COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2175-02
Bill No.: Perfected HCS for HB 1094
Subject: Taxation and Revenue - General; Department of Revenue; Taxation and Revenue - Income
Type: Original
Date: April 10, 2019

Bill Summary: This proposal prohibits the assessment of penalties on certain late income tax payments for the 2018 tax year.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	**FY 2019***	**FY 2020***	**FY 2021***
General Revenue	$0 or (Could exceed $9,270,649)	(Unknown)	$0
Total Estimated Net Effect on General Revenue	**$0 or (Could exceed $9,270,649)**	**(Unknown)**	**$0**

*** Due to this proposal beginning on January 1, 2019, Oversight has changed the Fiscal Years on the fiscal note.**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	**FY 2019**	**FY 2020**	**FY 2021**
Total Estimated Net Effect on Other State Funds	**$0**	**$0**	**$0**

Numbers within parentheses: ( ) indicate costs or losses. This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	**FY 2019**	**FY 2020**	**FY 2021**
Total Estimated Net Effect on All Federal Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	**FY 2019**	**FY 2020**	**FY 2021**
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 2019**	**FY 2020**	**FY 2021**
Local Government	**$0**	**$0**	**$0**

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Office of Administration Division of Budget and Planning** (**B&P**) assume this proposal would prohibit penalties for tax year 2018 remittance payments until after December 31, 2019 for taxpayers who timely file their tax return by the original due date and make a good faith effort to participate in a repayment plan authorized by DOR.

This proposal would also prohibit the assessment of interest on late payments until May 15, 2019. B&P notes that the current tax due date is April 15th. Therefore, this proposal would reduce interest collections by one month.

This proposal also requires DOR to refund any relevant penalty and interest payments made prior to May 15, 2019 by December 31, 2019. B&P notes that this provision may push some of the impact from this proposal into FY 2020. However, B&P does not have any information on the amount of such impacted that would be shifted between FY 2019 and FY 2020. Therefore, B&P will show the full impact from this proposal as occurring in FY 2019, due to the emergency clause located in Section B.

In 2015, DOR assessed $7.2 million in failure to pay and miscellaneous penalties for individual income taxes. In 2016, DOR assessed $6.6 million in such penalties for individual income taxes. Therefore, B&P estimates that this proposal will reduce individual income tax penalties by $6.9 million (the average of 2015 and 2016).

In 2015, DOR assessed $4.0 million in interest for the period after an individual remittance return was filed with the state, but before a payment demand letter was sent to the taxpayer. For the purpose of this fiscal note, B&P will assume that payment letters are mailed within four months of the final tax due date. In 2016, DOR assessed $3.6 million in interest for the period after an individual remittance return was filed with the state, but before a payment demand letter was sent to the taxpayer. Therefore, B&P estimates that interest collections for the 30 days after the April tax due date in 2015 was $1.0 million ($4.0M / 4) and in 2016 was $0.9 million ($3.6M / 4). Therefore, B&P estimates that this proposal will reduce interest assessments for individual income taxes by $1.0 million (the average of 2015 and 2016).

Therefore, B&P estimates that this provision will reduce Total State Revenue and General Revenue by $7.9 million in FY 2019.

Oversight will show the $6.9 million estimated by B&P for the penalties and the $1 million estimated for the one month of interest for the individual income tax, for a total of $7.9 million.

ASSUMPTION (continued)

Oversight will also show an Unknown impact in FY 2019 and FY 2020 for DOR refunding previously paid penalties back to the taxpayers.

Officials from the **Department of Revenue** (**DOR**) assume this proposal would prevent penalties for delayed payments on outstanding income tax liabilities for the 2018 tax year, as long as a taxpayer timely files their return. There may be interest assessed on outstanding income tax liabilities, provided that no interest will be assessed before May 15, 2019. This section also allows for a refund to be issued to taxpayers that paid the penalties and interest prior to May 15, 2019.

This proposal would only apply to taxpayers who established a payment plan with the Department of Revenue and participate in the plan in good faith. There is a sunset on December 31, 2019.

For individual taxpayers, the Department for TY 2015 collected $7.2 million in penalties that would be exempt under this proposal, and in TY 2016 it collected $6.7 million. The average amount of this collection was $6.9 million. The amount of interest that was collected in TY 2015 for one month was $1.0 million, and in TY 2016 was $0.9 million. With the average being $1.0 million in interest paid.

