

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1795

Bill Subtitle: TO ALLOW FOR SALES AND USE TAX ON ALL-TERRAIN VEHICLES TO BE PAID AT THE TIME OF THE REGISTRATION OF THE ALL-TERRAIN VEHICLE; AND TO AMEND THE LAW CONCERNING THE REGISTRATION REQUIREMENTS FOR ALL-TERRAIN VEHICLES.

Basic Change :

Sponsors: Rep. Brown and Sen. Irvin

This bill would amend existing law to change the method of sales tax payment on the sale of an all-terrain vehicle and levies the sales tax on sales on used all-terrain vehicles in the same manner as new all-terrain vehicles.

Under current law, dealers of all-terrain vehicles collect from the consumer the applicable state and local sales tax at the time of sale. The taxes collected are remitted to DFA by the dealer when reporting the taxes on all of their other sales of products and services. Dealers typically report sales tax collections not only on ATVs but also on sales on other types of off-road cycles, motorcycles and motorized bicycles in addition to sales taxes on parts, accessories and repair services.

The bill would change the definition of "motor vehicle" within the sales tax code provisions to provide that a "motor vehicle" is a vehicle that is self-propelled and is required to be registered with DFA. The language requiring a vehicle to be used on the highway for taxation as a motor vehicle is removed.

If taxed as a "motor vehicle", ATVs will become subject to the sales tax provisions that allow trade-in allowances when calculating taxes due; apply a local tax cap on the total amount of local sales tax to be paid on the purchase; and allow claiming a refund if the owner sells an ATV and within 45 days purchases a replacement and pays the sales tax on the replacement unit. All sales of used ATVs by dealers or by consumers will also become subject to taxation unless the sales price of the used ATV is less than \$4,000. For purposes of local city and county sales taxes, the local sales tax would be capped and calculated on the first two thousand five hundred dollars (\$2,500.00) of the sales price only.

The bill also adds new provisions to current law that create additional circumstances for ATV dealers to submit monthly reports to DFA. Each month the dealer would submit a report to DFA that includes information on each ATV sold during the previous month. The report must contain the name of purchaser, the brand, model, year, make and VIN and the sales price of the ATV. The report is to be submitted electronically by the twentieth day of each month.

Annual renewals of all ATV registrations will be required. Currently, ATV registration does not require renewal and is a one-time requirement. The annual renewals will have a cost of \$10.00. The decal reflecting the registration with DFA is currently specified as 1½ inches wide X 1¼ inches tall. This bill changes the size of the required decal to 2 inches wide X 2 inches tall. The bill levies a penalty of \$5.00 for each 10-day period of late registration with a maximum penalty of seventy-five dollars (\$75.00).

The effective date of the act would be the first day of the calendar quarter following the effective date of the act (October 1, 2019).

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Revenue Impact :

Unknown Impact to State Sales and Use Tax Collections -- Impact to current State, City and County Sales and Use Tax revenues would be dependent on purchasers of new and used ATVs failing to register their ATV purchase with DFA and paying taxes due. Risk of loss is increased by increasing the number of taxpayers reporting the tax from only DFA registered sellers collecting, filing and remitting sales taxes on a monthly basis for many ATV sales transactions and all of their other taxable sales transactions as a required and routine business practice to a requirement that each individual purchaser would report taxes on their own purchase by registering their ATV with DFA and making full payment of tax due at that time. Loss of revenue would occur if the purchaser failed to register their purchase unless DFA could locate the purchaser, make a tax audit assessment and subsequently collect the taxes, penalties and interest due.

\$2.5 Million Estimated Annual Loss to City and County Sales Tax Revenues on sales of new ATVs.

[Based on 2018 ATV registrations. During 2018, approximately 13,000 new ATVs were registered with DFA. It is not known if this is the total number of ATVs sold by dealers in Arkansas during the year. Applying a local tax cap to limit the city and county sales tax to the first \$2,500 of the sales price reduces local city and county taxes due. Example: \$8,000 ATV with purchaser residing in Little Rock. Current Little Rock and Pulaski County sales tax = \$200.00; Proposed local tax = \$62.50.]

Unknown Revenue Gain -- Annual ATV Registration Fees -- Impact from levying an annual registration fee of \$10 on each ATV owned by Arkansas residents is not known. The DFA Registration System includes a total of 263,567 ATV registrations. Registrations do not expire and the total of 263,567 includes ATVs registered beginning in the late 1980's. DFA has no knowledge as to which of the ATVs are currently in service; which are owned by the original registrant; if the original registrant is currently a resident of Arkansas; or if living in Arkansas, the registrants home address and city of residence if it has changed since the original registration date. Some registrants may no longer be living. DFA would have to contact every registrant to determine which registrants continue to own the ATV and be subject to the annual registration fee. If no longer owned by the original registrant, DFA would attempt to determine who is the current owner and make the current owner aware of the annual registration requirement.

Unknown Revenue Gain -- Sales and Use Tax on Used ATVs -- Impact from levying state and local sales taxes on sales of used ATVs is not known. Used ATVs with a sales price of less than \$4,000 would continue to be exempt from state and local sale taxes.

Taxpayer Impact :

The draft bill will require Taxpayers to register and pay state and local sales and use taxes on their ATV purchases with the Department of Finance and Administration rather than to make payment to the ATV dealer when the vehicle is purchased. Taxpayers will realize a tax reduction resulting from the local sales tax cap on motor vehicles as the ATV sales transactions are currently not capped on their City and County tax collections on the first two thousand five hundred dollars (\$2,500.00) of the sales

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price. Taxpayers trading in a used ATV will also remit reduced sales taxes calculated on the net sales price after deducting the trade-in amount.

