

Department of Finance and Administration

Legislative Impact Statement

Bill: SB1027

Bill Subtitle: TO DEDICATE THE SALES AND USE TAX REVENUE GENERATED FROM SALES OF MOTOR VEHICLES AND AUTO-RELATED SALES AND SERVICES 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 taxes from sellers having no physical presence in the state, transfers from state general revenues shall be deposited to the State Highway and Transportation Department Fund as follows:

- (1) Six percent (6%) of the state general revenue levied under Arkansas sales and use tax code sections §§ 26-52-301, 26-52-302(a), 26-52-302(b), 26-52-303, 26-52-317(c)(1)(A), 26-52-319(a)(4)(A), 26-53-106; 26-53-107(a), 26-53-107(b), 26-53-145(c)(1)(A), and 26-53-148(a)(4)(A) which reflect the estimated amount attributable to auto related sales and services; and
- (2) All net available general revenue derived from the sale of motor vehicles.

The maximum amount of the general revenue transfer from motor vehicles and auto related sales and services would equal the amount of sales taxes collected from the remote sellers who would be required to register if federal legislation is adopted.

DFA would certify to the State Treasurer the amount of net available general revenue attributable to the collection of sales and use taxes from sellers with no physical presence and would also certify the amount of net general sales and use tax revenues attributable from both in-state and out-of-state sales of motor vehicles, as well as the six percent (6%) of the remaining net general revenue resulting from all sales activities. The State Treasurer would then distribute the calculated amount of sales and use tax revenues to the State Highway and Transportation Fund. Based on current tax collection amounts, the State Treasurer would transfer all new general revenues reported by the remote sellers. The proposal would become effective 90 days after adjournment of the 89th General Assembly.

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 amount of existing sales taxes collected on motor vehicles and 6% of all other existing general revenue collections far exceed the \$75 million amount and would result in all new sales taxes to be transferred to the State Highway and Transportation Department Fund.

Existing law, Ark. Code Ann. §§ 26-52-317 and 26-53-145, 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

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Transportation Fund with no additional revenue to offset the General Revenue reduction resulting from the 0% state sales tax rate on food.

Taxpayer Impact :

None

Resources Required :

Reprogramming of state tax system and AASIS to allow for the change in the deposit of the revenue.

Time Required :

Adequate time is allowed in the proposal.

Procedural Changes :

DFA would develop systems and procedures to track tax collections from the new remote sellers.

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 law was not amended.

The proposal should be amended to take effect on the first day of a calendar month after 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 general 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 of Federal law is adopted that grants remote collection authority to the states.

Legal Analysis :

This bill attempts to use language relating to the collection of revenues attributable to Streamlined Sales Tax (SST) as a trigger to divert an amount calculated to be attributable to auto-related sales and services (6% of all sales and use tax collected under specific levy statutes) 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

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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 auto related sales and services will go to Highway, resulting in a double hit on general revenues.

Senate Bill 1027 amends Arkansas Code § 26-52-107 regarding disposition of taxes, interest, and penalties in order to dedicate a portion of sales and use tax revenue 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:

(1) 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

(2) the total amount of the following:

- the available net general revenues derived from the sale of motor vehicles; and
- 6% of the available net general revenues generated under §§ 26-52-301, 26-52-302(a), 26-52-302(b), 26-52-303, 26-52-317(c)(1)(A), 26-52-319(a)(4)(A), 26-53-106, 26-53-107(a), 26-53-107(b), 26-53-145(c)(1)(A), and 26-53-148(a)(4)(A), which is intended to reflect an amount attributable to "auto-related sales and services" as defined in the bill.

The Treasurer shall then deposit into the State Highway and Transportation Department Fund the total amount of available net general revenues determined by adding the available net general revenues derived from the sale of motor vehicles and the 6% of available net general revenues as set forth above. However, the amount deposited shall not exceed the amount attributable to the collection of sales and use tax from sellers that do not have a physical presence in the state.

The attempted 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 for the cap on the transfer to State Highway and Transportation Department Fund.

In addition, it is not clear whether the revenues to be transferred should first be distributed to the various State Treasury funds as provided by the Revenue Stabilization Law, § 19-5-101, et seq. The bill references "available net general revenue," however, this term is not defined.

With respect to the "available net general revenue derived from the sale of motor vehicles," this should be amended to include the actual statutory provisions at issue to avoid confusion and allow for easier implementation. Also, if the list of general revenues to be diverted is intended to encompass all general revenue taxes, 26-52-107(b)(2)(A)(ii)(b) should be amended to read: "Six percent (6%) of the total net general revenues as enumerated in 19-6-201(1) and (2) that were collected as sales and use

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tax under §§ 26-52-301, 26-52-302(a), 26-52-302(b)(1), 26-52-303, 26-52-317(c)(1)(A), 26-52-319(a)(5)(A), 26-52-319(c)(2) as distributed under 26-52-319(a)(5)(A), 26-52-607, 26-53-106, 26-53-107(a), 26-53-107(b)(1), 26-53-145(c)(1)(A), 26-53-148(a)(5)(A), and 26-53-148(c)(2) as distributed under 26-53-148(a)(5)(A)." As written, the bill would divert funds not only from general revenue but from the property tax relief fund and educational adequacy. It also fails to collect a percentage of all general revenues. Even if corrected, the transferring language should be amended to prevent the bill from diverting revenues from the Educational Adequacy Fund and the Educational Excellence Fund should that not be its intention.

The bill would affect the amount of general revenues available in the State Treasury. Currently, increases in costs for various state programs, including education, health care for the poor, and criminal justice, are paid from revenue growth arising from year to year. This bill will divert additional funds available from revenue growth away from essential state programs and dedicate that money to construction and maintenance of state roads. Consequently, reduced funds will be available to meet increased costs experienced by other state programs. Current law mandates that the state provide adequate education funding. This bill will make it more difficult to provide adequate education funding by reducing the funds available to pay increasing education costs. The state's ability to issue Amendment 82 bonds to finance large industrial projects is determined based on historical revenue growth. This bill reduces the amount of future revenue growth and limits or impairs the state's ability to pursue additional Amendment 82 projects.

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.