

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4
5 By: Representative Jett
6

A Bill

HOUSE BILL 1965

For An Act To Be Entitled

8 AN ACT TO AMEND THE PROVISIONS OF LAW PROVIDING FOR
9 THE DISTRIBUTION AND USE OF CERTAIN SALES AND USE TAX
10 REVENUES; TO REPEAL PROVISIONS OF LAW DIRECTING HOW
11 SALES AND USE TAX REVENUES FROM REMOTE SELLERS ARE TO
12 BE USED; TO DEPOSIT SALES AND USE TAX REVENUES
13 RECEIVED FROM REMOTE SELLERS INTO A FUND TO BE USED
14 BY THE GENERAL ASSEMBLY; TO DECLARE AN EMERGENCY; AND
15 FOR OTHER PURPOSES.

Subtitle

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19 TO REPEAL PROVISIONS REGARDING THE USE OF
20 SALES AND USE TAX REVENUES FROM REMOTE
21 SELLERS; TO DEPOSIT SALES AND USE TAX
22 REVENUES FROM REMOTE SELLERS INTO A FUND
23 TO BE USED BY THE GENERAL ASSEMBLY; AND
24 TO DECLARE AN EMERGENCY.
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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29 SECTION 1. Arkansas Code Title 19, Chapter 5, Subchapter 12, is
30 amended to add an additional section to read as follows:

31 19-5-1258. Arkansas 21st Century Fund.

32 (a) There is created on the books of the Treasurer of State, the
33 Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous
34 fund to be known as the "Arkansas 21st Century Fund".

35 (b) The fund shall consist of:

36 (1) Any funds authorized or provided by law; and



1 (2) Any remaining fund balance carried forward from year to
 2 year.

3 (c) The fund shall be used by the General Assembly for any purposes
 4 determined appropriate by the General Assembly.

5 (d) Moneys remaining in the fund at the end of each fiscal year shall
 6 carry forward and be made available for the purposes stated in this section
 7 in the next fiscal year.

8
 9 SECTION 2. Arkansas Code § 26-51-201(e), concerning the income tax
 10 levied on individuals, trusts, and estates, is repealed.

11 ~~(e) If the director determines that federal law authorizes the state~~
 12 ~~to collect sales and use tax from sellers that do not have a physical~~
 13 ~~presence in the state, then after the first twelve (12) months of collecting~~
 14 ~~sales and use tax from sellers that do not have a physical presence in the~~
 15 ~~state, the director shall:~~

16 ~~(1) After making the deductions required under § 19-5-~~
 17 ~~202(b)(2)(B)(i), certify to the Governor and the Office of Economic and Tax~~
 18 ~~Policy the amount of available net general revenues attributable to the~~
 19 ~~collection of sales and use tax from sellers that do not have a physical~~
 20 ~~presence in the state during the first twelve (12) months of collections;~~

21 ~~(2) Use any amount under subdivision (e)(1) of this section that~~
 22 ~~exceeds seventy million dollars (\$70,000,000) to reduce the rate of four and~~
 23 ~~five tenths percent (4.5%) in the table contained in subdivision (a)(7) of~~
 24 ~~this section equally for all taxpayers subject to the rate of four and five-~~
 25 ~~tenths percent (4.5%);~~

26 ~~(3) Certify the amount of the reduction of the income tax rate~~
 27 ~~under this subsection to the Governor and the Office of Economic and Tax~~
 28 ~~Policy; and~~

29 ~~(4) Incorporate the reduced income tax rate into the table~~
 30 ~~prescribed under subsection (d) of this section, which shall be applicable~~
 31 ~~for each tax year thereafter.~~

32
 33 SECTION 3. Arkansas Code § 26-52-317(a), concerning the sales tax
 34 levied on food and food ingredients, is amended to read as follows:

35 (a)(1)(A) The Director of the Department of Finance and Administration
 36 shall ~~determine the following conditions:~~

1 ~~(A) That federal law authorizes the state to collect sales~~
 2 ~~and use tax from some or all of the sellers that have no physical presence in~~
 3 ~~the State of Arkansas and that make sales of taxable goods and services to~~
 4 ~~Arkansas purchasers;~~

5 ~~(B) That initiating the collection of sales and use tax~~
 6 ~~from these sellers would increase the net available general revenues needed~~
 7 ~~to fund state agencies, services, and programs; and~~

8 ~~(C)(i) That during a six month consecutive period, the~~
 9 ~~amount of net available general revenues attributable to the collection of~~
 10 ~~sales and use tax from sellers that have no physical presence in the State of~~
 11 ~~Arkansas is equal to or greater than one hundred fifty percent (150%) of~~
 12 ~~sales and use tax collected under subsection (c) of this section and § 26-53-~~
 13 ~~145 on food and food ingredients.~~

