

SUMMARY OF PROPOSAL #16
for consideration by the
ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE

TOPIC: Sales Tax Exemptions for Named Non-Profit Entities

Summary of Proposal for Consideration

To sunset any sales tax exemption for a named non-profit organization, effective for tax years beginning on or after January 1, 2019.

Fiscal Analysis

Repeal of the exemptions may result in an estimated \$720,240 per year increase to General Revenue based upon figures from FY11 and FY17, as provided by the Department of Finance and Administration's "Sales and Use Tax Revenue Impact of Exemptions" presentation to the Arkansas Tax Reform and Relief Legislative Task Force on March 19, 2018.

Legal Analysis

Background

Arkansas currently has the following sales tax exemptions for named non-profit organizations:

- Sales to The Poets Roundtable of Arkansas under Arkansas Code 26-52-401(9)
 - Per DFA, the Fiscal Impact in FY11 was \$83
 - The sales tax exemption was created by ACT 630 of 1979, and has not been amended since.
- Sales to Fort Smith Clearing House under Arkansas Code § 26-52-424
 - Per DFA, the Fiscal Impact in FY11 was \$5,871
 - The sales tax exemption was created by ACT 913 of 1993, and has not been amended since.
- Sales to the Arkansas Symphony Orchestra Society Arkansas Code § 26-52-401(37)
 - Per DFA, the Fiscal Impact in FY11 was \$4,737
 - The sales tax exemption was created by ACT 2132 of 2005, and has not been amended since.
- Sales to Arkansas Search Dog Association, Inc. under Arkansas Code § 26-52-443
 - Per DFA, the Fiscal Impact in FY11 was \$692
 - The sales tax exemption was created by ACT 1176 of 2009, and has not been amended since.
- Arkansas Entertainers Hall of Fame Board under Arkansas Code § 13-9-104
 - Per DFA, the Fiscal Impact in FY11 was \$2,428
 - The sales tax exemption was created by ACT 671 of 1985, and has not been amended since.

- Sales to Arkansas Black Hall of Fame Foundation under Arkansas Code § 26-52-401(39)
 - Per DFA, the Fiscal Impact in FY17 was \$2,562
 - The sales tax exemption was created by ACT 998 of 2011, and has not been amended since.
- Sales to Boys' and Girls' Clubs of America and any local councils under Arkansas Code § 26-52-401(8)
 - Per DFA, the Fiscal Impact in FY11 was \$41,119
 - The sales tax exemption was created by ACT 922 of 1995, and has not been amended since.
- Sales to 4-H Clubs and FFA Clubs located in Arkansas, the Arkansas 4-H Foundation, the Arkansas Future Farmers of America Foundation, and the Arkansas Future Farmers of America Association under Arkansas Code § 26-52-401(10)
 - Per DFA, the Fiscal Impact in FY11 was \$49,600
 - The sales tax exemption was created by ACT 630 of 1979, and has not been amended since.
- Sales to Humane Societies not operated for profit and organized for the prevention of cruelty to animals under Arkansas Code § 26-52-414
 - Per DFA, the Fiscal Impact in FY11 was \$57,707
 - The sales tax exemption was created by ACT 417 of 1979, and has not been amended since.
- Sales to Habitat for Humanity under Arkansas Code § 26-52-401(31)
 - Per DFA, the Fiscal Impact in FY17 was \$65,381
 - The sales tax exemption was created by ACT 516 of 1995, and has not been amended since.
- Sales to the Salvation Army under Arkansas Code § 26-52-401(33)
 - Per DFA, the Fiscal Impact in FY17 was \$72,385
 - The sales tax exemption was created by ACT 603 of 1997, and has not been amended since.
- Sales to Heifer Project International, Inc. under Arkansas Code § 26-52-401(34)
 - Per DFA, the Fiscal Impact in FY17 was \$194,590
 - The sales tax exemption was created by ACT 1222 of 1997, and has not been amended since.
- Sales of articles sold on the premises of the Arkansas Veterans' Home under Arkansas Code § 26-52-401(25)
 - Per DFA, the Fiscal Impact in FY11 was \$1,157
 - The sales tax exemption was created by ACT 324 of 1979, and has not been amended since.
- Sales to Arkansas National Guard – Sales by Canteen under Arkansas Code § 12-63-406
 - Per DFA, the Fiscal Impact in FY17 was \$221,928
 - The sales tax exemption was created by ACT 489 of 1977, and has not been amended since.

Potential Legal Issues

Article 5, § 25 of the Arkansas Constitution states that “[i]n all cases where a general law can be made applicable, no special law shall be enacted[.]” When determining whether a law is special legislation and not general legislation, the Arkansas Supreme Court has held that Article 5, § 25 of the Arkansas Constitution provides the legislature discretion in determining whether a special law should be passed. *See, Boyd v. Bryant*, 35 Ark. 69 (1879); *City of Little Rock v. Parish*, 36 Ark. 166 (1880); and *Greer v. Merchants & Mechanics Bank*, 169 S.W. 802 (1914).