Tax Year	Returns Filed	Failure to Pay Penalty Paid	Misc Penalty Paid	Interest Paid
2015	261,772	$7,247,727	$279	$4,032,495
2016	232,513	$6,639,977	$0.00	$3,598,076

DOR notes that under Chapter 143 (not including the criminal penalties under §143.911 - §143.951) they can assess interest and additions to tax for the following:

a. Interest is mandated by §143.731 and cannot be abated.
b. An addition to tax for failure to timely file (§143.751)
c. An addition to tax for failure to timely pay (§143.741)
d. An addition to tax for failure to pay estimated income tax (§143.761)
e. A penalty for filing incomplete or misleading return (§143.773)

DOR also notes that both b and c have a mental intent component. For failure to file, if the failure is due to reasonable cause not willful neglect, the director may abate. For failure to pay, the addition is assessed only when the deficiency is due to negligence or intentional disregard of

ASSUMPTION (continued)

the rules and regulations. If the director finds no negligence or intentional disregard, the penalty may be abated.

Oversight notes the penalties and interest rates are:
a) Interest - is established under §32.068 & §32.069 (see below for more information)
b) Failure to timely file - 5% penalty each month up to a cap of 25% (for five months).
c) Failure to timely pay - 5% of delinquency
d) Failure to pay estimated income tax - calculated in DOR Form 2210
e) Filing incomplete or misleading return - DOR says they could not find an instance where they have assessed this penalty

The **DOR** states that §32.068 is determined quarterly by the state treasurer and §32.065 is adjusted annually by the Director of Revenue. House Bill 1858(2018) modifies §32.069 by changing the rate in which interest on refunds is determined from Section 32.068 to Section 32.065 (effective July 1, 2019).

DOR, for informational purposes, provided Oversight with the history of the interest rate calculated under §32.068.

Interest Rates – Refunds 32.068/32.069				
Year	Q1	Q2	Q3	Q4
2018	0.9%	1.0%	1.2%	1.3%
2019	1.5%	1.7%		

Interest Rates – Delinquencies 32.065	
Year	
2018	4%
2019	5%

Oversight has had numerous conversations with DOR over the last month regarding the fiscal impact of this proposal. Oversight has received, it seems, conflicting information at times regarding the implications of the proposal and DOR's current ability/requirement to waive penalties and interest in order to understand the impact on taxpayers. Oversight will continue to work with DOR to pinpoint the impact of the proposal; however, Oversight will present the best information that we have available. Upon the receipt of additional information, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval

ASSUMPTION (continued)

of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

Oversight notes this proposal would not allow DOR to assess any penalty or interest on any taxpayer that files timely (b above), for all underpayment of taxes (d above), or for not paying taxes by April 15th © above) and would not allow interest on any payment to accrue until after May 15th (a above). This proposal would expire on December 31, 2019 making this in effect for the remainder of the calendar year.

Oversight notes that DOR on their website has stated it will not collect any penalties for the underpayment of taxes as long as at least 85% of the tax is paid by April 15th, the previous limit was 90% as required by §143.761.4. Oversight inquired which provisions of law allow DOR to not collect underpayment penalties (d above) and if they could waive the entire fee. DOR responded that they are following the Internal Revenue Service's lead, who is waiving that fee as of January 16, 2019. DOR has stated they already intend to waive this penalty; however, they are not currently required to do so. Oversight inquired again of DOR of what statutory authority they have to waive this penalty and DOR responded that §143.961 requires them to follow as nearly as practicable the rules and regulations of the Treasury of the United States. Oversight notes DOR has stated they intend to waive the penalty for those who filed at least 85%; however, this proposal would mandate the penalty for underpayment be waived for all who file by April 15th. Oversight notes that in Kidde v. America, Inc. v. Dir. of Revenue, 198 S.W.3d 153, 155 (Mo. banc 2006) (citing Armco Steel Corp. v. State Tax Commission, 580 S.W.2d 242, 245 (Mo. banc 1979)) the court ruled that § 143.961.2 does not require the director to follow the federal regulations if to do so will change the substantive rules of Missouri law.

Oversight is unclear whether the department's interpretation of §143.961 would still require DOR to follow the federal penalty rule and still assess penalties for underpayment of estimated tax less than 85% (d above), rather than 0% in this proposal. Oversight notes the average amount collected over the last two years from the under-withholding penalty is $1,370,649. Oversight will reflect in the fiscal note $0 (DOR discretion in waiving the penalty) to the estimate of the penalty.

