

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4182S.01I
Bill No.: SB 700
Subject: Taxation and Revenue - Sales and Use; Department of Revenue
Type: Original
Date: February 9, 2022

Bill Summary: This proposal modifies provisions relating to sales taxes.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue	(\$17,624,792- \$23,755,553)	(\$17,324,792- \$23,455,553)	(\$17,324,792- \$23,455,553)
Total Estimated Net Effect on General Revenue	(\$17,624,792- \$23,755,553)	(\$17,324,792- \$23,455,553)	(\$17,324,792- \$23,455,553)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
School District Trust Fund (0688)	(\$5,774,931 - \$7,818,518)	(\$5,774,931 - \$7,818,518)	(\$5,774,931 - \$7,818,518)
Parks And Soils (0613 & 0614)	(\$577,493 - \$781,852)	(\$577,493 - \$781,852)	(\$577,493 - \$781,852)
Conservation Commission Fund (0609)	(\$721,866 - \$977,315)	(\$721,866 - \$977,315)	(\$721,866 - \$977,315)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$7,074,290 - \$9,577,685)	(\$7,074,290 - \$9,577,685)	(\$7,074,290 - \$9,577,685)

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on FTE			

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

☐ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Local Government	(\$23,272,971-\$31,508,626)	(\$23,272,971-\$31,508,626)	(\$23,272,971-\$31,508,626)

FISCAL ANALYSIS

ASSUMPTION

Section 144.020 Room Rental Sales Tax Exemption

Officials from the **Department of Revenue (DOR)** state this proposal is exempting from sales tax the sales or charges for the rental of any rooms at an establishment that does not offer overnight accommodations for transient guests. This appears to be exempting wedding venues and other meeting rooms that are rented out for events (weddings, anniversaries, family reunions etc.). These venues are currently subject to the state sales tax just as accommodations that offer overnight stays with use of their meeting rooms are subject to it. DOR determined the majority of the businesses that would qualify are:

NAICS 531120 – Lessors of nonresidential buildings (except mini warehouses)

NAICS 722320 – Caterers

NAICS 72110 – Hotels

NAICS 721120 – Casino Hotels

In order to determine an estimated impact from this provision, DOR used its taxable sales reports. Given the industries this would impact have also been some of the hardest hit due to COVID, and it is unknown how long it may take these industries to recover, DOR will use the information from the FY 2019 and FY 2021 reports to create a low/high range. DOR notes the taxable sales for the qualifying NAICS codes.

Taxable Sales by NAICS Code

NAICS Code	Description	Taxable Sales	
		FY 2019	FY 2021
531120	LESSORS OF NONRESIDENTIAL BUILDINGS (EXCEPT MINIWAREHOUSES)	\$104,751,981	\$84,994,902
722320	CATERERS	\$1,259,611,023	\$943,348,971
72110	HOTELS (EXCEPT CASINO HOTELS) AND MOTELS	\$1,912,996,675	\$1,230,675,596
721120	CASINO HOTELS	\$80,408,405	\$35,746,967

Research indicates that approximately 50% of taxable sales for businesses under NAICS codes 531120 and 72320 are related to venue rental, while approximately 5% of taxable sales for businesses under NAICS codes 72110 and 721120 are related to venue rentals. Therefore, DOR adjusted the taxable sales to be:

Adjusted Taxable Sales by NAIC code

	% of rental	2019 Taxable Sales	2021 Taxable Sales
531120	50%	\$52,375,990	\$42,497,451
722320	50%	\$629,805,511	\$471,674,485
72110	5%	\$95,649,834	\$61,533,780
721120	5%	\$4,020,420	\$1,787,348
		\$781,851,756	\$577,493,065

DOR assumes this would be a loss of the state sales tax currently charged. The state sales tax of 4.225% is distributed as 3% to general revenue, 1% to the school trust fund, 0.125% for the Conservation Commission fund and 0.1% for the Parks, Soil & Water funds. When calculating the local sales tax loss DOR used a 4.03% weighted average.

