

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

SENATE BILL 394

By: Senator J. Boyd
By: Representative L. Johnson

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING SALES AND USE TAX ON MOTORBOATS; TO AMEND THE LAW CONCERNING THE COLLECTION OF SALES AND USE TAX ON MOTORBOATS; TO SUBJECT CERTAIN USED MOTORBOATS TO A SPECIAL RATE OF TAX; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE COLLECTION OF SALES AND USE TAX ON MOTORBOATS; AND TO SUBJECT CERTAIN USED MOTORBOATS TO A SPECIAL RATE OF TAX.

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

SECTION 1. Arkansas Code § 26-52-324 is amended to read as follows:

26-52-324. Special tax rate for certain used motor vehicles, motorboats, trailers, and semitrailers.

(a) In lieu of the gross receipts or gross proceeds taxes levied under §§ 26-52-301 and 26-52-302, there is levied an excise tax on the gross receipts or gross proceeds derived from the sale of a used motor vehicle, motorboat, trailer, or semitrailer that has a sales price of at least four thousand dollars (\$4,000) but less than ten thousand dollars (\$10,000) at the rate of two and eight hundred seventy-five thousandths percent (2.875%).

(b) The tax levied in this section shall be in addition to:

(1) Any gross receipts or gross proceeds tax levied in the Arkansas Constitution;



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(2) Any gross receipts or gross proceeds tax levied by a municipality or county; and

(3) Any additional gross receipts or gross proceeds tax levied in an Arkansas city and resulting from an election within that city conducted in accordance with §§ 26-52-601 – 26-52-606.

(c) For the purpose of determining whether the tax levied by this section applies to the sale of a used motor vehicle, motorboat, trailer, or semitrailer, the sales price for the used motor vehicle, motorboat, trailer, or semitrailer shall not be reduced by:

(1) The value of a motor vehicle, motorboat, trailer or semitrailer traded in as part payment on the purchase price of the newly acquired motor vehicle, trailer, or semitrailer; or

(2) The amount received by the purchaser for the sale of another motor vehicle, motorboat, trailer, or semitrailer.

(d) The revenues generated by the tax levied under this section shall be distributed as follows:

(1) Seventy-six and six-tenths percent (76.6%) of the taxes, interest, penalties, and costs received by the Secretary of the Department of Finance and Administration under this section shall be deposited as general revenues;

(2) Eight and five-tenths percent (8.5%) of the taxes, interest, penalties, and costs received by the secretary under this section shall be deposited into the Property Tax Relief Trust Fund; and

(3) Fourteen and nine-tenths percent (14.9%) of the taxes, interest, penalties, and costs received by the secretary under this section shall be deposited into the Educational Adequacy Fund.

(e) The excise tax levied under this section shall be collected and paid in the same manner and at the same time as is prescribed in § 26-52-510 for the collection and payment of gross receipts taxes on motor vehicles, motorboats, trailers, and semitrailers.

(f) As used in this section, "motorboat" means the same as defined in § 27-101-103.

SECTION 2. Arkansas Code Title 26, Chapter 52, Subchapter 5, is amended to add an additional section to read as follows:

26-52-524. Direct payment of tax by consumer-user – New and used

motorboats – Definition.

(a) As used in this section, "motorboat" means the same as defined in § 27-101-103.

(b)(1) On or before the time for applying for a certificate of number as prescribed by § 27-101-304, a consumer shall pay to the Secretary of the Department of Finance and Administration the tax levied by this chapter and all other gross receipts taxes levied by the state with respect to the sale of a new or used motorboat required to be numbered in this state, instead of the taxes being collected by the dealer or seller.

(2) The secretary shall require the payment of the taxes at the time of registration before issuing a certificate of number for the new or used motorboat.

(3)(A) The taxes apply regardless of whether the motorboat is sold by a motorboat dealer or an individual, corporation, or partnership not licensed as a motorboat dealer.

(B) The exemption in § 26-52-401(17) for isolated sales does not apply to the sale of a motorboat.

(4) If the consumer fails to pay the taxes when due:

(A) There is assessed a penalty equal to ten percent (10%) of the amount of taxes due; and

(B) The consumer shall pay to the secretary the penalty under subdivision (b)(4)(A) of this section and the taxes due before the secretary issues a certificate of number for the motorboat.

