

JOINT BUDGET COMMITTEE



INTERIM SUPPLEMENTAL BUDGET REQUESTS FY 2018-19

DEPARTMENT OF REVENUE

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

PREPARED BY:
ALFREDO KEMM, JBC STAFF
SEPTEMBER 20, 2018

JOINT BUDGET COMMITTEE STAFF
200 E. 14TH AVENUE, 3RD FLOOR • DENVER • COLORADO • 80203
TELEPHONE: (303) 866-2061 • TDD: (303) 866-3472
<https://leg.colorado.gov/agencies/joint-budget-committee>

CONTENTS

Taxation – Sales and Use Tax Collection 1

Numbers Pages.....

 Taxation – Sales and Use Tax Collection 6

INTERIM SUPPLEMENTAL REQUESTS

TAXATION – SALES AND USE TAX COLLECTION

	REQUEST	RECOMMENDATION
TOTAL	\$1,249,437	\$927,036
FTE	12.6	7.1
General Fund	1,249,437	927,036
Cash Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? **YES**
 [The Controller may authorize an overexpenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the overexpenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the overexpenditure is to be made.]

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? **YES**
 [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]

Explanation: JBC staff and the Department agree that this request is the result of an unforeseen contingency based on the U.S. Supreme Court's June 21, 2018 decision in *South Dakota v. Wayfair*.

DEPARTMENT REQUEST: The Department requests \$1,249,437 General Fund and 12.6 FTE to implement the collection of sales and use taxes from out-of-state retailers doing business in Colorado for FY 2018-19. The Department anticipates an annualized request for 14.6 FTE for FY 2019-20 and ongoing, with 4.0 FTE designated as temporary, with temporary staff reductions beginning in FY 2020-21.

STAFF RECOMMENDATION: Staff recommends that the Committee approve the request as follows:

- 1 Staff recommends a total appropriation of \$927,036 General Fund and reflecting 7.1 FTE for FY 2018-19. This recommendation includes a personal services appropriation of \$530,382 and an operating expenses appropriation of \$396,654.
- 2 The Department requests appropriations totaling \$123,162 for benefits POTS, including \$80,593 for Health, Life, and Dental, \$20,888 each for Amortization Equalization Disbursement and Supplemental Amortization Equalization Disbursement, and \$793 for Short Term Disability. Committee policy is to exclude benefits POTS for additional FTE in the first year of a request for fewer than 20.0 FTE. Consistent with Committee policy, staff recommends no appropriation for benefits POTS.
- 3 The Department requests an appropriation for leased space totaling \$62,370. The Department includes a leased space cost per FTE as a standard cost item in the fiscal note process for

legislation that requires additional FTE. Staff recommends no appropriation for leased space. Staff makes this recommendation within the more limited context of the interim supplemental request. The 1331 process addresses anticipated overexpenditures. Staff anticipates that the Department will not experience actual additional lease cost and cash outflow in the current fiscal year for the requested increase in staff.

- 4 The Department estimates 10,000 new retailer sales tax accounts as the basis for some of its staffing request. That number appears to represent the entire universe of potential new accounts. For the 1331, at this time, staff recommends the use of 7,500 accounts for estimating workload, with the opportunity to make adjustments to the appropriation in the Department's January 2019 supplemental bill based on the Department's actual experience. The Department requests 8.6 FTE of Tax Examiners, including 6.6 FTE of Tax Examiner I, 1.0 FTE of Tax Examiner II, and 1.0 FTE of Tax Examiner III. Staff recommends 6.7 FTE (annualized) of Tax examiners, including 5.1 FTE of Tax Examiner I and 0.8 FTE each of Tax Examiner II and III; this reflects 4.4 FTE (3.4/0.5/0.5) for the remainder of FY 2018-19 based on the Department's anticipated recruiting and hiring schedule and including an adjustment for the June 2019 payday shift.
- 5 The Department requests 4.0 FTE of Training Specialist III's, to be located in offices around the State to provide training to in-state businesses on assessing taxes on delivery location for sales not made in-store. This request is not dependent on out-of-state retailer sales tax accounts. Staff recommends an annualized appropriation of 4.0 FTE, representing 2.7 FTE for the remainder of FY 2018-19, including an adjustment for the June 2019 payday shift.
- 6 Staff recommends staff-related operating expenses for 7.1 FTE calculated at \$5,653 per FTE.
- 7 Staff recommends GenTax and GIS Database implementation and testing as requested by the Department. Temporary staffing resources total \$169,051, GIS database testing totals \$98,549, and GenTax testing and registrations total \$70,502.
- 8 Additionally, although not requested by the Department, staff recommends funding an out-of-state retailer sales tax data reporting component for GenTax. *The cost for this item was not available at the time of publication.*

