COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4306S.01I
Bill No.: SB 868
Subject: Taxation and Revenue - Income; Tax Credits
Type: Original
Date: January 10, 2022

Bill Summary: This proposal modifies provisions relating to tax credits.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue Fund	Could Exceed $6,728,260	Could Exceed $6,728,260	Could Exceed $6,728,260
Total Estimated Net Effect on General Revenue	**Could Exceed $6,728,260**	**Could Exceed $6,728,260**	**Could Exceed $6,728,260**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on Other State Funds	**$0**	**$0**	**$0**

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on All Federal Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on FTE	**0**	**0**	**0**

☐ Estimated Net Effect (expenditures or reduced revenues) expected to exceed $250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

☒ Estimated Net Effect (savings or increased revenues) expected to exceed $250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Local Government	**$0**	**$0**	**$0**

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Revenue (DOR)** note:

135.800 - 135.825 The Tax Credit Accountability Act

The tax credit accountability act (TCAA) requires that recipients of certain tax credits file an annual report declaring information about the holder of the tax credit as well as the number of jobs created by the projects funded. DOR is to assess a penalty against each recipient that fails to file the reports as required. The penalties for failing to file are currently steep and several taxpayers end up owing more in penalties than in the credit received.

The tax credit accountability act is being modified to help the taxpayer understand their responsibilities for reporting and to make the reporting easier. This proposal will require that every applicant under TCAA sign a statement affirming that they are aware of the reporting requirements of section 135.805 and the penalty provisions of section 135.810. DOR assumes the creation and distribution of this acknowledgment to the tax credit administering agencies would not have a fiscal impact. However, they hope it will help reduce the number of taxpayers who owe the fees for non-compliance.

This proposal is clarifying that this annual filing requirement is on June 30th and is for the first three years after the issuance of the credits. It requires the name of each tax credit recipient and the amount of tax credits issued shall be made available for public inspection. These requirements may be satisfied by making such information available to the public through the Department of Economic Development's website or the Missouri accountability portal.

This proposal modifies the penalty provisions. This proposal provides that thirty days after the annual report is past due, the administering agency shall send notice by either registered or certified mail to the last known address of the entity obligated to complete the report. Three months after the annual report is past due, the agency shall notify the department of revenue of any taxpayer subject to penalties. The payment of penalties under this section shall be due as of the filing date of the taxpayer's next income tax return. If not required to file, it shall be due as of the next April 15. The director of revenue shall prepare forms and rules to allow the reporting and satisfaction of liability for such penalties and for valuable consideration, may enter into agreements to compromise or abate some or all of the penalty amount. Any nonpayment of liability for penalties by the due date under this section shall be subject to the same provision of law as a liability for unpaid income tax including underpayment interest provisions but excluding income tax penalties and addition to tax provisions.

The Department assumes this changes can be made using DOR's existing resources.

143.119 Self-Employed Health Insurance Tax Credit

DOR notes this proposal modifies the existing self-employed health insurance tax credit program. The purpose of the Self-Employed Health Insurance tax credit was to provide persons who may not otherwise be able to purchase health insurance a credit to help offset the cost of the insurance. This credit is currently refundable. This credit is not limited to Missouri residents or taxpayers with a Missouri tax liability. The following has been distributed to non-residents with no Missouri taxable income:

CY 2021 so far 485 total returns filed claiming $483,794
CY 2020 850 total returns filed claiming $947,611
CY 2019 748 total returns filed claiming $953,114
CY 2018 617 total returns filed claiming $720,514

This proposal modifies the existing tax credit program to ensure only those with a Missouri tax liability will get this credit. It also makes it non-refundable. It also adds sunset language similar to the other tax credits.

Currently there is a deduction allowed to be taken under Section 143.113 for these same self-employed health insurance expenses. This proposal would limit a person to either the tax credit or the deduction.

It is expected that these changes would result in a savings to the state of greater than $873,746 annually.

This proposal will require the Department to update its MO-SHC form and the individual income tax filing system. These costs are estimated at $3,596.

Oversight assumes DOR could absorb these costs within current appropriation amounts.

Officials from the **Office of Administration – Budget & Planning (B&P)** assume:

Section 135.800 – Tax Credit Accountability Act

This section rearranges and changes certain definitions.

Section 135.800.2(5) removes the Health Care Access Fund tax credit from the list of domestic and social tax credits. B&P notes that the Health Care Access Fund tax credit has never been implemented.

Section 135.800.2(5) also adds the Health, hunger and hygiene tax credit to the definition of domestic and social tax credits.

Section 135.800.2(10) changes the definition of “recipient” to clarify that a recipient is not a person or entity that receives a transferred tax credit.

