

**DEPARTMENT OF REVENUE  
FY 2011-12 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Wednesday January 5, 2011  
1:30 pm – 3:00 pm**

**1:30-1:45     INTRODUCTIONS AND OPENING COMMENTS**

**1:45-2:00     QUESTIONS COMMON TO ALL DEPARTMENTS**

1. Please identify your department's three most effective programs and your department's three least effective programs, and explain why you identified them as such. How do your most effective programs further the department's goals? What recommendations would you make to increase the effectiveness of the three least effective programs?

**Response:** On the following pages, the Department has provided combined responses to question #1 and #2 for the following most effective and least effective programs:

**Most Effective**

Colorado Integrated Tax Architecture  
Tax Administration Best Practices  
State Lottery Division

**Least Effective**

Conservation Easement Protest Resolution  
Vehicle and Driver Service Delivery  
Remittance Processing

2. For the three most effective and the three least effective programs identified above, please provide the following information:
  - a. A statement listing any other state, federal, or local agencies that administer similar or cooperating programs, and outline the interaction among such agencies for each program;
  - b. A statement of the statutory authority for these programs and a description of the need for these programs;
  - c. A description of the activities which are intended to accomplish each objective of the programs, as well as, quantified measures of effectiveness and efficiency of performance of such activities;
  - d. A ranking of the activities necessary to achieve the objectives of each program by priority of the activities; and
  - e. The level of effort required to accomplish each activity associated with these programs in terms of funds and personnel.

## **Department of Revenue's Most Effective Programs**

### **Colorado Integrated Tax Architecture**

The Department of Revenue has broad authority in Article 35 of Title 24 and in Articles 21 and Title 39 of the Colorado Revised Statutes to administer Colorado's tax laws. The Department is in the fourth of a five phase project to replace its antiquated and disparate tax systems with a single, contemporary, integrated, taxpayer account-centric system. To date, the successful implementation of this new system has migrated all major taxes, including severance, income, sales and use, and withholding taxes, to a commercial off-the-shelf software package. As part of the implementation process, the Department of Revenue has reviewed the processes it developed to work with its legacy systems. It has identified areas where it can enhance its customer service, often through streamlined processes. Specifically, the new system has allowed the Department to achieve the following:

*Productivity Increase* – In the Department's legacy environment, tax compliance agents were required to report to an office everyday to gather caseload. The CITA program contains functionality that allows tax compliance agents to spend more time in the field, due to its ability to accept wireless connections to the CITA network. As such, productivity gains will be realized, and the Department of Revenue recently increased the requirement for agent time in the field from 30 hours a week to 36 hours a week. The Department fully expects collections to increase as a result of the expected productivity gain. In addition, CITA contains enhanced functionality for field agents, which includes: (1) a prioritization of workload based on the number of delinquent periods and the amount of the delinquency a particular business may have; (2) communication with the network to provide up-to-date account information while in the field; and (3) mapping software that will determine the most efficient routes for a day's caseload.

Furthermore, while the Department does not have empirical data as of yet, staff indicate that up to 50 percent more account reviews are able to be processed. Additional account reviews may result in assessments and refund adjustments. Taxpayers will benefit from this because they can be ensured of paying only their correct amount due and receiving accurate and timely refunds. In addition, the Department is verifying more apportionment schedules for corporations. Improving the accuracy of tax collections is a high priority for the Department of Revenue.

*Implementation of Predictive Analytics* – Current Department processes require manual audit selection. The CITA program has audit selection modules that the Department will expand to include predictive analytics. This type of analysis uses advanced statistical modeling to predict areas of compliance that will produce positive results for state taxpayers. The State of Colorado will be on the forefront of using this modeling for audit purposes. Once implemented, it will enhance productivity. Current audit staff will likely work on audits with

a higher probability of findings, and therefore production (both refunds and assessments) will increase.

*Streamlined Electronic Filing* – Most states in the union are actively participating in the streamlined sales tax project, and one of the goals of the project is to develop an easy mechanism for large companies to file taxes electronically. While Colorado’s current tax structure makes its full participation in this project unfeasible, it can utilize nationwide best practices in its administration of the state’s taxes. The standard chosen by the project to enable streamlined electronic filing is Extensible Markup Language (XML), which is known for its internet applications.