STAFF ANALYSIS:

LEGAL OVERVIEW

States were previously prohibited from imposing sales tax obligations on retailers who lacked a physical presence within a state. The U.S. Supreme Court reversed its position on the physical presence requirement in its South Dakota v. Wayfair decision on June 21, 2018.

The Department intends to promulgate two rules related to the Wayfair decision to begin implementation of the collection of sales and use taxes from out-of-state retailers.

- The first is a *de minimis* standard, consistent with South Dakota's treatment of out-of-state retailers, which requires out-of-state retailers with 200 or more transactions or with sales of \$100,000 or more in a year to collect and pay sales and use taxes to the State.
- The second is a destination-sourcing rule, which requires all retailers, including in-state, to collect sales taxes based on the destination of a sale for sales not made in-store.

Staff consulted with staff attorneys from the Office of Legislative Legal Services (OLLS) regarding the Department's current statutory authority. Based on information provided by OLLS, staff is satisfied that the Department has statutory authority to promulgate the proposed rules and implement the collection of sales and use taxes from out-of-state retailers.

Staff understands that the General Assembly's interim committee, the Sales and Use Tax Simplification Task Force, will not propose legislation related to the Wayfair decision. Nevertheless, the General Assembly will have the opportunity to express its policy preferences in the 2019 session.

First, on the basis of current statutory authority, and second, with an interest in preserving legislative authority to provide policy guidance related to the Wayfair decision, staff is confident that the Committee may consider approving the Department's interim supplemental request.

REQUEST SPECS

The Department intends to have the out-of-state retailer sales tax collection system ready by December 1st, which necessitates the Department's interim supplemental request. The Department requests staffing and resources:

- To implement GenTax and GIS database IT systems changes to accommodate the collection of sales taxes from out-of-state retailers;
- To provide staffing to support the anticipated additional sales tax accounts; and
- To provide staffing to provide training and support for in-state businesses related to the destination-sourcing rule change.

The Department estimates a total universe of potential out-of-state retailers of 10,000. These represent approximately 1,400 in the \$25-50 million total online sales range, 6,500 in the \$5-\$25 million range, and 10 percent (2,500) of the 25,000 companies with \$1-\$5 million in sales. The Department states that the 1,284 companies with online sales of \$50 million or more are already paying sales taxes to the State due to the scale of these companies. The Department's source for estimates is an e-commerce companies market size report from marketcandy.com.

Related to implementing GenTax and GIS database IT systems changes, the Department requests temporary staffing resources totaling \$169,051, GIS database testing totaling \$98,549, and GenTax testing and registrations totaling \$70,502.

Related to staffing to provide training and support for in-state businesses, the Department requests four Training Specialist III positions to be located in service center locations outside of Denver, including Fort Collins, Colorado Springs, Pueblo, and Grand Junction.

Staffing to support the anticipated additional sales tax accounts include a total of 6.6 FTE of Tax Examiner I to handle sales tax distribution, sales tax refunds, and local government support, with 4.1 FTE of the 6.6 FTE for call center activities. Additionally, the Department requests 1.0 FTE of Tax Examiner II to function as the call center work lead for the new work group and 1.0 FTE of Tax Examiner III to function as the call center supervisor.

Included in the Department's staffing request are benefits POTS totaling \$123,162, including \$80,593 for Health, Life, and Dental, \$20,888 each for Amortization Equalization Disbursement and Supplemental Amortization Equalization Disbursement, and \$793 for Short Term Disability. Additionally, the Department has included a request for leased space totaling \$62,370.

