



# Senate

General Assembly

**File No. 678**

January Session, 2021

Senate Bill No. 1107

*Senate, May 10, 2021*

The Committee on Finance, Revenue and Bonding reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## **AN ACT CONCERNING THE TAXATION OF AMBULATORY SURGICAL CENTER SERVICES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 12-263i of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective June 1, 2021, and*  
3 *applicable to calendar quarters commencing on or after July 1, 2020*):

4 (a) As used in this section:

5 (1) "Ambulatory surgical center" means an entity included within the  
6 definition of said term that is set forth in 42 CFR 416.2 and that is  
7 licensed by the Department of Public Health as an outpatient surgical  
8 facility, and any other ambulatory surgical center that is Medicare  
9 certified;

10 (2) "Commissioner" means the Commissioner of Revenue Services;  
11 and

12 (3) "Department" means the Department of Revenue Services.

13 (b) (1) For each calendar quarter commencing on or after October 1,  
14 2015, but prior to July 1, 2021, there is hereby imposed a tax on each  
15 ambulatory surgical center in this state to be paid each calendar quarter.  
16 The tax imposed by this section shall be at the rate of six per cent of the  
17 gross receipts of each ambulatory surgical center, except that:

18 (A) Prior to July 1, 2019, such tax shall not be imposed on any amount  
19 of such gross receipts that constitutes either (i) the first million dollars  
20 of gross receipts of the ambulatory surgical center in the applicable fiscal  
21 year, or (ii) net revenue of a hospital that is subject to the tax imposed  
22 under section 12-263q; [and]

23 (B) On and after July 1, 2019, but prior to July 1, 2021, such tax shall  
24 not be imposed on any amount of such gross receipts that constitutes  
25 any of the following: (i) The first million dollars of gross receipts of the  
26 ambulatory surgical center in the applicable fiscal year, excluding  
27 Medicaid and Medicare payments, (ii) net revenue of a hospital that is  
28 subject to the tax imposed under section 12-263q, (iii) Medicaid  
29 payments received by the ambulatory surgical center, and (iv) Medicare  
30 payments received by the ambulatory surgical center; [.] and

31 (C) For the calendar quarters commencing on or after July 1, 2020, but  
32 prior to July 1, 2021, COVID-19 expenses may be deducted from the  
33 gross receipts of the ambulatory surgical center prior to the imposition  
34 of such tax. As used in this subparagraph, (i) "COVID-19 expenses"  
35 means all amounts incurred by or on behalf of an ambulatory surgical  
36 center directly or indirectly as a result of COVID-19, including, but not  
37 limited to, amounts for the purchase, lease, licensing or use of tangible  
38 or intangible property in connection with tests for, protection or  
39 prevention against or treatment of COVID-19 or its symptoms, for the  
40 ambulatory surgical center's personnel, patients, service providers,  
41 visitors, facilities or tangible personal property, and (ii) "COVID-19"  
42 means the respiratory disease designated by the World Health  
43 Organization on February 11, 2020, as coronavirus 2019, and any related  
44 mutation thereof recognized by said organization as a communicable  
45 respiratory disease.

46 (2) Nothing in this section shall prohibit an ambulatory surgical  
47 center from seeking remuneration for the tax imposed by this section.

48 (3) Each ambulatory surgical center shall, on or before January 31,  
49 2016, and thereafter on or before the last day of January, April, July and  
50 October of each year until and including July 31, 2021, render to the  
51 commissioner a return, on forms prescribed or furnished by the  
52 commissioner, reporting the name and location of such ambulatory  
53 surgical center, the entire amount of gross receipts generated by such  
54 ambulatory surgical center during the calendar quarter ending on the  
55 last day of the preceding month and such other information as the  
56 commissioner deems necessary for the proper administration of this  
57 section. The tax imposed under this section shall be due and payable on  
58 the due date of such return. Each ambulatory surgical center shall be  
59 required to file such return electronically with the department and to  
60 make payment of such tax by electronic funds transfer in the manner  
61 provided by chapter 228g, regardless of whether such ambulatory  
62 surgical center would have otherwise been required to file such return  
63 electronically or to make such tax payment by electronic funds transfer  
64 under the provisions of chapter 228g.

