this subchapter for the collection, reporting, and payment of Arkansas compensating taxes.

(d)(1) There is levied an additional excise tax of seven-eighths of one percent (0.875%) upon all tangible personal property, specified digital products, digital codes, and taxable services subject to the tax levied by this subchapter ~~except for food and food ingredients that are taxed under § 26-53-145~~ and except for used motor vehicles, trailers, and semitrailers that are taxed under § 26-53-150.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this subchapter for the collection, reporting, and payment of Arkansas compensating taxes.

SECTION 12. Arkansas Code § 26-53-145 is repealed.

~~26-53-145. Food and food ingredients.~~

~~(a)(1) The Secretary 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 secretary 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 secretary 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;~~  
and

~~(v) 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), the secretary 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) 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 secretary shall conclude that the conditions in this subdivision (a)(2) have not been met.~~

~~(3) When the secretary 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 secretary.~~

~~(b) As used in this section:~~

~~(1) "Food" and "food ingredients" mean the same as defined in § 26-53-102 except that "food" and "food ingredients" do not include prepared food; and~~

~~(2) "Prepared food" means the same as defined in § 26-53-102 except that "prepared food" does not include:~~

~~(A) Food that is only cut, repackaged, or pasteurized by the seller; or~~

~~(B) Eggs, fish, meat, and poultry, and foods containing these raw animal foods requiring cooking by the consumer to prevent food-borne illnesses as recommended by the United States Food and Drug Administration in its 2005 Food Code, § 3-401.11, as it existed on January 1, 2007.~~

~~(c)(1) Beginning July 1, 2011, in lieu of the compensating use taxes levied on food and food ingredients under §§ 26-53-106 and 26-53-107, there is levied a tax on the privilege of storing, using, distributing, or consuming food and food ingredients at the rate of one and three eighths percent (1.375%) to be distributed as follows:~~

~~(A) Seventy six and six tenths percent (76.6%) of the taxes, interest, penalties, and costs received by the secretary under this subdivision (c)(1) shall be deposited as general revenues;~~

~~(B) Eight and five tenths percent (8.5%) of the taxes, interest, penalties, and costs received by the secretary under this~~

~~subdivision (c)(1) shall be deposited into the Property Tax Relief Trust Fund; and~~

~~(C) Fourteen and nine tenths percent (14.9%) of the taxes, interest, penalties, and costs received by the secretary under this subdivision (c)(1) shall be deposited into the Educational Adequacy Fund.~~

~~(2) The use tax levied under subdivision (c)(1) of this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas compensating use taxes.~~

~~(d) The following shall continue to apply to the sales price of food and food ingredients:~~

~~(1) The compensating use tax levied under Arkansas Constitution, Amendment 75, § 2; and~~

~~(2) All municipal and county use taxes.~~

~~(e) The Department of Finance and Administration shall promulgate rules to implement the provisions of this section.~~

SECTION 13. EFFECTIVE DATE. Sections 1-12 of this act are effective on the first day of the calendar quarter following the effective date of this act.