Colorado Legislative Council Staff

HB16-1275

FISCAL NOTE

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

Drafting Number:	LLS 16-0166	**Date:**	February 22, 2016
Prime Sponsor(s):	Rep. Foote; Pettersen Sen. Jones; Donovan	**Bill Status:**	House Finance
		Fiscal Analyst:	Larson Silbaugh (303-866-4720)

BILL TOPIC: TAXATION OF CORP INCOME SHELTERED IN TAX HAVEN

Fiscal Impact Summary	FY 2016-2017	FY 2017-18	FY 2018-2019
State Revenue	**$20.4 Million**	**$49.4 Million**	**$70.2 Million**
General Fund*	$20.4 Million	$49.4 Million	$70.2 Million
State Transfers			
General Fund*		($49.4 Million)	($70.2 Million)
State Education Fund*		$49.4 Million	$70.2 Million
State Expenditures		**$103,354**	
General Fund		$103,354	
TABOR Impact:	See TABOR Impact Section.		
Appropriation Required: None.			
Future Year Impacts: Ongoing state revenue increase if measure approved by voters.			

** The revenue and expenditures for HB 16-1275 are conditional on voter approval of the measure.*

Summary of Legislation

Conditional on voter approval, this bill requires corporations filing a Colorado combined income tax return on or after January 1, 2017 to add income from affiliated corporations incorporated in tax haven jurisdictions. The bill identifies criteria for which jurisdictions are considered tax havens. The Department of Revenue (DOR) will use this criteria to determine tax havens through administrative rule. The director of the DOR may allow corporations with subsidiaries incorporated in tax havens to not report tax haven income if the subsidiary is incorporated in the tax haven for legitimate business purposes.

The bill refers a measure to the voters authorizing the state to retain and spend revenue received by the taxation of a corporation's income that is held in offshore tax havens. If the voters approve this measure, the increase in corporate income tax revenue will be transferred from the General Fund to the State Education Fund. The voter approved revenue increase is exempt from TABOR.

Background

Combined report. This bill affects corporations that file a "combined" income tax return. A combined income tax return is a state filing method used by certain groups of affiliated corporations. Colorado law defines an affiliated group as one or more chains of corporations connected through stock ownership with a common parent corporation, where the parent corporation owns more than 50 percent of both the voting and nonvoting stock in each includable corporation.

The combined income tax return is required to report the income of all member corporations that have 20 percent or more of their property and payroll within the United States and that meet three out of six designated tests. Requiring corporations incorporated in tax haven jurisdictions to be included in the combined report increases Colorado corporate income.

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

Tax havens. There is no precise definition of a tax haven. Five factors are listed in the bill for the DOR to use when determining which countries are tax havens.

State Revenue

Conditional on voter approval, this bill will increase General Fund revenue by $20.4 million in FY 2016-17, $49.4 million in FY 2017-18, and $70.2 million in FY 2018-19. Starting in FY 2017-18, this revenue will be deposited in the General Fund and transferred to the State Education Fund to fund elementary and secondary public education. The accuracy of these revenue estimates depend on the following assumptions.

Assumptions. In 2013, corporations reported $16.7 billion in tax haven income to Montana, which has a law requiring corporations to report income from subsidiaries incorporated in tax havens. The Colorado DOR was able to provide aggregate corporate income tax data for companies identified by U.S. PIRG as having a subsidiary in a tax haven. Between 2009 and 2014, combined worldwide income has increased 42.2 percent on an average annual basis. Applying this growth rate to the tax haven income reported to Montana results in estimated tax haven income of $68.3 billion in 2017, $97.1 billion in 2018, and $138.1 billion in 2019. This amount is added to federal taxable income, before the corporate income is apportioned to Colorado.

Based on the information provided by the DOR, the weighted apportionment factor for corporations with tax haven income was 1.3 percent between 2009 and 2011. This apportionment factor was weighted by the amount of corporate income reported in Colorado and total combined worldwide income.

Using the weighted apportionment factor and the 4.63 Colorado corporate income tax rate, this bill will increase corporate income tax revenue by $40.7 million in tax year 2017, $58.0 million in tax year 2018, and $82.4 million in tax year 2019. After adjusting for state fiscal years, corporate income taxes will increase $20.4 million in FY 2016-17, $49.4 million in FY 2017-18, and $70.2 million in FY 2018-19. Starting in FY 2017-18, this revenue will be transferred to the State Education Fund.

TABOR Impact

If approved by voters, this bill will increase General Fund revenue. The ballot language exempts the additional revenue from the TABOR limit, therefore it has no impact on the TABOR situation.

State Expenditures

Conditional upon voter approval, this bill will increase one-time General Fund expenditures by $103,354 in FY 2017-18 for computer programing and testing.

Table 1. Expenditures Under HB 16-1275		
Cost Components	**FY 2016-17**	**FY 2017-18**
GenTax Programing	$0	$88,000
GenTax Testing	$0	$15,354
TOTAL	**$0**	**$103,354**

Department of Revenue. This bill requires changes to the DOR's GenTax software system. Changes are programmed by a contractor at a rate of $200 per hour. The changes in this bill are expected to increase General Fund expenditures by $88,000, representing 440 hours of programming. All GenTax programming changes are tested by department staff. Testing for this bill will require the expenditures for contract personnel totaling $15,354, representing 635 hours of testing at a rate of $24 per hour.

The DOR will also need to develop rules to identify countries that qualify as tax havens under this bill. This workload increase can be accomplished with existing resources.

Election expenditure impact (existing appropriations). The bill includes a referred measure that will appear before voters at the November 2016 general election. Although no additional appropriation is required in this bill to cover election costs associated with this ballot measure, certain election costs to the state are appropriated as part of the regular budget process. First, state law requires that the state reimburse counties for costs incurred conducting a ballot measure election, paid from the Department of State Cash Fund. Second, the text and title of the measure must be published in one legal newspaper per county and an analysis of the measure must be included in the Ballot Information Booklet (Blue Book) mailed to all registered voter households prior to the election paid from the Ballot Analysis Revolving Fund. As of this writing, there will be at least one citizen-initiated measure on the ballot at the 2016 election, which will trigger the ballot costs shown in Table 2 below for a single ballot measure. Costs in 2016 will increase by approximately $100,000 per measure beyond this base amount for any additional referred or initiated measures placed on the ballot.

Table 2. Projected Costs of a Single Statewide Ballot Measure Election in 2016	
Cost Component	**Amount**
County Reimbursement for Statewide Ballot Measures	$2,400,000
Ballot Information Booklet (Blue Book) & Newspaper Publication	$670,000
TOTAL	**$3,070,000**

HB16-1275

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature. However, several provisions become effective January 1, 2017 if approved by voters.

State and Local Government Contacts

Information Technology   Personnel   Revenue   Secretary of State