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Overview

This bill makes a variety of tax administrative changes:

- Requires the commissioner of the Department of Revenue (DOR) to establish a private letter ruling (PLR) program.
- Limits the authority to make sales tax assessments that are inconsistent with prior positions taken by DOR in an audit of the taxpayer.
- Provides a reasonable cause limit on assessments of sales and withholding taxes.
- Expands the commissioner's authority to abate penalties.
- Provides that the minimum penalty is \$150.
- Extends the statute of limitation for refund claims to two years following payment of the tax, consistent with the federal practice.

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1 Private letter ruling (PLR) program. Directs the commissioner of revenue to establish a PLR program by January 1, 2018. This program would be similar to the Internal Revenue Service's PLR program and would provide guidance and an explanation of the reasoning behind the ruling to applying taxpayers as to the state tax treatment of specific transactions or situations. DOR could exclude categories of transactions or provisions of law from the program.

Taxpayers or their representatives would need to apply for a PLR and provide the supporting facts that DOR requires. DOR could charge taxpayers a fee to recover its actual costs in preparing PLRs, but not to exceed \$1,000. The fee would be deposited in the DOR special

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account and appropriated to pay for the administrative costs of the program. The commissioner may require the fee to be paid in advance of considering an application, and the fee structure must vary based on complexity of the request. The fee would be refundable if DOR fails to issue a PLR within 90 days, but that would not absolve DOR of the requirement to issue a ruling.

Only the applying taxpayer could legally rely on the PLR, but DOR would be required to make the rulings available to the public on its website, grouped by tax type, with any identifying information redacted. DOR would be required to file a biennial report to the legislature on usage of the program by January 31st of odd-numbered years. The first report would be made to the 2020 legislature.

Requires the commissioner to use the administrative rulemaking process to adopt rules governing the PLR program.

Effective date: Day following final enactment

- 2 **Authority to request dual audits.** Authorizes certain taxpayers who are audited under either chapter 290 (individual income and corporate franchise tax) or chapter 297A (sales and use tax) to request in writing that the commissioner audit the tax due under both chapters at the same time. If the commissioner declines to do so, then the commissioner may not subsequently audit the tax due under the chapter not subject to audit for the time period covered by the audit. Taxpayers qualify to request dual audits if the taxpayer:

- has a sales tax collection permit;
- reported gross receipts in the most recent year less than an unspecified amount; and
- was subject to a sales or income/corporate franchise tax audit within an unspecified number of years, and the audit found additional liability less than \$1,000 or an unspecified percentage of liability.

- 3 **Limits on assessments; sales tax.** Prohibits the commissioner from issuing assessments of tax under the sales taxes that are inconsistent with the taxpayer's past practices, if they were fully disclosed to and specifically reviewed by DOR in a prior audit and DOR did not assess additional tax for that item. This limit would not apply if the commissioner has notified the taxpayer in writing, issued a contrary Revenue Notice, or the law has been materially changed (e.g., by Congress, the legislature, or by administrative rule).

Effective date: Assessments made after June 30, 2017

- 4 **Limits on assessments; reasonable cause.** Establishes a reasonable cause grounds for reducing or eliminating an assessment of tax that the taxpayer is required to collect or withhold from another individual or entity (e.g., sales or withholding taxes). A taxpayer is authorized to assert this defense on audit, in an administrative appeal, or in a refund claim. Lack of clarity in the law may be a reasonable cause; reliance on prior written advice from DOR that has not been superseded or preempted is reasonable cause.

Effective date: Assessments made after June 30, 2017

- 5 **Authority to abate penalties.** Gives the commissioner of revenue discretion to decline to impose or to abate tax penalties.

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Under current law, the commissioner's authority is limited to:

- instances of "reasonable cause";
- late payments due to presidentially declared disasters; and
- erroneous advice provided by a DOR employee.

Effective date: Day following final enactment

- 6** **Administrative appeals.** Specifies the content required in an administrative appeal based on the reasonable cause exception under section 4.

Effective date: Assessments made after June 30, 2017

- 7** **Time for claims for refunds.** Modifies the statute of limitation that applies to claims for refund to two years after payment of the tax. Under present law, the limit is one year following an assessment order or one year after payment of the tax on a commissioner-filed return. The limit for refunds resulting from federal (IRS) orders is extended to 180 days after the final federal determination.

Effective date: Claims for refunds after the day following final enactment

- 8** **De minimis penalties.** Provides no penalty for failure to pay tax applies if the calculated amount is less than \$150, or if the underpayment resulting in the penalty is less than \$1,000 and the taxpayer filed timely returns in the previous three years and was not subject to a penalty for any of those years (regardless of whether it was excused by the \$150 de minimis).

Effective date: Penalties imposed after June 30, 2017

- 9** **Appropriation.** Appropriates an unspecified amount for fiscal years 2018 and 2019 to DOR for the cost of establishing and administering the PLR program under section 1.