2011 UPDATE ON THE STREAMLINED SALES TAX

LBB FACTS AND FINDINGS

- The SSUTA was amended to allow states to use origin-base sourcing of local sales taxes for intrastate sales, removing the primary obstacle to Texas membership in the agreement.
- Amending Texas sales tax statutes to conform to the SSUTA, absent congressional action, would result in a revenue loss of $88.3 million during the 2012–13 biennium.
- If the U.S. Congress enacts legislation authorizing states to require sellers to collect taxes on remote sales and Texas joins the SSUTA, the state could gain approximately $500 million annually.

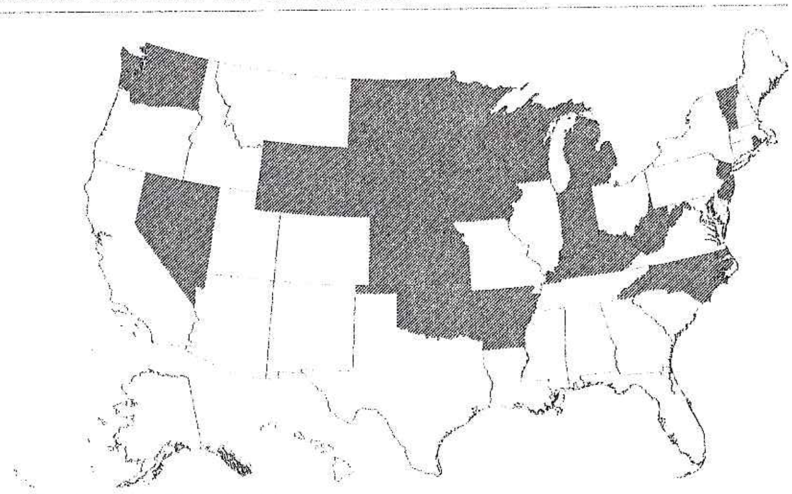
This report does not include any recommendations. The introduced 2012–13 General Appropriations Bill does not include any adjustments as a result of this report.

This report would have no fiscal impact for the 2012–13 biennium. It provides an update on SSUTA developments since January 2007.

Federal courts have ruled that states may not require a firm to collect state and local sales tax on interstate sales unless the firm has a physical presence in the taxing state. In response to mounting sales tax losses from the growth in Internet sales, a group of states formed the Streamlined Sales Tax Project in 2000. The purpose of the project was to establish a simplified sales tax framework with the goal of collecting sales tax on remote sales through voluntary compliance by sellers or through congressional action authorizing states to require vendors to collect taxes on remote sales. The project produced the multi-state Streamlined Sales and Use Tax Agreement (SSUTA), which took effect in October 2005.

Under the key provisions of the agreement, participating remote vendors voluntarily collect state and local sales taxes on remote sales on behalf of SSUTA member states, which are shown in **Figure 1**. Federal legislation that would ratify the agreement and mandate tax collections by remote sellers has been introduced in the U.S. Congress, but has made little progress in the federal legislative process. Texas is not a member of the Streamlined Sales and Use Tax Agreement, and Texas statutes do not conform to the agreement guidelines in several respects. Becoming a member would require Texas to take legislative action to amend the state's sales and use tax law. Amending Texas sales tax statutes to conform to the SSUTA, absent congressional action, would result in a revenue loss of $88.3 million during the 2012–13 biennium.

FIGURE 1
STREAMLINED SALES AND USE TAX FULL MEMBER STATES, NOVEMBER 2010



Source: Streamlined Sales Tax Project.

The full text of this report can be found in the *Government Effectiveness and Efficiency* report (Legislative Budget Board, January 2011), page 149.

REDUCE GENERAL REVENUE LOSS FROM SALES TAX DISCOUNTS

LBB RECOMMENDATIONS

1 Amend statute to increase the timely filer discount to 0.75 percent and limit the amount a vendor can retain in the form of the timely filer discount to $3,750 per tax year.

2 Amend statute by adjusting the prepayment discount rate to the lesser of 1.25 percent or the rate that yields an annualized rate of return of 4 percent over the prime rate.

These recommendations would require statutory change. The introduced 2012–13 General Appropriations Bill does not include any adjustments as a result of these recommendations.