DOR notes this would result in taxable sales of \$577,493,065 to \$781,851,756 becoming exempt from state and local sales tax, which would result in a loss of \$24,399,082 to \$33,033,238 in total state revenue. Distributed amongst the state sales tax funds would result in a loss of:

		Low	High
GR	3.000%	(\$17,324,792)	(\$23,455,553)
Education	1.000%	(\$5,774,931)	(\$7,818,518)
Conservation	0.125%	(\$721,866)	(\$977,315)
Parks, Soil, Water	0.100%	(\$577,493)	(\$781,852)
TSR		(\$24,399,082)	(\$33,033,238)
Local	4.030%	(\$23,272,971)	(\$31,508,626)

DOR notes this proposal has an emergency clause and depending on when it is adopted, could have a fiscal impact starting in FY 2022. For the simplicity of the fiscal note, the Department will show all the impact starting on July 1, 2022 (FY 2023).

Officials from the **Office of Administration - Budget and Planning (B&P)** note this section would create a sales tax exemption for room rentals not used for overnight stays. B&P notes that while this would not include hotel and motel overnight rooms, this exemption would include conference and meeting rooms. B&P further notes that this would include places such as banquet halls, meeting space rentals, conference rooms, ballrooms, party room rentals, wedding venues, etc.

B&P determined that the majority of qualifying businesses would fall under the following NAICS codes:

- NAICS 531120 – Lessors of nonresidential buildings (except mini warehouses)

- NAICS 722320 – Caterers
- NAICS 72110 – Hotels
- NAICS 721120 – Casino Hotels

In order to determine an estimated impact from this provision, B&P utilized the taxable sales reports published by DOR. For the purpose of this fiscal note, B&P used both FY19 and FY21 taxable sales to estimate a high and low impact. B&P notes that these industries have been some of the hardest hit due to COVID and it is unknown how long it may take these industries to recover. Therefore, the estimate impact will account for lower sales due to COVID and the higher sales that may occur once the industries recover. Table 1 shows the taxable sales for the qualifying NAICS codes.

Table 1: Taxable Sales by NAICS Code

NAICS Code	Description	Taxable Sales	
		FY 2019	FY 2021
531120	LESSORS OF NONRESIDENTIAL BUILDINGS (EXCEPT MINIWAREHOUSES)	\$104,751,981	\$84,994,902
722320	CATERERS	\$1,259,611,023	\$943,348,971
72110	HOTELS (EXCEPT CASINO HOTELS) AND MOTELS	\$1,912,996,675	\$1,230,675,596
721120	CASINO HOTELS	\$80,408,405	\$35,746,967

B&P notes that the taxable sales amounts above amounts that would not become tax exempt, such as the cost of catering or the cost of overnight rooms. Based on research, B&P determined that approximately 50% of taxable sales for businesses under NAICS codes 531120 and 72320 are related to the venue rental. In addition, approximately 5% of taxable sales for businesses under NAICS codes 72110 and 721120 are related to venue rentals. Table 2 shows the adjusted taxable sales amounts.

Table 2: Adjusted Taxable Sales by NAICS Code

NAICS Code	Description	Adjustment	Adjusted Taxable Sales	
			FY 2019	FY 2021
531120	LESSORS OF NONRESIDENTIAL BUILDINGS (EXCEPT MINIWAREHOUSES)	50%	\$52,375,990	\$42,497,451
722320	CATERERS	50%	\$629,805,511	\$471,674,485
72110	HOTELS (EXCEPT CASINO HOTELS) AND MOTELS	5%	\$95,649,834	\$61,533,780
721120	CASINO HOTELS	5%	\$4,020,420	\$1,787,348
Total Estimated Sales Exempt			\$781,851,756	\$577,493,065

Based on the above research and estimates, B&P calculated that this proposal could exempt \$577,493,065 to \$781,851,756 in taxable sales. Therefore, B&P estimates that this proposal could reduce TSR by \$24,399,082 to \$33,033,238 and GR by \$17,324,792 to \$23,455,553 annually beginning with FY23.

Section 144.190.11 Sales Tax Refund

DOR notes this proposal would requires the Department to allow refunds until July 1, 2026, for taxpayers that paid sales and use tax as a result of an audit that occurred between August 28, 2005 and August 28, 2015. This proposal establishes a limit of \$100,000 to pay the claims on a first-come, first-serve basis. If additional refund claims come in then the Department is authorized to request additional funding through the appropriation process.

