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Fiscal Note

Drafting Number: LLS 22-0481
Prime Sponsors: Rep. Daugherty
Date: February 9, 2022
Bill Status: House Finance
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Bill Topic: SALES & USE TAX REFUNDS

- Summary of Fiscal Impact:**
- State Revenue
 - State Expenditure
 - State Transfer
 - TABOR Refund
 - Local Government
 - Statutory Public Entity

The bill establishes criteria for sales and use tax refund claims made by purchasers to the Department of Revenue. The bill increases state revenue and may minimally increase state workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 22-1118

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	General Fund	less than \$75,000	less than \$75,000
Expenditures		-	-
Transfers		-	-
Other Budget Impacts	TABOR Refund	less than \$75,000	less than \$75,000

Summary of Legislation

The bill requires the Executive Director of the Department of Revenue to issue a voucher to the State Controller in favor of a purchaser who makes a valid and complete claim for a sales and use tax refund beginning July 1, 2022. The bill eliminates interest payments on these claims, creates a civil penalty for frivolous claims equal to 10 percent of the refund claimed, establishes criteria for determining frivolous claims, and the circumstances under which the department may waive the penalty.

Background

Purchasers or vendors may file a claim for a sales and use tax refund to the Department of Revenue up to three years after taxes were overpaid. Overpayments may occur in a number of situations including disputes over exemptions, tax collected on nontaxable services, or for other reasons. Under current law, the Department of Revenue pays interest on some refund claims.

State Revenue

Interest payments. While the bill is not expected to impact the amount of sales and use tax refunds, the bill eliminates interest paid by the Department of Revenue for sales and use tax refund claims made by purchasers. From 2018 to 2021, the department paid less than \$75,000 in interest for sales and use tax refunds each year. The fiscal note assumes that ongoing revenue to the General Fund from eliminated interest payments will not exceed \$75,000 annually.

Civil penalties. Under the bill, the Executive Director of the Department of Revenue shall assess and collect a civil penalty equal to 10 percent of the total refund claimed for a frivolous sales and use tax refund application. The penalty applies only to claims totaling at least \$5,000, with an exception for multiple claims filed or prepared by the same person in a 12-month period. This revenue is classified as a damage award and not subject to TABOR. Given the uncertainty about the number of frivolous applications filed and cases that may be pursued, the potential revenue impact of these civil penalties cannot be estimated.

State Expenditures

Workload in the Department of Revenue may increase or decrease depending on how many frivolous claims are deterred under the bill, and the need for updates to information and forms related to sales and use tax refunds. Any change is expected to be minimal.

Workload in the Judicial Department will minimally increase to the extent that frivolous claims are pursued. The fiscal note assumes that workload impacts can be met with existing resources.

Other Budget Impacts

TABOR refunds. The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by less than \$75,000 in each of FY 2022-23 and FY 2023-24. This estimate assumes the December 2021 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available

beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, increased General Fund revenue will increase the TABOR refund obligation, but result in no net change to the amount of General Fund available to spend or save.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Information Technology
Personnel

Judicial - Civil
Revenue