

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0827-01  
Bill No.: HB 422  
Subject: Department of Revenue, Taxation and Revenue - Sales and Use  
Type: Original  
Date: January 22, 2019

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Bill Summary: This proposal authorizes a sales tax refund 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 28, 2015.

**FISCAL SUMMARY**

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	\$0	\$0 to (\$5,000,000)	\$0 or (Could Exceed \$100,000)
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0 to (\$5,000,000)</b>	<b>\$0 or (Could Exceed \$100,000)</b>

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
School District Trust	\$0	\$0 or (Unknown)	\$0 or (Unknown)
Conservation Commission	\$0	\$0 or (Unknown)	\$0 or (Unknown)
Park, Soil & Water	\$0	\$0 or (Unknown)	\$0 or (Unknown)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

☒ 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 2020	FY 2021	FY 2022
<b>Local Government</b>	<b>\$0</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Office of Administration Division of Budget and Planning (B&P)** assume this proposal would allow businesses to receive a refund for 100% of the assessed sales and use taxes against the taxpayer that were not collected from the taxpayer's customers after a Department of Revenue (DOR) audit when the DOR expanded its interpretation of taxable items. Refunds would be allowed for tax assessments from August 28, 2005 through August 28, 2015.

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. Further, it is unclear if judicial rulings changing the interpretation of taxable items by DOR would also qualify for these refunds.

A total of \$5.0 million in refunds is allowed under this proposal. In addition, if more than \$5.0 million in claims for refunds is made, DOR is to request appropriations from the General Assembly in later fiscal years.

Therefore, B&P estimates that Total State Revenue and General Revenue would decrease by \$5.0 million during FY 2021, the first fiscal year the refunds would become available; and General Revenue could be negatively impacted by an unknown amount beginning in FY 2022 if DOR requires further appropriations.

This proposal will impact the calculation under Article X, Section 18(e).

Officials at the **Department of Revenue (DOR)** assume this proposal states that the Department must allow for refund claims from businesses that paid sales and use tax assessments as a result of an audit by the Department between August 28, 2005 and August 28, 2015, when the Department expanded its interpretation of taxable items and the taxpayer did not collect the tax from the taxpayer's customers. The refund shall be allowed in an amount equal to the amount actually paid on such assessment by the taxpayer, plus interest calculated using the Applicable Federal Rates as published by the Internal Revenue Service under 26 U.S. C. Section 1274. The total amount of refund claims paid under this subsection shall not exceed five million dollars and shall be issued on a first-come, first-served basis. If the total amount of refund claims exceeds five million dollars, the Department shall request an appropriation from the General Assembly in later fiscal years to satisfy such unpaid claims.

ASSUMPTION (continued)

Decrease to Specific Funds - Fiscal Year 2021
General Revenue
\$5,000,000

The revenue impact above is reported for Fiscal Year 2021. Future impacts to the funds above are subject to the appropriation(s) to the Department of Revenue by the General Assembly, which is required to be requested by the Department if the amount of sales and use tax refund requests in relation to this legislation exceeds \$5 million.

The Department wishes to note that the local jurisdiction(s) in which a business resides, who may qualify for a refund under this proposed section, may see decreased revenues as well. Without knowing which businesses would qualify for a refund under this proposed legislation, the Department is unable to determine what jurisdiction(s) will be impacted nor can the Department provide estimated decrease(s) to local revenues

**Oversight** notes this proposal becomes effective July 1, 2020 which is FY 2021.

**Oversight** notes this proposal caps the claims made to DOR for a refund at \$5 million. Should the amount of claims exceed \$5 million, then DOR is to request an appropriation the following year for the amount to satisfy the refund claims. Oversight notes that DOR is unable to determine the number of amount of claims that may be filed. Oversight notes it is unclear if there is a conflict with the statute of limitations for sales tax refunds. Oversight also notes this proposal is subject to appropriation, therefore Oversight will show the impact to General Revenue as \$0 to the \$5 million stated in this proposal for FY 2021. Oversight will show the impact in FY 2022 as \$0 to Could Exceed \$100,000 in FY 2022 for claims that could exceed the \$5 million.

**Oversight** notes that these refunds are for sales and use taxes paid. Oversight notes that sales and use tax money is distributed to the School District Trust Fund, Conservation Commission Fund, Park, Soil & Water Funds, Local Political Subdivision Funds and to General Revenue. Since it is unclear if General Revenue would pay out all this refund money or it would be split among the Funds that share sales and use taxes, Oversight will show the impact to General Revenue of the \$5 million and a potential Unknown impact to the other sales and use tax Funds.

<u>FISCAL IMPACT - State Government</u>	FY 2020	FY 2021	FY 2022
<b>GENERAL REVENUE</b>			
<u>Revenue Reduction</u> - DOR §144.190 sales and use refund	<u>\$0</u>	<u>\$0 to</u> <u>(\$5,000,000)</u>	\$0 or (Could Exceed <u>\$100,000</u> )
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<u><b>\$0</b></u>	<u><b>\$0 to</b></u> <u><b>(\$5,000,000)</b></u>	<b>\$0 or (Could</b> <b>Exceed</b> <b><u>\$100,000</u></b> )
<b>SCHOOL DISTRICT TRUST FUND</b>			
<u>Revenue Reduction</u> - DOR §144.190 sales and use refund	<u>\$0</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND</b>	<u><b>\$0</b></u>	<u><b>\$0 or</b></u> <u><b>(Unknown)</b></u>	<u><b>\$0 or</b></u> <u><b>(Unknown)</b></u>
<b>CONSERVATION COMMISSION FUND</b>			
<u>Revenue Reduction</u> - DOR §144.190 sales and use refund	<u>\$0</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND</b>	<u><b>\$0</b></u>	<u><b>\$0 or</b></u> <u><b>(Unknown)</b></u>	<u><b>\$0 or</b></u> <u><b>(Unknown)</b></u>
<b>PARK, SOIL &amp; WATER FUNDS</b>			
<u>Revenue Reduction</u> - DOR §144.190 sales and use refund	<u>\$0</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON PARK, SOIL &amp; WATER FUNDS</b>	<u><b>\$0</b></u>	<u><b>\$0 or</b></u> <u><b>(Unknown)</b></u>	<u><b>\$0 or</b></u> <u><b>(Unknown)</b></u>

<u>FISCAL IMPACT - Local Government</u>	FY 2020	FY 2021	FY 2022
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**LOCAL POLITICAL SUBDIVISIONS**

<u>Revenue Reduction</u> - DOR §144.190		<u>\$0 or</u>	<u>\$0 or</u>
sales and use refund	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

<b>ESTIMATED NET EFFECT ON</b>		<u><b>\$0 or</b></u>	<u><b>\$0 or</b></u>
<b>LOCAL POLITICAL SUBDIVISIONS</b>	<u><b>\$0</b></u>	<u><b>(Unknown)</b></u>	<u><b>(Unknown)</b></u>

FISCAL IMPACT - Small Business

This could potentially increase the revenues of small businesses that claim and receive a refund.

FISCAL DESCRIPTION

This bill requires the Department of Revenue to refund, with interest, the sales tax paid in a 10-year period between 2005 and 2015 as a result of an audit when the department expanded its interpretation of sales tax law and the taxpayer did not collect the tax from its customers. The total amount that can be refunded under this bill is \$5 million. The department must request an appropriation for any claims that exceed this cap.

This bill has an effective date of July 1, 2020.

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

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SOURCES OF INFORMATION

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