For informational purposes, DOR is providing the number of audits it conducted during the time frame delineated by this proposal, the amount of unreported tax discovered by the audit team and the amount of that unreported tax collected by the Department as a result of the audit.

Row Labels	No S&U Audits	S&U Unreported Tax Owed	S&U Collections
2006	1,811.00	\$ 21,443,075.00	\$20,967,321.42
2007	2,016.00	\$ 7,857,066.00	\$25,045,128.00
2008	1,744.00	\$29,175,191.97	\$27,158,701.95
2009	1,761.00	\$26,118,092.92	\$ 20,353,725.42
2010	1,950.00	\$25,738,846.82	\$24,087,511.72
2011	1,694.00	\$19,599,893.15	\$18,910,005.39
2012	1,468.00	\$28,547,278.65	\$23,479,002.26
2013	1,628.00	\$30,315,967.71	\$22,534,167.39
2014	1,531.00	\$29,178,349.45	\$22,985,495.18
2015	1,041.00	\$32,336,325.67	\$24,231,045.40
2016	175.00	\$4,606,730.32	\$2,669,410.30
Grand Total	16,819.00	\$274,916,817.66	\$232,421,514.43

The DOR is unaware of any of these cases being from the Department expanding its interpretation of taxable items. The Department is unsure what information the taxpayer would need to provide in order to claim a refund under this proposal. The Department assumes this will have a fiscal impact of \$100,000 in the first year and will only impact the Department in the future should the General Assembly decide to appropriate additional funding.

This proposal has an emergency clause and depending on when it is adopted, could have a fiscal impact starting in FY 2022. For the simplicity of the fiscal note, the Department will show all the impact starting on July 1, 2022 (FY 2023) at the limits established in the proposal.

B&P notes Subsection 144.190.11 would allow businesses and individuals to receive a refund for any sales and use tax assessments resulting from audits between August 28, 2015 and August 28, 2016, when such assessments were the result of DOR expanding its interpretation of taxable items and where the taxpayer had not collected such sales and use tax from customers.

The refund granted shall be equal to the amount actually paid by the taxpayer on the qualifying assessment, plus interest as calculated and published by the IRS. DOR shall allow refund claims until July 1, 2026.

B&P notes that it is unclear if judicial rulings changing the interpretation of taxable items by DOR would also qualify for these refunds.

A total of \$100,000 in refunds is allowed under this proposal. In addition, if more than \$100,000 in claims for refunds is made, DOR is to request appropriations from the General Assembly in later fiscal years.

Section 144.190.12 Sales Tax Refund for Wedding Venues

This proposal allows wedding venues that were assessed and paid sales and use tax as a part of a Department audit conducted between January 1, 2018 and October 1, 2019, to claim a sales tax refund by July 1, 2026. This proposal establishes a limit of \$200,000 to pay the claims on a first-come, first-serve basis. This proposal would also require a reimbursement of attorney fees to those wedding venues.

Part of the Department's function is to audit businesses to ensure compliance with state tax laws. As a routine part of that function, the Department audited some wedding venues. When it was determined that some of those venues were out of compliance in collecting and remitting sales tax, the Department acted accordingly and assessed unpaid tax, penalties, and interest. The Department has taken the extra steps to reach out to wedding venues (and similar businesses) to help educate them regarding the State's tax laws and to help them come into and maintain compliance.

DOR states it should be noted that Section 536.087 currently only allows attorney fees to be paid by an agency when "...a party who prevails in an agency proceeding or civil action arising therefrom, brought by or against the state, shall be awarded those reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust." The Department has not been involved in litigation with any wedding venue on this issue, but the Department worked with many businesses to ensure understanding of and compliance with the law. Since this proposal does not amend Section 536.087 the DOR is not sure how to comply with the payment of the attorney fees requested.

Additionally, DOR notes this proposal is unclear in what would be an allowable attorney expense. DOR inquires: Is discussing the situation with an attorney or filing a case against the Department an allowable expense? Clarity would be needed to ensure only those with a valid claim could receive the proper reimbursement. Without clarity as to what constitutes an allowable attorney fee, the Department is unable to determine if additional resources greater than the \$200,000 would be needed to reimburse the attorney expenses.

