

Department of Finance and Administration

Legislative Impact Statement

Bill: SB140

As Engrossed: 2/2/2017

Bill Subtitle: TO PROVIDE FOR THE COLLECTION OF SALES AND USE TAX RATHER THAN USE TAX ON SALES BY CERTAIN REMOTE SELLERS.

Basic Change :

Sponsor: Senator Files

Engrossment 02/02/17 --- Senate Amendment 1 --- Amends the bill to clarify that the provisions apply to Arkansas sales and use taxes; sales of all product types subject to sales and use tax; and removes from the current sales tax code provisions existing language that would conflict with the bill regarding in-state affiliates of out-of-state sellers.

Original Bill --- SB140 would add a new code section to the Arkansas Gross Receipts Tax Act of 1941, § 26-52-101 *et seq.*, to require out-of-state sellers having no physical presence in Arkansas to collect Arkansas sales tax in accordance with Arkansas law. Out-of-state or "remote" sellers subject to the provisions of the bill would include those sellers meeting either of the following criteria in the previous calendar year or the current calendar year:

- (1) a seller having gross revenue from sales of products and services delivered into Arkansas that exceeds one hundred thousand dollars (\$100,000); or
- (2) a seller who has sold products and services for delivery into Arkansas in at least two hundred (200) separate sales transactions.

To enforce the collection requirements of SB140, the state may bring a declaratory judgment action in circuit court against any seller the state believes meets the criteria of the bill to establish the obligation to collect and remit sales tax. The filing of the declaratory judgment action by the state serves as an administrative injunction prohibiting the state from enforcing the tax collection obligation upon the seller until the declaratory judgment action is resolved in favor of the state. If the declaratory judgement is resolved in favor of the state, the state may assess and apply the obligation to collect the tax from that date forward.

SB140 would be effective on the first day of the second calendar month following the effective date of the act.

Revenue Impact :

Under the provisions of the bill, state and local sales tax assessments against an out-of-state seller could begin following a favorable result from a declaratory judgment action brought by the state. The revenue impact from out-of-state sellers volunteering to begin tax collections resulting from passage of SB140 is not known

Taxpayer Impact :

An out-of-state seller having no physical presence in Arkansas would be required to collect and remit the sales tax due following a favorable result from a declaratory judgement action brought by the state. An out-of-state seller having no physical presence in Arkansas meeting the sales volume criteria of SB140 could voluntarily register with the Department of Finance and Administration (DFA) to collect and remit sales tax.

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Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

None.

Other Comments :

The legislation mirrors that previously adopted in the State of South Dakota which is currently being litigated in South Dakota state courts.

Legal Analysis :

SB140-S1 amends the bill to replace the term "products transferred electronically" with the phrase "any other property subject to Arkansas sales and use tax" in order to cure the constitutional issue created because Arkansas law does not currently impose tax on in-state sales of "products transferred electronically." This substitution also creates a uniform tax base in compliance with the Streamline Sales and Use Tax Agreement. The amendment provides that sellers are required to collect sales and use tax. The amendment clarifies the provision that in the event it is determined that a seller was not required to collect sales and use tax, a purchaser has no claim against a seller for taxes collected. The amendment repeals § 26-52-110 related to the creation of nexus based on the physical presence of a seller's affiliates or by referral agreements with Arkansas residents. Because this method is replaced by SB140's creation of physical presence nexus for sellers based on the total amount of sales or total number of sales transactions, its repeal resolves the possible conflict between it and the bill.