

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1366-05
Bill No.: SCS for HCS for HB Nos. 517 & 754
Subject: Taxation and Revenue - Sales and Use
Type: Original
Date: April 27, 2015

Bill Summary: This proposal would change provisions related to income tax withholding on tips and would specify that mandatory gratuities imposed by a restaurant for a large group are not subject to state and local sales tax. In addition, the proposal would allow taxpayers to seek a refund after the statute of limitations has passed if the taxpayer files an amended return or the taxpayer's federal return is changed by the Internal Revenue Service.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	(More than \$200,700)	(More than \$100,000)	(More than \$100,000)
Total Estimated Net Effect on General Revenue	(More than \$200,700)	(More than \$100,000)	(More than \$100,000)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
School Districts	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
Conservation Commission	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
Parks, and Soil and Water	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
Total Estimated Net Effect on <u>Other</u> State Funds	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on FTE			

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 2016	FY 2017	FY 2018
Local Government	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)

FISCAL ANALYSIS

ASSUMPTION

Section 143.191 Withholding Tax on Gratuities

Changes to this provision would limit the amount of withholding tax required on gratuities, and would limit the employer’s liability related to that withholding.

Oversight assumes this provision would have no impact to the state or local governments.

ASSUMPTION (continued)

Section 144.020, RSMo. - Sales Tax on Gratuities:

Officials from the **Department of Revenue (DOR)** assumed that implementing a previous version of this proposal would require one additional Tax Collection Technician (Range 10, Step L); the DOR estimate of cost to implement this proposal including the additional employee, benefits, equipment, and expense totaled \$41,204 for FY 2016, \$42,044 for FY 2017, and \$42,480 for FY 2018.

Oversight notes this proposal would likely change a limited number of computations on individual tax returns and would not be expected to have an impact on the number of returns filed. In addition, Oversight notes a significantly high percentage of income tax returns are prepared online, electronically, or by paid preparers. Oversight assumes there would not be a significant number of additional errors resulting from the changes in this proposal; and therefore assumes existing DOR staffing would be adequate to implement this proposal. If unanticipated additional costs are incurred or if multiple proposals are implemented that increase DOR costs or the workload for DOR employees, resources could be requested through the budget process

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** assume this proposal would exempt mandatory gratuities at restaurants from state sales tax. BAP officials noted that due to recent changes in the federal Internal Revenue Service rules regarding mandatory gratuities for federal tax purposes, most restaurants have begun moving away from charging these mandatory fees. Therefore, BAP officials assume this proposal would reduce Total State Revenue by less than \$100,000 and General Revenue by less than \$71,000 per year.

BAP officials provided an estimate of revenue reduction by fund for this proposal as follows.

Fund or Entity	FY 2016	FY 2017	FY 2018
General Revenue	\$28,000	\$71,000	\$71,000
Conservation	\$1,000	\$3,000	\$3,000
Parks, and Soil and Water	\$1,000	\$2,000	\$2,000
Education	\$9,000	\$24,000	\$24,000
Total	\$71,000	\$100,000	\$100,000

ASSUMPTION (continued)

Oversight has no independent information regarding the amount of mandatory service charges at restaurants, and will assume for fiscal note purposes the BAP estimate is the best available. Oversight notes the full year estimate of \$100,000 in revenues would indicate a taxable sales base of $(\$100,000 / .04225) = \$2,366,864$. For convenience, Oversight will round that amount to \$2.4 million and compute sales taxes on that amount as shown in the following table.

		Estimated Revenue Reduction	
Fund	Sales Tax Rate	Ten Months	Twelve Months
General Revenue	3.000%	\$60,000	\$72,000
School District Trust	1.000%	\$20,000	\$24,000
Conservation Commission	0.125%	\$2,500	\$3,000
Parks, and Soil and Water	0.100%	\$2,000	\$22,400
Local Governments *	3.880%	\$77,600	\$93,100
* The 3.88 percent average local government sales tax rate was calculated by Oversight based on tax collections reported by the Department of Revenue.			

For fiscal note purposes, **Oversight** will indicate a revenue reduction less than \$100,000 per year for the General Revenue Fund, other state funds that receive sales tax revenues, and for local governments.

Oversight is aware that sales tax revenues in the School District Trust Fund are distributed, along with other revenues, to local school districts but will not include those transfers in this fiscal note.

Officials from the **Department of Conservation (MDC)** assumed a previous version of this proposal would have an unknown negative fiscal impact on their organization, but greater than \$100,000. MDC officials assume the Department of Revenue would be better able to estimate the anticipated fiscal impact that would result from this proposal.

ASSUMPTION (continued)

In response to a previous version of this proposal, officials from the **Department of Natural Resources (DNR)** noted the Department's Parks and Soils Sales Tax Funds are derived from one-tenth of one percent sales and use tax pursuant to Article IV Section 47(a) of the Missouri Constitution. Therefore, any additional sales and use tax exemption would be a loss to the Parks and Soils Sales Tax Funds.

DNR officials assume assumes the Department of Revenue and Office of Administration-Budget and Planning will provide a more detailed account of the fiscal impact.

Section 143.801, RSMo. - Credits and Refunds:

Changes to this provision would allow a taxpayer to claim a credit or refund for overpayment of income taxes after the statute of limitations for making a claim has expired, if the taxpayer files an amended return or if the federal Internal Revenue Service changes the taxpayer's return. The Department would be required to notify the taxpayer of the overpayment and the taxpayer could file a claim for a credit or refund within one year of the notice.

