

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1890**

**Amendment Number: H1 (3/17/15 Engrossment)**

**Bill Subtitle: TO CLARIFY THE TAX TREATMENT OF CERTAIN FOOD PRODUCTS.**

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**Basic Change :** Sponsor: Representative Davis

The proposal would amend provisions of state law Act which authorize a city government to levy an Advertising and Promotions Tax (A & P). A & P taxes are currently administered and collected by the city government. Cities levy the A & P taxes on sales of prepared foods, sales of accommodations rentals, or on both prepared foods and accommodations. The bill provides an exemption from taxation for the sale of baked goods by a bakery. Sales of these products will no longer be subject to the A & P taxes when purchased for off-premises consumption. Under the proposal, DFA would be responsible for collecting the A & P taxes in the same manner as state, city and county sales taxes are currently reported. The A & P tax revenue collected by DFA would be deposited into the Local Sales and Use Tax Trust Fund for subsequent distribution by the State Treasurer to the city that levies the tax. The proposal would be effective ninety (90) days after final adjournment of the 90th General Assembly.

**Revenue Impact :**

Current tax revenues collected by cities resulting from A & P taxes will be reduced because of the fees required by state law for revenues deposited through the State Treasurer's office being subject to the three and two-tenths percent (3.2%) reduction of the funds collected for deposit to the Constitutional Officer's and State Central Services Funds

**Taxpayer Impact :**

Taxpayers would remit the tax to DFA instead to the cities.

**Resources Required :**

DFA will need additional employees to administer these A&P taxes. Collection of the A&P tax will result in additional taxpayer issues, additional tax audits, and additional collections issues for DFA to address. Current staffing levels are such that this additional work will require additional employees. Also, there will be significant expense associated with changing computer programs to accommodate collection of this new tax. Tax forms and instructions also must be changed to collect this new tax type again at significant expense. Finally, it will be necessary to contact each business and provide instructions regarding how to pay the tax in the future. This will require significant amounts of postage and time.

**Time Required :**

The effective date for DFA tax collections must be on the first day of the calendar month. Taxpayers do not have the ability to report a portion of a month's tax directly to the city government and a portion of the month to DFA.

DFA printing contracts provides for printing and mailing of tax reporting forms to taxpayers twice per year. Forms are mailed for tax reporting periods of July through December (6 monthly reporting forms) and for the tax reports for the periods of January through June each year. In order for the print files to be created, the data must be submitted to the printer in the spring. The proposal should reflect a beginning date for DFA tax collections to begin on January 1, 2016 to avoid significant costs in additional printing and mailing.

**Procedural Changes :**

Education of staff in the change of law will be required. Rules will be required for administration of the A & P tax with common provisions for a state-wide administration. New forms, computer systems changes and preparation of instruction sets for taxpayers will be required.

**Other Comments :**

The bill provides an exemption from advertising and promotion (A&P) taxes for the sale of baked goods by a bakery for off premises consumption. This exemption will present administrative and bookkeeping problems for many sellers. Baked goods are subject to state and local sales taxes but

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would be exempt under HB 1890. This requires separate record keeping for sales of bakery items separate from sales of other goods. This separate record keeping would be problematic for businesses such as grocery stores, convenience stores and fast food locations that sell bakery items and non-bakery goods. The business would be required to account for their sale of bakery items separately for purposes of paying the A&P tax but would combine those bakery sales together with all other sales for purposes of sales and use tax. This separate record keeping presents an administrative burden for those businesses.

HB1890 continues the current provision of state law that exempts charitable organizations from the A&P tax. This is contrary to state sales and use tax law which requires charitable organizations to collect tax on their sales if those sales compete with for-profit entities. If DFA is to administer the A&P tax as required by HB1890, this separate treatment of non-profit corporations will be a complicating factor.

HB 1890 provides that DFA shall collect and administer the A&P tax. Current state law requires a 3.2% withholding for State Central Services and Constitutional Officers fund for all taxes administered by DFA. Consequently, collections to each A&P commission would be reduced by 3.2% because DFA is administering the tax.

The exemption for bakery goods will also reduce collections to those A&P commissions that currently levy a tax applying to baked goods for off-premises consumption. The amount of this reduction is unknown.

DFA will need additional employees to administer these A&P taxes. Collection of the A&P tax will result in additional taxpayer issues, additional tax audits, and additional collections issues for DFA to address. Current staffing levels are such that this additional work will require additional employees.

The A&P will be difficult for DFA to administer because the tax base is different than the tax base for sales tax and the tax base for A&P taxes is inconsistent from one city to another.

The proposal also does not follow other state and local sales and use tax change requirements. State law requires notification to DFA of at least ninety (90) days' for a change or levying of a tax and DFA must provide taxpayers with sixty (60) day notice before tax changes can be effective. The bill should be amended to provide these timing requirements.

### Legal Analysis :

Amendment 1 to HB1890 amends § 26-75-602(c)(2) related to advertising and promotion taxes levied by municipal governments. The bill impacts DFA by transferring the collection of this tax from the municipality's advertising and promotion commission to DFA to be collected in the same manner as sales and use taxes. Accordingly, the strictures of the Arkansas Tax Procedure Act will apply. In addition, the method of computation, rounding, and prompt payment discount found in § 26-75-312 apply. The funds collected are to be deposited into the Local Sales and Use Tax Fund created under § 26-75-223. HB1890 is not in conflict with the Streamlined Sales and Use Tax Agreement. The Agreement pertains only to sales and use taxes, not to any other type of taxes.