

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1178**

**Amendment Number: S1**

**Bill Subtitle: TO PROVIDE A SALES AND USE TAX EXEMPTION FOR A LESSEE OF AN INTERMODAL AUTHORITY IN CERTAIN CIRCUMSTANCES.**

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**Basic Change :** Sponsor: Representative Pitsch

Senate Amendment 1 --- Amends the bill to require that the lessee's business that is located at the intermodal facility is carrying out the essential governmental function of the authority. The amendment also provides that the lessee's business located at the intermodal facility would continue to be subject to the one-half of one percent (.5%) state sales and use tax levied for highways under Constitutional Amendment 91..

Original Bill --- The bill amends the Regional Intermodal Facilities Act to extend the sales and use tax exemption for those intermodal facilities to entities that lease property at the facility for purposes of constructing new business establishments. The Regional Intermodal Facilities Act, provides for the creation of regional Authorities by Arkansas cities and counties for the purpose of acquiring, equipping, constructing, maintaining and operating regional intermodal facilities and have authority to lease property located at the facility. Authorities are exempt from payment of all state and local taxes on their intermodal operations. The bill would extend the exemption from state and local sales and use taxes to those who lease property from the Authority at the intermodal location. The exemption would only apply to those products and services purchased by the lessee for use at their intermodal location. The bill limits the exemption to those lessee's who have not ceased or substantially reduced operations of a similar nature at other locations within 50 miles of the intermodal location. The proposal would be effective 90 days after adjournment of the 90<sup>th</sup> General Assembly.

**Revenue Impact :**

Adoption of the amended proposal would place Arkansas in noncompliance with the Streamlined Sales Tax Agreement and risk loss of approximately \$10 million received annually in Arkansas state and local sales and use tax revenue that is collected by voluntary sellers reporting taxes under the terms of the Agreement.

**Taxpayer Impact :**

Businesses leasing property from regional intermodal facility authorities would be subject to a reduced state sales and use tax rate on purchases of products and services consumed at their intermodal location.

**Resources Required :**

If sellers are to collect a different state sales and use tax rate when selling to the eligible businesses, modifications to DFA's computer tax reporting and processing system and tax reporting forms used by taxpayers will be required.

If eligible businesses pay the 6.5% state sales and use tax rate plus local city and county sales and use taxes to sellers when making purchases and were required to request a refund from DFA in order for the businesses to receive the proposed benefit, taxpayers would have to submit detailed refund claims with required documentation and DFA audit and verification processes would have to be created for refund issuance.

If eligible businesses were required to be direct pay taxpayers and report all taxes due using the DFA on-line tax return filing system; purchase all products and services exempt from state and local sales and use tax; and subsequently report the total purchases subject to tax and calculate the amount of tax due after considering the tax reduction proposed, modifications to the DFA computer tax reporting and processing system will be required.

**Time Required :**

Adequate time for implementation is provided by the proposed legislation.

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### **Procedural Changes :**

Registration of eligible businesses leasing property at the regional intermodal authorities would be required to receive the tax rate benefits proposed.

### **Other Comments :**

As described in the Legal Comments below, the provision to collect the ½% sales and use tax for highways violates Amendment 91 of the Arkansas Constitution. In addition, adoption of the amended proposal would place Arkansas in noncompliance with the Streamlined Sales Tax Agreement and risk loss of approximately \$10 million received annually in Arkansas state and local sales and use tax revenue that is collected by voluntary sellers reporting taxes under the terms of the Agreement.

The Agreement requires each state to have one common tax base for all sellers to administer when collecting state, city and county sales taxes. The Agreement also requires each state to levy one state sales and use tax rate on all products and services subject to tax (except for food and certain utilities which may have a different tax rate). The amended proposal continues the levy of the one-half of one percent (.5%) state sales and use tax designated for highways levied under Constitutional Amendment 91. This provision would create an additional state sales and use tax rate for sellers to administer in violation of the Agreement provisions.

Because state sales and use tax would continue to be levied on sales of products and services purchased by the businesses locating at the intermodal facility, the requirements of Amendment 75 would also continue to apply which levies the .125% state sales and use tax that supports Arkansas programs for wildlife, parks, tourism and natural heritage. The Amendment 75 levy applies to sales of all products and services upon which a state sales tax applies.

Excluding the collection of Arkansas city and county sales and use taxes while levying state sales and use taxes violates the Streamlined Sales Tax Agreement. The amended proposal creates a different tax base for sellers to administer when collecting state sales and use taxes from the tax base to be used when collecting city and county sales and use taxes.

At present, no Arkansas intermodal Authorities currently lease property for purposes of constructing new business establishments at the intermodal locations.

### **Legal Analysis :**

Amendment 91 provides that a ½% sales and use tax shall be levied on all taxable sales subject to the Arkansas state sales and use tax. If the General Assembly enacts an exemption for certain transactions, those exemptions apply to the ½% tax levied by Amendment 91. Amendment 91 does not provide authority to impose the ½% sales tax for highways in a manner differently than the state sales and use tax.