STAFF RECOMMENDATIONS

Staff generally recommends approval of the Department's request for additional resources for this purpose. However, staff makes the following budget item recommendations:

- Staff recommends funding GenTax and GIS database IT systems changes as requested - \$525,569.
- Additionally, although not requested by the Department, staff recommends funding a reporting component for the GenTax system for the purpose of collecting and periodically reporting out-of-state retailers sales tax collection data. The Department states that the GenTax system was developed for the purpose of "tax administration" and not for the purpose of "tax reporting". This has generated concerns among legislative staff, particularly among Legislative Council Staff Economists, as it relates to tracking and projecting state revenue estimates. Staff is currently exploring this issue for presentation as an issue brief in the next budget cycle. For now, staff recommends that the Committee fund this reporting component to capture relevant sales tax collection data from the point of implementation. ***The cost for this item was not available at the time of publication.***
- Staff recommends funding the four Training Specialist III positions as requested, to provide training and support for in-state businesses related to the destination-sourcing rule change, representing 2.7 FTE in FY 2018-19.
- Staff recommends funding for staffing to support 7,500 additional sales tax accounts rather than 10,000. The Department's 10,000 new accounts estimate appears to be the maximum number of estimated accounts. The Department does not appear to have a compliance policy or effort in place to ensure out-of-state retailer payment compliance, nor is it included in the request. Staff recommends an estimate of 75 percent of maximum at this time. Staff is open to making adjustments to this estimate, based on actual Department experience, in the Department's January 2019 supplemental bill. On that basis, staff recommends funding for 6.7 FTE (when annualized) for Tax Examiner I, II, and III, included in the request, representing 4.4 FTE in FY 2018-19.
- Staff recommends that the Committee not fund the Department's request for benefits POTS. Committee policy is to exclude benefits POTS for additional FTE in the first year of a request for fewer than 20.0 FTE. While the Department's request totals 12.6 FTE by its calculation, staff calculates 9.4 FTE using the Department's recruiting and hiring schedule, and calculates 8.3 FTE

when adjusting for the June 2019 paydate shift. Staff recommends 7.1 FTE total for this request; well below the 20.0 FTE threshold.

- Staff recommends that the Committee not fund the Department's request for leased space. The Department includes a leased space cost per FTE as a standard cost item in the fiscal note process for legislation that requires additional FTE. The 1331 process addresses anticipated overexpenditures. Staff anticipates that the Department will not actually lease additional space to accommodate the additional staff requested.
- Staff recommends funding staffing-related operating expenses for 7.1 FTE calculated at \$5,653 per FTE (\$40,136).

The following table outlines the details of the Request and Recommendation.

Department of Revenue Sept. 2018 1331 Request and Recommendation

	Request staffing assumption - 10,000 new accounts					JBC Staff Recommendation - 7,500 new accounts				
	Staffing	Months	Calc. FTE	Mo. Salary	Total Request	Staffing	Months	Calc. FTE	Mo. Salary	Total Request
Tax Examiner I										
Sales Tax - Distribution	1.4	7	0.8	\$3,382	\$33,144	0.9	6	0.5	\$3,382	\$18,263
Sales Tax - Refunds	0.1	7	0.1	3,382	2,367	0.1	6	0.1	3,382	2,029
Local Gov Support	1.0	9	0.8	3,382	30,438	1.0	8	0.7	3,382	27,056
Call Center	4.1	9	3.1	3,382	124,796	3.1	8	2.1	3,382	83,874
Subtotal - Tax Examiner I	6.6		4.8		\$190,745	5.1		3.4		\$131,222
Tax Examiner II										
Call Center - Work Lead	1.0	9	0.8	\$3,906	\$35,154	0.8	8	0.5	\$3,906	\$24,998
Tax Examiner III										
Call Center - Supervisor	1.0	9	0.8	\$4,515	40,635	0.8	8	0.5	\$4,515	28,896
Training Specialist III										
Sales tax training in-state	4.0	9	3.0	\$4,200	151,200	4.0	8	2.7	\$4,200	134,400
Subtotal - FTE Salary	12.6		9.4		\$417,734	10.7		7.1		\$319,516
PERA (10.15/10.4 percent)					\$43,444					\$37,182
Medicare (1.45 percent)					6,057					4,633
One-time staffing										
GIS Database Testing					98,549					98,549
GenTax Testing/Registrations					70,502					70,502
Benefits POTS										
HLD					80,593					0
AED					20,888					0
SAED					20,888					0
STD					793					0
Subtotal - Personal Services	12.6		9.4		\$759,448	10.7		7.1		\$530,382
Operating Expenses - FTE-related					\$71,101					\$40,136
Leased Space					62,370					0
Programming - Contractor					275,000					275,000
Programming - Testing					81,518					81,518
Programming - Reporting					-					TBD
Subtotal - Operating Expenses					\$489,989					\$396,654
Total Request	12.6		9.4		\$1,249,437	10.7		7.1		\$927,036