Previously, the Department of Revenue allowed large businesses to submit sales tax returns on spreadsheets of their own making. Once submitted to the Department, staff would open the documents, print them, and data enter relevant information. The legacy process introduced the potential for errors to occur when transferring data. XML filing will eliminate that potential and provide other benefits to the Department, local jurisdictions, and taxpayers. Electronic filing will reduce errors as the forms will automatically calculate. Taxpayers will benefit because manual work associated with gathering information for filing will be streamlined. Businesses now have the capability to file by location, rather than by parent branch, which mirrors how they are set up to collect taxes.

#### **Tax Administration Best Practices**

Coinciding with the successful implementation of CITA, over the past two years, the Department has adopted numerous best practices from other states’ tax administration. Best practice adoption not only increases the Department’s productivity and collection activity, but also leads to enhanced customer service. As noted above, the Department has broad authority in the Colorado Revised Statutes to administer Colorado’s tax laws. There are several home rule cities and counties that collect and administer their respective sales and use taxes; however, a significant majority of jurisdictions rely on the Department of Revenue to collect and remit their sales and use taxes.

The Department of Revenue collects debt originating from delinquent taxes, assessments, and licenses under its jurisdiction, pursuant to Section 24-35-108, C.R.S. With minimal funding, the Department is increasing its collections and tax compliance while improving service and communication with Colorado taxpayers. Initiatives undertaken in the last two years include the following.

*Treasury Offset Program* – Treasury offset programs allow states to intercept a federal tax refund to satisfy income tax debts owed the state. Beginning in FY 2010-11, the Department received \$159,000 to consistently mail offset notices to delinquent taxpayers. It is estimated that this funding will increase collections by \$4.2 million annually. Prior to the current fiscal

year, the Department was unable to participate in the offset on a consistent basis. However, during FY 2009-10, the Department was able to identify funds in its postage budget to send notices to approximately 98,000 delinquent taxpayers. To date that has increased collections by approximately \$11.5 million.

*Statements of Account* – The Department maintains custody of delinquent accounts for up to one year after which it refers them to collection agencies pursuant to Section 39-21-114 (8), C.R.S. Prior to the implementation of CITA and the adoption of certain best practices, most of the Department’s workload and taxpayer outreach was focused on the first 140 days that an account was delinquent. Over the last seven months that the Department has custody of the account, it did not actively work to maintain contact with the taxpayer. Rather, it allows its automated systems to look for opportunities to garnish or to identify vendor offsets. The Department did not send any additional mailings or make other attempts to connect with the taxpayer.

Sending a monthly billing for delinquent accounts was an area where the Department was deficient in best practices. Because it is a core functionality of the GenTax product, the Department sought and the General Assembly approved funding to expand the number of account statements sent to delinquent taxpayers. The Department has only one month of comparable data, so it is unable to report on collections activity at this point; however, November, 2010, collections were \$4.1 million greater than those of November, 2009. While the Department cannot definitively state that monthly statements of account are solely responsible for an increase in collections for any particular month, they are a contributing factor to overall collections.

*1099 Project* – The Department identified a population of taxpayers that have Form 1099 income, which represents individuals who receive their income as non-employee compensation, such as contractors or consultants. The Department will identify taxpayers who have not filed a return with the State of Colorado but for whom the Department has income information. There are two groups that the Department would primarily focus on: (1) 23,500 accounts that have received 1099-Miscellaneous (non employee compensation) over \$1,000; and (2) 2,800 accounts over \$1,000 that have income (w-2 wages) but nothing else. Based on historical collection rates of similar populations in previous years, the Department estimates it will collect approximately \$4.9 million General Fund revenue per year beginning in FY 2010-11.

*Creation of a Taxpayer Access Point* – Scheduled for implementation in April, 2011, the Taxpayer Access Point represents a significant expansion of the customer service options offered by the Department of Revenue. It will provide secure e-government functions such as registering for tax accounts, updating contact information, revising names and addresses, viewing account summaries and transaction lists, filing returns online, and linking to a payment portal to make secure, on-line payments. This application will increase the capacity

of the Department's taxpayer service representatives to address specific customer account inquiries and will expedite common account reviews, which in turn will increase the rate at which taxpayers receive refunds.

