

**LEGISLATIVE FISCAL OFFICE**  
**Fiscal Note**



Fiscal Note On: **SB 198** SLS 19RS 388

Bill Text Version: **REENGROSSED**

Opp. Chamb. Action:

Proposed Amd.: **w/ PROP HSE COMM AMD**

Sub. Bill For.:

<b>Date:</b> June 1, 2019	4:16 PM	<b>Author:</b> PEACOCK
<b>Dept./Agy.:</b> Board of Tax Appeals		<b>Analyst:</b> Benjamin Vincent
<b>Subject:</b> BTA Jurisdiction, Refunds for Unconstitutional Tax Law		

TAX/SALES RE DECREASE GF RV See Note Page 1 of 2  
Provides for administration, disposition, enforcement, and adjudication of state and local taxes and for the Board of Tax Appeals. (Governor's signature)

Proposed law generally expands BTA jurisdiction and authority, including to the determination of overpayments due to an unconstitutional, invalid, or unenforceable law, or mistake of law. Proposed law directs LDR to make a refund where such overpayments are determined, with interest in some cases. Proposed law authorizes judgments of up to \$250,000 with JLCB Litigation Subcommittee approval (up to \$20,000 without) to be made from current collections, not to exceed \$2,000,000 in any fiscal year without approval by the Commissioner of Administration and JLCB. Refunds not approved by JLCB may be taken as a nonrefundable offset which may be transferred to an affiliated entity listed on a federal consolidated return. Proposed law increases the amount transferred to the BTA Local Tax Division, and obligates the Louisiana Sales and Use Tax Commission for Remote Sellers to fulfill the dedication if consumer use tax collections are insufficient. Proposed law adds overpayment pursuant to the Combat-Injured Veterans Tax Fairness Act of 2016 to the instances that trigger the suspension of prescription from audits and IRS examinations. Governor's signature.

<b>EXPENDITURES</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>	<b>5 -YEAR TOTAL</b>
State Gen. Fd.	\$700,000	\$200,000	\$200,000	\$200,000	\$200,000	<b>\$1,500,000</b>
Agy. Self-Gen.	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
Ded./Other	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Federal Funds	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Local Funds	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
<b>Annual Total</b>						

<b>REVENUES</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>	<b>5 -YEAR TOTAL</b>
State Gen. Fd.	DECREASE	DECREASE	DECREASE	DECREASE	DECREASE	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Ded./Other	\$5,000	\$5,000	\$5,000	\$5,000	\$0	<b>\$20,000</b>
Federal Funds	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Local Funds	(\$2,500)	(\$2,500)	(\$2,500)	(\$2,500)	\$0	<b>(\$10,000)</b>
<b>Annual Total</b>						

**EXPENDITURE EXPLANATION**

LFO notes that multiple provisions of proposed law expand BTA's jurisdiction. The BTA reports no administrative costs associated with the bill. However, to the extent that increased responsibility requires additional resources, fee revenue and general fund expenditures in support of BTA proceedings may increase.

LDR anticipates increased expenditures associated with accommodating a large influx of claims against the state due to proposed law. Up to three permanent employees, at a recurring cost of approximately \$200,000, may be required in order to review and process claims. Additionally, an upfront cost of approximately \$500,000 will be incurred for system programming and testing. All expenditures would be subject to appropriation.

**REVENUE EXPLANATION**

**Refunds for Overcollections Due to Laws Ruled Unconstitutional**

Proposed law authorizes refunds out of current collections for overpayments that are determined to be a result of a law or regulation that is ruled unconstitutional, invalid, or unenforceable, or arising from a mistake of law due to misinterpretation.

The magnitude of exposure to the state due to proposed law is likely significant. LDR illustrates this with a franchise tax regulation ruled invalid in 2011 involving over \$60 million in claims against the state. A recent ruling invalidating a personal income tax change of a credit for taxes paid in other states involves over \$30 million per year of tax payments over three years. Not all of the state's exposure due to these rulings may be realized, however the opportunities for remedies under proposed law are significantly expanded relative to current law. Additionally, proposed law authorizes refunds of overpayments with interest. The timing of all revenue impacts is uncertain, but it is possible that proposed law would begin reducing general fund net revenues immediately in the initial year.

Current law already provides for an offset against future tax liabilities for erroneous payments of franchise tax, limited to 25% per year of the claim and the tax liability of the taxpayer or affiliate. According to LDR, some taxpayers have taken advantage of this procedure, but in some cases their is insufficient tax liability available to exhaust the claims and a four year period (with a two year extension) must be accepted by affected taxpayers. This bill provides alternative remedies for recoupment through refunds regardless of tax liabilities available for offset over time. Thus, the bill works to increase the state's exposure to annual net receipt losses in excess of what would otherwise occur. **(continued page 2)**

- Senate Dual Referral Rules
- 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}
  - 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

- House
- 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
  - 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

*Gregory V. Albrecht*  
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**Chief Economist**

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**CONTINUED EXPLANATION from page one:**

**Increased Transfer to BTA Local Tax Division**

Additionally, proposed law increases the amount transferred to the BTA Local Tax Division under R.S. 47:302(K) annually by \$5,000 per year in FY20-FY23. This increase to the BTA is funded from revenue that would otherwise flow to the state general fund and to local governments; displayed as a 50/50 cost split in the table above (\$2,500 of the \$5,000 per year comes from local funds).

Proposed law provides that if collections under R.S. 47:302(K) are insufficient to fulfill the Local Tax Division Expense Fund dedication, the Louisiana Sales and Use Tax Commission for Remote Sellers shall treat any unfunded portion as an expense of the Commission and fund the transfer via their collections of local sales and use tax. Additionally, proposed law provides that payment for the transfer may be made from state sales and use tax collections of the commission, implying a hierarchy of funding for the transfer that uses local funds first. To the extent that collections under 47:302(K) are insufficient, some combination of state general fund and local funds will presumably have to be diverted the the Local Tax Division Expense Fund. Revenue Dept. reports indicate that typical 302(K) collections are approximately \$20,000- \$30,000 per month.

**Combat-Injured Veterans Tax Fairness Act of 2016**

The Combat-Injured Veterans Tax Fairness Act of 2016 provides that, due to improper reporting of disability severance income by the Department of Defense dating back to 1991, an unknown number of veterans residing in Louisiana will be eligible for refunds. Proposed law provides that a refund pursuant to this act will be an instance that triggers a two-year suspension of prescription. LDR does not have information on the number of taxpayers eligible, or on the distribution of the refund sizes. Suspending prescription due to an overpayment under these circumstances is anticipated to have a negative, but likely small impact on the general fund.

Senate

Dual Referral Rules

House

13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}

6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}

13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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