

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 22, 2009

TO: Honorable Rene Oliveira, Chair, House Committee on Ways & Means

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2319 by Eissler (Relating to the sales tax treatment of a fundraising sale by a qualified organization.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2319, As Introduced: a negative impact of (\$23,977,000) through the biennium ending August 31, 2011, if the effective date of the bill is July 1, 2009; or a negative impact of (\$22,145,000) through the biennium ending August 31, 2011, if the effective date of the bill is September 1, 2009.

All Funds, Six-Year Impact:

Fiscal Year	Probable Revenue (Loss) from <i>General Revenue Fund</i> 1	Probable Revenue (Loss) from <i>Cities</i>	Probable Revenue (Loss) from <i>Transit Authorities</i>	Probable Revenue (Loss) from <i>Counties</i>
2009	(\$894,000)	\$0	\$0	\$0
2010	(\$11,260,000)	(\$2,094,000)	(\$714,000)	(\$296,000)
2011	(\$11,823,000)	(\$2,199,000)	(\$750,000)	(\$311,000)
2012	(\$12,415,000)	(\$2,309,000)	(\$787,000)	(\$326,000)
2013	(\$13,035,000)	(\$2,424,000)	(\$827,000)	(\$343,000)
2014	(\$13,687,000)	(\$2,546,000)	(\$868,000)	(\$360,000)

The above table assumes an effective date of July 1, 2009. The table below assumes an effective date of September 1, 2009.

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>Cities</i>	Probable Revenue Gain/(Loss) from <i>Transit Authorities</i>	Probable Revenue Gain/(Loss) from <i>Counties</i>
2010	(\$10,322,000)	(\$1,745,000)	(\$595,000)	(\$247,000)
2011	(\$11,823,000)	(\$2,199,000)	(\$750,000)	(\$311,000)
2012	(\$12,415,000)	(\$2,309,000)	(\$787,000)	(\$326,000)
2013	(\$13,035,000)	(\$2,424,000)	(\$827,000)	(\$343,000)
2014	(\$13,687,000)	(\$2,546,000)	(\$868,000)	(\$360,000)

Fiscal Analysis

The bill would amend Section 151.310 of the Tax Code relating to sales tax exemptions for religious, educational, and public service organizations.

Under current statute, a religious, educational, or public service organization is allowed two 24 hour tax free sale days a year. This bill eliminates this limitation. In addition, under current policy, brochure fundraising firms are considered the actual sellers of taxable items and the tax free sale exemption does not apply when they have the exempt organizations take orders for them. The supplier or

distributor is responsible for the collection and remittance of sales and use tax on items sold in the fundraiser. The exempt entity does not have a tax obligation under this current policy. This bill would eliminate the tax responsibility of the supplier or distributor while allowing religious, educational, or public service organizations to purchase items for sale in a fundraiser exempt from tax as a sale for resale.

The bill would create definitions for "agent in fact," "market," "net sales proceeds," "occasional," "fundraiser," and "qualified organization," as those terms relate to the sale of taxable items by religious, educational, and public service organizations.

The bill would specify that the sale of a taxable item, the sales price of which is \$5,000 or less, by a qualified organization is exempt from sales tax if the sale occurs in a fundraiser and the qualified organization purchases and receives delivery of the item from a wholesale supplier and resells and delivers the item to a consumer, regardless of the sequence in which the product is marketed, purchased, received, sold, and delivered by the organization.

A qualified organization could claim the sale for resale exemption for taxable items purchased for sale in a fundraiser. The organization would be considered to have purchased a taxable item for sale in a fundraiser if the organization receives title for consideration under a contract, purchase order, invoice, shipping document, or other proof.

The Comptroller could not regard a qualified organization that conducts a fundraiser as the agent of the organization's wholesale supplier or distributor unless the organization is the agent in fact of the supplier or distributor.

The bill would eliminate provisions relating to the number of tax free sales religious, educational, and public service organizations may hold each year.

The bill would take effect immediately upon enactment, assuming that it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2009.

Methodology

Sales of items that would be exempt from sales tax when purchased for sale in a fundraiser were estimated based on data gathered from a variety of sources including Comptroller tax files. Sales were multiplied by the state sales tax rate; adjusted for the potential effective dates of July 1, 2009 and September 1, 2009; and extrapolated through fiscal 2014.

Local Government Impact

There would be a proportional loss of sales tax revenue to units of local government.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, MN, SD, KK