*Better Local Jurisdiction Tax Distribution* – The implementation of the sales tax module in CITA allows the Department to provide better information and earlier distributions to local jurisdictions. In the legacy environment, sales were not attributed to specific locations; rather they were summarized at the state level. Now, jurisdiction-specific information is available. Additionally, local sales tax distributions are available to cities and counties two days sooner than the legacy systems provided. With funding available in a more timely manner, local jurisdictions can be assured of better financial management.

### **State Lottery Division**

The State Lottery Division (hereafter referred to as "the Lottery") is one of the Department's most effective programs because it has efficiently and responsibly maximized revenue for designated proceeds recipients since its inception in 1983. The proceeds recipients include Great Outdoors Colorado (GOCO), Conservation Trust Fund, Division of Parks and Recreation, and the Public School Capital Construction Assistance Fund to address health and safety issues in public schools. The distribution of net lottery proceeds is outlined in 33-60-104. C.R.S. and 22-43.7-104 (2) (b) (III).

The Lottery offers the only lottery products in the state of Colorado, and was established in Article XVIII, Section 2(1) of the Colorado Constitution and Part 2 of Article 35 under Title 24 of the Colorado Revised Statutes. The Lottery is wholly cash funded, and costs approximately \$9.2 million to administer. The Lottery consists of 126.0 FTE that are primarily dedicated to marketing and sales, but also include information technology, operations, financial management, and security staff. Every function of the Lottery is equally critical to its effectiveness.

Through innovative measures and strategic changes to its product mix and operational plan, the Lottery has consistently met its objective to maximize sales and proceeds, even during economic downturns. In 2010, the Lottery modernized its back office computer system, which provided more dynamic capabilities to meet market demands. Specifically, the new platform allowed the Lottery to implement courier distribution of all Scratch game products to its statewide network of 3,000 retailers. Prior to this change, scratch ticket inventory was delivered by Lottery sales representatives that are now able to focus their efforts on retailer development, recruiting and training. While many surrounding states have experienced a net decrease in retailers, Colorado has enjoyed a modest increase despite the fact that many stores have closed their doors. This is due to an aggressive recruiting campaign. The new computer system also enabled the Lottery to add MatchPlay, Mega Millions, and a Raffle to its product mix.

Over the last 10 years, the Lottery has increased sales by an average of 4.3% per year, with a slight decrease of 2.5% from FY 2007-08 to FY 2008-09 due to the recession. In FY 2009-10 Lottery sales got back on track and increased 1.6% over the previous year and are tracking ahead this fiscal year as compared to last year. The Lottery has also maintained administrative costs below 8% of total revenue for the last seven years. Additionally, the Colorado Lottery leads per capita sales in states with comparable population and product mix. In FY 2009-10, the Colorado Lottery achieved per capita sales of \$1.92 as compared to other representative states such as Arizona (\$1.61), Iowa (\$1.52), Washington (\$1.41) and Minnesota (\$1.82).

**Department of Revenue’s Least Effective Programs**

**Conservation Easement Protest Resolution**

The conservation easement tax credit is authorized in Section 39-22-522, C.R.S. The Department of Revenue’s hearing process is outlined in Sections 39-21-103 and 39-21-104, C.R.S. It is the Department’s statutory responsibility to ensure that income tax credits are properly applied. The federal Internal Revenue Service does operate a conservation easement program; however, it is different in scope than the state’s tax credit. The federal government allows a donation to qualify as a charitable contribution. Charitable contributions may reduce federal tax liability, but generally not on a dollar for dollar basis. The state’s conservation easement income tax credit relies on the federal designation, but the administration of the tax credit falls to the Department of Revenue since the federal government has no jurisdiction in state income tax law. Thus, there is minimal interaction between the federal program and the state income tax credit outside of the designation of a charitable organization. Since the passage of H.B. 08-1353, the Department of Revenue has worked with the Department of Regulatory Agencies and the Conservation Easement Oversight Commission.

Since the state income tax credit’s inception in calendar year 2000, the Department has received 2,847 donations<sup>1</sup>. Eighty-two percent of these donations were received between calendar year 2002 and calendar year 2007. Of donations made in that period, the Department has denied or is in the process of denying 549 claims for the tax credit. These claims represent \$137.8 million in outstanding liability to the state, not including penalty and interest. After the enactment of H.B. 08-1353, the number of denied claims relative to total donations has decreased by nearly 75.0 percent when compared to those denied between 2002 and 2007.