65 (c) Whenever the tax imposed under this section is not paid when  
66 due, a penalty of ten per cent of the amount due and unpaid or fifty  
67 dollars, whichever is greater, shall be imposed and interest at the rate of  
68 one per cent per month or fraction thereof shall accrue on such tax from  
69 the due date of such tax until the date of payment.

70 (d) The provisions of sections 12-548, 12-550 to 12-554, inclusive, and  
71 12-555a shall apply to the provisions of this section in the same manner  
72 and with the same force and effect as if the language of said sections had  
73 been incorporated in full into this section and had expressly referred to  
74 the tax imposed under this section, except to the extent that any  
75 provision is inconsistent with a provision in this section.

76 (e) For the fiscal [year] years ending June 30, 2016, [and each fiscal  
77 year thereafter] to June 30, 2021, inclusive, the Comptroller is authorized  
78 to record as revenue for each fiscal year the amount of tax imposed

79 under the provisions of this section prior to the end of each fiscal year  
80 and which tax is received by the Commissioner of Revenue Services not  
81 later than five business days after the last day of July immediately  
82 following the end of each fiscal year.

83 Sec. 2. Subdivision (2) of subsection (a) of section 12-407 of the general  
84 statutes is repealed and the following is substituted in lieu thereof  
85 (*Effective July 1, 2021, and applicable to sales occurring on or after July 1,*  
86 *2021*):

87 (2) "Sale" and "selling" mean and include:

88 (A) Any transfer of title, exchange or barter, conditional or otherwise,  
89 in any manner or by any means whatsoever, of tangible personal  
90 property for a consideration;

91 (B) Any withdrawal, except a withdrawal pursuant to a transaction  
92 in foreign or interstate commerce, of tangible personal property from  
93 the place where it is located for delivery to a point in this state for the  
94 purpose of the transfer of title, exchange or barter, conditional or  
95 otherwise, in any manner or by any means whatsoever, of the property  
96 for a consideration;

97 (C) The producing, fabricating, processing, printing or imprinting of  
98 tangible personal property for a consideration for consumers who  
99 furnish either directly or indirectly the materials used in the producing,  
100 fabricating, processing, printing or imprinting, including, but not  
101 limited to, sign construction, photofinishing, duplicating and  
102 photocopying;

103 (D) The furnishing and distributing of tangible personal property for  
104 a consideration by social clubs and fraternal organizations to their  
105 members or others;

106 (E) The furnishing, preparing, or serving for a consideration of food,  
107 meals or drinks;

108 (F) A transaction whereby the possession of property is transferred

109 but the seller retains the title as security for the payment of the price;

110 (G) A transfer for a consideration of the title of tangible personal  
111 property which has been produced, fabricated or printed to the special  
112 order of the customer, or of any publication, including, but not limited  
113 to, sign construction, photofinishing, duplicating and photocopying;

114 (H) A transfer for a consideration of the occupancy of any room or  
115 rooms in a hotel, lodging house or bed and breakfast establishment for  
116 a period of thirty consecutive calendar days or less;

117 (I) The rendering of certain services, as defined in subdivision (37) of  
118 this subsection, for a consideration, exclusive of such services rendered  
119 by an employee for the employer;

120 (J) The leasing or rental of tangible personal property of any kind  
121 whatsoever, including, but not limited to, motor vehicles, linen or  
122 towels, machinery or apparatus, office equipment and data processing  
123 equipment, provided for purposes of this subdivision and the  
124 application of sales and use tax to contracts of lease or rental of tangible  
125 personal property, the leasing or rental of any motion picture film by  
126 the owner or operator of a motion picture theater for purposes of display  
127 at such theater shall not constitute a sale within the meaning of this  
128 subsection;