(c)(1)(A) Except as provided in this section, when a used motorboat is taken in trade as a credit or part payment on the sale of a new or used motorboat, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used motorboat sold and the credit for the used motorboat taken in trade.

(B)(i)(a) If the total consideration for the sale of the new or used motorboat is less than four thousand dollars (\$4,000), no tax is due.

(b) If the total consideration for the sale of a new motorboat is four thousand dollars (\$4,000) or more, the full gross receipts tax rate levied under this chapter shall be levied and collected.

(ii) If the total consideration for the sale of a

used motorboat is at least four thousand dollars (\$4,000) but less than ten thousand dollars (\$10,000), the gross receipts tax due shall be determined under § 26-52-324.

(iii) If the total consideration for the sale of a used motorboat is ten thousand dollars (\$10,000) or more:

(a) The exemption under subdivision

(c)(1)(B)(i)(a) of this section does not apply;

(b) The special tax rate provided in § 26-52-324 does not apply; and

(c) The full gross receipts tax rate levied under this chapter shall be levied and collected.

(C)(i) When a used motorboat is sold by a consumer, rather than traded-in as a credit or part payment on the sale of a new or used motorboat, and the consumer subsequently purchases a new or used motorboat of greater value within sixty (60) days of the sale, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used motorboat purchased subsequently and the amount received from the sale of the used motorboat sold in lieu of a trade-in.

(ii)(a) Upon applying for a certificate of number for the new or used motorboat, a consumer claiming the deduction provided by subdivision (c)(1)(C)(i) of this section shall provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the motorboat.

(b) A copy of the bill of sale shall be deposited with the revenue office at the time of applying for a certificate of number for the new or used motorboat.

(c) The deduction provided by this section shall not be allowed unless the taxpayer claiming the deduction provides a copy of a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the motorboat.

(iii) If the taxpayer claiming the deduction provided in this section fails to provide a bill of sale signed by all parties to the transaction that reflects the total consideration paid to the seller for the motorboat, tax shall be due on the total consideration paid for the new or motorboat without any deduction for the value of the item sold.

(2)(A)(i) When a motorboat dealer removes a motorboat from its inventory and the motorboat is used by the dealership as a service motorboat, the dealer shall obtain a certificate of number, register and obtain a certificate of title, and pay sales tax on the listed retail price of the new motorboat.

(ii)(a) When the motorboat dealer returns the service motorboat to inventory as a used motorboat and replaces it with a new motorboat for dealership use as a service motorboat, the dealer shall pay sales tax on the difference between the listed retail price of the new service motorboat to be used by the dealership and the value of the used service motorboat being returned to inventory.

(b) The value of the used service motorboat shall be the highest listed wholesale price reflected in the most current edition of a publication that is generally accepted by the industry as providing an accurate valuation of used motorboats.

(B)(i) As used in this subsection, "service motorboat" means a motorboat driven exclusively by an employee of the dealership and used either to transport dealership customers or dealership parts and equipment.

(ii) "Service motorboat" does not include motorboats that are rented by the dealership, used as demonstration motorboats, or used by dealership employees for personal use.

(d) All parts and accessories purchased by motorboat sellers for resale or used by them for the reconditioning or rebuilding of used motorboats intended for resale are exempt from gross receipts tax, provided that the motorboat seller meets the requirements of § 26-52-401(12)(A) and applicable rules promulgated by the secretary.

(e) This section does not repeal any exemption from this chapter.

(f) A credit is not allowed for sales or use taxes paid to another state with respect to the purchase of a motorboat that first obtained a certificate of number or title by the purchaser in Arkansas.

(g)(1)(A) A motorboat dealer with a permit under § 27-101-302(5) who has purchased a used motorboat upon payment of all applicable fees may apply for a certificate of number for the motorboat for the sole purpose of obtaining a certificate of title to the motorboat without payment of gross receipts tax, except as provided in subdivision (g)(1)(B) of this section.

(B)(i) The sale of a motorboat from the original franchise dealer to any other dealer, person, corporation, or other entity other than a franchise dealer of the same make of motorboat and which sale is reflected on the statement of origin shall be subject to gross receipts tax.

