

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1005

Bill Subtitle: TO CLARIFY THE APPLICATION OF THE SALES AND USE TAX TO CANDY AND SOFT DRINKS.

Basic Change :

Sponsor: Rep. Davis

Act 141 of 2017 provided that the sale of candy and soft drinks would be subject to the full state sales tax rate. Sales of food and food ingredients that are not defined as candy and soft drinks would continue to be subject to sales tax at the reduced state sales tax rate. HB1005 would create a new section in the Arkansas Code, § 26-52-323, to direct the Department of Finance and Administration (DFA) to provide additional guidance and information to sellers of candy and soft drinks regarding their taxation under the sales tax provisions of the Arkansas Code.

HB1005 would require that the Director of DFA either:

1. Publish a list of Universal Product Codes to provide guidance to retailers, sellers, and vendors as to which items are defined as a candy or a soft drink but not defined as food and food ingredients: or
2. Not subject a retailer, seller, or vendor to penalties for under collection or non-reporting of sales and use Taxes on candy and soft drinks as long as the retailer, seller, or vendor:
 - Collects and remits tax payments to DFA on the gross receipts and gross proceeds derived from the sale of items that meet the existing definitions of candy and soft drinks; and
 - Demonstrates a good faith effort to collect and remit tax payments to the department on the gross receipts and gross proceeds derived from the sale of items that meet the existing definitions of candy and soft drinks.

The Act would be effective 90 days after final adjournment.

Revenue Impact :

None.

Taxpayer Impact :

A retailer, seller, or vendor may not be penalized for under collection or non-reporting of sales and use taxes on candy and soft drinks if the retailer, seller, or vendor demonstrates a good faith effort to collect and remit the tax on candy and soft drinks in accordance with Arkansas law.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

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Procedural Changes :

Updates to the sales tax rules would require promulgation and tax auditing procedures would need to be updated.

Other Comments :

The bill would require DFA to compile a list of UPC codes for any item of candy or soft drink sold to a customer in the State of Arkansas. It is unknown if any such data is available to DFA.

Legal Analysis :

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 food and food ingredients are taxed at a lower rate than other tangible personal property. Food and food ingredients are defined to exclude candy and soft drinks. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Soft drink" means a nonalcoholic beverage that contains natural or artificial sweeteners.

HB1005 would require the Director of DFA to either publish a list of Universal Product Codes for items of tangible personal property that meet the definition of "candy" or "soft drink" or, in certain circumstances, exempt sellers of candy or soft drinks from certain identified penalty provisions in the Arkansas Code. Specifically, for such a seller to be exempt from the identified penalty provisions, the seller must both collect and remit tax payments on the gross receipts from the sale of candy or soft drinks and demonstrate a good faith effort to collect and remit taxes due on the gross proceeds of the sale of candy or soft drinks.

Among the penalty provisions that HB1005 would affect in this way are the criminal penalties of §§ 26-18-201 and -202 for willfully attempting to evade or defeat the payment of any tax, penalty, and interest due and for willfully failing to pay any tax, penalty, and interest due. However, the effect of this provision is uncertain because the Director of DFA does not have authority to prosecute acts identified in criminal statutes or to provide immunity from criminal prosecution.

HB1005 would also affect the civil penalties in § 26-18-208 that apply to nonpaying taxpayers and the civil penalties in § 26-18-209 that apply to any person who assists a taxpayer in evading or defeating the payment of a state tax due.

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 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 definitions of "candy" and "soft drink," which are provided for in the agreement. The State of Arkansas must also adhere to all decisions of the Governing Board of the agreement that have

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been adopted in the agreement regarding what items constitute candy or soft drinks. Therefore, the proposed list that HB1005 describes would have to be in compliance with all decisions of the Governing Board. In the event that the Governing Board were to adopt a decision contrary to the list that the Director of DFA publishes, the Director would require the authority to amend the list in order for the state of Arkansas to remain in compliance with the agreement.

As a practical matter, DFA has considered the complexity of compliance for newly enacted statutes in the course of audit procedures and the prohibition on the application penalties to noncompliant taxpayers for a specific type of taxable sales is an extraordinary and unique provision.