	FY 2017-18	FY 2018-19	Fiscal Year 2018-19 Interim Supplemental		
	Appropriation	Appropriation	Requested Change	Recommended Change	New Total with Recommendation

DEPARTMENT OF REVENUE

Interim Supplemental - Taxation - Sales and Use Tax Collection

Part XIX, Department of Revenue

(1) Executive Director's Office

(A) Administration and Support

Health, Life, and Dental	11,848,685	12,699,520	80,593	0	12,699,520
General Fund	4,692,581	5,065,441	80,593	0	5,065,441
Cash Funds	7,132,434	7,615,882	0	0	7,615,882
Reappropriated Funds	23,670	18,197	0	0	18,197
Federal Funds	0	0	0	0	0
Short-term Disability	144,085	137,500	793	0	137,500
General Fund	61,768	56,646	793	0	56,646
Cash Funds	82,147	80,688	0	0	80,688
Reappropriated Funds	170	166	0	0	166
Federal Funds	0	0	0	0	0
S.B. 04-257 Amortization Equalization					
Disbursement	3,797,608	4,042,418	20,888	0	4,042,418
General Fund	1,625,206	1,666,122	20,888	0	1,666,122
Cash Funds	2,167,923	2,371,409	0	0	2,371,409
Reappropriated Funds	4,479	4,887	0	0	4,887
Federal Funds	0	0	0	0	0
S.B. 06-235 Supplemental Amortization					
Equalization Disbursement	3,797,608	4,042,418	20,888	0	4,042,418
General Fund	1,625,206	1,666,122	20,888	0	1,666,122
Cash Funds	2,167,923	2,371,409	0	0	2,371,409
Reappropriated Funds	4,479	4,887	0	0	4,887
Federal Funds	0	0	0	0	0
Leased Space	4,767,476	5,238,528	62,370	0	5,238,528

General Fund	792,046	835,024	62,370	0	835,024
Cash Funds	3,975,430	4,403,504	0	0	4,403,504
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0

*(3) Taxation Business Group
(C) Taxpayer Service Division*

Personal Services	8,424,420	8,616,529	636,286	530,382	9,146,911
FTE	<u>137.6</u>	<u>137.6</u>	<u>12.6</u>	<u>7.1</u>	<u>144.7</u>
General Fund	8,119,069	8,304,362	636,286	530,382	8,834,744
Cash Funds	305,351	312,167	0	0	312,167
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0
Operating Expenses	524,961	508,769	427,619	396,654	905,423
General Fund	520,281	504,686	427,619	396,654	901,340
Cash Funds	4,680	4,083	0	0	4,083
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0

Totals					
DEPARTMENT OF REVENUE					
TOTALS for ALL Departmental line items	357,248,771	370,007,602	1,249,437	927,036	370,934,638
FTE	<u>1,437.2</u>	<u>1,472.0</u>	<u>12.6</u>	<u>7.1</u>	<u>1,479.1</u>
General Fund	108,468,830	113,271,850	1,249,437	927,036	114,198,886
Cash Funds	241,710,307	249,529,454	0	0	249,529,454
Reappropriated Funds	6,245,246	6,381,910	0	0	6,381,910
Federal Funds	824,388	824,388	0	0	824,388

Key:
"N.A." = Not Applicable or Not Available