129 (K) The rendering of telecommunications service, as defined in  
130 subdivision (26) of this subsection, for a consideration on or after  
131 January 1, 1990, exclusive of any such service rendered by an employee  
132 for the employer of such employee, subject to the provisions related to  
133 telecommunications service in accordance with section 12-407a;

134 (L) (i) The rendering of community antenna television service, as  
135 defined in subdivision (27) of this subsection, for a consideration on or  
136 after January 1, 1990, exclusive of any such service rendered by an  
137 employee for the employer of such employee. For purposes of this  
138 chapter, "community antenna television service" includes service  
139 provided by a holder of a certificate of cable franchise authority

140 pursuant to section 16-331p, and service provided by a community  
141 antenna television company issued a certificate of video franchise  
142 authority pursuant to section 16-331e for any service area in which it  
143 was not certified to provide community antenna television service  
144 pursuant to section 16-331 on or before October 1, 2007;

145 (ii) The rendering of certified competitive video service, as defined in  
146 subdivision (38) of this subsection, for consideration on or after October  
147 1, 2007, exclusive of any such service rendered by an employee for the  
148 employer of such employee;

149 (M) The transfer for consideration of space or the right to use any  
150 space for the purpose of storage or mooring of any noncommercial  
151 vessel, exclusive of dry or wet storage or mooring of such vessel during  
152 the period commencing on the first day of October in any year to and  
153 including the thirty-first day of May of the next succeeding year;

154 (N) The sale for consideration of naming rights to any place of  
155 amusement, entertainment or recreation within the meaning of  
156 subdivision (3) of section 12-540;

157 (O) The transfer for consideration of a prepaid telephone calling  
158 service, as defined in subdivision (34) of this subsection, and the  
159 recharge of a prepaid telephone calling service, provided, if the sale or  
160 recharge of a prepaid telephone calling service does not take place at the  
161 retailer's place of business and an item is shipped by the retailer to the  
162 customer, the sale or recharge shall be deemed to take place at the  
163 customer's shipping address, but, if such sale or recharge does not take  
164 place at the retailer's place of business and no item is shipped by the  
165 retailer to the customer, the sale or recharge shall be deemed to take  
166 place at the customer's billing address or the location associated with  
167 the customer's mobile telephone number; [and]

168 (P) The furnishing by any person, for a consideration, of space for  
169 storage of tangible personal property when such person is engaged in  
170 the business of furnishing such space, but "sale" and "selling" do not  
171 mean or include the furnishing of space which is used by a person for

172 residential purposes. As used in this subparagraph, "space for storage"  
173 means secure areas, such as rooms, units, compartments or containers,  
174 whether accessible from outside or from within a building, that are  
175 designated for the use of a customer, where the customer can store and  
176 retrieve property, including self-storage units, mini-storage units and  
177 areas by any other name to which the customer has either unlimited free  
178 access or free access within reasonable business hours or upon  
179 reasonable notice to the service provider to add or remove property, but  
180 does not mean the rental of an entire building, such as a warehouse. For  
181 purposes of this subparagraph, furnishing space for storage shall not  
182 include general warehousing and storage, where the warehouse  
183 typically handles, stores and retrieves a customer's property using the  
184 warehouse's staff and equipment and does not allow the customer free  
185 access to the storage space and shall not include accepting specific items  
186 of property for storage, such as clothing at a dry cleaning establishment  
187 or golf bags at a golf club; [.] and

188 (Q) The rendering of an ambulatory surgical center service, as  
189 defined in subdivision (45) of this subsection, by an ambulatory surgical  
190 center, as defined in subdivision (44) of this subsection, for a  
191 consideration, exclusive of such service rendered by an employee for the  
192 employer of such employee, subject to the provisions related to  
193 ambulatory surgical center services in accordance with this section and  
194 section 12-408, as amended by this act.

