

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1980

Amendment Number: Engrossment 3/26/13 (Am # H1)

Bill Subtitle: TO AMEND AND EXPAND THE ARKANSAS ARTS AND CULTURAL DISTRICTS ACT; AND TO CREATE TAX INCENTIVES RELATED TO ARTS AND CULTURAL DISTRICTS.

Basic Change :

Representative Sabin

Engrossment 03/26/13 --- House Amendment 1 --- The bill creates income tax and sales tax exemptions for qualifying artists who reside in arts and cultural districts. To qualify as a residing artist, an individual must own or rent residential property in the county where the arts and cultural district is located; must conduct a business in the arts and cultural district; and must derive income from the sale or performance within the arts and cultural district of an artistic work that the individual wrote, composed, executed, or otherwise created, either alone or with others within the district. Current Arkansas law provides that Arts and Cultural Districts are created by the Arkansas Arts Council upon request by city and county government officials.

Artistic works that must be created or performed include those that are created, written, composed, or executed within the district and be A book or other writing; A play or performance of a play; An instrumental or vocal musical composition or the performance of an instrumental or vocal musical composition; A painting or other picture; A sculpture; A traditional or fine craft; The creation of a film or television production or the acting within a film or television production; The creation of a dance or the performance of a dance; The creation of original jewelry, clothing, costumes, or clothing or costume design; or Any other product generated as a result of a work listed in subdivisions (1)(B)(i)-(ix) of this section;

The proposal would provide:

- (1) an income tax exemption on income earned from the sale of artistic works written, composed, executed and created within the district by qualifying resident artists;
- (2) a sales and use tax exemption for the sale of artistic work created by a qualifying resident artist; and
- (3) a sales and use tax exemption for the sale of an original, one-of-a-kind artistic works sold by a gallery or other business within the district.

The bill is effective on the first day of the calendar quarter following the effective date of the act.

Revenue Impact :

Income Tax:

FY2014 - \$342,000 loss

FY2015 - \$348,000 loss

FY14 Tax Decrease

Total Impact to State Revenues - \$670,000

-\$ 447,692 --- State General Revenue (4.5%)
-\$ 87,051 --- Educational Adequacy (.875% tax)
-\$ 49,744 --- Property Tax Relief Trust Fund (.5%)
-\$ 12,436 --- Conservation Tax (.125%)
-\$ 49,744 --- Highway Fund (.5%)
-\$ 0 --- Educational Excellence Trust Fund
-\$ 0 --- Educational Adequacy (GR transfer)
-\$ 13,333 --- State Central Services
-\$ 6,667 --- Constitutional Officers
Total Impact to City and County Sales Tax - \$225,000

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FY15 Tax Decrease

Total Impact to State Revenues - \$1,050,000

-\$ 636,216 --- State General Revenue (4.5%)
-\$ 137,106 --- Educational Adequacy (.875% tax)
-\$ 78,346 --- Property Tax Relief Trust Fund (.5%)
-\$ 19,587 --- Conservation Tax (.125%)
-\$ 78,346 --- Highway Fund (.5%)
-\$ 63,304 --- Educational Excellence Trust Fund
-\$ 5,596 --- Educational Adequacy (GR transfer)
-\$ 21,000 --- State Central Services
-\$ 10,500 --- Constitutional Officers
Total Impact to City and County Sales Tax -\$340,000

Taxpayer Impact :

Eligible residing artists would be exempt from state income taxes. The residing artists and art galleries and other arts and cultural businesses located within the district would no longer collect state and local sales taxes from their customers.

Resources Required :

Computer programming changes, booklet changes, staff training

Time Required :

Adequate time is provided.

Procedural Changes :

Return processing procedures must be updated to verify eligibility and track the tax exemption.

Other Comments :

The bill violates the Streamlined Sales and Use Tax Agreement and would result in Arkansas being removed from full compliance with the Agreement and jeopardizes collection of the current \$10,000,000 in annual tax collections from volunteer remote sellers. Under the Agreement, a state must have a common tax base that applies equally to all in-state and out-of-state sellers and to all areas of the entire geographical area of the state. A state cannot levy sales taxes or create exemptions that only apply to certain sellers or only for a portion of the state, a city or a county. Any exemption granted for the types of merchandise subject to this bill must apply to all in-state and out-of-state sellers equally regardless of where the sale occurs.

Legal Analysis :

Amendment H1 to HB1980 creates sales tax and income tax incentives related to an arts and cultural district. Each qualifying residing artist is entitled to an income tax exemption on the income from the sale, publication, or production of an artistic work that is created in the district and sold within the district or shipped from within the district to purchasers who order by Internet, mail-order, or catalog. The sale of an artistic work created by a qualified artist in the district or an original artistic work sold by a gallery within the district is exempt from sales and use tax.

The sales tax exemption will apply to any work created in the district by a qualified residing artist, regardless of where the work is sold. The exemption will also apply to any work, regardless of where

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the artist who created it resides or where he created the work, so long as it is an original, one-of-a-kind work that is sold in a gallery in the district.

Current law grants authority to the Arkansas Arts Council to determine what areas qualify as an arts and cultural district. The effect of this bill is to allow the Arkansas Arts Council to likewise extend the sales and income tax exemptions to persons and businesses within those districts by virtue of that designation. Current law provides little guidance concerning what criteria must be satisfied before an area may be granted designation as an arts and cultural district. This lack of guidance concerning the criteria that must be satisfied to create a district could potentially be challenged as an unlawful delegation of legislative authority to the Arkansas Arts Council.