14 ~~(ii) The director shall make the determination under~~
 15 ~~subdivision (a)(1)(C)(i) of this section on a monthly basis following the~~
 16 ~~determination that the conditions under subdivision (a)(1)(A) of this section~~
 17 ~~have been met.~~

18 ~~(2)(A) Beginning July 1, 2013, the director shall make a monthly~~
 19 ~~determination as to whether the aggregate amount of deductions from net~~
 20 ~~general revenues attributable to the following during the most recently ended~~
 21 ~~six-month consecutive period, as compared with the same six-month period in~~
 22 ~~the prior year, has declined by thirty-five million dollars (\$35,000,000) or~~
 23 ~~more:~~

24 (i) The Educational Adequacy Fund;

25 (ii) Bonds issued under the Arkansas College Savings
 26 Bond Act of 1989, § 6-62-701 et seq.;

27 (iii) Bonds issued under the Arkansas Higher
 28 Education Technology and Facility Improvement Act of 2005, § 6-62-1101 et
 29 seq.;

30 (iv) The City-County Tourist Facilities Aid Fund;

31 (v) Amounts disbursed or approved to be disbursed by
 32 the Department of Education for desegregation expenses under any
 33 desegregation settlement agreement, as certified by the Treasurer of State
 34 and the Chief Fiscal Officer of the State under § 6-20-212; and

35 (vi) Bonds issued under the Arkansas Water, Waste
 36 Disposal and Pollution Abatement Facilities Financing Act of 1997 and the

1 Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing
 2 Act of 2007, § 15-20-1301 et seq.

3 (B)(i) In making the determination in this subdivision
 4 ~~(a)(2)~~ (a)(1), the director shall consider all economic factors existing at
 5 the time of the determination that could potentially affect the decline in
 6 the aggregate amount of deductions, including without limitation pending
 7 litigation.

8 (ii) If the consideration of additional economic
 9 factors under subdivision ~~(a)(2)(B)(i)~~ (a)(1)(B)(i) of this section results
 10 in a determination that the decline in the aggregate amount of deductions is
 11 not likely to remain at that reduced level, the director shall conclude that
 12 the conditions in this subdivision ~~(a)(2)~~ (a)(1) have not been met.

13 ~~(3)~~ (2) When the director finds that ~~all of~~ the conditions in
 14 ~~either~~ subdivision (a)(1) of this section ~~or subdivision (a)(2) of this~~
 15 ~~section~~ have been met, then the gross receipts or gross proceeds taxes levied
 16 under subsection (c) of this section shall be levied at the rate of zero
 17 percent (0%) on the sale of food and food ingredients beginning on the first
 18 day of the calendar quarter that is at least thirty (30) days following the
 19 determination of the director.

20
 21 SECTION 4. Arkansas Code § 26-53-145(a), concerning the compensating
 22 use tax levied on food and food ingredients, is amended to read as follows:

23 (a)(1)(A) The Director of the Department of Finance and Administration
 24 shall ~~determine the following conditions:~~

25 ~~(A) That federal law authorizes the state to collect sales~~
 26 ~~and use tax from some or all of the sellers that have no physical presence in~~
 27 ~~the State of Arkansas and that make sales of taxable goods and services to~~
 28 ~~Arkansas purchasers;~~

29 ~~(B) That initiating the collection of sales and use tax~~
 30 ~~from these sellers would increase the net available general revenues needed~~
 31 ~~to fund state agencies, services, and programs; and~~

32 ~~(C)(i) That during a six month consecutive period, the~~
 33 ~~amount of net available general revenues attributable to the collection of~~
 34 ~~sales and use tax from sellers that have no physical presence in the State of~~
 35 ~~Arkansas is equal to or greater than one hundred fifty percent (150%) of~~
 36 ~~sales and use tax collected under subsection (c) of this section and § 26-52-~~

1 ~~317 on food and food ingredients.~~

2 ~~(ii) The director shall make the determination under~~
 3 ~~subdivision (a)(1)(C)(i) of this section on a monthly basis following the~~
 4 ~~determination that the conditions under subdivision (a)(1)(A) of this section~~
 5 ~~have been met.~~

6 ~~(2)(A) Beginning July 1, 2013, the director shall~~ make a monthly
 7 determination as to whether the aggregate amount of deductions from net
 8 general revenues attributable to the following during the most recently ended
 9 six-month consecutive period, as compared with the same six-month period in
 10 the prior year, has declined by thirty-five million dollars (\$35,000,000) or
 11 more:

