

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1112**

**Bill Subtitle: TO AMEND THE LAW CONCERNING THE SALES AND USE TAX EXEMPTION FOR SALES BY A CHARITABLE ORGANIZATION.**

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**Basic Change :** Sponsor: Representative Sabin

The proposal would amend current sales tax code provisions regarding the collection of sales taxes when merchandise is sold by charitable organizations. Under current law, if sales of merchandise by a charitable organization do not compete with sales by for-profit businesses, the collection of state and local sales taxes is not required. In order to determine if a sale by a charitable organization does not compete with a sale by a for-profit business, the following criteria must be met:

- (1) The sales transaction is conducted by a member of the charitable organization and not by any franchisee or licensee;
- (2) All the proceeds derived from the sales transaction go to the charitable organization;
- (3) The sales transaction is not a continuing one and is held not more than three (3) times a year; and
- (4) The dominant motive of the majority of purchasers of the items sold is the making of a charitable contribution, with the purchase of an item being merely incidental and secondary to the dominant purpose of making a gift to the charitable organization.

The bill would remove the dominate motive test for determining when an organization must collect sales taxes. If adopted, the amendment would impact current sales tax collections by Arkansas charitable organizations sponsoring annual music festivals, concerts, community events and shows. Products upon which sales taxes are currently collected include sales of t-shirts and event souvenirs, food, soft drinks and water, and sales of alcoholic beverages including mixed drinks, beer and wine. Other vendors selling at these events would continue to collect sales taxes on their product sales. The proposal would be effective the first day of the calendar quarter following the effective date of the act.

### **Revenue Impact :**

#### **FY16 Tax Decrease**

Total Impact to State Revenues - \$128,000  
[ 8 Months of Reduced Tax Collections -- 10/1/2015 Effective Date ]

-\$ 85,780 --- State General Revenue (4.5%)  
-\$ 16,679 --- Educational Adequacy (.875% tax)  
-\$ 9,531 --- Property Tax Relief Trust Fund (.5%)  
-\$ 2,383 --- Conservation Tax (.125%)  
-\$ 9,531 --- Highway Fund (.5%)  
-\$ 0 --- Educational Excellence Trust Fund  
-\$ 0 --- Educational Adequacy (GR transfer)  
-\$ 2,816 --- State Central Services  
-\$ 1,280 --- Constitutional Officers

Total Loss to City and County Sales Taxes - \$50,000

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### FY17 Tax Decrease

Total Impact to State Revenues - \$192,000

- \$ 115,468 --- State General Revenue (4.5%)
- \$ 25,019 --- Educational Adequacy (.875% tax)
- \$ 14,297 --- Property Tax Relief Trust Fund (.5%)
- \$ 3,574 --- Conservation Tax (.125%)
- \$ 14,297 --- Highway Fund (.5%)
- \$ 12,129 --- Educational Excellence Trust Fund
- \$ 1,072 --- Educational Adequacy (GR transfer)
- \$ 4,224 --- State Central Services
- \$ 1,920 --- Constitutional Officers

Total Loss to City and County Sales Taxes - \$75,000

### Taxpayer Impact :

Charitable organizations selling products at annual festivals and events would no longer collect state and local sales taxes on their sales.

### Resources Required :

None

### Time Required :

Adequate time is provided for implementation

### Procedural Changes :

Amendment to sales tax rules and instructions sets for taxpayers would require amendment.

### Other Comments :

The proposal does not impact the sales taxes collected for advertising and promotion programs of Arkansas cities on sales of food. These sales taxes are often referred to as the local "hamburger tax" and are reported directly to the city by the organization making the sale.

### Legal Analysis :

State law provides an exemption from sales and use tax for sales of tangible personal property or taxable services made by charitable organizations, except when the organizations may be engaged in business for profit. This exemption will not extend to sales of new tangible personal property if the sales compete with for profit businesses. A sale would be determined to compete with for-profit businesses if the dominant motive of the majority of the purchasers of the new property being sold is not the making of a charitable contribution. HB1112 removes the requirement that the motive of the purchaser be the making of a charitable contribution. The effective date would be the first day of the calendar quarter following the effective date of the act.