

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1772

Bill Subtitle: TO AMEND THE SALES TAX LAWS CONCERNING SPECIAL EVENTS; AND TO EXCLUDE CERTAIN SCHOOL FUNDRAISERS FROM THE SALES TAX LAWS REGULATING SPECIAL EVENTS.

Basic Change :

Sponsor: Rep. Lowery

HB1772 would amend existing Arkansas Law to exempt sales or services to a parent teacher organization, a parent teacher association, or similar organizations from sales and use taxes. A similar organization is the type described in 26 U.S.C. § 501(c)(3), as in effect on January 1, 2019, and is affiliated with a public school.

Arkansas Gross Receipts Rule GR-24 currently provides that these organizations, when conducting fundraising activities, must pay sales tax on their purchases of products that will be resold during the fundraiser but do not collect sales tax when selling the items. The bill would exempt all purchases by the organizations including the items purchased for a fundraiser to be resold.

HB1772 would also exempt a public-school fundraising event sponsored by a parent teacher organization, a parent teacher association, or a similar organization from the definition of "Special Event" for the purposes of collecting sales and use taxes on ticket sales. PTA's or PTO's hosting "special events" as defined in Arkansas sales tax code provisions where the organization rents booth spaces to retailers and the PTA or PTO acts as the promoter of the special event, are required to retrieve and send to DFA the sales taxes collected by the retailers selling at the event. The bill removes PTA's and PTO's from the special events language and retailers selling at the events held by the organizations would collect the sales taxes and remit them directly to DFA.

The effective date of this bill is on and after October 1st, 2019.

Revenue Impact :

-\$135,000 to \$350,000 Estimated Annual Loss to State Sales Tax --- Purchases by PTA's and PTO's
-\$95,000 to \$235,000 Annual General Revenue Loss

[Estimate based on 1,046 Arkansas school districts with an estimated equal number of PTA's and PTO's. Estimate assumes purchasing of taxable products averaging \$2,000 to \$5,000 per organization per year. Few PTA's or PTO's host special events as defined in Arkansas sales tax code provisions where the organization rents booth spaces to retailers and the PTA or PTO acts as the promoter of the event and is required to retrieve and send to DFA the sales tax collected by the retailers selling at the event. A PTA or PTO conducting a special event and collecting admission fees, would collect sales tax on the price of the admission tickets. DFA prior year total tax collections from PTA/PTO organizations on ticket sales for special events is less than \$500 per year.]

Taxpayer Impact :

A parent teacher organization, a parent teacher association, and similar organizations that are currently required to register fundraising events with the department as a "Special Event" and collect sales tax on ticket sales would no longer be required to collect and remit sales tax on those proceeds.

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Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Updates to the sales tax rules will need to be promulgated.

Other Comments :

None.

Legal Analysis :

HB1772 would amend § 26-52-401 to provide a tax exemption for sales of tangible personal property, specified digital products, a digital code, or services to a parent teacher organization. Under current law, there is no general exemption for sales made to a parent teacher organization. This bill would exempt sales to a parent teacher organization, parent teacher association, or similar organization that is a 501(c)(3) organization under the federal Income Tax Code and that is affiliated with a public school. The bill defines "public school" to mean a school operated by a public school district or an open-enrollment public charter school.

This bill also would amend § 26-52-518 to exclude from the definition of "special event" a public school fundraising event sponsored by a parent teacher organization. Under current law, a promoter or an organizer of a special event must register for sales tax collection with the DFA Director and must provide vendors with special event sales tax reporting forms and other information. This bill would exclude a school fundraising event sponsored by a parent teacher organization from these requirements if: (1) ticket sales to the fundraising event are sold by public school personnel, students, parents of students, and community volunteers and businesses; and (2) gross proceeds from the ticket sales are used to directly assist the public school in fulfilling its mission of educating children. It is unclear whether support of the organization itself would qualify as directly assisting a public school.

This bill creates a tax exemption for sales made to a parent teacher organization. The bill does not create a tax exemption for sales made by a parent teacher organization, including sales of tickets to the type of fundraising event described by Section 2 of the bill. This is because the bill does not amend § 26-52-301(5), which levies gross receipts tax on tickets or admissions to places of amusement or to athletic, entertainment, or recreational events, or fees for access to or the use of amusement, entertainment, athletic, or recreational facilities. Section 2 of the bill, which amends § 26-52-518 to remove registration and recordkeeping requirements associated with organizing and promoting the special event, does not affect the taxability of ticket sales.

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Because the bill does not exempt sales made by a parent teacher organization, the sale of tangible personal property at the type of school fundraising event described by Section 2 still would be subject to the gross receipts tax unless another exemption applied.

In Section 2, Lines 9-21, page 2, do not define or limit the terms "parent teacher organization, a parent teacher association, or a similar organization." Section 2 likely should include language similar to the language in Section 1, which limits the terms "parent teacher organization, a parent teacher association, or a similar organization" to an organization that is a 501(c)(3) organization under the federal Income Tax Code and that is affiliated with a public school.

Lines 9-17, page 2, provide that one of the requirements for a fundraising event to qualify for the exclusion from the definition of a "special event" is that the "gross proceeds from the ticket sales are used to directly assist the public school in fulfilling its mission of educating children." The bill does not identify a percentage or amount of the gross proceeds from ticket sales that must go to the public school. Thus, as long as the seller remits a portion of the gross proceeds from ticket sales to the public school, the exclusion still would apply even if the seller retains the balance of the gross proceeds for profit or for other purposes. It is unclear what "directly" assisting a public school would entail or require.