

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1565

Bill Subtitle: TO AMEND THE LAW CONCERNING THE ISSUANCE AND EXPIRATION OF GROSS RECEIPTS TAX PERMITS AND THE COLLECTION OF UNPAID TAXES UPON DISCONTINUATION OF BUSINESS.

Basic Change :

Sponsor: Representative Jett

The bill amends existing Arkansas sales tax code provisions, §§ 26-52-206 and 26-52-207, regarding the expiration of sales tax permits. Under current law, a retailer must be registered with DFA and hold a sales tax permit prior to making retail sales in the state. The bill provides that sales tax permits would automatically expire if the business ceases operations at the registered business location, ownership of the business changes, or if a business closure order resulting from the retailer not remitting sales taxes, § 26-18-1001 et seq., has become final.

The bill also provides that DFA shall not issue a permit to a person who is substantially connected to a business that owes past due taxes until the past due taxes have been paid. The bill defines "past due tax" to mean a state tax administered by DFA that is not paid when due after completion of all administrative and judicial remedies provided by law. "Substantially connected" means a person who owned and operated a business that incurred past due taxes or a person who served as a partner, officer, or director of a partnership, corporation, or limited liability company that incurred past due taxes.

The act would be effective on the first day of the calendar quarter following the effective date of this act.

Revenue Impact :

No impact to current state revenues.

Taxpayer Impact :

Taxpayers who owned and operated a business that incurred past due taxes or a person who served as a partner, officer, or director of a partnership, corporation, or limited liability company that incurred past due taxes would not be eligible to register for a new Sales and Use Tax permit to conduct business in Arkansas until all prior sales tax debts have been paid in full by the permit applicant.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

New procedures for reviewing applicants for Sales and Use Tax permits will be implemented.

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Education of staff personnel in the revised procedures will administered.

Other Comments :

None.

Legal Analysis :

Arkansas law does not clearly provide that a sales tax permit automatically expires in the event of a change of ownership of a business, or at the time a business closure is final. This results in the continued and improper use of existing permits. This bill provides that sales tax permits will automatically expire in the event of a change of ownership of a business or at the time a business closure order becomes final.

Arkansas law currently provides that, at the time of the sale of a business that owes delinquent sales tax, the tax constitutes a lien on the assets of the business. This has been interpreted to mean that the unpaid tax is only a lien on business assets if a sale occurs. This has resulted in attempts by some taxpayers to transfer assets of the business to third parties other than by sale and without payment of the delinquent tax due. This bill provides that unpaid sales tax constitutes a lien on the assets of a business regardless of whether or not the business is actually sold.

Lastly, taxpayers who have sales tax delinquencies are attempting to change ownership of their business (usually by incorporating or re-incorporating) in order to avoid collection of delinquent tax while continuing business operations. This bill provides that a sales tax permit will not be issued to persons who are substantially connected to a business that owes delinquent taxes until such time as the delinquent taxes have been paid. This is consistent with existing provisions of state law, at Ark. Code Ann. § 26-54-114 (Repl. 2014), that prohibit persons who are substantially connected to corporations or limited liability companies that owe past-due franchise taxes from being allowed to then file forms and documents necessary to create a legal entity in this state or obtain authority to do business in the state.