

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1002

Bill Subtitle: TO REQUIRE CERTAIN OUT-OF-STATE SELLERS TO COLLECT AND REMIT ARKANSAS SALES AND USE TAX.

Basic Change :

Sponsor: Rep. D. Douglas

HB1002 would add a new code section to the Arkansas Gross Receipts Tax Act of 1941, § 26-52-101 et seq., to require out-of-state sellers having no physical presence in Arkansas to collect Arkansas state and local sales and use tax. Out-of-state or "remote" sellers subject to the provisions of the bill would include those sellers meeting either of the following criteria in the previous calendar year or the current calendar year:

1. A seller having gross revenue from sales of products and services delivered into Arkansas that exceeds one hundred thousand dollars (\$100,000); or
2. A seller who has sold products and services for delivery into Arkansas in at least two hundred (200) separate sales transactions.

The remote sellers subject to collecting the tax would be those out-of-state remote sellers found to be doing business with Arkansas customers equaling the same business operating thresholds as found to be acceptable in the U.S. Supreme Court decision of *South Dakota v. Wayfair*. The bill provides that the tax collection responsibility would not be applied retroactively, and businesses would be subject to the provisions only upon the effective date of the act.

The bill also repeals § 26-52-110, which established sales tax collection by businesses that have a connection to the state through affiliated companies. With the adoption of the requirement for remote sellers to collect the tax, these affiliate nexus provisions are likely no longer be needed.

The effective date of the act would be the first day of the calendar quarter following the effective date of the act, which would likely fall on October, 1 2019.

Revenue Impact :

FY2020 - \$23,592,606 Million Total Gain to State Sales Tax Revenue
(8 months of Monthly Tax Deposits Only)

+\$ 495,445 --- State Central Services
+\$ 235,926 --- Constitutional Officers
+\$ 15,827,009 --- General Revenue
+\$ 0 --- Educational Excellence Trust Fund
+\$ 0 --- Educational Adequacy (GR transfer)
+\$ 3,077,474 --- Educational Adequacy (7/8% tax)
+\$ 1,758,557 --- Property Tax Relief Trust Fund
+\$ 439,639 --- Conservation Tax
+\$ 1,758,557 --- Highway Fund

Gain to City and County Sales Tax Revenue: +\$7,864,202

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FY2021 - \$35,388,909 Million Total Gain to State Sales Tax Revenue

+\$ 743,167 --- State Central Services
+\$ 353,889 --- Constitutional Officers
+\$ 21,304,737 --- General Revenue
+\$ 2,237,939 --- Educational Excellence Trust Fund
+\$ 197,838 --- Educational Adequacy (GR transfer)
+\$ 4,616,211 --- Educational Adequacy (7/8% tax)
+\$ 2,637,835 --- Property Tax Relief Trust Fund
+\$ 659,459 --- Conservation Tax
+\$ 2,637,835 --- Highway Fund

Gain to City and County Sales Tax Revenue: +\$11,796,303

Taxpayer Impact :

An out-of-state remote seller having no physical presence in Arkansas meeting the sales transactions or sales volume criteria as provided in the bill would register with the Department of Finance and Administration (DFA) to collect and remit sales and use tax and begin collecting the tax on October 1, 2019.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Updates to the sales tax rules will be promulgated.

Other Comments :

The draft legislation mirrors that previously adopted by the State of South Dakota and upheld by the U.S. Supreme Court in its decision of *South Dakota v. Wayfair*. As of January 2019, of the 45 states that levy sales taxes, 32 have implemented or adopted state laws requiring remote sellers to collect sales tax on products and services sold for delivery into their states following the South Dakota model of establishing thresholds levels.

The bill does not provide clear guidance on the emerging issue of marketplace facilitators who facilitate sales between remote sellers and purchasers and often collect payments and/or arrange shipments. This could cause a significant gap in anticipated remote seller collections. It may be helpful that these provisions be added to the legislation to mirror these same provisions being implemented by other states. Marketplace facilitators and the states recently worked with the Multistate Tax Commission to create provisions and standardized procedures for marketplace facilitator tax collections. The final

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report included the procedures as requested by the marketplace facilitators for their collection of the state and local sales taxes on behalf of their participating marketplace sellers for the states.

The bill does not provide guidance for remote sellers as to their responsibility for beginning to collect the Arkansas tax after meeting the established sales volume or monetary threshold if the seller does not meet these levels upon the initial effective date of the act. Adding additional guidance for sellers that do not initially meet the thresholds to provide that they must begin collecting the tax by the first day of a month within 60 days of their reaching the threshold level would provide adequate time for the seller to implement the change.

It may also be helpful that language be added to the bill to provide that sellers that begin collecting the tax during a calendar year must continue to collect the tax through the following calendar year regardless of the seller's sales volumes before the seller may cancel their state tax registration. If a seller's sales volumes did not meet the threshold levels during the second calendar year of registration, the seller could then cancel their registration and not be required to collect the tax until a subsequent calendar year when they again exceed the threshold levels.

The bill does not include a specific date of implementation for the out-of-state sellers to begin collecting and remitting the Arkansas taxes and unfamiliarity with Arkansas code provisions regarding effective dates for legislation that does not have a specific effective date may cause confusion. It is may be helpful that a specific effective date be placed in the bill. With an emergency clause, July 1, 2019 could be implemented by DFA.

Legal Analysis :

HB1002 empowers DFA to impose collection of sales tax on remote sellers who deliver taxable goods or services into the state if the seller receives gross revenue of \$100,000 or conducts at least 200 transactions into the state. These thresholds are identical to those imposed by South Dakota which were recently upheld by the United States Supreme Court in *South Dakota v. Wayfair, Inc.* 585 U.S. ____, 138 S.Ct. 2080 (2018).

The bill also states that the threshold requirements impose obligations on sellers "as if the seller had a physical presence." This language may be unnecessary and confusing as the Supreme Court found in *South Dakota* that physical presence is not required to impose collection duties on remote sellers.

The bill preserves DFA's ability to seek compensating use tax from taxpayers when sales tax was not otherwise collected by the seller and also provides relief of liability for sellers who begin to voluntarily comply with the agreement. Additionally, this bill repeals a previous statute on "click through nexus," which has become outdated in today's marketplace.

This bill becomes effective on the first day of the calendar quarter following the effective date of the bill. This effective date conforms with the Streamlined Sales and Use Tax Agreement.