These recommendations would generate $152 million in General Revenue Funds for the 2012–13 biennium and increase the sales tax discount for small businesses.

Texas allows businesses to retain a flat rate of state sales tax collections to compensate for their effort in collecting and reporting sales tax regardless of the size of business. Additionally, retailers receive a prepayment discount, an additional amount of sales tax collections for remitting estimated collections prior to their due date. Texas retailers who prepay their sales taxes earn the equivalent of approximately a 13.27 percent annual rate of return on their prepayments. This is significantly higher than the 1.57 percent interest rate the state earned on its treasury funds and higher than any interest rates available to retailers via other savings vehicles in 2009. **Figure 1** shows that these discounts are expected to cost the state more than $200 million in each fiscal year of the 2012–13 biennium.

FIGURE 1
PROJECTED SALES TAX DISCOUNTS
FISCAL YEARS 2009 TO 2014 (IN MILLIONS)

DISCOUNT	2009*	2010	2011	2012	2013	2014
Timely Filer	$94.0	$99.1	$108.1	$112.4	$116.9	$116.9
Prepayment	$91.4	$91.4	$95.2	$99.7	$103.7	$107.8

*Actual discount amount.
SOURCE: Legislative Budget Board.

Unlike Texas, many states either cap the amounts businesses can retain, offer different levels of compensation to retailers based on the amount of taxable sales, or do not offer such discounts to control for the loss of General Revenue.

The full text of this report can be found in the *Government Effectiveness and Efficiency* report (Legislative Budget Board, January 2011), page 155.

FIVE-YEAR FISCAL YEAR IMPACT, FISCAL YEARS 2012 TO 2016

FISCAL YEAR	PROBABLE GAIN/(LOSS) TO GENERAL REVENUE FUNDS
2012	$74,239,722
2013	$77,736,413
2014	$81,397,798
2015	$85,231,634
2016	$89.246,044

SOURCE: Legislative Budget Board.

PHASE OUT ECONOMIC DEVELOPMENT TAX REFUNDS

LBB RECOMMENDATION

1 Amend statute to phase out the Tax Refund for Economic Development Program between fiscal years 2012 to 2016.

This recommendation requires statutory change. The introduced 2012–13 General Appropriations Bill does not include any adjustments as a result of this recommendation.

The recommendation would save $4.0 million in General Revenue Funds in the 2012–13 biennium and would phase out the Tax Refund for Economic Development because this program's effectiveness is limited by its structure.

Since 1997, the State of Texas has refunded $114.9 million through the Tax Refund for Economic Development Program. Partial refunds of sales and use and franchise tax payments reimburse participants in city and/or county property tax abatement agreements for some of the school property taxes they pay due to the state prohibition on school property tax abatements. These refunds originated as a means to compensate city and county property tax abatement agreement participants for unabated school property taxes. The refunds are intended to promote economic development, but their structure and operation hinder their efficiency and effectiveness. These factors, plus the creation of other economic development programs and state efforts to reduce school property taxes, have made the program's incentives less meaningful. Phasing out the program would allow current participants to continue receiving some refunds and result in savings of $4 million in General Revenue Funds for the 2012–13 biennium.

The full text of this report can be found in the *Government Effectiveness and Efficiency* report (Legislative Budget Board, January 2011), page 163.

FIVE-YEAR FISCAL IMPACT, FISCAL YEARS 2012 TO 2016

FISCAL YEAR	PROBABLE SAVINGS/(COST) IN GENERAL REVENUE FUNDS	PROBABLE SAVINGS/(COST) TO PROPERTY TAX RELIEF FUND	PROBABLE COMBINED SAVINGS/ (COST) IN ALL-FUNDS
2012	$0	$0	$0
2013	$2,685,600	$1,314,400	$4,000,000
2014	$4,028,400	$1,971,600	$6,000,000
2015	$5,371,200	$2,628,800	$8,000,000
2016	$6,714,000	$3,286,000	$10,000,000

SOURCE: Legislative Budget Board.

TIE THE AUGUST SALES TAX HOLIDAY TO BUDGET CONDITIONS

LBB RECOMMENDATIONS

1 Amend statute to establish a permanent review process for the August sales tax holiday.

2 Amend statute to suspend the August holiday in fiscal years 2011 and 2012.

These recommendations require statutory change. The introduced 2012–13 General Appropriations Bill does not include any adjustments as a result of these recommendations.