These provisions will not impact TSR or the calculation under Article X, Section 18(e).

Section 135.802 – Tax Credit Application Requirements

Section 135.802.1(5) requires that created jobs must be the direct result of project under consideration.

Section 135.800.10 would allow DED to require additional information from applicants. Section 135.800.12 would require an applicant to sign a statement acknowledging the tax credit reporting requirements and penalty for failure to file the annual reports.

These provisions will not impact TSR or the calculation under Article X, Section 18(e).

Section 135.805 – Annual Tax Credit Reports

Section 135.805.1 would remove the annual reporting exemption currently in place for recipients of environmental, financial, and insurance tax credits. While there are currently no active environmental tax credits (charcoal producer tax credit, wood energy tax credit, and alternative fuel stations tax credit), there are multiple DOR and/or DCI managed active financial/insurance tax credit programs (bank franchise tax credit, bank tax credit for S corporations, exam fee, life and health insurance guaranty tax credit, property and casualty guaranty tax credit, and self-employed health insurance tax credit). B&P notes that requiring these taxpayers to file the annual TCAA reports could increase the number of non-compliant taxpayers and corresponding penalties. Therefore, this provision may impact TSR and GR as well as the calculation under Article X, Section 18(e).

Section 135.805 requires the annual report to include the number of jobs directly created by the project.

This section would also require the annual reports to include projected and actual project costs and completion time. B&P notes that currently the annual reports only require projected or actual information, but not both.

This section also removes the requirement that the first annual report not be due until June 30th one year after the tax credits were issued. B&P notes that under the proposed language, it would be possible for an individual or entity to be issued tax credits on June 29th and then be required to file their first annual report one day later on June 30th.

Section 135.805.13 would allow administering agencies to publish relevant tax credit reporting data on either DED’s website or the Missouri Accountability Portal.
Section 135.810 – Failure to File Annual Tax Credit Report

This section would change the timing and penalties for individuals and entities that do not file a required annual tax credit report.

This proposal would make the following changes to the TCAA reporting penalties:

Reporting Penalty	Current Law	Proposed
Failure to File	6 – 11 months – 2% per month (maximum of 12%) 12 months and up – 10% per month (max 100%)	1st report, 3 months and up – 1% per month (max 10%) 2nd report, 3 months and up– 1.5% per month (max 20%) 3rd report, 3 months and up – 1.5% per month (max 20%)
Fraud	100%	200%

Based on information provided by DOR, on average, 58 taxpayers per year fail to file the required TCAA reports for at least two years. DOR only issues a notice of deficiency after the maximum penalty has accrued over two years. For example: a taxpayer is required to file a TCAA report in 2018, but fails to submit such report. DOR would not send a notice of deficiency (NOD) until June 2021 when the maximum 100% penalty has been met. The following table shows the number of deficiency notices that have been sent each year from 2015 through 2018.

Year TCAA Report Covers	Year TCAA Report Due	Year NOD Issued	Number of NOD reports
2015	2016	2018	36
2016	2017	2019	47
2017	2018	2020	83
2018	2019	2021	67

From 2018 through 2020, DOR collected between $42,391 and $305,870 a year in failure to report penalties. These penalties go to general revenue. The following table shows the amount collected per TCAA report year:

Year TCAA Report Covers	Year TCAA Report Due	Year NOD Issued	Collected as of 9/20/2021
2015	2016	2018	$81,539
2016	2017	2019	$305,870
2017	2018	2020	$42,391
2018	2019	2021	$0

However, this proposal would not eliminate the TCAA failure to file penalty, it would only reduce the maximum penalty from 100% to 20% for each of the three required reports. Therefore, B&P estimates that this proposal could reduce penalty collections by $33,913 to $244,696 per year beginning in FY24.

TCAA Report Year	Current Penalty	Proposed Penalty	Loss in Penalty Revenue
2015	$81,539	$16,308	($65,231)
2016	$305,870	$61,174	($244,696)
2017	$42,391	$8,478	($33,913)

Oversight notes that Section 135.810 – Failure to File Annual Tax Credit Report shortens the amount of time the claimant has to file annual report and reduces the amount of penalties. Additionally, the proposal increases fraud penalties from 100% to 200% of the tax credits issued. B&P assumes that there would be a loss in Penalties Revenue due to the reduction of the maximum penalties from 100% to 20%. Oversight notes the three average loss in penalty revenue is shown in the able below:

TCAA Report Year	Current Penalty	Proposed Penalty	Loss in Penalty Revenue
2015	$81,539	$16,308	($65,231)
2016	$305,870	$61,174	($244,696)
2017	$42,391	$8,478	($33,913)
Avearge			**($114,613)**

Oversight assumes the loss in penalty revenue is unknown but could exceed $114,613 based on the three year average.

