

Department of Finance and Administration

Legislative Impact Statement

Bill: SB916

Bill Subtitle: TO DEDICATE THE SALES AND USE TAX REVENUE GENERATED FROM SELLERS THAT DO NOT HAVE A PHYSICAL PRESENCE IN THE STATE TO THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT WHEN CERTAIN CONDITIONS ARE MET.

Basic Change : Sponsors: Senators B. Sample and K. Ingram

The proposal would amend current law regarding disposition of sales and use taxes to provide that when Federal law authorizes the state to collect sales and use tax from sellers that do not have a physical presence in the state, the taxes collected as the result of the federal authority would be distributed in a specified manner.

- (1) If food and food ingredients are taxed at a 0% state tax rate at the time that the federal authority becomes effective for Arkansas, the State Treasurer would deposit the General Revenue portion of the new revenues (the 4.5% portion of the 6.5% state sales tax) to the State Highway and Transportation Department Fund. The existing state sales taxes to property tax relief (.5% tax rate), education adequacy (.875% tax rate), conservation (.125% tax rate) and highways (.5% tax rate) would continue to be deposited in the existing manner.
- (2) If food and food ingredients are taxed at a rate higher than zero percent at the time that federal authority becomes effective for Arkansas, the State Treasurer would deposit the new revenues as follows:
 - The first seventy million dollars (\$70,000,000) as general revenues; and
 - Any remainder into the State Highway and Transportation Department Fund.

Each calendar month, the Chief Fiscal Officer of the State would certify to the State Treasurer the amount of revenues attributable to the collection of sales and use taxes from the remote sellers for the funds distribution as provided.

Revenue Impact :

The proposal could provide additional funding for state highways if certain conditions are met. Additional revenues for Highways would be dependent on (1) federal authority being granted to require remote seller collection of sales taxes; (2) if the state tax rate on food is equal to 0% or at a higher tax rate; and (3) the amount of any new revenues collected from the remote sellers.

Taxpayer Impact :

No Impact on sellers collecting sales and use taxes for Arkansas.

Resources Required :

None

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Providing tax collection information to the State Treasurer for proper distribution of revenues as provided in the legislation.

Other Comments :

As drafted, if the state sales tax rate on food is higher than 0% at the time of federal collection is

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effective in Arkansas, the first \$70,000,000 of new monies are to be deposited as state General Revenues. In accordance with Ark. Code Ann. § 26-52-317, the existing state sales tax on food may be removed if the new tax collections from the remote sellers equal or exceed 150% of the sales and use tax collected on food for a six-month consecutive period. This proposal does not change the existing provisions for removing the sales tax on food based on new remote seller tax collections.

As a member of the Streamlined Sales Tax Agreement, approximately 2,300 out-of-state sellers with no physical presence in Arkansas have voluntarily registered to collect Arkansas state and local sales taxes. The tax receipts from these sellers currently provide approximately \$10M annually in state sales and use tax revenue. The proposal does not clearly provide guidance as to including the existing revenue from these remote sellers when determining the \$70 million threshold or if these revenues are to be transferred to Highways if the food tax rate is 0% at the time of federal authorization. If they are to be redistributed to Highways, state general revenues, property tax relief, education adequacy, conservation, and highway sales taxes will reflect a loss.

The proposal would provide \$70 million to state general revenues from the new remote seller revenues. If the remote collection authority ultimately resulted in the sales tax on food to be removed, it is not clear if \$70 million would be sufficient revenues to offset the reduction caused by the 0% tax rate on food being implemented.

Legal Analysis :

Currently, Arkansas requires all sellers doing business in the state to collect and pay Arkansas sales and use taxes on behalf of Arkansas consumers. That reporting requirement is limited by the U.S. Constitution to only apply to sellers with physical presence within the state. The U.S. Supreme Court generally requires that a seller have actual physical presence within a state for that state to impose sales and use tax reporting requirements under the Commerce Clause of the US Constitution. *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). However, Congress is considering legislation that would allow states to collect sales and use taxes from remote sellers if certain conditions are met.

SB916 provides that the Chief Fiscal Officer will remit the following amounts of net general revenues derived from sales and use taxes collected from sellers that do not have a physical presence in the state to the State Highway and Transportation Department Fund:

- (1) If the statutory sales and use tax on food and food ingredient is reduced to 0%, the Treasurer will remit all proceeds after deducting for the Constitutional Officers Fund and the State Central Services Fund; or
- (2) If the statutory sales and use tax on food and food ingredient is higher than 0%, the Treasurer will remit all proceeds after deducting for the Constitutional Officers Fund and the State Central Services Fund and deposit \$70 million of the net general revenue collected from sellers that do not have a physical presence in the state as general revenues.

The amounts will start being deposited into the State Highway and Transportation Department Fund after the DFA Director determines that federal law authorizes the state to collect sales and use tax from sellers that do not have physical presence in the state and that some or all of the sellers that do not have physical presence in the state make sales of taxable goods and services to purchasers in the state. The bill is effective 90 days after final adjournment.