

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1374**

**Bill Subtitle: TO AMEND THE LAW CONCERNING WHICH SALES BY CHARITABLE ORGANIZATIONS ARE EXEMPT FROM SALES AND USE TAX; AND TO AMEND THE CRITERIA TO DETERMINE WHEN A SALE BY A CHARITABLE ORGANIZATION COMPETES WITH A SALE BY A FOR-PROFIT BUSINESS.**

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### Basic Change :

**Sponsors: Reps. A. Collins and J. Jett  
Sen. J. Dismang**

HB1374 amends § 26-52-430(b) to allow a charitable organization to hold sales transactions for fundraising events up to ten times per year on sales of new items of tangible personal property before the sales transaction would be deemed to compete with sales by a for-profit business. Under current law, a charitable organization may sell new items of tangible personal property exempt from sales and use tax provided that the organization is not engaged in business for profit and the sales do not compete with for-profit businesses. Under current law, a sale by a charitable organization does not compete with a sale by a for-profit business if:

- The sales transaction is conducted by a member of the charitable organization;
- All proceeds of the sales transaction go to the charitable organization; and
- The sales transaction is not a continuing one and is not held more than three times a year.

HB1374 does not provide an effective date. For purposes of the Revenue Impact below, the effective date is presumed to be October 1st, 2021.

### Revenue Impact :

#### **FY2022**

#### **Total Approximate State Sales and Use Tax Loss \$ - 104,000**

(Estimated Effective Date 10/1/21 --- 8 months reduced tax collection)

General Revenue - 4.5%	\$ - 69,768
Property Tax Relief - .5%	\$ - 7,752
Conservation Fund - .125%	\$ - 1,938
Educational Adequacy Fund - .875%	\$ - 13,566
Highway Fund - .5%	\$ - 7,752
Educational Excellence Trust Fund -	\$ - .000
Educational Adequacy (GR Transfer) -	\$ - .000
State Central Services -	\$ - 2,184
Constitutional Officers -	\$ - 1,040

**Total Approximate Local City and County Sales and Use Tax Loss \$ - 34,667**

#### **FY2023**

**Total Approximate State Sales and Use Tax Loss \$ - 156,000**

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General Revenue - 4.5%	\$ - 93,915
Property Tax Relief - .5%	\$ - 11,628
Conservation Fund - .125%	\$ - 2,907
Educational Adequacy Fund - .875%	\$ - 20,349
Highway Fund - .5%	\$ - 11,628
Educational Excellence Trust Fund -	\$ - 9,865
Educational Adequacy (GR Transfer) -	\$ - 872
State Central Services -	\$ - 3,276
Constitutional Officers -	\$ - 1,560
<b>Total Approximate Local City and County Sales and Use Tax Loss</b>	<b>\$ - 52,000</b>

### **Taxpayer Impact :**

An entity meeting the definition of a "charitable organization" for Arkansas sales and use tax purposes would now be limited to not more than ten fundraising events per year instead of the three events per year in order to qualify for the sales and use tax exemption under §§ 26-52-401(2) and -430(b). This exemption does not extend to for-profit businesses operating in conjunction with a charitable organization or at the charity's event.

### **Resources Required :**

None.

### **Time Required :**

Adequate time is provided for implementation.

### **Procedural Changes :**

Updates to the Sales and Use Tax Rules will need to be promulgated.

### **Other Comments :**

None.

### **Legal Analysis :**

Generally, sales made by a charitable organization are exempt from sales tax. If a charitable organization sells new tangible personal property, specified digital products, or digital code, then the sale is taxable if the sale competes with sales by for-profit businesses. § 26-52-430 defines sales that do "not compete with a sale by a for-profit business." Under current law, a sale by a charitable organization does not compete with a sale by a for-profit business if the sales transaction is conducted by a member of the charitable organization, all proceeds of the sales transaction go to the charitable

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organization, and the sales transaction is not a continuing one and is not held more than three times a year.

HB1374 alters the circumstances when a sale by a charitable organization is deemed to not compete with a sale by for-profit businesses by increasing the number of times a sales transaction can occur within a year from three to ten.

HB1374 also replaces an "and" within the definition of sales that do not compete with a sale by a for-profit business with an "or." Under HB1374, a sale by a charitable organization does not compete with a sale by a for-profit business if the business meets the unchanged subdivisions (b)(1) and (b)(2) of § 26-52-430 and either is not a continuing one or is not held more than ten times per year.

This bill does not contain an effective date and will become effective on the 91st day after sine die adjournment of the General Assembly. If Arkansas passes a law that results in a change in a sales tax rate or base, the Streamlined Sales and Use Tax Agreement requires Arkansas to make a reasonable effort to limit the effective date of the bill to the first day of a calendar quarter. For that reason, the bill may benefit from an amendment providing for an effective date on the first day of a calendar quarter.