



**Colorado
Legislative
Council
Staff**

SB17-299

**REVISED
FISCAL NOTE**

(replaces fiscal note dated April 26, 2017)

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

Drafting Number: LLS 17-1147 **Date:** May 1, 2017
Prime Sponsor(s): Sen. Holbert; Moreno **Bill Status:** Senate Appropriations
 Rep. Van Winkle; Kraft-Tharp **Fiscal Analyst:** Larson Silbaugh (303-866-4720)

BILL TOPIC: APPORTIONMENT OF INCOME OF ENTERPRISE DATA CENTERS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019	FY 2019-2020
State Revenue	<u>Potential minimal increase</u>	<u>(Up to \$2.4 million)</u>	<u>(Up to \$4.8 million)</u>
General Fund	Potential minimal increase	(Up to \$2.4 million)	(Up to \$4.8 million)
State Expenditures	<u>Workload increase.</u>		
TABOR Impact		(Up to \$2.4 million)	(Up to \$4.8 million)
Appropriation Required: None.			
Future Year Impacts: Ongoing revenue decrease and workload increase.			

Summary of Legislation

This bill allows a taxpayer that invests in an enterprise data center in Colorado to use a beneficial apportionment factor when allocating federal taxable income to Colorado. Under current law, companies apportion federal taxable income to Colorado based on sales within in the state. Qualifying taxpayers would be allowed to lower their apportionment factor and apportion income based on how many of their customers have a billing address in the state. A taxpayer must invest at least \$150 million in a data center in a consecutive five-year period starting on or after January 1, 2013. **As amended by the Senate Finance Committee**, the bill applies to corporate tax years beginning on or after July 1, 2018.

The taxpayer must enter into a memorandum of understanding with the Office of Economic Development and International Trade (OEDIT) establishing eligibility to use a different apportionment factor. In negotiating a memorandum of understanding with a taxpayer, OEDIT is authorized to seek input from the Department of Revenue (DOR), which must provide taxpayer-specific information to the office. Failure to keep this information confidential is punishable as a misdemeanor with a fine of not more than \$1,000 and, if an officer or employee of the state, dismissal from office.

On November 1, 2019, and each November 1 thereafter, OEDIT and DOR are required to submit a report to the Finance Committees of the General Assembly describing the capital investments made, the number of memoranda entered into, and the use of market-based apportionment in the state.

Background

Apportionment factor. Corporate income is apportioned to Colorado based on the percent of sales that occur in Colorado relative to total sales of the corporation. This factor is the apportionment factor, which is applied to federal taxable income to determine income for Colorado corporate income taxes.

Comparable Crime

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. This bill creates a new basis for punishment for releasing or otherwise divulging confidential information in connection with taxes. There have been no convictions of this offense for the past three years.

State Revenue

Overall, this bill will reduce state General Fund revenue by up to \$2.4 million in FY 2018-19, \$4.8 million in 2019-20, and up to \$19.0 million when the companies have fully transitioned to the new apportionment factor in FY 2024-25. There is a potential minimal revenue increase in FY 2017-18 from new criminal fine revenue if OEDIT employees disclose confidential taxpayer information.

Corporate income tax revenue reduction. Property tax records were used to identify 18 companies that have already made a significant investment data centers in Colorado, contributing to the \$150 million investment required under the bill. DOR analyzed the most recent complete corporate tax returns (either 2014 or 2015) for these identified companies, comparing the apportionment factor reported on these tax returns and an apportionment factor of 0.01714, equal to Colorado's share of the nation's population. The analysis identified a small number of taxpayers that would be able to reduce their apportionment factor under this bill. DOR could not disclose the number of taxpayers without violating taxpayer confidentiality. It is estimated that under the bill, Colorado taxable income would be reduced by \$410.4 million, reducing Colorado corporate income tax collections by \$19.0 million.

The bill requires OEDIT to establish an incremental transition schedule for the taxpayer's apportionment factor, which must be complete within eight years. Assuming the full \$19.0 million corporate income tax reduction will be phased in over eight years, this bill will reduce corporate income tax revenue by up to \$2.4 million in FY 2018-19, \$4.8 million in 2019-20, and up to \$19.0 million when the companies have fully transitioned to the new apportionment factor in FY 2024-25.

Criminal fines. Any offenses of the unclassified misdemeanor for releasing confidential information are subject to a fine of up to \$1,000, credited to the General Fund. The fiscal note assumes a high rate of compliance and notes that any increase in revenue is likely to be minimal.

TABOR Impact

This bill reduces state revenue from corporate income taxes and potentially increases criminal fine revenue into the General Fund. The net impact will reduce the amount of money required to be refunded under TABOR for FY 2018-19, the last year of our forecast period. 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

Beginning in FY 2017-18, the bill increases workload for several state agencies, as described below. All workload increases can be accomplished within existing department appropriations.

Office of Economic Development and International Trade. OEDIT is required to negotiate memoranda of understanding and a transition schedule for taxpayers to use once they have made the necessary investments in a data center. OEDIT will also have workload to provide the required reports to the General Assembly.

Department of Revenue. The DOR will assist OEDIT with information for memoranda of understanding with taxpayers and to complete the required annual reporting. Additional workload is required to administer the tax expenditure, relying on supporting information provided by OEDIT.

Judicial Department. The bill may increase workload for the trial courts if an employee violates current law confidentiality requirements for taxpayers applying to use a beneficial apportionment factor. The fiscal note assumes a high rate of compliance.

Local Government Impact

To the extent that an employee violates the taxpayer confidentiality laws, workload will increase for a district attorney to prosecute the offense. If the offense occurs in the City and County of Denver, workload will increase for that court. The fiscal note assumes a high rate of compliance and that any future workload impacts are minimal.

Effective Date

The bill takes effect August 9, 2017, if the General Assembly adjourns on May 10, 2017, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Counties OEDIT	District Attorneys Personnel	Information Technology Revenue	Judicial - Criminal Sheriffs
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