Section 135.815.2 changes the definition of employing an illegal alien.

Section 135.825 – Tax Credit Tracking System

B&P states this section would require tax credit administering agencies to work with DOR and DED to implement a system for tracking tax credits. This provision will not impact TSR or the calculation under Article X, Section 18(e).

Section 143.119 – Self-Employed Health Insurance Tax Credit

B&P states this section would limit the self-employed tax credit to individuals with a Missouri income tax liability of $3,000 or less. In addition, the credit is changed from refundable to non-refundable, non-transferable, and cannot be carried forward or back to any other tax year.

In addition, no individual can claim both this tax credit and the tax deduction under Section 143.113 in the same tax year. Based on data provided by DOR, 92% of taxpayers claim both the self-employed health insurance tax credit and the self-employed health insurance tax deduction each year.

Subdivision 3 would sunset the tax credit, unless reapproved, on December 31, 2028. Therefore, unless reapproved, tax year 2028 would be the last year that this credit could be claimed.

B&P notes that currently non-Missouri residents with no Missouri income tax liability are able to apply for the refundable self-employed health insurance tax credit. B&P further notes that under this provision, such individuals would still be able to apply for the credit (as their Missouri tax liability would be less than $3,000). However, this proposal also makes the credit non-refundable. Therefore, non-Missouri residents with no Missouri tax liability would no longer benefit from the tax credit.

Per DOR, an average 9,940 taxpayers claim the self-employed health insurance tax credit each year with average yearly credit redemptions of $8,869,960. Based on additional DOR data, prohibiting the credit for non-Missouri residents and Missouri residents with an income tax liability greater than $3,000 would lower the number of taxpayers eligible for this credit by approximately 66.7% each year.

Preventing non-Missouri residents, with no Missouri income tax liability, would reduce tax credit redemptions by up to $900,000 per year. Disallowing the credit for Missouri residents with an income tax liability greater than $3,000 would further reduce redemptions by approximately $5,586,511 per year. B&P is unable to determine the amount of additional savings from making the credit non-refundable, but it could be a substantial amount of the remaining eligible credits (up to $2,383,449).

B&P notes that this provision would begin August 28, 2022, during tax year 2022. B&P assumes that because this language would take effect before taxpayers file their 2022 tax returns, this provision would impact tax year 2022.

Therefore, B&P estimates that this provision could increase TSR and GR by up to $8,869,960 annually beginning in FY23.

Summary

B&P estimates that this proposal could increase TSR and GR by up to $8,869,960 in FY23. Once fully implemented, this proposal could increase TSR and GR by up to $8,836,047 to $8,625,264 annually.

Table 1: Summary Impact by Provision and Fiscal Year

Provision		FY23 Low	FY23 High		FY24 Low	FY24 High
TCAA Reporting Penalties		$0	$0		($33,913)	($244,696)
Self-Employed Health Insurance Tax Credit	Up to	$8,869,960		Up to	$8,869,960	
Total GR Impact	Up to	$8,869,960	$8,869,960	Up to	$8,836,047	$8,625,264

Oversight agrees with the DOR and B&P and the overall projection of impact for non-Missouri residents, with no Missouri income tax liability, and will show reduced tax credit redemptions that could be less than or exceed $900,000 per year for purpose of this fiscal note.

Oversight will also show additional reduction of tax credit redemptions for taxpayers who would now not qualify for the credit (Missouri residents with an income tax liability greater than $3,000). **Oversight** assumes the savings in tax credit redemptions is unknown however is estimated at $5,942,873 as shown in table below. Oversight assumes this savings in tax credit redemptions could exceed the amount estimated given that those with higher income tax liability likely represent a larger portion of the total redemption amount and are now excluded.

Total Redemption	$	8,869,960.00
Total Self-employed Filers		9940
Average credit	$	892.35
Calculation of average credit	$8,869,960 /9940	
Over 3,000 liability (67.7%)		**6660**
	9940*67.7	
Less than $3,000 liability		**3280**
	9940*33.3	
Over $3,000 Liability	**$**	**5,942,873.20**
Less than $3,000 liability	$	2,927,086.80
Out of State		**$900,000**
Lesser or Could exceed	**$**	**6,842,873.20**
Calculation of impact for taxpayer over 3,000 liability (residents and non-residents)	$900,000 + $5,942,873	

Oversight notes that the taxpayers with liability less than $3,000 have a choice to claim either **Self-Employed Health Insurance Tax Credit,** as specified in Section **143.119, or self-employed health insurance tax deduction** each year but not both. Oversight assume there are estimated 3280 self-employed filers (with total amount of possible redemption totaling to $2,927,087) in State of Missouri with such a liability. However, Oversight is not able to estimate the actual impact for this group due to the complexity (as shown in table below) of the individual selection of either tax liability choice proposed in this legislation. Therefore, Oversight will note Unknown amount of the savings to GR for this specific group.

