



**Colorado
Legislative
Council
Staff**

SB17-238

**FINAL
FISCAL NOTE**

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-1026

Date: May 16, 2017

Prime Sponsor(s): Sen. Holbert

Bill Status: Postponed Indefinitely

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BILL TOPIC: NOTIFICATIONS REGARDING ONLINE PURCHASES

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue General Fund	<u>(up to \$4.7 million)</u> (up to 4.7 million)	<u>(up to \$5.0 million)</u> (up to 5.0 million)
State Expenditures General Fund Centrally Appropriated Costs	<u>(\$2,487)</u> 3,217 (5,704)	<u>(\$28,066)</u> (22,197) (5,869)
TABOR Impact	(up to \$4.7 million)	(up to \$5.0 million)
FTE Position Change	(0.5 FTE)	(0.5 FTE)
Appropriation Required: \$3,217 - Department of Revenue (FY 2017-18).		
Future Year Impacts: Ongoing state revenue and expenditure decrease.		

NOTE: This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

This bill modifies notification requirements for out-of-state retailers that do not collect Colorado sales tax on sales made to Colorado purchasers. The bill repeals the requirement that retailers not collecting sales tax provide the Department of Revenue (DOR) with a list of purchasers who made purchases on which tax was not collected, and repeals the fine assessed on retailers who fail to do so. It requires retailers to notify purchasers of their state use tax obligation by email rather than first class mail.

Through July 2021, the bill requires DOR to publish materials on its website explaining that items purchased over the internet or by catalog may require taxes to be paid to the state and certain special districts. This information must also be published in the Colorado income tax filing booklet for 2018 and all future years. The website and print materials must both be written at a fourth grade reading level.

Background

The state levies a 2.9 percent sales tax on purchases of most goods and some services. A complementary use tax is levied when sales tax is due but was not collected. Sales tax is due when a Colorado resident purchases a taxable good or service from an out-of-state retailer, including an online retailer. If the retailer does not collect and remit Colorado sales tax, the purchaser is required to remit consumer use tax to DOR.

House Bill 10-1193 requires out-of-state retailers that do not collect Colorado sales tax to notify the purchaser of his or her tax liability, and to notify DOR of the Colorado purchasers from whom tax was not collected in each calendar year. Notification must be sent by March 1 of the following year. The retailer is assessed a fine of \$10 per purchaser from whom tax was not collected if the retailer fails to notify DOR.

HB10-1193 took effect in 2010; however, its implementation was stayed pending the resolution of a legal dispute regarding its constitutionality. On February 22, 2016, the Tenth Circuit Court of Appeals ruled that the bill is constitutional. On December 12, 2016, the United States Supreme Court denied the plaintiff's petition for a writ of certiorari, effectively ending the legal dispute. Under current law, retailers that do not collect sales tax will be required to furnish DOR with a list of purchasers from whom tax was not collected in 2017 by March 1, 2018.

State Revenue

The bill is expected to reduce General Fund revenue from use taxes by **up to \$4.7 million in FY 2017-18, up to \$5.0 million in FY 2018-19**, and similar amounts in subsequent years. The bill also potentially reduces General Fund revenue from fines assessed on out-of-state retailers; the revenue impact of these fines is indeterminate and not estimated.

Use tax. It is assumed that retailers will comply with HB10-1193 by notifying purchasers of their Colorado use tax obligation, rather than by collecting and remitting Colorado sales tax. On individual income tax returns for 2015, about 79,000 taxpayers reported and remitted an average of \$30 each in consumer use tax, for a total of \$2.6 million. It is assumed that this amount understates the potential use tax revenue that would be collected under full implementation of HB10-1193 as enacted in current law, because purchasers would be contacted directly concerning their state use tax obligation and because the retailer notification requirement allows for additional enforcement. Consumer use tax revenue is expected to increase by \$5.9 million in FY 2017-18 under current law as a result of the implementation of HB10-1193. Under SB17-238, consumer use tax revenue is expected to increase by at least \$1.2 million instead. The larger revenue reduction in FY 2018-19 assumes growth in consumer spending as projected in the March 2017 Legislative Council Staff revenue forecast.

Education materials. The use tax education materials in the bill are expected to increase use tax revenue by an indeterminate amount. DOR currently includes use tax liability information in the income tax filing booklet and on its website; however, this information is written at a reading level higher than the fourth grade level required by the bill. To the extent that taxpayers are more responsive to use tax informational materials written at a lower grade level, increased compliance will partially offset the bill's use tax revenue reduction.

