

Department of Finance and Administration

Legislative Impact Statement

Bill: SB262

Bill Subtitle: TO FACILITATE AND ENCOURAGE CHARITABLE DONATIONS; AND TO EXEMPT FROM THE SALES AND USE TAX SELLERS' DONATIONS OF TANGIBLE PERSONAL PROPERTY TO CHARITABLE ORGANIZATIONS OR FOR CHARITABLE CAUSES.

Basic Change :

Senator A. Clark

Representative Lea

The proposal would allow a seller to withdraw tangible personal property, other than alcoholic beverages, from inventory and be exempt from state and local sales tax if the item is donated to a charitable organization or a charitable cause. Under current law, merchandise purchased by a retailer is purchased tax free and any subsequent withdrawals of merchandise from a retailer's inventory to give away are subject to state and local sales taxes at the time of withdrawal. The bill would allow the merchant to continue to purchase the items tax free and would provide a sales tax exemption for the withdrawals of those items from inventory for charitable organizations and causes.

For purposes of the exemption, charitable organizations include those created for philanthropic, educational, humanitarian, or religious pursuits. A "charitable cause" is defined to be a philanthropic purpose that benefits one or more private individuals who are not related to the seller or employed by the seller. The item donated must be used for recovering from a natural disaster or given to an individual who is indigent or has a disability. The proposal would be effective on the first day of the second calendar quarter following the effective date of the act.

Revenue Impact :

Total Impact to State Revenues - \$.733 million

(Estimated Effective Date 10/01/13 -- 8 months reduced tax collections)

- \$.494 million --- State General Revenue (4.5%)
- \$.096 million --- Educational Adequacy (.875% tax)
- \$.055 million --- Property Tax Relief Trust Fund (.5%)
- \$.032 million --- Conservation Tax (.125%)
- \$.032 million --- Highway Fund (.5%)
- \$ 0 --- Educational Excellence Trust Fund
- \$ 0 --- Educational Adequacy (GR transfer)
- \$.017 million --- State Central Services
- \$.007 million --- Constitutional Officers
- Total Impact to City and County Sales Tax -\$150,000

FY15 Tax Decrease

Total Impact to State Revenues - \$1.14 million

- \$.692 million --- State General Revenue (4.5%)
- \$.149 million --- Educational Adequacy (.875% tax)
- \$.085 million --- Property Tax Relief Trust Fund (.5%)
- \$.050 million --- Conservation Tax (.125%)
- \$.050 million --- Highway Fund (.5%)
- \$.070 million --- Educational Excellence Trust Fund
- \$.006 million --- Educational Adequacy (GR transfer)
- \$.026 million --- State Central Services
- \$.011 million --- Constitutional Officers
- Total Impact to City and County Sales Tax -\$225,000

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Taxpayer Impact :

Taxpayers must keep records of the items withdrawn from inventory for the eligible donations.

Resources Required :

None

Time Required :

Adequate time is allowed in the proposal.

Procedural Changes :

Education of staff and a revision of existing rules.

Other Comments :

None

Legal Analysis :

The bill has a specific definition of the term "charitable organization" that applies only to this exemption. The term is defined as an organization created for the purpose of philanthropic, educational, humanitarian, or religious pursuits rather than pecuniary pursuits; and that employs the organization's resources to philanthropic, educational, humanitarian, or religious pursuits. The term "charitable organization" under the bill includes without limitation a nonprofit corporation or association organized under the laws of Arkansas or qualified under 26 U.S.C. § 501(c)(3), as it existed on January 1, 2013. The bill's definition of "charitable organization" differs from the definition of the term promulgated by the Department of Finance and Administration (DFA) for purposes of the sales and use tax exemption for sales by charitable organizations in Gross Receipts Tax Rule GR-37(E)(6), as applied to Rule GR-39. The current Rule definition is as follows: "[c]haritable organization' means an organization whose purpose is benevolent, philanthropic, patriotic or eleemosynary and whose function if performed, and not performed by a private party, would have to be performed at public expense." While §501(c)(3) organizations do not automatically qualify as charitable organizations for purposes of the existing exemption, they will always qualify under the exemption in this bill.

The term "charitable cause" is defined by the bill as a philanthropic purpose that benefits one or more private individuals who are not related within one degree of consanguinity to the donor or the donor's employees. The recipients of the donation must either use the donated items in recovering from a natural disaster; or the recipients must be persons who are indigent or have a disability who use the items "for purposes that would otherwise be served by a charitable organization."

Several terms in the bill are undefined. The bill does not define the terms "indigent" or "disability." The term "for purposes that would otherwise be served by a charitable organization" is not defined in the bill. It will be necessary to define these terms by rule.