Officials from the **Department of Commerce and Insurance**, **Department of Economic Development**, **Missouri Department of Agriculture**, **Missouri Department of Transportation**, **Joint Committee on Administrative Rules, State Tax Commission**, **City of Springfield,** and **University of Missouri System** each assume the proposal will have no fiscal impact on the respective organizations.

FISCAL IMPACT – State Government	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE FUND			
Loss of Penalties Revenue – Section 135.810 – Penalties & fraud for timely filing p. 7	Could Exceed ($114,638)	Could Exceed ($114,638)	Could Exceed ($114,638)
Savings from Credit Redemption – Section 143.119 for self-employed filers with greater than $3,000 liability p. 8	Unknown, Exceed $5,942,873	Unknown, Could Exceed $5,942,873	Unknown, Could Exceed $5,942,873
Savings from Credit Redemption – Section 143.119 for self-employed non-resident filers p. 4, 8	Unknown, Could Exceed $900,000	Unknown, Could Exceed $900,000	Unknown, Could Exceed $900,000
Savings from Credit Redemption – (Section 143.119) no longer refundable	Unknown	Unknown	Unknown
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	**Could Exceed $6,728,260**	**Could Exceed $6,728,260**	**Could Exceed $6,728,260**

FISCAL IMPACT – Local Government	FY 2023 (10 Mo.)	FY 2024	FY 2025
	$0	**$0**	**$0**

FISCAL IMPACT – Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This act modifies the definition of "domestic and social tax credits" by removing the health care access fund tax credit, which has expired, and by adding the health, hunger, and hygiene tax credit.

This act also modifies the definition of "recipient" to provide that such term does not include the transferee of a tax credit. (Section 135.800)

This act requires an applicant for a tax credit, as a part of the application process, to sign a statement affirming that the applicant is aware of the reporting requirements and penalty provisions of the Tax Credit Accountability Act. (Section 135.802)

Current law requires the recipients of tax credits to file annual reports that includes either the estimated or actual project costs. This act requires such reports to include both the estimated and actual project costs.

Additionally, current law requires the administering agency of a tax credit to make available the names of each tax credit recipient. This act allows such information to be made available either on the Department of Economic Development's website or through the Missouri Accountability Portal. (Section 135.805)

Current law provides for penalties for a failure to submit required annual reports, with a penalty of 2% of the value of the tax credits for each month of delinquency of more than six months but less than one year, and a penalty of 10% of the value of the credits for each month of delinquency of more than one year. This act modifies such penalties. Failure to file the first annual report for more than three months shall result in a penalty of 1% of the value of the credits, not to exceed 10%. Failure to file the second or third annual report for more than three months shall result in a penalty of 1.5% of the value of the credits, not to exceed 20% per report.

Current law provides for a penalty equal to 100% of the value of the credits for fraud in the tax credit application process. This act increases such penalty to 200% for fraud in the application or reporting process. This act also provides that the Administrative Hearing Commission shall determine whether fraud has occurred. The Department of Revenue, the Department of

Economic Development, or the administering agency may file a fraud complaint to the Administrative Hearing Commission, as described in the act.

Current law requires an administering agency to send a notice of delinquency ninety days after the annual report is due. This act changes such requirement to thirty days. This act also allows the Department of Revenue to enter into agreements to compromise or abate some or all of any penalties administered under the act. (Section 135.810)

Current law requires tax credit applicants to forfeit and repay tax credits if such applicant purposely and directly employs unauthorized aliens. This act changes such standard to an applicant knowingly employing unauthorized aliens. (Section 135.815)

HEALTH INSURANCE DEDUCTION TAX CREDIT

Current law authorizes a refundable tax credit for self-employed taxpayers who are ineligible for the federal health insurance deduction. This act modifies such tax credit by making it nonrefundable, nontransferable, and not eligible to be carried forward or backward to any other tax year. This act also requires a taxpayer to have a Missouri income tax liability of less than $3,000. A taxpayer shall not be able to claim such tax credit and the state health insurance deduction in current law for the same tax year.

This tax credit will sunset December 31, 2028 unless reauthorized by the General Assembly.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Administration – Budget & Planning
Department of Revenue
Department of Commerce and Insurance
Department of Economic Development
Missouri Department of Agriculture
Missouri Department of Transportation
Joint Committee on Administrative Rules
State Tax Commission, City of Springfield
University of Missouri System

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