

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1245**

**Bill Subtitle: TO INCLUDE A PODIATRIST WITHIN THE DEFINITION OF "PHYSICIAN" FOR PURPOSES OF THE SALES TAX EXEMPTION FOR DURABLE MEDICAL EQUIPMENT, MOBILITY ENHANCING EQUIPMENT, PROSTHETIC DEVICES, AND DISPOSABLE MEDICAL SUPPLIES.**

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### **Basic Change :**

**Sponsors: Rep. Boyd and Sen. Hammer**

HB1245 would amend existing Arkansas Law to include a podiatrist in the definition of "physician" for the purposes of the sales tax exemption for sales of products classified as durable medical equipment, mobility enhancing equipment, prosthetic devices, and disposable medical supplies.

Under current law, items of durable medical equipment, mobility enhancing equipment, prosthetic devices, and disposable medical supplies may be purchased exempt from sales tax when sold to a specific patient pursuant to a prescription written before the sale by a physician licensed by the Arkansas State Medical Board to practice medicine in Arkansas in accordance with § 17-95-401 et seq.

HB1245 adds podiatrists licensed by the Arkansas Board of Podiatric Medicine in accordance with § 17-96-601 et seq. to the definition of "physician" for Arkansas sales and use tax purposes. This change will allow patients of podiatrists to purchase the prescribed items of durable medical equipment, mobility enhancing equipment, prosthetic devices, and disposable medical supplies exempt from state and local sales tax if issued a prescription order by their podiatrist.

The Act would become effective the first day of the calendar quarter following the effective date of the act (October 1, 2019).

### **Revenue Impact :**

Unable to determine but minimal impact expected.

### **Taxpayer Impact :**

A podiatrist would be classified as a "physician" to meet the sales tax exemption requirements when prescribing durable medical equipment, mobility enhancing equipment, prosthetic devices, and disposable medical supplies for their patients. The patient would use the prescription to purchase the products from their retailer or supplier.

### **Resources Required :**

None.

### **Time Required :**

Adequate time is provided for implementation.

### **Procedural Changes :**

Updates to the sales tax rules will be required.

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### Other Comments :

None.

### Legal Analysis :

HB1245 would expand the amount of exempt durable medical exempt from tax by expanding the definition of "physician" for tax purposes.

Sales and use taxes are levied upon the gross proceeds or gross receipts derived from all sales to any person of tangible personal property, but the gross receipts derived from the sale of durable medical equipment, mobility enhancing equipment, prosthetic devices, and disposable medical supplies are exempt from tax when prescribed by a physician. Under current law, a "physician" is defined as someone who is licensed to perform any of the acts constituting the practice of medicine under the Arkansas Medical Practices Act, § 17-95-401 et seq. However, the licensing requirements of podiatrists are separate and not tied to the Arkansas Medical Practices Act. The Department of Finance and Administration ("DFA") promulgated GR-38.2(D) of the Gross Receipts Tax Rules, which specifically states that the gross receipts from the sale of durable medical equipment, mobility enhancing equipment, prosthetic devices, and disposable medical supplies are not exempt from tax when prescribed by a podiatrist for this reason.

HB1245 would change the definition of "physician" for the purpose of the sale and use tax exemption to include someone who is licensed under § 17-96-101 et seq. to practice podiatry. Under HB1245, the gross receipts from the sale of durable medical equipment, mobility enhancing equipment, prosthetic devices, and disposable medical supplies would be exempt from tax when prescribed by a podiatrist.

The Arkansas General Assembly has made it the policy of the state to enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of this policy, the General Assembly directed the Director to enter into the Streamlined Sales and Use Tax Agreement (the "Agreement") and to take actions reasonably required to implement the Agreement. In order for the state of Arkansas to remain in compliance with the Agreement, the state of Arkansas must adhere to the respective definitions of "durable medical equipment," "mobility enhancing equipment," "prosthetic devices," and "disposable medical supplies" as set forth in the agreement. Under the Agreement, Arkansas may limit the application of each respective definition by requiring a prescription. Because the Agreement does not restrict who may provide the required prescription, Arkansas may amend its definition of "physician" and remain in compliance with the Agreement.

Further, section 304 of the Agreement requires the state of Arkansas lessen the difficulties faced by sellers when there is a change in a state sales or use tax rate or base by making a reasonable effort to provide sellers with as much advance notice as practicable of a rate change, limit the effective date of a rate change to the first day of a calendar quarter, and notify sellers of legislative changes in the tax base and amendments to sales and use tax rules and regulations. In accordance with section 304 of

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the Agreement, HB1245 would become effective on the first day of the calendar quarter following the ninety-first day after sine die adjournment of the session at which the act was enacted or the ninety-first day of a recess.

Lastly, HB1245 will require DFA to amend GR-38.2(D) of the Gross Receipts Tax Rules to conform with the definitional change provided in HB1245 if it is enacted.