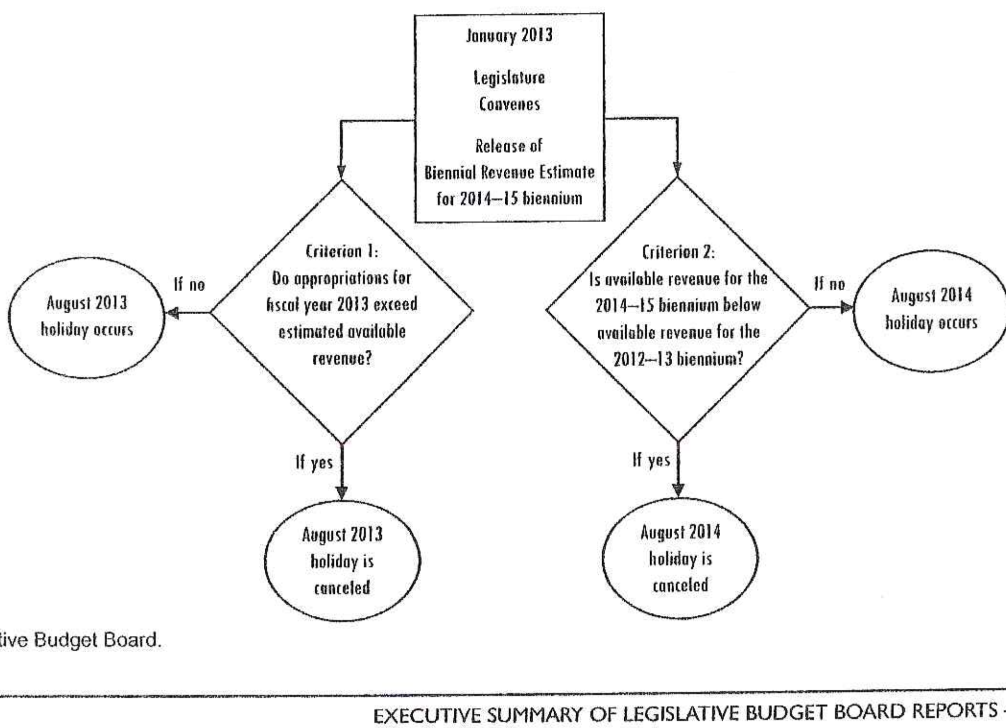
These recommendations would generate $14.5 million in General Revenue Funds for fiscal year 2011 and $97.3 million in General Revenue Funds for the 2012–13 biennium, and would provide the state with an objective process to be used in determining whether or not to have the salex tax holiday.

Nineteen states, including Texas, held sales tax holidays in 2010. These holidays exempted certain products, typically clothing and school supplies, from the state sales tax for a defined period. Texas statute provides for an annual sales tax holiday each August regardless of the state's ability to afford it in a given year. Some states canceled their planned holidays in 2009 and 2010 because of budgetary and economic conditions.

Analysis indicates Texas will face budgetary shortfalls in fiscal year 2011 and the 2012–13 biennium. Amending statute to establish a permanent review process that uses budget criteria as a basis for determining whether to hold the holiday would give the state flexibility to hold the holiday in years in which the state can afford it and enable the Texas Legislature to make appropriations decisions based on the availability of additional sales tax revenue when the holiday is suspended. **Figure 1** shows the criteria recommended for making this determination. The six-year fiscal impact of these recommendations is shown on the next page.

The full text of this report can be found in the *Government Effectiveness and Efficiency* report (Legislative Budget Board, January 2011), page 169.

FIGURE 1
USE OF CRITERIA IN THE DECISION-MAKING PROCESS
JANUARY 2013



Source: Legislative Budget Board.

SIX-YEAR FISCAL IMPACT, FISCAL YEARS 2011 TO 2016

FISCAL YEAR	PROBABLE GAIN/(LOSS) IN GENERAL REVENUE FUNDS
2011	$14,549,128
2012	$55,513,694
2013	$41,830,179
2014	$0
2015	$0
2016	$0

Source: Legislative Budget Board.

