

SALES TAX PROPOSAL #17
for consideration by the
ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE

TOPIC: Sales and Use Tax Exemptions; Named Nonprofits

Summary of Proposal for Consideration

This proposal would repeal all sales and use tax exemptions for named nonprofit entities and create new, more generalized exemptions for these specific types of nonprofit entities, effective beginning July 1, 2019. The purposes of this proposal are to eliminate any potential constitutional issues relating to special and local legislation for sales and use tax exemptions provided to specific nonprofit entities and to promote a more fair and equitable sales and use tax exemption for all nonprofit entities in Arkansas.

Under this proposal the sales and use tax exemptions for the following named nonprofit entities would be repealed and replaced with generalized sales and use tax exemptions that are specific to the types of services these kinds of entities provide to the residents of this state:

- Arkansas Entertainers Hall of Fame Board under Arkansas Code § 13-9-104;
- Boys' and Girls' Clubs of America and any local councils under Arkansas Code § 26-52-401(8);
- Poets Roundtable of Arkansas under Arkansas Code § 26-52-401(9);
- 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);
- Arkansas Veterans' Home under Arkansas Code § 26-52-401(25);
- Habitat for Humanity under Arkansas Code § 26-52-401(31);
- The Salvation Army under Arkansas Code § 26-52-401(33);
- Heifer Project International, Inc. under Arkansas Code § 26-52-401(34);
- Arkansas Symphony Orchestra Society under Arkansas Code § 26-52-401(37);
- Arkansas Black Hall of Fame Foundation under Arkansas Code § 26-52-401(39);
- Fort Smith Clearing House under Arkansas Code § 26-52-424; and
- Arkansas Search Dog Association, Inc. under Arkansas Code § 26-52-443.

Fiscal Analysis

The Department of Finance and Administration (DFA) is unable to provide a fiscal impact regarding this proposal. There are an unknown number of nonprofit and not-for-profit entities that may prove eligible for an exemption under the proposal that would create an unknown fiscal impact that DFA is unable to quantify. Any definitions that would apply to the listed entities would likely also apply to other entities not currently listed and therefore may create a fiscal impact for entities not currently able to purchase goods and services exempt from Arkansas sales and use tax.

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).

Amendment 14 to the Arkansas Constitution provides 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.” The Arkansas Supreme Court has held that the determinative factor as to whether legislation is special legislation is 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 applies 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 that would fall naturally into the class to which the act is limited. *Id.*

The purpose of this proposal is to eliminate any local or special legislation concerns with respect to the sales and use tax exemptions for the listed named entities. The changes proposed are intended to expand the classes subject to the sales and use tax exemptions so that the exemptions do not omit entities that would naturally fall into the classes subject to the exemptions.