

**SALES TAX PROPOSAL #41**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: Sales Tax Exemption; Magazine Subscriptions**

**Summary of Proposal for Consideration**

It is proposed that the sales tax exemption on the sale of any publication, other than newspapers, through regular subscription under Arkansas Code § 26-52-401(14) be repealed, if federal law allows states to directly require remote sellers to collect and remit sales and use tax, either through a decision from the United States Supreme Court or legislation enacted by the United States Congress. This proposal is conditioned on such a change in federal law because the repeal of the sales tax exemption under Arkansas Code § 26-52-401(14) without the ability for Arkansas to require remote sellers to collect and remit sales tax would create an unfair burden on Arkansas-based companies and may result in an unfair tax advantage for companies that are not based in Arkansas.

**Fiscal Analysis**

According to information presented by the Department of Finance and Administration (DFA) to the Task Force on March 19, 2018, repeal of the sales tax exemption for sales of any publication, other than newspapers, through regular subscription may result in a per year increase of approximately one million five hundred and fifty-six thousand dollars (\$1,556,000) in general revenues based on FY11.

**Potential Legal Issues**

Based on the United States Supreme Court's recent decision in *South Dakota v. Wayfair, Inc.*, 585 U.S. \_\_\_ (2018), a seller no longer has to have a physical presence in a state in order to be compelled to collect sales and use taxes on sales that seller makes into the state if the state takes steps to mitigate the burden such collection would place on interstate commerce. Although the Supreme Court did not determine the validity of South Dakota's law requiring certain remote sellers to collect and remit sales and use tax, based on the comments of the Court in the majority opinion, it is probable that this type of law would be upheld by the Court if it were challenged. Accordingly, physical presence is no longer required for a state to compel a seller to collect and remit sales and use tax, and it is likely that federal law would be interpreted to allow states to compel remote sellers to collect and remit sales and use tax if the state takes steps to minimize the burden on interstate commerce.