

Department of Finance and Administration

Legislative Impact Statement

Bill: HB2143

Bill Subtitle: TO CREATE AN EXEMPTION FROM SALES AND USE TAX FOR CONSTRUCTION MATERIALS PURCHASED WITH PUBLICLY FUNDED BONDS AND USED FOR PUBLIC ROAD CONSTRUCTION PROJECTS.

Basic Change :

Representative Westerman

The bill provides a sales and use tax exemption for construction materials and consumables purchased for state, city, and county funded road construction projects that are financed through issuance of publicly funded bonds. Materials and consumables purchased for road construction projects that are not financed through issuance of bonds remain subject to sales and use tax. A road construction project is defined to mean the construction, restoration, reconstruction, renovation or repair of highways, streets and roads, bridges, overpasses and interchanges. The exemption would be granted for those materials and consumables that remain part of the completed construction project. The bill excludes from the exemption any purchases of construction equipment, tools, and fuels. The bill also excludes from the exemption those other items that may be used for purposes of a public road construction project that do not remain part of the construction project, excepting consumables. The exemption would be effective on the 1st day of the calendar quarter following the effective date of the act.

Revenue Impact :

FY14 Tax Decrease

Total Impact to State Revenues - \$ 7.53 million

[8 Months of Reduced Tax Collections --- 10/1/2013 Effective Date]

-\$ 5.04 million ---State General Revenue (4.5%)
-\$ 0.98 million ---Educational Adequacy (.875% tax)
-\$ 0.56 million ---Property Tax Relief Trust Fund (.5%)
-\$ 0.14 million ---Conservation Tax (.125%)
-\$ 0.56 million ---Highway Fund (.5%)
-\$ 0.00 million ---Educational Excellence Trust Fund
-\$ 0.00 million ---Educational Adequacy (GR transfer)
-\$ 0.17 million ---State Central Services
-\$ 0.08 million ---Constitutional Officers
Maximum Impact to City and County Sales Tax - \$2.4 million

FY15 Tax Decrease

Total Impact to State Revenues - \$11.60 million

-\$ 6.99 million ---State General Revenue (4.5%)
-\$ 1.51 million ---Educational Adequacy (.875% tax)
-\$ 0.86 million ---Property Tax Relief Trust Fund (.5%)
-\$ 0.22 million ---Conservation Tax (.125%)
-\$ 0.86 million ---Highway Fund (.5%)
-\$ 0.71 million ---Educational Excellence Trust Fund
-\$ 0.06 million ---Educational Adequacy (GR transfer)
-\$ 0.27 million ---State Central Services
-\$ 0.12 million ---Constitutional Officers
maximum Impact to City and County Sales Tax - \$3.7 million

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Taxpayer Impact :

Taxpayers eligible for the exemption would need to register with DFA identifying the eligible construction project in order for DFA to issue a certificate for the eligible project to be provided to the sellers of the eligible items.

Sellers would be required to implement procedures to apply the exemption on their sales to construction companies for construction projects performed for state, local and federal government entities that are financed through issuance of bonds. They would maintain accounting and billing records to clearly establish for which public construction project the materials were being purchased and in order to identify which materials sold to the contractor were eligible for the exemption.

Resources Required :

Resources will be used to develop a system of registration by construction project for construction contractors awarded publicly bond financed road construction and road repair projects with provisions for registration of their related sub-contractors. A registered contractor and sub-contractor would then have documentation to substantiate their exempt purchases for each contract that they could provide to their product suppliers when claiming the exemption.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

DFA would develop and implement a method to provide eligible purchasers with an exemption certificate for eligible projects. DFA would also develop rules and procedures for implementation of the proposal in order to provide guidance to sellers and to reduce non-compliance concerns. Cities, counties and the state Highway and Transportation Department would have to notify DFA of construction contracts awarded for projects financed through bond issuance in order to provide construction contractors and the governmental entities with documentation that they can provide to sellers to substantiate their exempt purchases.

Other Comments :

The bill grants the exemption to construction materials and consumables. It is recommended that a definition for "consumables" be included in the bill to provide clarity.

Sellers would have difficulty in determining which sales qualify for the exemption. Once an item has been determined to be eligible as a construction material, sellers would then be required to determine if the purchase was for an eligible public construction project financed through bond issuance. Sellers of construction materials would acquire documented proof from construction contractors for each sales transaction exempted from taxation. Errors in failing to collect the proper tax when due would be the responsibility of the seller. The proposal should clarify that an improper claim for an exemption would require the purchaser to remit the tax.

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Legal Analysis :

HB2143 amends the provisions of Ark. Code Ann. §26-52-401 et seq. to provide an exemption from state sales and use taxes for construction materials that become part of a public road construction project or that are consumed during such project. The exemption does not apply to the purchase of equipment, tools, fuel, "or any other item of property that may be used for purposes of a public road construction project that do not remain part of the public road construction project or are not consumed during the construction process." In order to qualify for exemption the road construction project must be initiated by the state or a political subdivision of the state, and must be paid for with bonds paid for with funds or guarantees from the state or a political subdivision of the state.

A rule will be necessary to administer the exemption to provide additional clarity as to the materials that qualify for the exemption and the bill does require DFA to promulgate rules.

In Arkansas, the sales tax liability for all sales of tangible personal property and taxable services is upon the seller unless the purchaser claims an exemption and the seller obtains identifying information from the purchaser. In addition, contractors performing construction contracts, such as road construction contracts, are deemed the consumer of materials used in fulfilling such contracts and are therefore responsible for sales and use tax due on such materials. In order to avoid liability for the tax at the point of purchase, a purchaser of exempt construction materials will be required to provide a seller with proof of exemption, and the bill does not set forth a mechanism to prove entitlement to exemption.

The bill does not impose any record keeping requirements on the sellers or purchasers of exempt construction materials. Record keeping requirements should be established for purposes of administering and enforcing the exemption.

The exemption will become effective on the first day of the calendar quarter following the effective date of the act.