Purchasers of used ATVs will remit sales taxes on the purchase price if the ATV has a purchase price of at least \$4,000. All sales of motor vehicles with a sales price above the threshold level are subject to taxation regardless if purchased from a dealer or an individual private seller.

ATV Dealers would be required to submit electronically a sales report to DFA of all ATV sale transactions by the 20th day of the month following the sale.

All ATV owners will be required to renew ATV registrations on an annual basis at a cost of \$10.00. Current ATV owners would be required to replace current decals with a larger decal.

Resources Required :

Total estimated cost to implement HB 1795 - \$1,342,675.00

\$3,850.00 - Current Decal Inventory Loss -- 69,269 decals must be discarded and inventory replaced.
\$31,250 New Decals costs -- (263,567 current registrations) Replace with new decals @ \$6,250.00 per 50,000 decals.

\$1,025,325.00 for New Pod Printers that will be required for 135 State Revenue Offices to print 2X2 Decals.

\$276,000 System Programming for electronic ATV Dealer report and Annual Registration Expirations.
\$100,000 Postage fees for mailings to ATV registered owners to determine current ownership status and to provide instructions for the annual registration procedures.

\$130,000 Two additional auditors will be needed to audit the reports sent to DFA by ATV dealers to reconcile the listed transactions against the DFA registered ATV's -- Estimated annual salary cost = \$130,000.

\$25,000 -- Additional resources for equipment, printing, mailing, postage, supplies, personal computer system for preparation and issuance of questionnaires, letters and audit reports to ATV purchasers regarding un-registered purchases.

Programming AIRS System for Renewal Notice Reminders ATV Dealers Reports and Inventory for replacement decals. Pod printers for annual registrations and decals.

Time Required :

January 1, 2021 is requested. This will allow renewal notices to be sent to all ATV owners a year in advance that their registration will expire and must be renewed annually.

Procedural Changes :

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Update Motor Vehicle Procedures Manual and distribute to DFA Revenue Offices of new practices and procedures.

Updated Sales Tax Rules will be required.

Initiate periodic audit procedures of ATV dealers of the new monthly sales reports to determine adequacy and accuracy of the data.

Update Motor Vehicle Procedures Manual and distribute to Revenue Offices. Train Motor Vehicle and Revenue Staff.

Other Comments :

The bill provides that the retailer would be responsible for sending a listing of ATV sales transactions including, without limitation, the name of the purchaser, the brand, model, year, and vehicle identification number of the all-terrain vehicle and the sales price of the all-terrain vehicle. This does not provide sufficient information necessary for DFA to assess tax due in the case that a purchaser neglects to register the ATV purchase. Additional information needed includes the date of sale, sales invoice number, the address of the purchaser and telephone number of the purchaser for DFA audit to contact if ATV was not registered or if ATV farm exemption was claimed and the registrant is not qualified for the exemption. Also, the information provided by the retailer would need to be in the electronic format prescribed by the DFA so that it is easily readable and is delivered in a cohesive nature to allow for system acceptability and integration.

Audits of ATV dealers would be conducted to verify the accuracy and completeness of the electronic listings submitted to DFA that reflect all of their new and use ATV sales.

Motor vehicle registration compliance for on-highway motor vehicles is assisted by Arkansas state and local police agencies when observing actions of drivers and their motor vehicles. Similar assistance for locating unregistered ATVs will not be available which may impact compliance with the registration requirement and fees due.

Unless previously registered by the ATV owner, DFA would have no knowledge as to current ATV owners that would be subject to annual registration fees.

Used ATVs with a sales price exceeding \$4,000 will be subject to sales tax under the bill. If sold by a dealer, the sale would be included on the monthly listing of sales transactions. If sold by an individual owner, DFA would have no knowledge of the sales transaction and unless the purchaser registered the ATV, the collection of the sales tax would not occur.

Currently the AIRS system reflects 280,000 ATVs but it is unknown if all of them are currently registered and will renew annually.

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Legal Analysis :

This bill implements delayed registration for ATVs and modifies existing sales tax language for motor vehicles.

The bill modifies the definition of "motor vehicle" from a self-propelled vehicle that is required to be registered "for use on the highway" to "with the department." This modification is made in several subsequent portions of the bill. It appears that this modification is made to bring ATVs into the types of motor vehicles that must be registered. This modification could greatly impact the Department's existing policies and implementation of sales tax.

Currently, sellers are required to collect sales tax on the sale of ATVs, unless a sales tax exemption is presented at the time of purchase. This bill modifies the duty of sellers to collect sales tax to a duty to report certain data on all ATVs sold to the Department. Notably, this information submitted **does not** include an address or other identifying information about the purchaser, other than the name. It then requires purchasers of ATVs to register the vehicles within thirty (30) days. The bill sets forth specific penalties for failure to register the ATV.

Administrative Concerns:

- Because this bill appears to include ATVs into the previous classification of motor vehicles, it is unclear how ATV sales will operate with § 26-52-510, which provides its own penalties and also allows for motor vehicle trade-ins and private sale credits. Moreover, it would prevent the collection of sales tax on an ATV sold for less than \$4,000.00. Additionally, by including ATVs in the definition of motor vehicles, the bill allows for a cap of \$2,500.00 on county and local tax collection.
- There will be issues in enforcing the registration of ATVs. Because the sellers no longer collect the sales tax, the Department will have to audit non-compliant individuals. If the seller follows minimal compliance requirements of the bill, the Department will be forced to conduct this audit with only a name. This will place a significant administrative burden on the Department.

This bill becomes effective on the first day of the calendar quarter following the effective date of this bill.