

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1400

As Engrossed: 2/22/2013

Bill Subtitle: TO EXEMPT HEARING AIDS FROM THE REQUIREMENT THAT PROSTHETIC DEVICES BE PRESCRIBED BY A PHYSICIAN TO BE ELIGIBLE FOR THE SALES AND USE TAX EXEMPTION IF CERTAIN CONDITIONS ARE MET.

Basic Change :

Representative D. Altes

Engrossment 02/22/13 -- House Amendment 1 -- Amends the bill to add the exemption for hearing aids to the Compensating Use Tax code.

Original Bill --The proposal would amend current sales tax code provisions to add an exemption for the sale of hearing instruments that are recommended for purchase by audiologists and persons licensed as hearing instrument dispensers. Current Arkansas sales tax code provisions exempt prosthetic devices, including hearing aids and repair and replacement parts for hearing aids when they are sold to a specific patient pursuant to a prescription written before the sale. The prescription must be written by a duly licensed physician or practitioner authorized to issue prescriptions under Arkansas law.

The proposal would extend the exemption to sales by audiologists and hearing instrument dispensers when sold in accordance with Code of Federal Regulations §§ 801.420 and 801.421. Sales by audiologists and hearing instrument dispensers are currently subject to these federal regulations which require the purchaser to waive the requirement for a medical evaluation prior to the sale of a hearing aid if the purchaser does not have a signed statement by a licensed physician. This provision would remove the requirement for a medical doctor's prescription for the sales tax exemption to apply.

The proposal would take Arkansas out of compliance with the Streamlined Sales Tax Agreement. Hearing instruments are within the product category of "prosthetics" and a state must levy the sales tax equally to all products within the definition. The Agreement allows a state to require a prescription issued in accordance with state laws when applying the prosthetic definition for exemption purposes. The exemption for prosthetic devices under Arkansas law does require a prescription by a physician. This bill would remove that requirement for one type of prosthetic device only and violate the Streamlined Sales Tax requirements. The proposal will be effective on the first day of the calendar quarter following the effective date of the act.

Revenue Impact :

Total Impact to State Revenues - \$1.17 million

(Estimate based on 8 months reduced tax collections)

-\$.79 million --- State General Revenue (4.5%)
-\$.15 million --- Educational Adequacy (.875% tax)
-\$.09 million --- Property Tax Relief Trust Fund (.5%)
-\$.02 million --- Conservation Tax (.125%)
-\$.09 million --- Highway Fund (.5%)
-\$ 0 --- Educational Excellence Trust Fund
-\$ 0 --- Educational Adequacy (GR transfer)
-\$.03 million --- State Central Services
-\$.01 million --- Constitutional Officers
Total Impact to City and County Sales Tax -\$375,000

FY15 Tax Decrease

Total Impact to State Revenues - \$1.83 million

-\$1.10 million --- State General Revenue (4.5%)
-\$.24 million --- Educational Adequacy (.875% tax)
-\$.14 million --- Property Tax Relief Trust Fund (.5%)

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- \$.03 million --- Conservation Tax (.125%)
- \$.14 million --- Highway Fund (.5%)
- \$.11 million --- Educational Excellence Trust Fund
- \$.01 million --- Educational Adequacy (GR transfer)
- \$.04 million --- State Central Services
- \$.02 million --- Constitutional Officers
Total Impact to City and County Sales Tax -\$590,000

Taxpayer Impact :

Audiologists and hearing instrument dispensers would establish accounting methods and procedures to substantiate sales that would be exempt from sales tax.

Resources Required :

None

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Education of staff and amend existing sales tax rules to reflect the exemption.

Other Comments :

None

Legal Analysis :

The Bill as engrossed incorporated the language of Amendment 1 into the language of the original Bill, HB1400. The engrossment does not cure the legal issues raised by HB1400 or Amendment 1. Engrossed HB1400 remains out of compliance with the Streamlined Sales and Use Tax Agreement's provision that all items within a product definition, in this case prosthetic devices, be either taxed or exempted. A State may not select items within a product definition for exemption while remaining items within the product definition are taxable.