(ii) The motorboat shall be considered a used motorboat that shall have a registered certificate of number and be titled, and tax shall be paid at the time of application for a certificate of number.

(iii) Subdivision (g)(1)(A) of this section does not apply in those instances.

(2) If a certificate of number is issued for a motorboat under § 27-101-302(5)(C), the used motorboat titled by a dealer under this subsection shall not be operated on the waters of this state unless there is displayed on the used motorboat the identifying certificate of number issued under § 27-101-302(5)(C).

(h)(1) For purposes of this section, the total consideration for a used motorboat shall be presumed to be the greater of the actual sales price as provided on the bill of sale, invoice or financing agreement, or the average loan value price of the motorboat as listed in the most current edition of a publication that is generally accepted by the industry as providing an accurate valuation of used motorboats.

(2) If the published loan value exceeds the invoiced price, then the taxpayer shall establish to the secretary's satisfaction that the price reflected on the invoice or other document is true and correct.

(3) If the secretary determines that the invoiced price is not the actual selling price of the motorboat, then the total consideration will be deemed to be the published loan value.

SECTION 3. Arkansas Code § 26-53-150 is amended to read as follows:

26-53-150. Special tax rate for certain used motor vehicles, motorboats, trailers, and semitrailers.

(a)(1) In lieu of the compensating use taxes levied under §§ 26-53-106 and 26-53-107, there is levied an excise tax for the privilege of storing, using, distributing, or consuming a used motor vehicle, motorboat, trailer, or semitrailer within this state if the sales price of the used motor vehicle, motorboat, trailer, or semitrailer is at least four thousand dollars (\$4,000) but less than ten thousand dollars (\$10,000).

(2) The excise tax levied under subdivision (a)(1) of this section is levied at the rate of two and eight hundred seventy-five thousandths percent (2.875%) of the sales price of the used motor vehicle, motorboat, trailer, or semitrailer.

(b) The tax levied in this section shall be in addition to:

(1) Any compensating use tax levied in the Arkansas Constitution;

(2) Any compensating use tax levied by a municipality or county; and

(3) Any additional compensating use tax levied in an Arkansas city under § 26-52-607.

(c) For the purpose of determining whether the tax levied by this section applies to the sale of a used motor vehicle, motorboat, trailer, or semitrailer, the sales price for the used motor vehicle, motorboat, trailer, or semitrailer shall not be reduced by:

(1) The value of a motor vehicle, motorboat, trailer, or semitrailer traded in as part payment on the purchase price of the newly acquired motor vehicle, motorboat, trailer, or semitrailer; or

(2) The amount received by the purchaser for the sale of another motor vehicle, motorboat, trailer, or semitrailer.

(d) The revenues generated by the tax levied under this section shall be distributed as follows:

(1) Seventy-six and six-tenths percent (76.6%) of the taxes, interest, penalties, and costs received by the Secretary of the Department of Finance and Administration under this section shall be deposited as general revenues;

(2) Eight and five-tenths percent (8.5%) of the taxes, interest, penalties, and costs received by the secretary under this section shall be deposited into the Property Tax Relief Trust Fund; and

(3) Fourteen and nine-tenths percent (14.9%) of the taxes, interest, penalties, and costs received by the secretary under this section shall be deposited into the Educational Adequacy Fund.

(e) The excise tax levied under this section shall be collected and paid in the same manner and at the same time as is prescribed in § 26-53-126 for the collection and payment of compensating use taxes on motor vehicles, motorboats, trailers, and semitrailers.

(f) As used in this section, "motorboat" means the same as defined in § 27-101-103.

SECTION 4. Arkansas Code Title 26, Chapter 53, Subchapter 1, is amended to add an additional section to read as follows:

26-53-151. Tax on new and used motorboats – Payment and collection – Definition.

(a) As used in this section, "motorboat" means the same as defined in § 27-101-103.

(b)(1) Upon applying for a certificate of number in this state, a new or used motorboat required to be registered with a certificate of number in this state is subject to the tax levied in this subchapter and all other use taxes levied by the state regardless of whether the motorboat was purchased from a dealer or an individual.