This proposal has an emergency clause and depending on when it is adopted, could have a fiscal impact starting in FY 2022. For the simplicity of the fiscal note, the Department will show all the impact starting July 1, 2022 (FY 2023) at the limits established in the proposal.

DOR notes this proposal will require form and computer programming changes to track the payment of these refunds. This would require another (1 FTE) Associate Customer Service Representative for every additional 3,500 refund claims.

Oversight assumes the Department of Revenue is provided with core funding to handle a certain amount of activity each year. Oversight assumes DOR could absorb the costs for computer upgrades related to this proposal. However, given the number of returns which might be affected, Oversight also will not show the abovementioned one FTE for purposes of this fiscal note. If multiple bills pass which require additional staffing and duties at substantial costs, DOR could request funding through the appropriation process.

B&P notes Subsection 144.190.12 would allow businesses and individuals to receive a refund for any sales and use tax assessments on wedding venues resulting from audits between January 1, 2018 and October 1, 2019.

The refund granted shall be equal to the amount actually paid by the taxpayer for the sales and use tax that was directly related to the wedding venue, plus interest as calculated and published by the IRS. DOR shall allow refund claims until July 1, 2026.

A total of \$200,000 in refunds is allowed under this proposal. In addition, if more than \$200,000 in claims for refund are made, DOR is to request appropriations from the General Assembly in later fiscal years.

Therefore, B&P estimates that TSR and GR could decrease by up to \$300,000 during FY23, the first fiscal year the refunds would become available; and GR could be negatively impacted by an unknown amount beginning in FY23 if DOR requires further appropriations.

Proposal as a Whole

B&P estimates that this proposal could reduce GR by \$17,624,792 to \$23,755,553 and TSR by \$24,699,082 to \$33,333,238 in FY23. Once fully implemented, this proposal could reduce GR by \$17,324,892 to \$23,455,553 and TSR by \$24,399,082 to \$33,033,238 annually. Using the population weighted local sales tax rate of 4.03% for 2021, B&P further estimates that this proposal could reduce local sales tax collections by \$23,272,917 to \$31,508,626 annually beginning in FY23. Table 3 shows the estimated impact by fund.

Table 3: Estimated Revenue Impact by Fund

<u>State Revenues</u>	FY23		FY24+	
	Low	High	Low	High
General Revenue				
Sales Tax Exemption	(\$17,324,792)	(\$23,455,553)	(\$17,324,792)	(\$23,455,553)
Refunds	(\$300,000)	(\$300,000)	\$0	\$0
Total GR Loss	(\$17,624,792)	(\$23,755,553)	(\$17,324,792)	(\$23,455,553)
Education	(\$5,774,931)	(\$7,818,518)	(\$5,774,931)	(\$7,818,518)
Conservation	(\$721,866)	(\$977,315)	(\$721,866)	(\$977,315)
Parks, Soil, Water	(\$577,493)	(\$781,852)	(\$577,493)	(\$781,852)
TSR	(\$24,699,082)	(\$33,333,238)	(\$24,399,082)	(\$33,033,238)
<u>Local Revenues</u>				
Local Sales Tax	(\$23,272,971)	(\$31,508,626)	(\$23,272,971)	(\$31,508,626)

Officials from the **City of Springfield** assume the proposal will have no fiscal impact on their organization.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other counties and cities were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in Oversight's database is available upon request.

<u>FISCAL IMPACT</u> – State Government	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE			
<u>Revenue Reduction</u> - §144.020 - Exemption of room rentals p. 3-6	(\$17,324,792 -\$23,455,553)	(\$17,324,792- \$23,455,553)	(\$17,324,792- \$23,455,553)
<u>Revenue Reduction</u> - §144.190.11 - Sales tax refunds over ten-year period p. 6-7	(\$100,000)	\$0	\$0
<u>Revenue Reduction</u> - §144.190.12 - Wedding venue sales tax refund p. 7-9	(\$200,000)	\$0	\$0
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(\$17,624,792- \$23,755,553)</u>	<u>(\$17,324,792- \$23,455,553)</u>	<u>(\$17,324,792- \$23,455,553)</u>
<u>FISCAL IMPACT</u> – State Government (continued)	FY 2023 (10 Mo.)	FY 2024	FY 2025

