

SUMMARY OF PROPOSAL #42
for consideration by the
ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE

TOPIC: Sales Tax Exemption for Used Property Taken in Trade

Summary of Proposal for Consideration

To amend the sales tax exemption for used property taken in trade to also include a sales tax deduction derived from the sale of used tangible property under Arkansas Code § 26-52-401(22), to collect sales tax on used tangible property sold or traded-in and providing a credit on the sales tax collected on the sale of new tangible property within forty-five (45) days of the sale of the used tangible personal property, effective for tax years beginning on or after January 1, 2019.

This proposal will also leave in place the sales tax exemption on the gross receipts or gross proceeds derived from the sale of used tangible property, when the used property is traded-in and accepted by the seller as part of the sale of other tangible property and Arkansas sales tax was collected and paid on the total amount of consideration of the used tangible property used as trade-in.

Fiscal Analysis

Further details are necessary to provide an accurate fiscal analysis of potential decreases in general revenue when amending the collection of sales tax under this proposal.

The current sales tax exemption under Arkansas Code § 26-52-401(22) may result in an estimated decrease of \$5,160,667 in General Revenue using figures from FY11, 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

Currently, Arkansas provides a sales tax exemption on the gross receipts or gross proceeds derived from the sale of used tangible property, when the used property is traded-in and accepted by the seller as part of the sale of other tangible property and Arkansas sales tax was collected and paid on the total amount of consideration of the used tangible property used as trade-in.

ACT 386 of 1941 created the sales tax exemption under Arkansas Code § 26-52-401(22), and has not been amended since.

Potential Legal Issues

This proposal recommends that Arkansas Code § 26-52-401(22) is amended to mirror the provisions for motor vehicle trade-ins under Arkansas Code § 26-52-510. For the purchase of a motor vehicle, sales tax is paid on or before the time the vehicle is registered directly to the Director of the Department of Finance and Administration. § 26-52-510(a)(1) Ark. Code Ann. Payment of the taxes is required at the time of registration before issuing a license for the new or used motor vehicle, trailer, or semitrailer. § 26-52-510(a)(2).

When a used motor vehicle, trailer, or semitrailer is sold by a consumer, rather than traded-in as a credit or part payment on the sale of a new or used motor vehicle, trailer, or semitrailer, and the consumer subsequently purchases a new or used vehicle, trailer, or semitrailer of greater value within forty-five (45) days of the sale, sales tax is paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer and the amount received from the sale of the used vehicle, trailer, or semitrailer sold in lieu of a trade-in under Arkansas Code § 26-52-510(b)(1)(C)(i).

In order to receive the sales tax deduction under Arkansas Code § 26-52-510, the following requirements must be satisfied:

- Upon registration of the new or used motor vehicle, a consumer claiming the deduction shall provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle. § 26-52-510(b)(1)(C)(ii)(a) Ark. Code Ann. ;
- A copy of the bill of sale shall be deposited with the revenue office at the time of registration of the new or used motor vehicle. § 26-52-510(b)(1)(C)(ii)(b) Ark. Code Ann.; and
- The deduction provided by this section shall not be allowed unless the taxpayer claiming the deduction provides a copy of a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle. § 26-52-510(b)(1)(C)(ii)(b) Ark. Code Ann.

Under Arkansas law, sales tax is generally collected at the point of sale when purchasing tangible property. Under Arkansas Code § 26-52-401(22) the amount of sales tax collected on the purchase of new personal property is reduced by the sales price of used tangible property traded-in and accepted by the seller as part of the sale of the new tangible property. Amending the procedures for the collection of sales tax by collecting sales tax on the used tangible property sold or traded-in, and providing a credit on the sales tax collected on the sale of new tangible property within forty-five (45) days of the sale of the used tangible personal property used as a trade-in, will require additional legal changes regarding how sales tax is collected and administered in Arkansas, including, but not limited to:

- Creating a system that allows a person claiming a deduction of sales tax to be collected on the purchase of a new tangible property by providing a receipt signed by the relevant parties to the transaction of the used personal property to be used

as a trade-in to reduce the amount of sales tax collected on the purchase of new tangible property;

- Creating a system to validate that Arkansas sales tax was collected and paid on the used tangible property used as a trade-in to reduce the sales tax to be collected on the purchase of new tangible property under Arkansas Code § 26-52-401(22)(B);
- Creating a system to collect and deposit a copy of the bill of sale or receipt demonstrating the sales tax collected on used tangible property to be used as a trade-in to reduce the amount of sales tax collected on new tangible personal property with the revenue office for auditing purposes;
- Creating a system to ensure that a bill of sale or receipt demonstrating sales tax collected on the sale of a used tangible property is not used as a trade-in to reduce the sales tax collected on the purchase of a new tangible property for more than one sale; and
- Defining whether the sale of new tangible property subject to the sales tax exemption must be considered a similar item to the used tangible property taken in trade.

Other States

- Iowa: Does not have an exemption similar to this proposal. However, Iowa does have a sales tax exemption for transactions in which tangible property is traded toward the sales price of other tangible property, to exempt a portion of the sales price which is not payable in money to the retailer from the taxable amount if the tangible property traded to the retailer is the type of property normally sold in the regular course of the retailer's business and the tangible property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item. (IA St. § 423.3)
- Louisiana: Does not have an exemption similar to this proposal. However, Louisiana provides for a sales tax credit for trade-ins of like property to be free of general sales tax. The trade-in credits are excluded from the definition of sales price. (LA St. § 47:301).
- Mississippi: No exemption.
- Missouri: No exemption.
- Oklahoma: No exemption.
- Tennessee: Does not have an exemption similar to this proposal. However, when calculating sales tax on the sales price of tangible property, Tennessee does provide a sales tax exemption by not including the value of items taken as "trade-ins" on purchases of similar new or used items if the trade-in item is listed by model and serial number, when applicable, on the customer's invoice. (TN St. § 67-6-102)
- Texas: No exemption.