Officials from the **Office of Administration - Division of Budget and Planning** assumed similar language in SS for SCS for SB 115 LR 0137-02 could reduce Total State Revenues and General Revenue but would not have an impact on the calculation of excess revenue under Section 18(e) of the state constitution.

Officials from the **Department of Revenue (DOR)** assumed similar language in SS for SCS for SB 115 LR 0137-02 could result in additional refunds.

Oversight will assume this proposal would result in an unknown amount of additional refund payments.

Oversight notes the proposal would require DOR to create a process to allow a taxpayer to claim refunds and credits which can not be claimed under current statute of limitations provisions. That process would become available if the taxpayer files an amended federal return, or the Internal Revenue Service changes the taxpayer's federal return and the changes would make the taxpayer eligible for a credit or refund.

ASSUMPTION (continued)

Administrative Impact

DOR officials assumed Personal Tax would require two additional Revenue Processing Technicians I for returns processed and error correction, and Corporate Tax would require one additional Revenue Processing Technician I for correspondence, and programming time to develop and install new notices and notice messages. In addition, Collections & Tax Assistance (CATA) would require two additional Tax Collection Technicians I for calls to the delinquent and non-delinquent call centers. These personnel would require CARES equipment and licenses. Finally, Withholding Tax would require one additional Revenue Processing Technician I for correspondence.

The DOR estimate of cost to implement this proposal including six additional employees, benefits, equipment, and expense, totaled \$245,770 for FY 2016, \$252,257 for FY 2017, and \$254,882 for FY 2018.

Oversight assumes a relatively small number of additional refunds would be allowed by this proposal and assumes DOR could implement this proposal with existing resources. If an unanticipated additional workload is created by this proposal or if multiple proposals are implemented which increase the DOR workload, additional resources could be requested through the budget process.

IT impact

DOR officials also provided an estimate of the IT cost to implement this proposal of \$100,700 for 1,343 hours of contractor programming at \$75 per hour.

Oversight will include the DOR estimate of IT cost in this fiscal note.

Officials from the **Department of Economic Development** deferred to the Office of Administration - Division of Budget and Planning and the Department of Revenue for an estimate of the fiscal impact of similar language in HB 268, LR 0719-01.

Officials from the **Joint Committee on Administrative Rules** assumed a previous version of this proposal would not have a fiscal impact to their organization.

ASSUMPTION (continued)

In response to a previous version of this proposal, officials from the **Office of the Secretary of State (SOS)** stated many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Officials from the **Department of Insurance, Financial Institutions, and Professional Registration** assumed similar language in HB 268, LR 0719-01 would not have a fiscal impact to their organizations.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
GENERAL REVENUE FUND			
<u>Revenue reduction - DOR</u>			
Refunds			
Section 143.801	(Unknown)	(Unknown)	(Unknown)
Cost - DOR			
IT cost	(\$100,700)	\$0	\$0
<u>Revenue reduction</u>			
Sales tax exemption on mandatory gratuities - Section 144.020	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	(More than <u>\$200,700</u>)	(More than <u>\$100,000</u>)	(More than <u>\$100,000</u>)

<u>FISCAL IMPACT - State Government</u> (Continued)	FY 2016 (10 Mo.)	FY 2017	FY 2018
SCHOOL DISTRICT TRUST FUND			
<u>Revenue reduction</u>			
Sales tax exemption on mandatory gratuities - Section 144.020	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)
ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)
CONSERVATION COMMISSION FUND			
<u>Revenue reduction</u>			
Sales tax exemption on mandatory gratuities - Section 144.020	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)
PARKS, AND SOIL AND WATER FUNDS			
<u>Revenue reduction</u>			
Sales tax exemption on mandatory gratuities - Section 144.020	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)
ESTIMATED NET EFFECT ON PARKS, AND SOIL AND WATER FUNDS	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)

<u>FISCAL IMPACT - Local Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
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LOCAL GOVERNMENTS

Revenue reduction

Sales tax exemption on mandatory gratuities - Section 144.020	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)
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ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)
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FISCAL IMPACT - Small Business

A small business could receive a tax credit or refund which was previously unavailable due to the statute of limitations if this proposal is implemented.

FISCAL DESCRIPTION

This proposal would specify that mandatory gratuities imposed by a restaurant for a large group are not subject to state and local sales tax when the tip is included in the employee's tip income. The proposal would also limit the calculation of state income tax withholding on tips received by an employee in the course of his or her employment to the amount of total tips reported to the employer in a written statement, and would specify that an employer cannot be obligated to pay withholding tax to the Department of Revenue for an employee's under-reported cash tip income. The proposal would determine the amount of cash tips that are taxable based on the federal Internal Revenue Code.

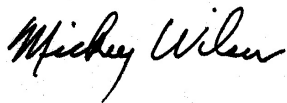
This proposal would also allow a taxpayer to claim a credit or refund of an income tax overpayment when the taxpayer files an amended return or the federal Internal Service changes the taxpayer's return. The Department of Revenue would be required to notify the taxpayer of any overpayment discovered and the taxpayer would be allowed to file a claim for the credit or refund within one year of the notice.

FISCAL DESCRIPTION (continued)

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

Office of the Secretary of State
Joint Committee on Administrative Rules
Department of Conservation
Department of Economic Development
Department of Insurance, Financial Institutions, and
Professional Registration
Office of Administration
Division of Budget and Planning
Information Technology Services Division
Department of Revenue



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