



Legislative Council Staff

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FISCAL NOTE

Drafting Number: LLS 20-0916
Prime Sponsors: Sen. Rankin, Rep. Will

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Bill Status: Senate Finance
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Bill Topic: THRESHOLDS FOR SALES TAX COLLECTION REQUIREMENTS

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

This bill increases the retail sales threshold for economic nexus and destination sourcing from \$100,000 per year to \$200,000 per year for sales tax collection purposes. The bill minimally increases workload in the Department of Revenue.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note represents the introduced bill.

Table 1
State Fiscal Impacts Under SB 20-099

Table with 4 columns: Category, Fund, FY 2020-21, FY 2021-22. Rows include Revenue, Expenditures, Transfers, and TABOR Refund.

Summary of Legislation

This bill increases the retail sales threshold for sales tax economic nexus from \$100,000 to \$200,000 in a year. This bill also increases the retail sales threshold for destination sourcing from \$100,000 to \$200,000, as well as striking the destination sourcing provision that exempts businesses that do not meet this threshold after the state-developed Geographic Information System (GIS) address database is implemented.

Background

Wayfair decision, DOR rules, and House Bill 19-1240. In June 2018, the U.S. Supreme Court ruled in the *South Dakota v. Wayfair* case that states may require out-of-state retailers to collect sales tax on purchases made by an in-state consumer, even if the retailer does not maintain a physical presence in the consumer's state, which is known as establishing economic nexus. Following this decision, the Colorado Department of Revenue (DOR) adopted emergency rules requiring retailers without physical presence in Colorado to collect state sales tax and the sales taxes levied by state-collected counties and municipalities. The new requirements do not affect self-collected home rule cities.

DOR now requires that all out-of-state retailers collect and remit sales tax when they ship goods into the state. The sales tax will be collected based on the consumer's address. Out-of-state retailers that have less than \$100,000 in sales in Colorado during the current or previous calendar years are not required to collect and remit sales tax to the state. These rules went into effect December 1, 2018; however, there was an enforcement grace period through May 31, 2019. These rules were codified under HB 19-1240.

Destination sourcing for in-state retailers. DOR modified how sales taxes are collected when a consumer purchases an item from a retailer that is not located in the same taxing jurisdiction in state. This applies only to goods that are shipped from the retailer to the consumer. Previously, collections were based on the source of the item, or the retailer's address, known as origin-based sales tax collection. Under the new rule and HB 19-1240, collections are based on the destination, or the consumer's address for delivery, known as destination-based sales tax collection. If a consumer purchases an item at the retailer's place of business, nothing changes, and the sales tax is collected based on the retailer's location.

Assumptions

From the 12-month period between November 2018 and October 2019, there were approximately 643 out-of-state sales tax license holders that had retail sales in the state between \$100,000 and \$200,000 who would be affected by the provisions of this bill. The total sales tax revenue attributable to these accounts during this time period was \$2.3 million.

State Revenue

This bill will decrease state revenue by about \$2.1 million in FY 2020-21 (partial-year impact) and by about \$2.7 million in FY 2021-22, with similar impacts in future years. These revenue impacts are attributable to the change in the threshold for economic nexus under this bill. Amounts for FY 2020-21 assume a September 1, 2020, effective date and reflect ten months of collections. If more out-of-state retailers become aware of Colorado's 2019 sales tax changes, this revenue impact could increase.

State Expenditures

This bill increases the workload for the Department of Revenue to notify vendors when the threshold limits change. This fiscal note assumes these notifications will be made primarily using free online resources. This workload requirement can be accomplished within existing appropriations.

TABOR refunds. The bill is expected to decrease state General Fund obligations for TABOR refunds by \$2.1 million in FY 2020-21 and \$2.7 million in FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly decrease the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

Local Government

This bill may decrease sales tax revenue for state-collected local governments, home rule municipalities, and special districts that have entered into voluntary agreements with out-of-state retailers if out-of-state retailers with \$100,000 to \$200,000 in retail sales do not collect sales tax. Similarly, the changes to destination sourcing under this bill may decrease local government or special district sales tax collections.

Effective Date

The bill takes effect September 1, 2020, if the General Assembly adjourns on May 6, 2020, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Counties	Municipalities	Regional Transportation District
Revenue	Special Districts	Information Technology