

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: SB527**

**Bill Subtitle: TO REQUIRE CERTAIN NOTICE AND REPORTING REQUIREMENTS FOR INTERNET SALES.**

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**Basic Change :** Sponsor: Senator A Clark

A retailer who is not registered to collect Arkansas tax would be required to notify Arkansas residents at the time of the sale, if the sale exceeds \$500.00, that the purchase is subject to the Arkansas compensating use tax and that the purchaser is required to self-report the tax to DFA. The retailer must also send an annual notification to Arkansas purchasers containing information for the total amount paid by the purchaser in the previous year; dates of purchases; description of the items purchased; and if known by the retailer, if the items purchased are exempt from tax. The retailer must again notify the purchaser of the requirement to self-report the use tax. The annual notification must be sent to each Arkansas purchaser by first class mail separately from any other shipments, identify on the outside of the envelope the words "Important Tax Document Enclosed" and identify the retailer.

The retailer would also be required to file an annual statement with DFA when a purchase is \$500 or more and made by a purchaser entitled to notice. The report would be due by March 1 of each calendar year. A retailer can be exempted from the reporting requirements when the retailer demonstrates undue hardship to DFA. The proposal would be effective 90 days after adjournment.

**Revenue Impact :**

Unknown amount of state, city and county use taxes would be reported by taxpayers making purchases from out-of-state retailers subject to the reporting requirements of the bill and through compliance audits performed by DFA on Arkansas purchasers of products who have failed to report the tax due.

**Taxpayer Impact :**

Retailers who are not currently required to register to collect state and local sales and use tax would be required to provide DFA an annual report of customers who have purchased more than \$500.

**Resources Required :**

None

**Time Required :**

Adequate time is allowed.

**Procedural Changes :**

Drafting of rules to implement the legislation. Modification of tax system to receive reports.

**Legal Analysis :**

Currently, Arkansas requires all sellers doing business in the state to collect and pay Arkansas use tax on behalf of Arkansas consumers. That reporting requirement is limited by the U.S. Constitution to only apply to sellers with physical presence within the state. The US Supreme Court generally requires that a seller have actual physical presence within a state for that state to impose use tax reporting requirements. SB527 would require out-of-state sellers that do not collect Arkansas Use Tax on their sales to in state customers to perform the following activities:

- On purchases exceeding \$500 dollars, at the time of the transaction, the remote seller must notify the purchaser that the purchase is subject to Arkansas use tax and the consumer is required to file a consumer use tax form with DFA;
- For consumers performing purchases exceeding \$500, the remote seller must send a

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separate annual notice by January 31st of each year to those Arkansas consumers providing the consumer's total purchases for that year, the purchase dates, the amount of each purchase, a description of the purchased items, and, if known by seller, whether the items qualify for a use tax exemption; and

The remote seller must also send an annual statement to DFA by March 1st of each year providing a listing of Arkansas consumers performing purchases exceeding \$500 during the prior year and providing the total purchases by each of those Arkansas consumers.

This bill is similar to a law already enacted in Colorado. That law requires the same types of reports but, in Colorado, the reporting requirements are only established for sellers whose annual sales to Colorado state residents exceed \$100,000. That law was deemed unconstitutional by a federal district court. *Direct Marketing Ass'n v. Huber*, 2012 WL 1079175 (D.Co. 2012). On appeal, that District Court ruling was rescinded on procedural grounds by the Tenth Circuit of Appeals in *Direct Marketing Ass'n v. Brohl*, 735 F.3d 904 (10th Cir. 2013). An appeal of that decision by the 10<sup>th</sup> Circuit Court of Appeals is pending before the US Supreme Court. *Direct Marketing Ass'n v. Borhl*, No. 13-1032, 134 S.Ct. 2901 (2013). On March 3, 2015 the US Supreme Court determined that the Tax Injunction Act did not bar the federal court from hearing this case and remanded the case back to the federal court to determine whether the matter should be heard in federal or state court.