Year	Total Donations	Value	Denied	Value of Denied Claims*
2000-2001	288	\$27,291,729	0	\$0
2002-2007	2,335	\$463,314,342	536	\$137,766,888
2008	224	\$63,398,113	13	\$3,360,200
<b>Total</b>	<b>2,847</b>	<b>\$554,004,184</b>	<b>549</b>	<b>\$141,127,088</b>

\* Value does not include penalty or interest calculations, and is as of November 5, 2010.

<sup>1</sup> Through November 5, 2010.

It is important to note that the Department of Revenue takes no position on the merits of the conservation easement tax credit itself. However, the Department views the protest resolution of denied tax credits as ineffective due to several reasons.

The Department and General Assembly first recognized the scope of issues with the conservation easement tax credit in 2008. The General Assembly enacted H.B. 08-1353 in that year’s legislative session; with its passage, the Department received its first resources to administer the tax credit. However, the resources received were dedicated to the processing and accounting of the credit, not to the resolution of denied claims. Once the Department had the staff to process and account for the credit, claim denials began to increase, and the Department subsequently noticed that it could not handle the protests of these denied claims utilizing existing resources. Beginning in FY 2010-11, the General Assembly appropriated resources totaling \$1.1 million to the Department to address the protest of denied claims.

With the increased funding, the Department developed a new approach to resolve disputes and has attempted to offer mediation as a way to expedite protest resolution. However, problems have occurred with this process. First, mediation is voluntary, so there is no compelling reason for taxpayers to enter into it. This fact is compounded by two issues: differences in valuation and the potential for an amnesty program.

The differences in valuation, and thus the starting points for mediation settlement, are dramatic. The Department has received independent appraisals of 35 donations; those values compare with the original taxpayer valuations as follows:

<b>Differences in Appraisal Valuation</b>				
	<b>Department</b>	<b>Taxpayer</b>	<b>Difference</b>	<b>Potential Overvaluation</b>
<b>Appraisal Value</b>	\$1,166,008	\$20,309,400	\$19,143,392	1,641.7%
<b>Credit Value</b>	\$975,508	\$8,459,242	\$7,483,734	767.2%

The large disparity in valuation as shown in the table above creates significant challenges for mediation settlement. Of the 35 cases the Department has received independent appraisals for, only two have settled. These two cases had differences in valuation of only \$25,000 each.

Additionally, the prospect of another amnesty bill weakens the state’s position in settlement negotiations because taxpayers will weigh whether a settlement in mediation or a hearing, or an elimination of their liability through amnesty will be more beneficial to their concerns. Furthermore, the potential loss of revenue associated with an amnesty could be as high as \$141.1 million, the total value of the denied claims.

Second, because individual valuations are not precedential, any case law regarding one valuation dispute will not bear as much significance with another valuation as it might in another context. The Department will be compelled to handle each case on an individual basis. As valuation disputes concern all denied conservation easement tax credits to date, the Department of Revenue lacks enforcement power in either voluntary mediation or in its formal hearing process to resolve cases independent of the judiciary. Independently determining the proper valuation of a claim requires the Department to contract with third party appraisers. There are few appraisers with the qualifications to perform conservation easement appraisals, and as such have limitations on their time. A typical conservation easement appraisal can take between two and six months to complete from assignment to final delivery.

Other complicating factors may include the issue of the tax matter representative statutory designation.<sup>2</sup> Some taxpayers have argued that the statutory designation of the donor of the credit as the agent responsible for all issues regarding the credit and as the representative of the transferees can be construed as a denial of due process to those taxpayers that have purchased the credit. In fact, the Department has been sued in Denver District Court over this issue.

Because of the valuation issues identified above, there is no immediate remedy to resolve the slow resolution of disputed claims. The General Assembly has endorsed mediation as an alternative means to resolution. Arguably, six months is too soon to accurately gauge the effectiveness of it. However, the only time taxpayers have requested mediation is after a tax hearing has been scheduled.

As an alternative to mediation, the General Assembly may consider binding arbitration of disputed valuation claims and could utilize, for example, an impartial body to assist in the resolution of these disputes. In addition, the Department recommends that the impartial body pre-certify any claim's valuation prior to its submission to the Department of Revenue. Ultimately, the most prevalent area of dispute of conservation easement tax credits lie in valuation of which the Department of Revenue has no subject matter expertise. By addressing those issues in an agency more equipped to deal with them, a more successful resolution is ensured. However, the Department of Revenue will continue to administer non-valuation issues that arise during the review of a taxpayer's conformance with applicable conservation easement statutes.

