

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 25, 2021

TO: Honorable Morgan Meyer, Chair, House Committee on Ways & Means

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB4114 by Burrows (Relating to the retention of state sales tax revenue collected by certain retailers for a limited period.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB4114, As Introduced : a negative impact of (\$1,220,000,000) through the biennium ending August 31, 2023.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2022	(\$571,500,000)
2023	(\$648,500,000)
2024	(\$61,300,000)
2025	\$0
2026	\$0

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Revenue (Loss) from General Revenue Fund 1
2022	(\$571,500,000)
2023	(\$648,500,000)
2024	(\$61,300,000)
2025	\$0
2026	\$0

Fiscal Analysis

The bill would amend Chapter 151, Tax Code, by adding Section 151.433 to provide that a retailer who collects sales taxes on admissions to a film and concessions sold at the retailer's place of business, and was required at any point in 2020 to cease operations pursuant to a government order in response to a disaster, would be allowed to retain all state sales taxes imposed under the chapter on sales made between September 1, 2021, and August 31, 2023.

The retailer would be required to file a report with the Comptroller showing the amount of state sales tax collected and retained. The retailer would be required to remit to the Comptroller any local sales tax collected.

The Comptroller would be authorized to require a retailer to demonstrate that it is in compliance with the provisions of the bill, as well as to revoke a retailer's ability to retain collected taxes if they are found not to be

in compliance.

The bill would take effect September 1, 2021.

Methodology

According to the Comptroller, the requirement that a retailer collect tax on admissions to a film and on concessions sold on-site does not limit qualification for retention of state sales tax to movie theaters. Any restaurant, bar, hotel, or other retailer capable of conducting an occasional movie night and charging a nominal admission fee, even if only screening a public domain film with rented projection equipment or a digitally streamed film on a large screen television, could qualify for retention of state sales tax revenue under the standard provided by the plain language of the bill. And the entitlement to the revenue would not be limited to the tax on the sales of admissions and concessions – it would be to all the state sales tax collected by a qualifying retailer on all taxable items. For this reason, a substantial portion of Chapter 151 sales tax revenue would be foregone by the state as retailers availed themselves of the legal entitlement to retain the tax, however scant the role of movie exhibition might be in their normal lines of business.

The sales and use tax revenue foregone by the state during the two-year period provided for retention by qualifying retailers would not be limited to the Chapter 151 tax. Section 183.043, Tax Code provides that Chapter 151 applies to Subchapter B-1 of Chapter 183, the mixed beverage sales tax, in the same manner as it applies to tax under Chapter 151. Consequently, retailers licensed for sales of mixed alcoholic beverages would be entitled to retain the 8.25 percent mixed beverage sales tax during the two-year retention period should they nominally engage in the exhibition of films and collect tax on admission fees.

The Comptroller's estimate of revenue loss is based on the *2022-23 Biennial Revenue Estimate* of limited sales and use tax and mixed beverage sales tax revenues and the minimally prudential assumption that fifteen percent of such taxes collected by restaurants and bars and 100 percent of such taxes collected by movie theaters between September 1, 2021 and August 31, 2023 would be retained by qualifying retailers and foregone by the state. Should that assumption prove insufficiently prudent the amount of revenue retained by retailers and foregone by the state could be substantially higher.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

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