195 Sec. 3. Subsection (a) of section 12-407 of the general statutes is  
196 amended by adding subdivisions (44) and (45) as follows (*Effective July*  
197 *1, 2021, and applicable to sales occurring on or after July 1, 2021*):

198 (NEW) (44) "Ambulatory surgical center" means any distinct entity  
199 that (A) operates exclusively for the purpose of providing surgical  
200 services to patients not requiring hospitalization and in which the  
201 expected duration of services would not exceed twenty-four hours  
202 following an admission, (B) has an agreement with the Centers for  
203 Medicare and Medicaid Services to participate in Medicare as an  
204 ambulatory surgical center, and (C) meets the general and specific

205 conditions for participation in Medicare set forth in 42 CFR Part 416,  
206 Subparts B and C, as amended from time to time.

207 (NEW) (45) (A) "Ambulatory surgical center service" means only  
208 those procedures or services included in a facility fee payment to an  
209 ambulatory surgical center facility associated with each surgical  
210 procedure and that are not reimbursable ancillary or professional  
211 procedures or services. "Ambulatory surgical center service" includes  
212 facility services only and does not include surgical procedures,  
213 physicians' services, anesthetists' services, radiology services,  
214 diagnostic services or ambulance services, if such procedures or services  
215 would be reimbursed as a separate line item from the facility fee  
216 payment to an ambulatory surgical center facility.

217 (B) For the purposes of the tax imposed under this chapter, "gross  
218 receipts" means the amounts received, in cash or in kind, from patients,  
219 third-party payers and others, including retroactive adjustments under  
220 reimbursement agreements with third-party payers, for the rendering  
221 of ambulatory surgical center services by an ambulatory surgical center.  
222 "Gross receipts" does not include (i) amounts received by an ambulatory  
223 surgical center that were or are subject to the tax imposed under section  
224 12-263i of the general statutes, as amended by this act, (ii) the first one  
225 million five hundred thousand dollars of gross receipts received during  
226 each twelve-month period commencing July first, excluding Medicaid  
227 and Medicare payments, by an ambulatory surgical center for the  
228 provision of ambulatory surgical center services, (iii) Medicaid or  
229 Medicare payments received by the ambulatory surgical center for the  
230 provision of ambulatory surgical center services, (iv) payer discounts,  
231 charity care and bad debts, or (v) amounts received by an ambulatory  
232 surgical center for tangible personal property used in connection with  
233 the rendering of an ambulatory surgical center service, including  
234 implants, devices, drugs and biologicals, regardless of the identity of the  
235 payer for such ambulatory surgical center.

236 (C) As used in this subdivision: (i) "Medicaid" means the program  
237 operated by the Department of Social Services pursuant to section 17b-



238 260 and authorized by Title XIX of the Social Security Act, as amended  
239 from time to time; (ii) "Medicare" means the program operated by the  
240 Centers for Medicare and Medicaid Services in accordance with Title  
241 XVIII of the Social Security Act, as amended from time to time,  
242 including, but not limited to, programs established pursuant to Parts A,  
243 B and C of Title XVIII of the Social Security Act, as amended from time  
244 to time; (iii) "payer discount" means the difference between an  
245 ambulatory surgical center's published charges and payments received  
246 by such center from one or more third-party payers for a method of  
247 payment that is different than or a rate that is reduced from the  
248 published charges. "Payer discount" does not include charity care or bad  
249 debts; and (iv) "charity care" means free or discounted health care  
250 services rendered by an ambulatory surgical center to an individual  
251 who cannot afford to pay for such services and includes, but is not  
252 limited to, health care services provided to an uninsured patient who is  
253 not expected to pay all or part of an ambulatory surgical center's bill  
254 based on income guidelines and other financial criteria set forth in the  
255 general statutes or in an ambulatory surgical center's charity care  
256 policies on file at the office of such center. "Charity care" does not  
257 include bad debts or payer discounts.

