



WHERE DID ALL THE MONEY GO? (A Continuing Series) The case of the sales tax discounts and refunds

Public structures—including public education, child health services, and transportation infrastructure—help maintain Texans’ quality of life, and they require adequate revenue to function properly. To provide adequate revenue, our state needs an up-to-date Tax Code without loopholes that let some dodge their share of responsibility. The Tax Code contains more than a few tax breaks, special treatments, and refunds that have outlived legislators’ rationale for adopting them. This Policy Page briefly describes three of these special-interest deals – the “timely filer discount,” the “prepayment discount,” and the “sales tax refund for economic development” – and suggests that the Legislature apply a sunset process to the tax code, as it does to all state agencies. An up-to-date Tax Code will help us take care of our public structures so they continue to take care of us—without the rest of us having to pick up the slack for those using anachronistic tax loopholes to avoid paying their fair share.

Sales Tax Discounts

The “timely filer discount”

Retailers that report and remit sales taxes to the comptroller on time can keep 0.5 percent of the taxes they collect,ⁱ ostensibly as compensation for collecting those taxes. The state adopted the discount when shopkeepers kept paper records of sales tax collections, which took time and trouble to record and remit to the state. Now, retailers record and remit these taxes electronically.

Nearly half of the states allow this type of compensation. The discount is typically calculated as a percentage of the sales tax collected, based on the assumption that a greater volume of receipts requires more effort to track. However, thirteen states limit the amount any individual store or chain can receive or reduce the rate for greater amounts of collections. The ceilings cover a large range—from \$360 a year in Florida to \$240,000 in Michigan—with a median ceiling of \$4,800. (Florida allows each location operated by a chain to qualify for the maximum.)

Because Texas does not impose a ceiling, the timely filer discount will reduce state sales tax revenue by \$202.4

million in the 2010-11 biennium, according to the comptroller’s biennial study.ⁱⁱ A ceiling of \$10,000 per retailer – twice the median ceiling nationally – would save the state a significant amount without reducing the discount received by small businesses. Only businesses with taxable sales exceeding \$24.25 million would be affected.

The “prepayment discount”

Texas allows retailers that prepay their sales taxes based on a reasonable estimate of their tax liability to retain an additional 1.25 percentⁱⁱⁱ (on top of the timely filer discount). The comptroller estimates that the prepayment discount will cost the state an additional \$186.6 million in the 2010-11 biennium.^{iv}

Larger firms that can afford early estimated payments primarily receive this discount. Bringing this larger discount under the proposed \$10,000 ceiling would save the state additional money. Only firms with taxable sales exceeding \$6.9 million that received the full 1.75 percent discount would be affected by the ceiling.

The timely-filer and prepayment discounts would be capped by at \$10,000 per firm by HB 2043 by Representative Michael Villarreal (referred to the House Ways and Means Committee), and SB 694 by Senator Rodney Ellis (referred to the Senate Finance Committee).

Sales Tax Refund for Economic Development

School property tax abatements were strongly discouraged in 1993, when the school-finance rules changed to reduce state aid to districts granting tax abatements, then explicitly prohibited in 2001.^v Some companies that received abatements from a city and county argued that their plans had assumed abatements from the school district too. They argued that it was unfair to change the rules under which they developed their project and asked for a transitional program to cushion the blow. The Legislature responded with SB 345 (1995), which reimburses property owners for school property taxes paid on property that received a city or county tax abatement. The reimbursement is made under the guise of a “refund of states sales and franchise taxes.”

The program will cost the state \$20 million in the 2010-11 biennium.

The state limits the total amount of reimbursement to \$10 million per year. Since the requests for reimbursement exceeded this amount every year since 1998, companies receive back only a portion of the school property taxes paid on the locally abated property. According to the most recent report by the comptroller, in 2007, 87 companies received payments equal to 32 percent of their school property tax payments.^{vi} These payments are an entitlement – as long as the company received a city or county abatement and met certain payroll or investment qualifications, the state has no discretion in determining whether to grant the refund.

Whatever sense this program made as a transitional provision because of the change in school-finance formulas, companies now know that school districts may not grant the same property tax abatements as cities and counties and should take this into account in planning projects. In addition, in some circumstances companies can receive the equivalent of a school tax abatement through Chapter 313 of the Tax Code, which allows school districts to limit the appraised value of a property.

This outmoded program would be terminated by HB 1403 by Representative Michael Villarreal (referred to the House Ways and Means Committee), and SB 966 by Sen. Rodney Ellis (referred to the Senate Finance Committee).

Texas Needs Sunset Review of the Tax Code

The survival of tax breaks beyond the initial rationale for their creation highlights the need for a thorough review of the Tax Code.. The legislature subjects state agencies a to a “sunset review” every twelve years to determine the continued utility of agency functions.^{vii} The Tax Code would benefit from a similar periodic review of all its exemptions, discounts, exclusions, and special treatments.

HB 1402 by Representative Michael Villarreal (referred to the House Ways and Means Committee), would create a Joint Legislative Tax Review Committee to regularly evaluate the adequacy and equity of all state and local taxes and recommend changes in each tax and its exemptions. The committee’s recommendations would be reviewed by a Select Commission that included legislators, members of the public, and the comptroller, then subject to a public hearing.

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The Center for Public Policy Priorities is a nonpartisan, nonprofit policy institute committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans.

ⁱⁱⁱ Tax Code, sec. 151.424

^{iv} *Tax Exemptions & Tax Incidence*, <http://www.window.state.tx.us/taxinfo/incidence09/>, table 4, page 14.

^v Tax Code, sec. 312.002(f)

^{vi} *Biennial Reports of Reinvestment Zone for Tax Abatement Registry Tax Abatement Agreement Registry Tax Increment Financing Zone Registry Refund for Economic Development*, <http://www.window.state.tx.us/taxinfo/proptax/registry08/> pp. 171-72.

^{vii} Government Code, sec. 325.001 et seq.