

**BILL SUMMARY**  
2<sup>nd</sup> Session of the 57<sup>th</sup> Legislature

<b>Bill No.:</b>	<b>HB 3011</b>
<b>Version:</b>	<b>INT</b>
<b>Request Number:</b>	<b>9789</b>
<b>Author:</b>	<b>Rep. Gann</b>
<b>Date:</b>	<b>2/17/2020</b>
<b>Impact:</b>	<b>Tax Commission: Revenue Decrease</b>

**Interest Rate Modification**  
**FY-21: \$0**  
**FY-22: (\$18,204,000)**

**Change to Statute of Limitations:**  
**FY-21: \$0**  
**FY-22: (\$10,100,000)**

**Vendor Retention**  
**FY-21: \$0**  
**FY-22: (\$14,660,287)**

**Administrative Cost Estimate:**  
**Statute of Limitation/Consolidated Reporting**  
**\$185,000**

**Research Analysis**

HB3011, as introduced, creates the Sales Tax Simplification and Fairness Reform Act of 2020. The measure makes numerous changes related to tax administration by:

- Tying the statutory interest rate used to determine interest on delinquent taxes, underpayment of taxes and interest paid on income tax refunds to the prime lending rate published by the Wall Street Journal. Currently, the statutory rate is 1.25% per month (15% annualized) and is not tied to any interest rate index.
- Increases, from 2 years to 3 years, the amount time allowed for filing claims for refunds of erroneously paid sale and use tax;
- Provides that any refund of taxes due to a taxpayer for erroneous payment of sales or use tax discovered through an audit will be applied as a credit to any assessment made against the taxpayer;
- Require taxpayers to file one consolidated sales and use tax report through one single account registered with the Oklahoma Tax Commission; and
- Authorizes vendors filing sales tax reports to keep 1% of the taxes due as compensation for timely filing and remittance. The deduction of the 1% of taxes due is limited to \$2500 per return filed.

Prepared By: Quyen Do

**Fiscal Analysis**

Analysis provided by the Tax Commission:

Section 2 of HB 3011 proposes to amend 68 § 217 which relates to the interest rate assessed on delinquent taxes, tax deficiencies<sup>4</sup> and the interest paid on income tax refunds by the Tax Commission. The interest rate is currently 1¼% per month (15% annualized) for delinquent taxes, tax deficiencies and refunds. This section proposes to change the monthly interest rate:

- Assessed on delinquent taxes to equal the Prime Lending Rate as published in the Wall Street Journal on the first business day of December for the following calendar year.
- Assessed on tax deficiencies to equal the Prime Lending Rate as published in the Wall Street Journal on the first business day of December, plus two percentage points, for the following calendar year.
- Paid by the Tax Commission on income tax refunds to equal the Prime Lending Rate as published in the Wall Street Journal on the first business day of December for the following calendar year.

To determine the potential revenue effect of this proposal, the prime lending rate of 4.75%.<sup>5</sup>, as published in the Wall Street Journal on January 1, 2020, was used for interest assessed on tax delinquencies and interest paid on income tax refunds; 6.75% (prime plus 2%) was used for interest assessed on tax deficiencies.<sup>6</sup> Interest paid on income tax refunds and interest received on tax delinquencies and deficiencies for FY 16 through FY 19 was analyzed and compared to the proposed interest rate structure.<sup>7</sup> Based on this analysis, an average decrease in revenue of \$18,204,000 per FY is projected. An estimated decrease of \$8,192,000<sup>8</sup> should occur in FY21, with the full decrease of collections of \$18,204,000 occurring in FY22. A one-time administrative cost of approximately \$100,000 is anticipated for programming changes.

Section 3 proposes amendment to Section 227 of Title 68 to lengthen the statute of limitations period for filing timely claims for refund of erroneously paid sales and use tax from two years to three years from the date of payment of the sales/use tax.