258 Sec. 4. Subparagraph (J) of subdivision (1) of section 12-408 of the  
259 general statutes is repealed and the following is substituted in lieu  
260 thereof (*Effective July 1, 2021, and applicable to sales occurring on or after*  
261 *July 1, 2021*):

262 (J) (i) The rate of tax imposed by this chapter shall be applicable to all  
263 retail sales upon the effective date of such rate, except that a new rate  
264 that represents an increase in the rate applicable to the sale shall not  
265 apply to any sales transaction wherein a binding sales contract without  
266 an escalator clause has been entered into prior to the effective date of the  
267 new rate and delivery is made within ninety days after the effective date  
268 of the new rate.

269 (ii) For the purposes of payment of the tax imposed under this  
270 section, any retailer of services (I) taxable under subdivision (37) of

271 subsection (a) of section 12-407, who computes taxable income, for  
272 purposes of taxation under the Internal Revenue Code of 1986, or any  
273 subsequent corresponding internal revenue code of the United States,  
274 as amended from time to time, on an accounting basis that recognizes  
275 only cash or other valuable consideration actually received as income  
276 and who is liable for such tax only due to the rendering of such services,  
277 and (II) taxable under subparagraph (Q) of subdivision (2) of subsection  
278 (a) of section 12-407, as amended this act, may make payments related  
279 to such tax for the period during which such income is or gross receipts  
280 are received, without penalty or interest, without regard to when such  
281 service is rendered;

282 Sec. 5. (NEW) (*Effective July 1, 2021, and applicable to sales occurring on*  
283 *or after July 1, 2021*) (a) As used in this section:

284 (1) "Ambulatory surgical center" has the same meaning as provided  
285 in subsection (a) of section 12-407 of the general statutes, as amended by  
286 this act;

287 (2) "Ambulatory surgical center service" has the same meaning as  
288 provided in subsection (a) of section 12-407 of the general statutes, as  
289 amended by this act;

290 (3) "Medicaid" has the same meaning as provided in subdivision (45)  
291 of subsection (a) of section 12-407, as amended by this act;

292 (4) "Medicaid investment" means an amount equal to the greater of  
293 (A) fifty per cent of the aggregate amount of Medicaid payments  
294 received during the applicable reporting period by an ambulatory  
295 surgical center for the provision of ambulatory surgical center services,  
296 or (B) fifty per cent of the aggregate amount of Medicaid payments that  
297 would have been due and owing had services similar to the ambulatory  
298 surgical center services provided by the ambulatory surgical center  
299 during the applicable reporting period been performed by and at a  
300 hospital instead; and

301 (5) "State health plan investment" means an amount equal to twenty-

302 five per cent of the aggregate payments received from or on behalf of  
 303 each individual who is covered under a health plan pursuant to section  
 304 5-259 of the general statutes, during the applicable reporting period by  
 305 an ambulatory surgical center for the provision of ambulatory surgical  
 306 center services.

307 (b) Each ambulatory surgical center shall be allowed, for each  
 308 reporting period, a credit against the tax imposed under chapter 219 of  
 309 the general statutes in the amount of the Medicaid investment plus the  
 310 state health plan investment. If the amount of the credit allowed  
 311 pursuant to this subsection exceeds the ambulatory surgical center's tax  
 312 liability for the tax imposed under chapter 219 of the general statutes for  
 313 the reporting period, the ambulatory surgical center shall file a claim for  
 314 refund, in such form and manner as prescribed by the Commissioner of  
 315 Revenue Services. Upon verification of the claim, the commissioner  
 316 shall treat such excess as an overpayment and shall refund the amount  
 317 of such excess to the ambulatory surgical center. There shall be added  
 318 to the amount of such refund interest at the rate of two-thirds of one per  
 319 cent for each month or fraction thereof that elapses between the  
 320 ninetieth day following receipt of such claim for refund by the  
 321 commissioner and the date of notice by the commissioner that such  
 322 refund is due. An ambulatory surgical center that claims a credit or  
 323 receives a refund under this subsection is entitled to retain such credit  
 324 or refund for its own account and is not required to refund or pay the  
 325 amount of such credit or refund to any user of or payer for ambulatory  
 326 surgical center services.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>June 1, 2021, and applicable to calendar quarters commencing on or after July 1, 2020</i>	12-263i
Sec. 2	<i>July 1, 2021, and applicable to sales occurring on or after July 1, 2021</i>	12-407(a)(2)