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<sup>2</sup> See Section 39-22-522 (7) (i), C.R.S., which states in part that: "The donor of an easement for which a tax credit is claimed or for the transferor of a tax credit transferred pursuant to this subsection (7) shall be the tax matters representative in all matters with respect to the credit." [Department's emphasis]



### **Vehicle and Driver Service Delivery**

The Department of Revenue has a statutory charge to register, license, and undertake other actions concerning drivers and motor vehicles, pursuant to the provisions and requirements of Title 42, Colorado Revised Statutes. The Department partners with county officials to provide motor vehicle titling and registration services as well as driver's license and identification card issuance services. During FY 2009-10, over 1.4 million title applications and 5.0 million registrations were processed, and over 900,000 documents were issued for Colorado citizens. The Department provides equipment and support for 108 county offices and 1,100 county system users of the Colorado State Titling and Registration System, which kept track of 10 million transactions valued at over \$1 billion in FY 2009-10. Additionally, the Department staffs and operates 37 State-operated Driver's License Offices and equips and supports 17 County-operated Driver's License Offices across Colorado.

Various fees associated with these activities are intended to support operations; however, titling and registration activity and document issuance have seen declines in the past several years, and associated revenues have dropped significantly. Specifically, in FY 2009-10 title applications and correlating revenue have been at their lowest levels in the last decade. The primary funding source for titling and registration services has seen a decline of nearly 10 percent over the past three fiscal years alone. Moreover, in FY 2009-10 photo identification document issuance and related revenues did not grow as quickly as originally anticipated and are not expected to generate enough revenues in the primary funding source to cover appropriated operation costs.

Fees that support vehicle and driver services are set by statutory mandate. The last fee increase for the operating budget of the titling and registration program occurred in 2001. Fees related to document issuance were adjusted in 2007 to cover operating costs for three new offices but the majority of the fee was still allocated to other transportation related costs. The full cost for driver services was not funded by document fees until 2009 but fees were not adjusted to account for the cost of operating all of the driver's license offices in the state at that time. Vehicle services projections show that operating budget expenditures will outpace revenues by up to \$2.5 million per year during the next 5 years. While photo identification document issuance and associated revenues is anticipated to increase in both FY 2010-11 and FY 2011-12, the shift in the funding for existing operating costs will put considerable pressure on the primary funding source. The Department projects a \$3.5 million shortfall in FY 2010-11 and a \$1.6 million shortfall in FY 2011-12 for driver services.

As a result, the Department has implemented several critical cost-saving measures with considerable impact to service delivery in recent fiscal years. The Department restricted all county office equipment replacement and contract maintenance expenses in FY 2009-10, implemented a division hiring freeze, restricted office hours in certain locations, reduced operational expenditures, and laid-off or did not hire temporary employees. As a result, however, customer service was negatively impacted. Based on customer comment cards,

average wait times increased from 28 minutes in the first quarter of FY 2009-10 to 59 minutes in the first quarter of FY 2010-11. Additionally, the Department worked together with the Governor's Office and the General Assembly to authorize two legislative funding options to support vehicle and driver services for the current and next fiscal years. Transfers of funds from other sources, including the Motorist Insurance Identification Account and the non-exempt portion of the Highway Users Tax Fund are meant to ensure that critical service delivery is not interrupted in the immediate future.

However, as revenues continue to be weak and service needs continue to increase, the Department's need for stable and consistent funding streams to support these vital services is critical. Furthermore, the Department has not been able to invest in critical infrastructure or long-term capital needs. In 2011, the titling and registrations system will be 28 years old, while the primary document issuance system will be 17 years old. The Department faces significant resource and budgetary limitations that prevent the expansion or enhancement of service delivery for Colorado citizens.

In FY 2009-10, the Department was appropriated \$39,874,418 total funds and 478.7 FTE to support the Division of Motor Vehicles and the Colorado State Titling and Registration System. The Department spent \$34,539,447 and maintained 433.7 FTE, which represents a 13.4% under-expenditure and a 9.4% underutilization rate for personnel. The Department has been unable to operate at the appropriated level for these programs due to the unstable and insufficient cash fund sources available to provide these services. In the next year, it is the Department's intent to seek legislation that would provide a comprehensive and long-term funding solution to support vehicle and driver services.