HB 3205 [2016] amended 68 O.S. § 227 by shortening the statute of limitations period for filing timely claims for refund of erroneously paid sales and use tax from three years to two years from the date of payment of the sales/use tax. An annualized increase of \$10,100,000 in state sales and use tax revenues was estimated to occur as a result of this change. Assuming similar sales and use tax refund claims, a like decrease of \$10,100,000 is estimate for FY 22.

Section 3 also amends Section 227 to direct that when a taxpayer is subject to an audit for underpayment of sales or use taxes is also due a refund for the erroneous payment of sales or use taxes, the amount of the refund shall be applied as a credit to any assessment made against the taxpayer. If such overpayment of taxes was paid to a vendor and the taxpayer does not have a sales tax permit, the taxpayer shall obtain an assignment of rights from the vendor which assigns the vendor's right to any refunded tax to the taxpayer.

Refund claims are currently conducted separately from audits, but are processed and worked together if the refund claim is discovered at commencement or during the audit. However, this cannot be done for

every case since both a customer and a vendor can apply to the OTC directly for a refund of sales tax. When a vendor incorrectly charges and collects sales or use tax from their customers and remits same to the OTC, either party may request a refund of taxes erroneously paid. For the vendor to receive a credit or refund of such tax they must provide proof that the erroneously collected tax has been refunded to the customer. The customer may request a refund of erroneously paid sales and use taxes directly from the OTC without need of an assignment of rights from the vendor. If a discovery was made during an audit that the vendor had been incorrectly collecting tax from their customers and a credit applied without refunding customers, no funding would exist to correctly refund the customer.

Section 4 requires that vendors required to remit sales tax shall only be required to do so through one single account registered with the OTC and file one consolidated report regarding sales tax, vendor use tax, and consumer use tax.

#### Administrative Cost:

For FY 21, the OTC will incur additional administrative costs of \$85,000 to make the necessary system modifications.

Section 5 proposes to allow vendors to retain one percent<sup>9</sup> of monthly sales taxes due for record maintenance and the timely filing and remittance of sales tax. No similar deduction is provided for vendor use tax.

Based on Oklahoma Tax Commission sales tax remittance records a decrease in state sales tax revenues of \$14,660,287 is estimated for FY 22.

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<sup>1</sup> Tax deficiencies are determined under 68 O.S. § 221. The distinction between tax delinquencies and tax deficiencies is that delinquent taxes are for taxes reported on a tax return that are filed but paid late. Tax deficiencies are for taxes assessed by the OTC after audit.

<sup>2</sup> Capped at \$2,500 per month per tax permit.

<sup>3</sup> Section 2 will result in an increase of \$100,000.00 in administrative costs and Section 4 will result in an increase of \$85,000.00 in administrative costs.

<sup>4</sup> Tax deficiencies are determined under 68 O.S. § 221. The distinction between tax delinquencies and tax deficiencies is that delinquent taxes are for taxes reported on a tax return that are filed but paid late. Tax deficiencies are for taxes assessed by the OTC after audit.

<sup>5</sup> <https://www.bankrate.com/rates/interest-rates/wall-street-prime-rate.aspx>

<sup>6</sup> This measure is effective November 1, 2020. The interest rate published December 1, 2020 will be in effect for calendar year 2021.

<sup>7</sup> The current tax processing system does not distinguish between interest received via delinquent taxes versus tax deficiencies. For purposes of this analysis, a conservative approach was used and the lower rate for delinquent taxes was used to estimate the revenue impact of this proposal. An estimate applying 6.75% interest rate to all delinquent taxes or tax deficiencies results in an estimated \$14,506,000 decrease in revenue. This measure also does not account for any potential increase in delinquent taxes or deficiencies as a result of lower interest rates.

<sup>8</sup> From FY16 through FY19; approximately 45% of the net interest was realized from January through June.

<sup>9</sup> Capped at \$2,500 per month per tax permit.

Prepared By: Mark Tygret

#### **Other Considerations**

None.