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Sec. 3	<i>July 1, 2021, and applicable to sales occurring on or after July 1, 2021</i>	12-407(a)
Sec. 4	<i>July 1, 2021, and applicable to sales occurring on or after July 1, 2021</i>	12-408(1)(J)
Sec. 5	<i>July 1, 2021, and applicable to sales occurring on or after July 1, 2021</i>	New section

**FIN**      *Joint Favorable*

*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

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**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 22 \$</b>	<b>FY 23 \$</b>
Revenue Serv., Dept.	GF - Revenue Loss	6.4 million	6.4 million
Revenue Serv., Dept.	GF - Cost	30,000	None

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill, which terminates the 6% ambulatory surgical centers (ASC) gross receipts tax and instead subjects ASC services to the 6.35% sales tax, subject to certain exclusions, results in a General Fund revenue loss of \$6.4 million annually beginning in FY 22 and a one-time cost to the Department of Revenue Services of \$30,000 in FY 22 only for information technology costs to implement the changes.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****SB 1107*****AN ACT CONCERNING THE TAXATION OF AMBULATORY SURGICAL CENTER SERVICES.*****SUMMARY**

Beginning July 1, 2021, this bill terminates the 6% ambulatory surgical centers (ASC) gross receipts tax and instead subjects ASC services to 6.35% sales tax, subject to certain exclusions.

Under the bill, the sales tax generally applies to ASC services (i.e., procedures and services included in a facility fee payment to an ASC) rendered by an ASC for consideration. The tax does not apply to, among other things, (1) the first \$1.5 million of gross receipts received during each 12-month period beginning on July 1 for the provision of ASC services; (2) Medicaid or Medicare payments; or (3) amounts received by the ASC for tangible personal property used in connection with ASC services.

The bill also authorizes a refundable state tax credit against the sales tax for ASCs, based on a portion of the (1) Medicaid payments the ASC received or would have been due had services similar to ASC services been performed by and at a hospital instead and (2) payments received from ASC services provided to individuals covered under the state employee health plan or municipal employees health insurance program (MEHIP).

Lastly, for the period from July 1, 2020, to July 1, 2021, the bill allows ASCs to deduct certain COVID-19 expenses from their gross receipts for purposes of the ASC gross receipts tax.

**EFFECTIVE DATE:** July 1, 2021, and applicable to calendar quarters beginning on or after July 1, 2021, except that the changes to the existing

ASC gross receipts tax are effective June 1, 2021, and applicable to calendar quarters beginning on or after July 1, 2020.

## **§§ 2-5 — SALES TAX ON ASC SERVICES**

Beginning July 1, 2021, the bill subjects to sales tax ASC services performed by ASCs for a consideration, excluding services performed by an employee for his or her employer.

### ***ASC Services Subject to Tax***

Under the bill, “ASC services” are the procedures and services included in a facility fee payment to an ASC that are (1) associated with a surgical procedure and (2) not reimbursable ancillary or professional procedures or services. They (1) include facility services only and (2) exclude surgical procedures and physicians’, anesthetists’, radiology, diagnostic, and ambulance services that are separately reimbursed to an ASC from the facility fee payment.

### ***Gross Receipts for Purposes of the Tax***

The bill limits the gross receipts from ASC services that are subject to sales tax to the amounts received (cash or in kind) from patients, third-party payers, and others for the provision of ASC services, including retroactive adjustments under reimbursement agreements with third-party payers. Gross receipts exclude the following:

1. the first \$1.5 million of gross receipts received during each 12-month period beginning July 1, excluding Medicaid and Medicare payments, for ASC services (presumably, the ASC would track its gross receipts and begin applying sales tax after reaching this threshold);
2. Medicaid or Medicare payments received for ASC services;
3. payer discounts, charity care, and bad debts (as defined below);
4. amounts received by an ASC for tangible personal property used in connection with an ASC service (e.g., implants, devices, drugs, and biologicals), regardless of the payer; and

5. amounts received by an ASC that were or are subject to the current ASC gross receipts tax;

Under the current ASC gross receipts tax, gross receipts exclude (1) the first \$1 million of the ASC's gross receipts in the applicable fiscal year, excluding Medicaid and Medicare payments, and (2) gross receipts from any Medicaid and Medicare payments the ASC receives.

