



LEGISLATIVE FISCAL OFFICE
Fiscal Note

Fiscal Note On: **HB 488** HLS 11RS 870
Bill Text Version: **ORIGINAL**
Opp. Chamb. Action:
Proposed Amd.:
Sub. Bill For.:

| | | |
|---|---------|--------------------------------|
| Date: May 15, 2011 | 2:29 PM | Author: GREENE |
| Dept./Agy.: Revenue | | |
| Subject: Provides for mandatory Committee approval for LDR rules | | Analyst: Deborah Vivien |

REVENUE DEPARTMENT

OR SEE FISC NOTE GF RV

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Prohibits the Dept. of Revenue from collecting tax on any transaction for which no clear intent to tax by the legislature exists unless the department promulgates a rule indicating its intention to do so

Current law allows for rule submissions and amendments by following the Administrative Procedures Act, which requires public notice, publication in the Register and public hearings upon request with certain time and notification constraints on each.

Proposed law requires the Department of Revenue to publish a rule before collecting any tax “for which no clear intent to tax by the legislature exists” and “any transaction generally understood by taxpayers as being exempt” that was passed after January 1, 2000. If the Department fails to enforce collection of the tax for one year after promulgation, the Department can never enforce collection of the tax. Additionally, the bill requires any rule to become effective one year after promulgation and approved by the House Ways and Means Committee and the Senate Revenue and Fiscal Affairs Committee. If the committees do not conduct a hearing on the rule, approval of the rule is not implied. The Department cannot issue any administrative announcements without first following the proposed procedure.

| EXPENDITURES | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 5 -YEAR TOTAL |
|----------------|-----------|-----------|-----------|-----------|-----------|---------------|
| State Gen. Fd. | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Agy. Self-Gen. | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | |
| 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 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

| REVENUES | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 5 -YEAR TOTAL |
|----------------|-----------|-----------|-----------|-----------|-----------|---------------|
| State Gen. Fd. | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | |
| Agy. Self-Gen. | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Ded./Other | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Federal Funds | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Local Funds | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | |
| Annual Total | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

EXPENDITURE EXPLANATION

The net impact to the department is not clear given the ambiguities in the bill and the staffing requirements involved in compliance. All transactions occurring after 1/1/00 must be evaluated for technological or commercial feasibility and a clear determination of the taxpayers’ understanding of exemptions. The bill will likely increase the number of policy staff needed to draft rules for submission to the committee. On the other hand, fewer audits may be authorized given the time and rule constraints. It is not clear whether current staff could be redirected to new duties or if specialized hiring would be necessary.

REVENUE EXPLANATION

The likely effect of this bill is to constrain the Department of Revenue’s (LDR) ability to administratively apply the state’s tax laws to a changing and developing economy; consequently, constraining the growth and development of the tax base and tax collections. The state revenue forecast reflects the historical growth and development of the tax base resulting from a variety of influences, including the administrative application of state law. Thus, it seems likely that the effect of the bill over time is to reduce state revenue collections below what they will otherwise be. Since the local sales tax base is generally tied to the state base, local collections growth and development is also likely constrained.

This bill appears to retroactively affect state and local tax issues back to 2000, and may result in the issuance of refunds. The amount of such impact, if any, cannot be determined due to the general descriptions in the bill concerning which transactions would be subject to the proposed provisions. The legislation applies to “any transaction occurring after 1/1/2000, the essential nature of which was not technologically and commercially feasible before that date” or “any transaction generally understood by taxpayers as being exempt” from taxation.

The legislation further states that a rule must be published in the Louisiana Register prior to the collection of any tax or issuance of an administrative pronouncement, but the effective date of that rule must be delayed one year past the publication date. LDR is prohibited from enforcing collections or following the edicts of the administrative pronouncement until the effective date of the rule. However, the legislation also states that if LDR does not enforce collections within one year of publication, LDR can never enforce collections. If LDR must wait one year from publication for the rule to become effective and forfeits the ability to collect if it does not enforce collections within that year, LDR may be effectively barred from enforcement for the life of any new taxes and possibly some existing taxes that would fall under the bill’s provisions. At a minimum, any new taxes will initially be paid solely on a voluntary basis with no legal enforcement allowed. Refunds associated with affected tax payments may also be delayed.

According to LDR, it is expected that this legislation could double the time involved in the rule-making process, which already takes about one year. The ability of LDR to address eminent or emergency issues could also be impaired.

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| Senate | Dual Referral Rules | House | |
| <input type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S&H} | | <input type="checkbox"/> 6.8(F)1 >= \$500,000 Annual Fiscal Cost {S} | Gregory V. Albrecht Chief Economist |
| | | <input type="checkbox"/> 6.8(F)2 >= \$100,000 Annual SGF Cost {H&S} | |
| <input 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} | |