

LEGISLATIVE FISCAL OFFICE
Fiscal Note



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

Bill Text Version: **REENGROSSED**

Opp. Chamb. Action: **w/ HSE FLOOR AMD**

Proposed Amd.:

Sub. Bill For.:

Date: June 4, 2019	9:28 AM	Author: PEACOCK
Dept./Agy.: Board of Tax Appeals		Analyst: Benjamin Vincent
Subject: BTA Jurisdiction, Refunds for Unconstitutional Tax Law		

TAX/SALES REF 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. Proposed law authorizes refunds of up to \$250,000 with JLCB Litigation Subcommittee approval (up to \$20,000 without) to be made from current collections. Claims between \$250,000 and \$1 million may be taken as a nonrefundable offset which may be carried forward for up to five years. Claims over \$1 million appear to require payment as a refund from current collections.

Proposed law increases the amount transferred to the BTA Local Tax Division, obligates the Louisiana Sales and Use Tax Commission for Remote Sellers to fulfill the dedication if consumer use tax collections are insufficient, and authorizes BTA to utilize its escrow account for the operation on an online claims filing system. **(continued page 2)**

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

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

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, including administering the annual refund cap applicable to certain claims. 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	<u>Dual Referral Rules</u>	House
<input checked="" type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}		<input checked="" type="checkbox"/> 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
<input checked="" type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}		<input type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

Gregory V. Albrecht
Chief Economist

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CONTINUED EXPLANATION from page one:

CONTINUED BILL EXPLANATION

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.

Proposed law sets forth procedures for the payment of approved claims that vary based on the size of the individual claim. For approved claims of no more than \$20,000, BTA may simply issue a judgment for payment out of current collections. The total amount of payment for claims under. For claims of no more than \$20,000, a maximum of \$2 million may be paid annually, in the order the claims were approved. Approved claims beyond this amount will be paid in the next year in same order of priority.

Claims between \$20,000 and \$250,000 will be submitted to the Litigation Subcommittee of the Joint Legislative Committee on the Budget, and approved claims will be paid out of current collections without interest.

For approved claims between \$250,000 and \$1 million that are approved but not satisfied via appropriation, the claimant and LDR may enter into an agreement for payment of the claim as a nonrefundable offset against the particular tax at issue.

Proposed law does not appear to establish procedures for claims that exceed \$1 million under the section addressing payment of approved claims. However, proposed law additionally provides that the secretary shall make a refund of overpayments in the case of an unconstitutional law, or otherwise invalid or unenforceable provision. Presumably, this provision would apply to claims over \$1 million.

CONTINUED REVENUE EXPLANATION

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 local governments. 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.

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 relatively small impact on the general fund.

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}

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