SCHOOL DISTRICT TRUST FUND			
<u>Revenue Reduction</u> - §144.020 - Exemption of room rentals p. 3-6	(\$5,774,931- \$7,818,518)	(\$5,774,931- \$7,818,518)	(\$5,774,931- \$7,818,518)
ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND (0688)	(\$5,774,931- \$7,818,518)	(\$5,774,931- \$7,818,518)	(\$5,774,931- \$7,818,518)
PARKS AND SOILS STATE SALES TAX FUNDS (0613 & 0614)			
<u>Revenue Reduction</u> - §144.020 - Exemption of room rentals p. 3-6	(\$577,493- \$781,852)	(\$577,493- \$781,852)	(\$577,493- \$781,852)
ESTIMATED NET EFFECT ON PARKS AND SOILS STATE SALES TAX FUNDS (0613 & 0614)	(\$577,493- \$781,852)	(\$577,493- \$781,852)	(\$577,493- \$781,852)
<u>FISCAL IMPACT</u> – State Government (continued)	FY 2023 (10 Mo.)	FY 2024	FY 2025

CONSERVATION COMMISSION FUND (0609)			
<u>Revenue Reduction</u> - §144.020 - Exemption of room rentals p. 3-6	(\$721,866- \$977,315)	(\$721,866- \$977,315)	(\$721,866- \$977,315)
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND (0609)	(\$721,866- \$977,315)	(\$721,866- \$977,315)	(\$721,866- \$977,315)

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
LOCAL POLITICAL SUBDIVISIONS			
<u>Revenue Reduction</u> - §144.020 - Exemption of room rentals p. 3-6	(\$23,272,971- \$31,508,626)	(\$23,272,971- \$31,508,626)	(\$23,272,971- \$31,508,626)
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	(\$23,272,971- \$31,508,626)	(\$23,272,971- \$31,508,626)	(\$23,272,971- \$31,508,626)

FISCAL IMPACT – Small Business

Certain small businesses that rent rooms not used for overnight accommodations for transient guests could be impacted by this proposal.

Small businesses that could claim a refund under this proposed legislation would be impacted, as they would gain back the revenues previously used to pay sales and use tax assessments.

FISCAL DESCRIPTION

Current law requires sales tax to be charged on the amount of sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore,

dining car, tourist cabin, tourist camp or other place in which rooms, meals or drinks are regularly served to the public. This act provides that such sales tax shall not be levied on charges for the rental of rooms not used for overnight accommodations for transient guests. (Section 144.020)

This act also requires the Department of Revenue to allow claims for refunds from businesses and individuals for sales and use taxes paid as a result of an audit conducted by the Department between August 28, 2005, and August 28, 2015, when such amounts owed were due to an expansion of the Department's interpretation of taxable items for which the taxpayer did not collect the tax. The Department shall allow such claims until July 1, 2026, and not more than \$100,000 in refunds shall be issued without a further appropriation from the General Assembly.

In addition to such refunds, the Department shall allow claims for refunds from businesses and individuals that supplied wedding venues and charged sales tax for such venues as a result of an audit by the Department between January 1, 2018, and October 1, 2019. The Department shall allow such claims until July 1, 2026, and not more than \$200,000 in refunds shall be issued without a further appropriation from the General Assembly. This act also allows a taxpayer to recover attorney's fees incurred in any proceeding relating to a tax assessment or audit of the use of the wedding venue. (Section 144.190)

This act contains an emergency clause.

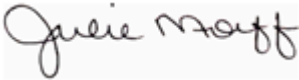
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

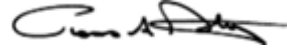
Department of Revenue
Office of Administration - Budget and Planning

KLP:LR:OD

City of Springfield

A handwritten signature in black ink, appearing to read "Julie Morff", is written over a light pink rectangular background.

Julie Morff
Director
February 9, 2022

A handwritten signature in black ink, appearing to read "Ross Strobe", is written in a cursive style.

Ross Strobe
Assistant Director
February 9, 2022