STRENGTHEN SALES TAX ENFORCEMENT RELATED TO CUSTOMS BROKERS AND INCREASE THE CHARGE FOR EXPORT STAMPS

LBB RECOMMENDATIONS

1. Amend statute to prohibit the issuance of one export certificate for multiple receipts.

2. Amend statute to prohibit the issuance of export certificates not produced on the online system.

3. Amend statute to require customs brokers to confirm they have seen property and a receipt for that property.

4. Amend statute to increase the price of export stamps from $1.60 to $3.20 each.

These recommendations require statutory change. The introduced 2012–13 General Appropriations Bill does not include any adjustments as a result of these recommendations.

These recommendations would generate $9.2 million in General Revenue Funds for the 2012–13 biennium and safeguard against abuse of sales tax provisions related to custom brokers.

The U. S. Constitution prohibits states from taxing exports to foreign countries. Texas provides five methods for purchasers to receive an exemption from or refund of sales taxes paid on exported property. One method, documentation by a customs broker, allows a purchaser to receive a refund while taking possession of property in this country. In a 2003 report, the Comptroller of Public Accounts documented widespread abuse of the customs broker provision and recommended repealing the provision. Rather than repeal the provision, the Texas Legislature restructured the customs broker system by establishing an online system for issuance of export certificates and imposing fees on export stamps and an annual fee on each broker location. The new online system dealt with some of the abusive practices, but the customs broker statute should be clarified to further safeguard against abuse. Revenue generated by export stamp charges and broker fees has been less than initially estimated. Enacting the recommended administrative changes and increasing the stamp fee could improve administrative efficiency and generate $9.2 million in General Revenue Funds during the 2012–13 biennium through fines, export stamp sales, and the reduction of sales tax refunds.

The full text of this report can be found in the *Government Effectiveness and Efficiency* report (Legislative Budget Board, January 2011), page 177.

FIVE-YEAR FISCAL IMPACT, FISCAL YEARS 2012 TO 2016

FISCAL YEAR	PROBABLE GAIN/(LOSS) IN GENERAL REVENUE FUNDS
2012	$4,586,000
2013	$4,586,000
2014	$4,586,000
2015	$4,586,000
2016	$4,586,000

SOURCE: Legislative Budget Board.

REPEAL SUNDAY LIQUOR SALES RESTRICTIONS TO GENERATE ADDITIONAL REVENUE

LBB RECOMMENDATION

1 Amend statute to allow for Sunday sales of liquor for off-site consumption.

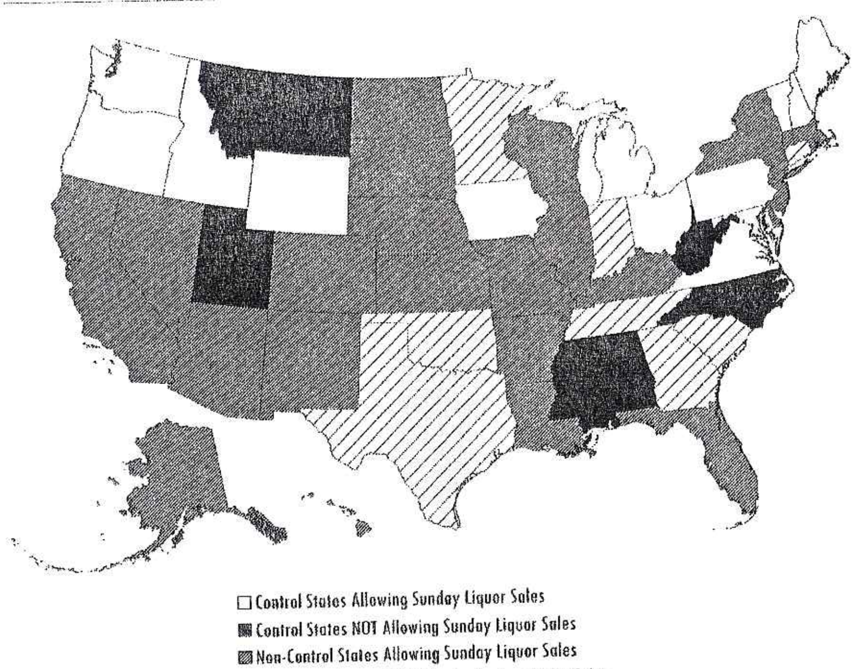
This recommendation requires statutory change. The introduced 2012–13 General Appropriations Bill does not include any adjustments as a result of this recommendation.

