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What Makes a Fee a Tax, and Other Crucial Queries

By ROSS RAMSEY

Ross Ramsey, the managing editor of The Texas Tribune, writes a regular column.

If you're a political lip reader, taxes are not the same as fees, or surcharges, or exemptions, deductions and wagers.

Texas lawmakers are scrounging for cash, and for ways to generate state revenue without breaking their promises not to raise taxes, which would set off waves of opposition in the 2012 elections.

By one count, the anorexic budgets proposed by the House, the Senate and the governor include around \$150 million in new fees. That's a financial speck, relatively speaking, of the \$15 billion or so lawmakers need if they want to bring those proposals up to the level of current spending — \$27 billion or thereabouts to bring them up to what's needed to maintain current services.

They've forsworn taxes, many of them, but they also promised to educate children, to build roads, to care for the needy and to do all of those things government is expected to do. It's the adult version of those mathematical story problems that made sixth grade so much fun.

The easy money is the money that's in the bank. Most Republican lawmakers are playing coy about tapping savings, but they'll have to before they raise significant money from most other sources. It's especially hard to raise taxes when you've got a Rainy Day Fund with \$9.4 billion available.

The loudest anti-tax crusader in the country, [Grover Norquist](#) of Americans for Tax Reform, is already patrolling Texas for apostates. When State Representative Elliott Naishtat, Democrat of Austin, filed legislation that would make it harder for Amazon and other Internet and mail-order retailers to avoid collecting Texas sales taxes, Mr. Norquist pounced, writing a letter to warn legislators that the bill would impose a new tax and that anyone who had taken an anti-tax pledge should stay away from it.

It's not a trivial issue: Comptroller Susan Combs, a Republican, is suing Amazon for \$269 million, saying the company should have collected — but didn't — sales taxes from Texas customers from 2005 to 2009. Amazon is only part of that problem, which Ms. Combs estimates at \$600 million in lost sales and use tax collections every year.

That hole, corked, would help balance the budget, but even that's not enough. There are more fees under consideration. Lawmakers, including Senator Steve Ogden, Republican of Bryan and chairman

of the Senate Finance Committee, have field-tested various changes to the state's largest corporate tax, which brings in less than a 2006 revision was supposed to produce. Now they're asking: If they adjust the levy so that it does what they had hoped, is that a tax increase? If they leave the rates the same but lower the deductions businesses are allowed in calculating the tax, is that a tax increase? Does that violate any pledges? The answers, from the governor on down: Leave it alone.

Producers of high-cost natural gas could be marks this year. Getting rid of an exemption that was meant to encourage such production would bring in \$500 million to \$700 million. That would help, but the industry, which is politically powerful, calls it a tax.

The "quality assurance fee" for nursing homes is back on the table. It has been around before, most recently in 2007 as an \$8-per-patient per day charge that can be used, in turn, to match federal [Medicaid](#) dollars. That version would have added \$400 million or so to the state budget. Nursing homes are wary of a legislative bait-and-switch, because they've seen it before. They need higher fees, they say, to stay open. They'd settle for the fees they get now, but the battened-down budget proposals would cut their reimbursement rates by 33 percent.

With the quality fee under consideration, the nursing homes can't get in line for other money. When the fee — labeled "the bed tax" and "the granny tax" — died at the ends of previous sessions, they were left with nothing, because other sources of money had already been committed to other programs. Color them nervous.

Lawmakers can save \$3 billion to \$4 billion with accounting and timing tricks, like writing a 23-month budget for the 24-month budget period and pushing the expenses from that last month into the next two-year budget. They also have \$1.2 billion in other proposals, offered in a thick "government effectiveness and efficiency report" from the Legislative Budget Board. Those include a pill-splitting program out on the frontier of financial creativity: the state could save roughly \$700,000 by getting state employees to order their prescription drugs in double-sized pills, which could then be split at home to get the proper dosage.

Maybe there will be a pain pill or two left for the budgeteers.

rramsey@texastribune.org