Oversight is unclear how this proposal will impact filers who have already filed and were assessed and/or already paid any penalties. Oversight inquired of DOR if there have been any taxpayers who have filed for the 2018 tax year that have already been assessed or paid penalties. DOR stated that their records show that roughly 30,000 taxpayers self-reported a penalty, and of those 5,900 have paid the penalty. DOR states they will refund the penalty following the department's normal procedures.

ASSUMPTION (continued)

Oversight has inquired about DOR's ability to waive penalties and interest. DOR stated that the director had no ability to resolve this problem in a blanket manner, except when granting an extension under §143.551 or if an individual/corporate taxpayer follows the formal dispute procedure in §32.378.

Oversight notes that §143.551 grants the Director of Revenue the ability to grant extensions up to six months of time for payment of tax or estimated tax or any installment thereof. It appears that DOR may already have the discretion to compensate taxpayers for required penalties and interest charged as a result of under withholding.

Oversight notes that DOR stated that §32.378 allows them to compromise on taxes; any penalties or interest and that the provision requires each taxpayer to file a formal dispute in order to initiate a compromise.

Oversight notes that Article 4, §22 Missouri Constitution empowers the Department of Revenue to collect all taxes and fees payable to the state as provided by law. §32.378 empowers the director of revenue to compromise any penalties or additions to tax assessed to promote effective tax administration which means that compromise of the liability will not undermine compliance by taxpayers with the tax laws, and that regardless of the taxpayer's financial circumstances, exceptional circumstances exist such that collection of the full liability will be detrimental to voluntary compliance by taxpayers. Such exceptional circumstances include, but are not limited to, instances where the taxpayer's failure to pay the taxes assessed is the result of circumstances beyond the reasonable control of the taxpayer and is not the result of negligence on the part of the taxpayer, or instances where a reasonable person would not have expected the assessment based on previous policy of the department of revenue or information provided to the taxpayer by the department of revenue.

Oversight assumes that as a result of uncertainty beyond the reasonable control of the taxpayer, and not the result of their negligence due to errors in the tax withholding tables, that the department of revenue may compromise its collection practices under §32.378 without this legislation; however, DOR has stated each taxpayer would be required to file a formal dispute in order for them to be able to compromise.

Oversight currently does not have the data or resources available to produce independent revenue projections, therefore Oversight uses the same assumptions for revenue growth as the FY 2020 Consensus Revenue Estimate (CRE) for revenue growth in all future years. The CRE assumes an increase in net general revenue collections of $192.6 million for FY 2020.

ASSUMPTION (continued)

Oversight notes pursuant to §143.011 - §143.022 (SBs 509 & 496 2014) if the previous fiscal year's net general revenue collections exceed the highest net general revenue collections of the three previous fiscal years by at least $150 million, then there will be a reduction in the individual income tax rate by one-tenth of a percent and a reduction for individual income tax filers of 5% of "business income." These reductions will reduce net General Revenue collections by an estimated $160.0 million annually. Oversight notes the proposed legislation may impact future net revenue collections and could impact future triggering of the rate reductions required under §143.011 - §143.022.

FISCAL IMPACT - State Government	FY 2019* (6 Mo)	FY 2020*	FY 2021*
GENERAL REVENUE			
Revenue Reduction - DOR §143.732 not collecting penalties ($6.9 m) and one month interest ($1 m) on individual income tax returns	$0 or (Could exceed $7,900,000)	$0	$0
Revenue Reduction - DOR §143.732 not collecting the under withholding penalty	$0 or (Could exceed $1,370,649)	$0	$0
Revenue Reduction - DOR §143.732 DOR refunding penalties back to taxpayers	(Unknown)	(Unknown)	$0
ESTIMATED NET EFFECT ON GENERAL REVENUE	**$0 or (Could exceed $9,270,649)**	**(Unknown)**	**$0**

*** Due to this proposal beginning on January 1, 2019, Oversight has changed the Fiscal Years on the fiscal note.**

FISCAL IMPACT - Local Government	FY 2019 (6 Mo)	FY 2020	FY 2021
	$0	**$0**	**$0**

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill prevents penalties for delayed payments on outstanding income tax liabilities for the 2018 tax year, as long as a taxpayer timely files their return. There may be interest assessed on outstanding income tax liabilities, provided that no interest will be assessed before May 15, 2019.

Also, this bill will only apply to taxpayers who establish a payment plan with the Department of Revenue and participate in the plan in good faith. The provisions of this bill will sunset on December 31, 2019.

The bill includes an emergency clause.

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

Department of Revenue
Office of Administration Division of Budget and Planning

Kyle Rieman
Director
April 10, 2019

Ross Strope
Assistant Director
April 10, 2019

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