This recommendation would generate $7.4 million in General Revenue Funds during the 2012–13 biennium and would create consistency among statutes governing the sale of all alcoholic beverages.

"Blue laws," which limit the operation of businesses or the sale of certain items on Sundays, date back to colonial times. Economic considerations and changes in public opinion have led to the repeal of these restrictions in many states. However, Texas continues to prohibit the sale of liquor for off-site consumption on Sundays, while allowing consumers to purchase liquor in restaurants and bars. Establishments can sell beer and wine for both on and off-premise consumption on Sunday.

Figure 1 shows that Texas is one of 14 states that does not allow the sale of liquor on Sunday. Laws restricting the sale of some alcoholic beverages prevent the state from maximizing liquor and sales tax revenues, and are inconsistent with beer and wine alcoholic beverage sales laws and laws governing the sale of other consumer goods. Several states have repealed their Sunday liquor sales restrictions in the last 10 years and have realized revenue gains. The five-year fiscal impact of these recommendations is shown on the next page.

FIGURE 1
STATES THAT ALLOW SUNDAY LIQUOR SALES FOR OFF-SITE CONSUMPTION
FISCAL YEAR 2010



Sources: Distilled Spirits Council of the United States; National Alcohol Beverage Control Association.

The full text of this report can be found in the *Government Effectiveness and Efficiency* report (Legislative Budget Board, January 2011), page 183.

FIVE-YEAR FISCAL IMPACT, FISCAL YEARS 2012 TO 2016

FISCAL YEAR	PROBABLE GAIN/(LOSS) TO GENERAL REVENUE FUNDS	PROBABLE REVENUE GAIN/(LOSS) TO LOCAL GOVERNMENT
2012	$3,622,979	$641,575
2013	$3,753,406	$677,290
2014	$3,888,529	$714,896
2015	$4,028,516	$754,491
2016	$4,173,542	$796,177

Source: Legislative Budget Board.

ELIMINATE THE HOTEL PERMANENT RESIDENT EXCEPTION

LBB RECOMMENDATION

1 Amend statute to repeal the permanent resident exception to the hotel occupancy tax.

This recommendation requires statutory action. The introduced 2012–13 General Appropriations Bill does not contain any adjustments as a result of this recommendation.

This recommendation would generate $16.1 million in General Revenue Funds and General Revenue–Dedicated Funds during the 2012–13 biennium and would mitigate abuse of this tax exemption.

Texas levies a hotel occupancy tax on hotel guests, but persons who occupy a hotel room for 30 or more consecutive days are considered permanent residents and are exempt from the hotel tax. A "person," as defined in the context of the law, includes individuals and businesses. Therefore, the statute authorizing the permanent resident exception extends to private businesses such as airlines, consulting firms, railroad and trucking companies, and others. In fiscal year 2010, the state collected $330.8 million in hotel tax revenue. Based on Comptroller of Public Accounts' quarterly data, all hotel occupancy tax exemptions, including the permanent resident exception, cost the state $53.7 million in General Revenue Funds during fiscal year 2010. The inclusion of businesses and individuals as parties that are exempt from the hotel occupancy tax is inconsistent with other tax exemptions typically granted in Texas. Other tax exemptions to the hotel tax are allowed for non-profit organizations, government entities, and higher education institutions.

The full text of this report can be found in the *Government Effectiveness and Efficiency* report (Legislative Budget Board, January 2011), page 189.

FIVE-YEAR FISCAL IMPACT, FISCAL YEARS 2012 TO 2016

FISCAL YEAR	PROBABLE GAIN/(LOSS) IN GENERAL REVENUE FUNDS	PROBABLE GAIN/(LOSS) IN GENERAL REVENUE–DEDICATED FUNDS
2012	$7,356,473	$677,242
2013	$7,356,473	$677,242
2014	$7,356,473	$677,242
2015	$7,356,473	$677,242
2016	$7,356,473	$677,242

Source: Legislative Budget Board.