### **Remittance Processing Data Entry and Document Imaging**

The Department of Revenue budgets approximately \$2.3 million and 41.0 FTE from the Central Department Operations Division to perform work associated with processing tax returns for deposit into the state's treasury and with tax records management. Permanent staffing is sufficient to operate the minimum daily volume of returns the Department processes. Temporary staff augment permanent staff during high volume periods such as income tax season and monthly and quarterly sales tax filing periods. This budget allows the Department of Revenue to process 2.8 million paper checks per year worth \$3.2 billion.

In addition to these costs, the Department of Revenue pays the Department of Personnel and Administration for back-end data entry and tax document imaging; the total cost of this effort is estimated to be \$2,270,009 in FY 2010-11. The Department of Revenue is statutorily required by Section 24-30-1104, C.R.S., to utilize certain "central services" offered by the Department of Personnel and Administration. Additionally, pursuant to a 1982 executive

order (D0004 82), the Department of Revenue must utilize data entry services performed by the Department of Personnel and Administration.

<b>Cost for Remittance, Date Entry, and Document Processing</b>		
	<b>General Fund Appropriation</b>	<b>FTE</b>
Permanent Staff	\$1,661,264	41.0
Temporary Staff	\$228,178	0.0
Operating Expenses	\$324,419	0.0
Data Entry (DPA costs)	\$1,875,719	0.0
Imaging (DPA costs)	\$394,290	0.0
Leased Space	\$27,500	0.0
Capitol Complex	<u>\$27,567</u>	<u>0.0</u>
<b>TOTAL</b>	<b>\$4,538,937</b>	<b>41.0</b>

Both data entry and imaging services are performed in Pueblo, and occur at the backend of the current process. Both rely heavily on manual labor to perform necessary tasks. Also pursuant to statute, the Department of Revenue is statutorily prohibited from seeking less expensive rates from the private sector without a waiver from the Department of Personnel and Administration. As such, the Department of Revenue must request funds from the General Assembly for rate increases. Over the last five years, data entry rates increased 15.36% while imaging rates increased 20.93%, resulting in a fiscal impact to the Department totaling \$140,209.

The backend services provided by the Department of Personnel and Administration are inefficient because current technology can streamline the remittance and document processing workflow. Current generation remittance processing equipment is capable of not only imaging checks and processing payments electronically, but also imaging the accompanying documents and capturing key data fields electronically. Because the images and most information is captured as checks and documents are processed, there will no longer be a need for back-end document management functions (document scanning) provided by the Department of Personnel and Administration and greatly reduced need for manual data entry services.

If the current, outdated remittance processing system is updated, then significant cost savings and productivity increases can be achieved. First, because the current process is manual, the state could reduce personnel costs once the Department's remittance processing infrastructure was updated. Current estimates indicate that it could save, at a minimum, 70% of its current data entry costs, and 100% of its imaging costs if its current infrastructure were updated. Second, it takes time to transport documents to and from Pueblo twice (once for manual data entry, and again for imaging). Thus taxpayer editing and auditing processes are delayed until the images are created, which typically takes two weeks. Conservatively, the Department anticipates a 6.7% increase in account reviews if images were immediately

available and indexed to a specific account. Thus, it is estimated that over 4,100 income tax accounts can be reviewed per year without additional staff and resources.

A delay in imaging generation results in the inability to quickly process refund approvals, the potential to generate unnecessary bills sent to taxpayers, and the inability to respond quickly and accurately to taxpayer inquiries. All of these issues add workload to Department of Revenue staff. Productivity gains will be realized, and a corresponding increase in customer service achieved, if the Department were to update its outdated remittance processing infrastructure.

Not only does transport delay processing, it also represents a significant security risk as has been suggested in a recent outside audit of the Department's processes. This will likely continue to be an audit finding due to the increased audit scrutiny required by the Statement on Auditing Standards (SAS) 109 and the reporting requirements of SAS 115. Since the Department detected internal fraud in 2007, it has redoubled its efforts to comply with and correct any deficiencies related to audit findings and standards.