Fines. The bill repeals fines assessed on retailers that fail to notify DOR of a purchaser's Colorado use tax obligation. The number of retailers that would fail to comply with the notification requirement is unknown. Additionally, it is unclear how DOR would collect the information needed to assess fines on these businesses. Accordingly, the repeal of fines is assessed as potentially reducing General Fund revenue by an indeterminate amount. Any impact on revenue from fines may be offset by a smaller use tax revenue impact than estimated above.

TABOR Impact

This bill reduces state revenue from use tax and fines, which will reduce the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. Since the bill reduces both revenue to the General Fund and the refund obligation by equal amounts, there is no net impact on the amount of money available in the General Fund for the budget. However, the bill will reduce money available for the General Fund budget in the future during years when the state does not collect money above the TABOR limit.

State Expenditures

The bill is expected to reduce General Fund expenditures for DOR by **\$2,487 and 0.5 FTE in FY 2017-18, \$28,066 and 0.5 FTE in FY 2018-19**, and similar amounts in subsequent years. State expenditures are summarized in Table 1 and detailed below.

Table 1. Expenditures Under SB17-238		
Cost Components	FY 2017-18	FY 2018-19
Personal Services	(\$19,912)	(\$21,722)
FTE	(0.5 FTE)	(0.5 FTE)
Operating Expenses	(475)	(475)
Language Consulting	16,000	
Legal Services	7,604	
Centrally Appropriated Costs*	(5,704)	(5,869)
TOTAL	(\$2,487)	(\$28,066)

* Centrally appropriated costs are not included in the bill's appropriation.

Education materials. The department will be required to republish materials on its website and in the income tax filing booklet in order to satisfy the fourth grade reading level requirement in the bill. It is expected that these revisions will affect 23 webpages, one informational document, and the income tax filing booklet. Based on the amount and complexity of the tax material, revisions are expected to require two weeks of language consulting at a cost of \$200 per hour and two weeks of legal services at the state rate of \$95.05 per hour. These are one-time expenditures, and this fiscal note assumes that they will occur in July 2017.

Enforcement. Departmental workload in the Division of Taxation Discovery Section is expected to increase by 0.5 FTE at the Tax Examiner I level in FY 2017-18 under current law, as the retailer notification requirement in HB10-1193 is administered for the first time. Workload is assumed to include the compilation of purchaser records and assessment of fines on noncompliant retailers. Because SB17-238 repeals the retailer notification requirement, these costs are not expected to be incurred under the bill.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under SB17-238		
Cost Components	FY 2017-18	FY 2018-19
Employee Insurance (Health, Life, Dental, and Short-term Disability)	(\$3,920)	(\$3,923)
Supplemental Employee Retirement Payments	(1,784)	(1,946)
TOTAL	(\$5,704)	(\$5,869)

Effective Date

The bill was postponed indefinitely by the House Finance Committee on May 1, 2017.

State Appropriations

For the FY 2017-18, the bill requires that state appropriations be amended as follows:

- the General Fund appropriation to the Department of Revenue for the Taxation and Compliance Division should be reduced by \$20,387, with a decrease of 0.5 FTE in the division's personal services allocation; and
- the General Fund appropriation to the Department of Revenue for the taxpayer Service Division should be increased by \$23,604; from this amount, \$7,604 should be reappropriated to the Department of Law.

Departmental Difference

The Department of Revenue assesses the bill as increasing departmental General Fund expenditures by \$208,308 and 0.5 FTE in FY 2017-18, FY 2018-19, and future years. These amounts represent the net impact of a reduction in departmental expenditures for use tax enforcement and a greater increase in expenditures for the use tax education campaign than is estimated in this fiscal note. The department estimates that the education campaign will require the addition of 1.0 FTE in its call center costing \$31,142, that supplemental publicity and outreach costs will total \$142,529 annually through FY 2020-21, and that language consultant and legal services costs will total \$66,329 for slightly more than a month of workload each year. The bill requires that use tax education materials be posted on the department's website and included in the income tax filing booklet. This fiscal note assumes that the bill does not authorize additional publicity and outreach expenditures and that costs will be incurred only for a language consultant and legal services, only for two weeks, and only in FY 2017-18.

State and Local Government Contacts

Counties
Municipalities

Information Technology
Personnel and Administration

Law
Revenue