12 (i) The Educational Adequacy Fund;

13 (ii) Bonds issued under the Arkansas College Savings
 14 Bond Act of 1989, § 6-62-701 et seq.;

15 (iii) Bonds issued under the Arkansas Higher
 16 Education Technology and Facility Improvement Act of 2005, § 6-62-1101 et
 17 seq.;

18 (iv) The City-County Tourist Facilities Aid Fund;

19 (v) Amounts disbursed or approved to be disbursed by
 20 the Department of Education for desegregation expenses under any
 21 desegregation settlement agreement, as certified by the Treasurer of State
 22 and the Chief Fiscal Officer of the State under § 6-20-212; and

23 (vi) Bonds issued under the Arkansas Water, Waste
 24 Disposal and Pollution Abatement Facilities Financing Act of 1997 and the
 25 Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing
 26 Act of 2007, § 15-20-1301 et seq.

27 (B)(i) In making the determination in this subdivision
 28 ~~(a)(2)~~ (a)(1), the director shall consider all economic factors existing at
 29 the time of the determination that could potentially affect the decline in
 30 the aggregate amount of deductions, including without limitation pending
 31 litigation.

32 (ii) If the consideration of additional economic
 33 factors under subdivision ~~(a)(2)(B)(i)~~ (a)(1)(B)(i) of this section results
 34 in a determination that the decline in the aggregate amount of deductions is
 35 not likely to remain at that reduced level, the director shall conclude that
 36 the conditions in this subdivision ~~(a)(2)~~ (a)(1) have not been met.

1 ~~(3)~~ (2) When the director finds that ~~all of~~ the conditions in
2 ~~either~~ subdivision (a)(1) ~~or subdivision (a)(2)~~ of this section have been
3 met, then the compensating use taxes levied under subsection (c) of this
4 section shall be levied at the rate of zero percent (0%) on the sale of food
5 and food ingredients beginning on the first day of the calendar quarter that
6 is at least thirty (30) days following the determination of the director.

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8 SECTION 5. DO NOT CODIFY. Deposit of funds into the Arkansas 21st
9 Century Fund.

10 For the fiscal year beginning July 1, 2017, and ending June 30, 2018,
11 all revenues from the taxes levied in §§ 26-52-301, 26-52-302(a)(1), 26-52-
12 302(b)(1), 26-52-317(c)(1)(A), 26-53-106(a), 26-53-107(a)(1), 26-53-
13 107(b)(1), and 26-53-145(c)(1)(A) in excess of two billion four hundred
14 forty-one million one hundred thousand dollars (\$2,441,100,000) shall be
15 deposited into the Arkansas 21st Century Fund to be used for any purposes
16 determined appropriate by the General Assembly.

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18 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
19 General Assembly of the State of Arkansas that the state has many needs,
20 including without limitation the need to reduce taxes to make the state more
21 competitive with surrounding states and the need to invest in a variety of
22 programs for the wellbeing of the state's citizens; that as a result of
23 federal and state law changes, Arkansas may soon receive additional state
24 sales and use tax collections from sellers that do not have a physical
25 presence in this state; that the additional tax collections from sellers that
26 do not have a physical presence in this state are in addition to the tax
27 collections Arkansas might otherwise have anticipated receiving from ordinary
28 growth of the state's economy; that it is currently impossible to determine
29 the amount of additional tax collections the state might receive from sellers
30 that do not have a physical presence in this state; that state law currently
31 contains competing provisions regarding the use of the anticipated tax
32 collections from sellers that do not have a physical presence in this state;
33 that unless a clear method is established to set aside and use the additional
34 tax collections from sellers that do not have a physical presence in this
35 state, the citizens of this state will be adversely affected by the inability
36 to use these additional revenues in the best manner possible for the benefit

1 of our citizens; and that this act is immediately necessary to avoid any
 2 adverse effect on the citizens of Arkansas by providing an orderly method to
 3 identify the additional collections from sellers that do not have a physical
 4 presence in this state and provide for their use in a manner that provides
 5 the greatest benefit to the citizens of this state in the most efficient
 6 manner possible. Therefore, an emergency is declared to exist, and this act
 7 being immediately necessary for the preservation of the public peace, health,
 8 and safety shall become effective on:

9 (1) The date of its approval by the Governor;

10 (2) If the bill is neither approved nor vetoed by the Governor,
 11 the expiration of the period of time during which the Governor may veto the
 12 bill; or

13 (3) If the bill is vetoed by the Governor and the veto is
 14 overridden, the date the last house overrides the veto.

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