### ***Definition of ASC***

By law, and under the bill, an ASC is a distinct entity that (1) operates exclusively to provide surgical services to patients not requiring hospitalization, where the services are not expected to take more than 24 hours; (2) has an agreement with the Centers for Medicare and Medicaid Services (CMS) to participate in Medicare as an ASC; and (3) meets the federal requirements to do so.

### ***Payer Discounts, Charity Care, and Bad Debts***

"Payer discounts" is the difference between an ASC's published charges and the actual payments it received from third-party payers for a different or discounted rate or payment method. It excludes charity care and bad debts.

"Charity care" is free or discounted health care services provided to individuals who cannot afford to pay, including to the uninsured patient or patients who are not expected to pay all or part of an ASC's bill based on income guidelines and other financial criteria established in statute or in an ASC's charity care policies on file at its office. It does not include bad debts and payer discounts.

### ***Reporting Method***

The bill allows ASCs to report their sales of ASC services on the cash basis of accounting, rather than on an accrual basis. It does so by extending to ASCs an existing provision that allows retailers whose only sales are certain enumerated services and who report their sales on the cash basis of accounting for federal income tax purposes to do so for state sales tax reporting purposes. Under the cash basis method of accounting, the retailer reports its sales during the filing period in which



the customer provides payment regardless of when the services were rendered.

### **Tax Credit**

The bill establishes a tax credit against the sales tax for ASCs equal to the following:

1. the greater of 50% of the aggregate amount of Medicaid payments (a) the ASC received during the applicable reporting period for ASC services or (b) that would have been due had those services been performed by and at a hospital instead (i.e., the “Medicaid investment”); plus
2. 25% of the aggregate payments received from or on behalf of each individual covered under the state employee health plan or MEHIP for the provision of ASC services (i.e., the “state health plan investment”).

If the credit amount allowed exceeds the ASC’s sales tax liability for the reporting period, the ASC must file a refund claim with DRS in the form and manner the DRS commissioner prescribes. After verifying the claim, the DRS commissioner must treat the excess as an overpayment and refund it to the ASC. DRS must add interest to the overpayment at a rate of 0.67% for each month or fraction of a month; the accrual period for this interest begins 90 days after DRS receives the ASC’s refund claim and runs until the date DRS provides notice that the refund is due.

Under the bill, an ASC that claims this credit and receives a refund is entitled to retain it for its own account and is not required to refund or pay it to any user or payer for ASC services.

### **§ 1 — ASC GROSS RECEIPTS TAX**

The bill terminates the ASC gross receipts tax as of July 1, 2021, and makes conforming changes.

It also allows ASCs to retroactively deduct COVID-19 expenses from their gross receipts for purposes of the tax for FY 21 (i.e., for calendar

quarters from July 1, 2020, to July 1, 2021). Specifically, they may deduct any amounts they incurred, directly or indirectly, as a result of COVID-19, for the ASC's personnel, patients, service providers, visitors, facilities, or tangible personal property. This includes amounts for purchasing, leasing, licensing, or using tangible or intangible property in connection with COVID-19 tests, protection, prevention, or treatment.

Under the bill, "COVID-19" means the respiratory disease designated by the World Health Organization (WHO) on February 11, 2020, as coronavirus 2019 and any related mutation of it that the WHO recognizes as a communicable respiratory disease.

## **BACKGROUND**

### ***Related Bill***

sHB 6443, favorably reported by the Finance, Revenue and Bonding Committee, contains identical provisions.

## **COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 48    Nay 0    (04/22/2021)