

Department of Finance and Administration

Legislative Impact Statement

Bill: SB1026

Bill Subtitle: TO DEDICATE THE SALES AND USE TAX REVENUE GENERATED FROM SELLERS THAT DO NOT HAVE A PHYSICAL PRESENCE IN THE STATE TO THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT WHEN CERTAIN CONDITIONS ARE MET.

Basic Change :

Senator Ingram

The bill provides that when Federal law authorizes states to collect sales and use tax from sellers having no physical presence in the state, the additional state general revenues received shall be deposited to the State Highway and Transportation Department Fund. DFA would certify to the State Treasurer the amount of net available general revenue attributable to the sales and use taxes collected from the remote sellers. The State Treasurer would then distribute this amount to the State Highway and Transportation Fund.

Revenue Impact :

Economists from the University of Tennessee have estimated that Arkansas would receive as much as \$100 million in new sales and use tax revenue if federal legislation were adopted to require remote sellers to collect state and local sales taxes. If the estimate is accurate, \$75 million in additional General Revenues would be received by Arkansas. The proposal would require these funds to be transferred to the State Highway and Transportation Department fund.

Existing law provides that the State sales and use tax on food and food ingredients will be levied at zero percent (0%) once the collection of sales and use tax from remote sellers is equal to or greater than one hundred fifty percent (150%) of the sales and use tax collected on food and food ingredients. Based on the existing amounts of state sales taxes collected on food and food ingredients and the amount of revenue estimated for Arkansas by the University of Tennessee economists, when remote collection authority begins, the state sales tax rate on food will be reduced to 0%. The proposal would result in the 4.5% portion of the state sales tax reported as a result of the federal legislation to be deposited to the Arkansas Highway and Transportation Fund with no additional revenue to offset the General Revenue reduction because of the 0% state sales tax rate on food.

Taxpayer Impact :

None

Resources Required :

None

Time Required :

Adequate time is allowed in the proposal

Procedural Changes :

Computer programming changes to allow for the proper deposit of the revenue.

Other Comments :

The proposal amends sales tax code provision Ark Code Ann. § 26-52-107 to redirect the net general revenue from remote sellers. Remote sellers collect compensating use taxes and the use tax laws were not amended with similar language.

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The proposal should be amended to take effect on the first day of a calendar month after the director determines the requirements are met.

The proposal conflicts with Ark Code Ann. §§ 26-52-317 and 26-53-145 which will reduce the State sales and use tax on food and food ingredients to zero percent (0%) once the collection of sales and use tax from remote sellers with no physical presence in the state is equal to or greater than one hundred fifty percent (150%) of the sales and use tax collected under the reduced tax levied on food and food ingredients. Unless amended, when remote collection authority begins, the state sales tax rate on food will be reduced to 0% with no additional revenue to offset the reduction.

It is not clear if the tax received from existing remote sellers who are voluntarily collecting and reporting Arkansas taxes through the Streamlined Sales and Use Tax Agreement should be transferred to the Arkansas Highway and Transportation Fund at the time Federal law is adopted that grants remote collection authority to the states.

Legal Analysis :

This bill diverts sales and use tax revenues attributable to Streamlined Sales Tax (SST) and send those revenues to the State Highway and Transportation Department Fund. If that intent is to be achieved, there are multiple amendments that would be required to the bill. One of the primary problems for which amendment would be required is that this bill takes funds collected as general revenues and deposits them as special revenues, without adequate statutory authority. Another problem is that the language regarding the revenues attributable to SST is already codified in § 26-52-317 and those funds are to be considered in the reduction of the sales tax on food. If both provisions are in the code when the trigger event occurs, the sales tax on food will be reduced to zero and the funds attributable to SST will go the Highway, resulting in a double hit on general revenues.

Senate Bill 1026 amends Arkansas Code § 26-52-107 regarding disposition of taxes, interest, and penalties in order to dedicate sales and use tax revenue generated from sellers that do not have a physical presence in the state to the Arkansas Highway and Transportation Department. Specifically, the bill adds a subsection that requires the Director of the Department of Finance and Administration (DFA) to determine that federal law authorizes the state to collect sales and use tax from sellers that do not have a physical presence in the state; and to determine that some or all of the sellers that do not have a physical presence in the state make sales of taxable goods and services to purchasers in the state. After DFA determines that these conditions have been met, the Chief Financial Officer of the State shall certify to the Treasurer of State the amount of available net general revenues attributable to the collection of sales and use tax from sellers that do not have a physical presence in the state and the Treasurer shall deposit the amount of net general revenues determined under this section to the State Highway and Transportation Department Fund.

The diversion of funds from general revenue to the State Highway and Transportation Department Fund is problematic for several reasons. First, the bill does not enumerate which general revenues "attributable to the collection of sales and use from sellers that do not have a presence in the state" are to be considered in the calculation, thus it is not clear what revenues are intended to be diverted. For example, the new subsection does not provide that such general revenues should first be distributed to

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the various State Treasury funds as provided by the Revenue Stabilization Law, § 19-5-101, et seq. In addition, it does not take into account any other sales and use tax provisions that divert any portions general revenue funds to another fund.

The bill would affect the amount of general revenues available in the State Treasury. Finally, because this bill changes how both sales and use taxes are distributed, a provision regarding the sales taxes affected should be added to Title 26, Chapter 52, and a provision regarding the use taxes affected should be added to the Arkansas Compensating Use Tax Act of 1949, rather than amending Arkansas Code § 26-52-107.