In 1926, Amendment 14 to the Arkansas Constitution was enacted, providing that “[t]he General Assembly shall not pass any local or special act [and that] the amendment shall not prohibit the repeal of local or special acts.” After the passage of Amendment 14 to the Arkansas Constitution, the Arkansas Supreme Court has held that the determinative factor as to whether legislation is special legislation, depends on whether the General Assembly acted in an arbitrary manner to separate one class of persons from another. *See, Eady v. Lansford*, 92 S.W.3d 57 (2002). When making this determination the Arkansas Supreme Court will apply the rational basis test to determine whether such a separation is arbitrary. *Id.* An act will generally not be considered local legislation or special legislation within the meaning of Amendment 14 simply because the legislation is limited to a class consisting of less than all citizens of the state or less than all of its territory. *See, Littleton v. Blanton*, 665 S.W.2d 239 (1984). Instead, in most cases, general legislation ends and special legislation begins where the class established by the act has no reasonable relation to the purpose or subject matter of the enactment or omits from its operation persons or areas which would fall naturally into the class to which the act is limited. *Id.*

Arkansas has a general sales tax exemption for sales by churches and charitable organizations, except when the organization may be engaged in business for profit under Arkansas Code § 26-52-401(1) and § 26-52-401(2). The sales tax exemption for charitable organizations does not apply to sales by the charitable organization, if the sales compete with sales by for-profit business. Ark. Code Ann. § 26-52-430.

Other States

- Iowa: Does not provide sales tax exemptions for specifically named entities. However, Iowa has a general charitable sales tax exemption of the sales price from sales or rental of tangible personal property, or services rendered by any entity where the profits from the sales or rental of the tangible personal property, or services rendered, are used by or donated to a nonprofit entity that is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, a government entity, or a nonprofit private educational institution, and where the entire proceeds from the sales, rental, or services are expended for any of the following purposes: educational, religious, or charitable. IA St. § 423.3)
- Louisiana: Does name certain entities for sales tax exemptions (LA St. 47:301), including:
 - Sales and Rentals to Boys State of La., Inc. and Girls State of La., Inc.
 - Sales to the Society of the Little Sisters of the Poor
 - Superdome admissions

- Sales to the Toledo Bend Dam Project
- Sales to the U.S. Navy
- Sales to Little Theater organizations

The Louisiana Constitution has certain prohibitions regarding special legislation, including a prohibition against exempting property from taxation. (La. Const. Ann. art. III, § 12). According to the Louisiana Supreme Court, a law will be considered local legislation or special legislation, where its restrictions can affect only a portion of the citizens of Louisiana and where there is no reasonable basis for the creation of the classification or substantial difference between the class created and the subjects excluded justifying the exclusion. World Trade Ctr. Taxing Dist. v. All Taxpayers, Prop. Owners, & Citizens of World Trade Ctr. Taxing Dist. & Nonresidents Owning Prop. or Subject to Taxation Therein, 894 So. 2d 1185, 1189 (La. 2005).

- Mississippi: Does name certain entities for entity sales tax exemptions (MS St. §§ 27-65-101 and 27-65-111), including:
 - Sales to Mississippi Blood Services
 - Sales to Mississippi Technology Alliance
 - Sales to PGA host of golf tournament held in Mississippi
 - Sales to YMCA and YWCA

The Mississippi Constitution has certain prohibitions regarding special legislation, specifying that no special or local law shall be enacted for the benefit of individuals or corporations, in cases which are or can be provided for by general law. (Miss. Const. art. IV, § 87). When determining whether legislation that exempts a certain organization or classification of citizens violates Mississippi's special legislation provision, the classification created by the legislation must be based on some reasonable basis. Miller v. Lamar Life Ins. Co., 131 So. 282, 284 (Miss. 1930)

- Missouri: Does not provides sales tax exemptions for specifically named entities. However, Missouri has a general charitable sales tax exemption for all sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions. (MO St. § 144.030)
- Oklahoma: Does name certain entities for sales tax exemptions (OK St. 68 § 1356), including:
 - Sales to Blue Star Mothers of America
 - Sales to Boy Scouts
 - Sales to Girl Scouts
 - Sales to Campfire USA
 - Sales by 4-H Organizations
 - Dues or fees, including free or complimentary dues or fees which have a value equivalent to the charge that could have otherwise been made, to YMCAs and YWCAs
 - Purchases made by the Oklahoma Life and Health Insurance Guaranty Association
 - Purchases made by the Oklahoma Property and Casualty Insurance Guaranty Association

The Oklahoma Constitution has certain prohibitions regarding special legislation, including a prohibition against exempting property from taxation. (Okla. Const. art. V, § 46). The Oklahoma Supreme Court has held that special legislation may be considered general legislation and have local application or apply to a designated class if it operates equally upon all the subjects within the class for which it was adopted. City of Enid v. Public Employees Relations Bd., Okla., 133 P.3d 281 (Ok. 2006).

- Tennessee: Does not provide sales tax exemptions for specifically named entities. However, Tennessee has a general charitable sales tax exemption for sales to charitable entities, and also provides a sales tax exemption for occasional and isolated sales, including sales by organizations such as the Boy Scouts, Girl Scouts, etc. (TN St. § 67-6-102 § 67-6-322)
- Texas: Does not provide sales tax exemptions for specifically named entities. However, Texas has a general charitable sales tax exemption that exempts items sold, leased or rented to religious, educational or charitable organizations; organizations exempted from federal income taxes under Section 501(c)(3), (4), (8), (10) or (19) of the Internal Revenue Code; nonprofit youth athletic organizations; volunteer fire departments; chambers of commerce; and convention and tourist promotional agencies. Also provides a sales tax exemption on occasional sales and amusement services sold by non-profit organizations. (TX St. §151.04 & § 151.310)