

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1023

Bill Subtitle: TO AMEND THE SALES TAX LAWS CONCERNING SPECIAL EVENTS; AND TO EXCLUDE CERTAIN SCHOOL FUNDRAISERS FROM THE SALES TAX LAWS REGULATING SPECIAL EVENTS.

Basic Change :

Sponsor: Rep. Lowery

HB1023 would amend § 26-52-401 to provide a sales tax exemption for sales of tangible personal property, specified digital products, a digital code, or services to a parent teacher organization (PTO), parent teacher association (PTA), or similar organization that is a § 501(c)(3) non-profit organization under the federal Income Tax Code and is affiliated with a public school. The bill defines "public school" to mean a school operated by a public school district or an open-enrollment public charter school. Under current law, there is no general sales or use tax exemption for sales made to a PTA, PTO, or similar organization.

HB1023 also would amend § 26-52-518 to exclude from the definition of "special event" a public school fundraising event sponsored by a PTA, PTO, or similar organization. Under current law, a promoter or an organizer of a special event must register for sales tax collection with the Department of Finance and Administration (DFA) and must provide vendors with special event sales tax reporting forms and other information. This bill would exclude a school fundraising event sponsored by a PTA, PTO, or similar organization from these requirements if:

- (1) Ticket sales to the fundraising event are sold by public school personnel, students, parents of students, and community volunteers and businesses; and
- (2) Gross proceeds from the ticket sales are used to directly assist the public school in fulfilling its mission of educating children.

This bill is effective on the first day of the calendar quarter following the effective date of the act, which is anticipated to be October 1, 2021.

Revenue Impact :

-\$135,000 to \$350,000 Estimated Annual Loss to State Sales Tax --- Purchases by PTA's and PTO's
-\$95,000 to \$235,000 Annual General Revenue Loss

[Estimate based on 1,046 Arkansas school districts in 2019 with an estimated equal number of PTA's and PTO's. Estimate assumes purchasing of taxable products averaging \$2,000 to \$5,000 per organization per year. Few PTA's or PTO's host special events as defined in Arkansas sales tax code provisions where the organization rents booth spaces to retailers and the PTA or PTO acts as the promoter of the event and is required to retrieve and send to DFA the sales tax collected by the retailers selling at the event. A PTA or PTO conducting a special event and collecting admission fees, would collect sales tax on the price of the admission tickets. DFA prior year total tax collections from PTA/PTO organizations on ticket sales for special events is less than \$500 per year.]

Taxpayer Impact :

A PTA, PTO, or similar non-profit organization affiliated with a public school would be able to purchase

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tangible personal property, specified digital products, a digital code, or services exempt from sales tax. Also, a PTA, PTO, or similar organization that is currently required to register a fundraising event with DFA as a "special event" and perform the duties of a special event promoter will no longer be required to register with DFA provided that the event is conducted consistent with HB1023.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Updates to the sales and use tax rules will need to be promulgated.

Other Comments :

None.

Legal Analysis :

This bill creates a sales tax exemption for sales made to a PTA, PTO, or similar non-profit organization affiliated with a public school. The bill does not create a tax exemption for sales made by a PTA, PTO, or similar non-profit organization, including sales of tickets to the type of fundraising event described by Section 2 of the bill. This is because the bill does not amend § 26-52-301(5), which levies gross receipts tax on tickets or admissions to places of amusement or to athletic, entertainment, or recreational events, or fees for access to or the use of amusement, entertainment, athletic, or recreational facilities. Section 2 of the bill, which amends § 26-52-518 to remove registration and recordkeeping requirements associated with organizing and promoting the special event, does not affect the taxability of ticket sales. The sale of tangible personal property by vendors at the type of school fundraising event described by Section 2 of the bill would continue to be subject to sales tax unless another exemption applied.

In Section 2, lines 9-21, the bill does not define or limit the terms "parent teacher organization, a parent teacher association, or a similar organization", as is limited by language in Section 1 to an organization that is a § 501(c)(3) and affiliated with a public school. It may be recommended that Section 2 include language similar to the language in Section 1.

In Section 2, lines 9-17, the bill provides that one of the requirements for a fundraising event to qualify for the exclusion from the definition of a "special event" is that the "gross proceeds from the ticket sales are used to directly assist the public school in fulfilling its mission of educating children." The bill does not identify a percentage or amount of the gross proceeds from ticket sales that must go to the public school. Thus, as long as the seller remits a portion of the gross proceeds from ticket sales to the public

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school, the exclusion still would apply even if the seller retains the balance of the gross proceeds for other purposes. It is unclear what "directly" assisting a public school would entail or require.