

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1743

Bill Subtitle: TO AMEND THE LAW CONCERNING THE ALLOCATION OF REVENUE WITHIN A COUNTY COMPOSED OF DUAL JUDICIAL DISTRICTS.

Basic Change :

Sponsor: Representative Capp

The bill amends laws concerning the allocation of local sales tax revenue in a county composed of dual judicial districts. In the case of *Mississippi County, Arkansas vs. City of Osceola, Arkansas*, 2017 Ark. 71 (March 2, 2017), the Arkansas Supreme Court in its decision of March 2, 2017 found that the provisions of Act 81 of 1901 would control the distribution of a proposed county-wide sales tax. Mississippi County is a County in Arkansas with dual judicial districts, *i.e.*, the Osceola District and the Chickasawba District, as created by Act 81 of 1901. Act 81 of 1901 provided that all revenue accruing to the county from the sale of forfeited state and county lands, liquor and ferry license, and from all other sources whatever, shall be used for the exclusive benefit of the district in which such revenue shall arise. The Court found that adoption of the county wide sales tax with proceeds to be used for bond payments related to the construction of property located in only one judicial district of the County would violate this provision of Act 81 of 1901 as residents from both judicial districts would be subject to the tax. Although Arkansas code provisions authorizing the levy of sales and use tax in Arkansas cities and counties were adopted subsequent to Act 81 of 1901, it was determined that Act 81 was controlling in the matter before the Court.

The bill amends the language in Act 81 of 1901 that provides for the Mississippi County tax distribution by judicial district that conflicts with Arkansas laws for city and county sales taxes. The bill also amends code provisions for the other Arkansas counties with dual judicial districts of: Clay County; Craighead County; Franklin County; Prairie County; Yell County; and Logan County. All of the referenced counties currently have county wide sales and use tax levies.

The bill also amends Ark Code. Ann. § 14-14-114 regarding allocation of county revenues to provide that revenues received by a county that contains within its boundary a circuit court composed of more than one (1) judicial district that was created by an uncodified act shall be allocated as determined by the quorum court and shall not be divided by the judicial district in which the revenues were collected.

Revenue Impact :

No impact of state revenues.

Taxpayer Impact :

None.

Resources Required :

None.

Time Required :

None.

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Procedural Changes :

The collections and deposit of county sales and use tax revenues are distributed in accordance with existing Arkansas Code provisions specifically providing for the tax distribution of city and county sales and use taxes.

Other Comments :

Arkansas is a "destination" sourcing state for purposes of collection of city and county sales taxes by retailers. The local sales taxes are collected for the city or county who levied the tax regardless of the location of the seller. At present, Arkansas has approximately 74,000 registered sales and use tax account holders including over 16,000 who are based out-of-state. All of these sellers collect local sales tax based on the city or county where the consumer takes receipt of the purchase. DFA provides look up tables based on the Arkansas address for the delivery of the purchase in order for the retailer to collect the proper local tax. No information is available for DFA to provide address information to sellers for use in counties having dual judicial districts. The provisions of the bill would allow DFA and the State Treasurer to continue existing procedures for county sales taxes as codified in Arkansas laws authorizing the tax levies.

Legal Analysis :

HB1743 repeals current state law requiring that revenues received from any source by a county having multiple judicial districts be used for the exclusive benefit of the judicial district in which the revenues arose. A recent Arkansas Supreme Court decision determined that a proposed county sales and use tax could not be presented for a vote by citizens of the county because the tax revenues to be raised in one judicial district within the county were to be dedicated in part to construction of court facilities in the other judicial district of the county. Consequently, the tax levy constituted an illegal exaction and could not be lawfully presented for consideration by the voters. HB1743 would reverse the results of that decision.

DFA is required by law to collect county sales and use taxes and remit those taxes to the State Treasurer for transmission to the appropriate county treasurer. DFA does not have the ability to identify county local sales tax collections to a judicial district within the county because businesses register based only on the county where they are located and not according to the judicial district within the county. Businesses that ship items to customers within a county are required to collect the local tax of the customer's location but would not know the judicial district of a customer's location. The recent Arkansas Supreme Court decision would require retailers to identify the county, city, and judicial district of each customer to whom items were shipped and then report the tax collections separately for each city, county and judicial district. HB1743 provides that these county sales and use tax revenues should instead be allocated as determined by the quorum court of the county.