

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4542-02
Bill No.: HB 2270
Subject: Tax Credits; Revenue, Department; Business and Commerce
Type: Original
Date: February 23, 2016

Bill Summary: This proposal establishes a tax credit for businesses that were assessed higher taxes without notice as a result of the Department of Revenue changing its interpretation of taxable items before August 31, 2015.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|--|--|--|--|
| FUND AFFECTED | FY 2017 | FY 2018 | FY 2019 |
| General Revenue | (Potentially Significant Unknown) | (Potentially Significant Unknown) | (Potentially Significant Unknown) |
| Total Estimated Net Effect on General Revenue | (Potentially Significant Unknown) | (Potentially Significant Unknown) | (Potentially Significant Unknown) |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|--|------------|------------|------------|
| FUND AFFECTED | FY 2017 | FY 2018 | FY 2019 |
| | | | |
| | | | |
| Total Estimated Net Effect on Other State Funds | \$0 | \$0 | \$0 |

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 6 pages.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2017 | FY 2018 | FY 2019 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE) | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2017 | FY 2018 | FY 2019 |
| | | | |
| | | | |
| Total Estimated Net Effect on FTE | 0 | 0 | 0 |

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

| ESTIMATED NET EFFECT ON LOCAL FUNDS | | | |
|--|----------------|----------------|----------------|
| FUND AFFECTED | FY 2017 | FY 2018 | FY 2019 |
| Local Government | \$0 | \$0 | \$0 |

FISCAL ANALYSIS

ASSUMPTION

Oversight was unable to receive some of the agency responses in a timely manner due to the short fiscal note request time. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

Officials from the **Office of Administration-Division of Budget and Planning (B&P)** assume this proposal would allow any individual, partnership, or corporation to receive a tax credit for 100% of the assessed sales and use taxes against the taxpayer that were not collected from the taxpayer's customers after the Department of Revenue (DOR) expanded its interpretation of taxable items.

B&P notes that there are no requirements for a taxpayer to prove the actual amount of sales and use tax being claimed as meeting these requirements. B&P also notes that there is no statute of limitations for these credits. This could allow businesses and taxpayers potentially to claim credits back to the implementation of the state sales tax. Further, it is unclear if judicial rulings changing the interpretation of taxable items by DOR would also qualify for tax credits.

Therefore, B&P estimates that this bill will reduce Total State Revenue and General Revenue by an unknown, but significant amount.

Oversight notes this proposal would establish a tax credit for businesses that were assessed higher taxes without notice as a result of the Department of Revenue (DOR) changing its interpretation of taxable items for sales and use tax. This proposal applies to the DOR expanding its interpretation of taxable items where the taxpayer did not collect sales taxes from the taxpayer's customers and is limited to sales occurring prior to August 28, 2015.

Oversight will show a potentially significant unknown amount in General Revenue reductions for FY 2017, FY 2018 and FY 2019 and assumes that substantially all credits would be redeemed within the three year period of the fiscal note.

Oversight assumes the DOR will incur an unknown amount of administrative costs in processing claimed credits and will show these anticipated costs for each year of the fiscal note.

ASSUMPTION (continued)

Officials from the **Joint Committee on Administrative Rules** assume this proposal will not cause a fiscal impact to their organization.

Oversight notes in response to similar legislation granting an agency rule making authority, officials at the Office of the Secretary of State assumed the following:

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year’s legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

| <u>FISCAL IMPACT - State Government</u> | FY 2017 (10 Mo.) | FY 2018 | FY 2019 |
|---|---|---|---|
| GENERAL REVENUE FUND | | | |
| <u>Revenue Reduction - DOR</u> Tax credits - Section 135.780 | (Potentially Significant Unknown) | (Potentially Significant Unknown) | (Potentially Significant Unknown) |
| <u>Costs-DOR</u> Administrative expenses | <u>(Unknown)</u> | <u>(Unknown)</u> | <u>(Unknown)</u> |
| ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND | (Potentially Significant <u>Unknown</u>) | (Potentially Significant <u>Unknown</u>) | (Potentially Significant <u>Unknown</u>) |

FISCAL IMPACT - Local Government

FY 2017
(10 Mo.)

FY 2018

FY 2019

\$0

\$0

\$0

FISCAL IMPACT - Small Business

Small businesses who qualify for the credit would be expected to benefit as a result of this proposal.

FISCAL DESCRIPTION

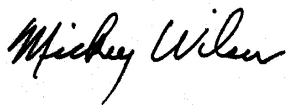
This bill authorizes an income tax credit equal to the eligible tax payments plus interest remitted by a business following a sales and use tax audit, prior to August 28, 2015, in which the Department of Revenue expanded its interpretation of taxable items and assessed the business sales and use tax that the business did not collect from its customers. A taxpayer cannot claim a tax credit in excess of \$1 million. The credit is nonrefundable, but may be carried forward to the next ten years. The credits cannot be transferred, sold, or assigned. The department must determine who may qualify for this credit and notify any qualified claimant of the claimant's potential eligibility.

The provisions of the bill will expire on December 31 six years after the effective date.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Joint Committee on Administrative Rules
Office of the Secretary of State
Office of Administrative - Budget and Planning



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