(2)(A) On or before the time for applying for a certificate of number as prescribed by § 27-101-304, the person making application for a certificate of number for the motorboat shall pay the taxes to the Secretary of the Department of Finance and Administration instead of the taxes being collected by the dealer or individual seller.

(B) The secretary shall collect the taxes before issuing a certificate of number for the motorboat.

(3) The exemption in § 26-52-401(17) for isolated sales does not apply to the sale of a motorboat.

(4) If the person making application for a certificate of number for a motorboat fails to pay the taxes when due:

(A) There is assessed a penalty equal to ten percent (10%) of the amount of taxes due; and

(B) The person making application for a certificate of number for a motorboat shall pay to the secretary the penalty under subdivision (a)(4)(A) of this section and the taxes due before the secretary issues a certificate of number for the motorboat.

(c)(1) When a used motorboat is taken in trade as a credit or part payment on the sale of a new or used motorboat, the tax levied in this subchapter and all other use taxes levied by the state shall be paid on the net difference between the total consideration for the new or used motorboat sold and the credit for the used motorboat taken in trade.

(2)(A)(i) If the total consideration for the sale of the new or used motorboat is less than four thousand dollars (\$4,000), no tax is due.

(ii) If the total consideration for the sale of a new motorboat is four thousand dollars (\$4,000) or more, the full compensating use tax rate levied under this chapter shall be levied and collected.

(B) If the total consideration for the sale of a used motorboat is at least four thousand dollars (\$4,000) but less than ten thousand dollars (\$10,000), the compensating use tax due shall be determined under § 26-53-150.

(C) If the total consideration for the sale of a used motorboat is ten thousand dollars (\$10,000) or more:

(i) The exemption under subdivision (c)(2)(A)(i) of this section does not apply;

(ii) The special tax rate provided in § 26-53-150 does not apply; and

(iii) The full compensating use tax rate levied under this chapter shall be levied and collected.

(3)(A) When a used motorboat is sold by a consumer, rather than traded in as a credit or part payment on the sale of a new or used motorboat, and the consumer subsequently purchases a new or used motorboat of greater value within sixty (60) days of the sale, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used motorboat purchased subsequently and the amount received from the sale of the used motorboat sold in lieu of a trade-in.

(B)(i) Upon applying for a certificate of number for the new or used motorboat, a consumer claiming the deduction provided by subdivision (c)(3)(A) of this section shall provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the motorboat.

(ii) A copy of the bill of sale shall be deposited with the revenue office at the time of registration of the new or used motorboat.

(iii) The deduction provided by this subdivision (c)(3) shall not be allowed unless the taxpayer claiming the deduction provides a copy of a bill of sale signed by all parties to the transaction

that reflects the total consideration paid to the seller for the motorboat.

(C) If the taxpayer claiming the deduction provided in this subdivision (c)(3) fails to provide a bill of sale signed by all parties to the transaction that reflects the total consideration paid to the seller for the motorboat, tax shall be due on the total consideration paid for the new or used motorboat without any deduction for the value of the item sold.

(d) The tax imposed by this subchapter does not apply to a motorboat to be registered by a bona fide nonresident of this state.

(e) This section does not repeal any exemption from this subchapter.

(f)(1) Upon payment of all applicable fees, a motorboat dealer with a permit under § 27-101-302(5) who has purchased a used motorboat may apply for a certificate of number for the motorboat for the sole purpose of obtaining a certificate of title to the vehicle without payment of use tax.

(2) If a certificate of number is issued for a motorboat under § 27-101-302(5)(C), and the used motorboat titled by a dealer under this subsection may not be operated on the waters of this state unless there is displayed on the used motorboat the identifying certificate of number issued under § 27-101-302(5)(C).

(g)(1) For purposes of this section, the total consideration for a used motorboat shall be presumed to be the greater of the actual sales price as provided on a bill of sale, invoice or financing agreement, or the average loan value of the motorboat as listed in the most current edition of a publication which is generally accepted by the industry as providing an accurate valuation of used motorboats.

(2) If the published loan value exceeds the invoiced price, then the taxpayer shall establish to the secretary's satisfaction that the price reflected on the invoice or other document is true and correct.

(3) If the secretary determines that the invoiced price is not the actual selling price of the motorboat, then the total consideration shall be deemed to be the published loan value.

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.