The Department has researched the feasibility of upgrading its legacy remittance processing system and is ready to proceed with a system upgrade that will allow it to achieve the cash flow and productivity improvements listed above. The Department previously submitted a capital construction request for FY 2009-10, which was denied due to a lack of funding. The current remittance infrastructure is antiquated and needs to be updated. The remittance processing system's current software vendor has notified the Department of Revenue that it will no longer support the current software version as of July 1, 2011. This update, which will cost \$180,065, is necessary because the Department could not secure funding for a wholesale replacement of the remittance processing system in time to avoid the cost of the upgrade. The Department of Personnel and Administration has granted the Department of Revenue a waiver related to data entry and imaging. It is estimated that a replacement remittance processing system capable of imaging documents and associated checks and automatically data entering information from the returns will cost \$2.3 million.

Based on the experiences of other states that have updated their remittance systems and from information obtained through a 2007 Request for Information, the Department anticipates up to a six-month implementation. Under such a schedule, the Department will process income, withholding, and sales tax documents by the second half of a fiscal year, assuming a July 1 start date. Significant savings in tax document processing will begin at that point. Additional savings will be realized during the second, full year of implementation. The payback on the initial capital investment of \$2.3 million will occur within two years, based on initial FY 2012 budget estimates.

<b>Savings for Remittance and Document Processing in First Year of Implementation</b>			
<b>Appropriation</b>	<b>FY 2011-12 Cost</b>	<b>FY 2011-12 Cost with Updated System</b>	<b>Savings</b>
Permanent Staff	\$1,661,264	\$1,661,264	\$0
Temporary Staff	\$228,178	\$131,253	(\$96,925)
Operating Expenses	\$324,419	\$324,419	\$0
Data Entry*	\$1,839,586	\$959,345	(\$880,240)
Imaging	\$394,290	\$178,694	(\$215,595)
Leased Space	\$27,500	\$0	(\$27,500)
Capitol Complex	\$27,567	\$27,567	\$0
<b>TOTAL</b>	<b>\$4,502,804</b>	<b>\$3,101,660</b>	<b>(\$1,220,260)</b>
*Note: Current estimates indicate the Department will not need the full appropriation.			

In April, approximately 41.0 percent of all income tax returns are filed. April also represents a quarterly filing month for sales tax. To handle this volume of mail the Department rents 13,750 square feet of temporary space in Denver at a cost of \$27,500 for the month. It also hires 112 temporary workers to sort and prepare the documents for processing. This effort costs the Department \$96,925. Because new systems automate a currently manual process, the Department will be able to move to shift work, eliminate the off-site space, and eliminate the associated temporary staff.

Pursuant to state statute and an existing executive order, the Department of Revenue utilizes data entry and imaging services provided by the Division of Central Services in the Department of Personnel and Administration. Because the newer remittance processing systems are capable of not only imaging both checks and accompanying documents but also of capturing relevant data automatically, the Department of Revenue will no longer need the current volume of manual data entry. It will be able to eliminate imaging services provided by the Department of Personnel and Administration. The savings associated with these activities totals \$1,095,835.

The Department anticipates a significant restructuring of its tax and document processing units. Currently, these sections account for 32.0 percent of the combined personal services and operating budget for the Central Department Operations Division and 40.0 percent of the Division's appropriated FTE. While it is too early to accurately determine the extent of savings the Department will realize if it were to receive funding to update its system, the Department would most likely realize significant savings in this area. Generally, the Department would evaluate the necessity of seasonal tax employees and determine if its permanent staff can be pared to reflect efficiencies gained throughout the document processing section. Additionally, the Department would realize continued savings in its data entry and imaging budget.

3. Detail what could be accomplished by your Department if funding for the department is maintained at the fiscal year 2009-10 level.

**Response:** The following table illustrates the differences between the Department's final FY 2009-10 appropriation - including supplemental and special bill appropriations - and the FY 2011-12 request.

FY 2011-12 Budget Request				FY 2011-12 Budget Request Excluding Limited Gaming Adjustment		
	FY 2009-10 Appropriation	FY 2011-12 Request <sup>1</sup>	Difference	FY 2009-10 Appropriation	FY 2011-12 Request <sup>1</sup>	Difference
FTE	1,490.7	1,520.2	29.5	1,490.7	1,504.2	13.5
General Fund	\$73,749,340	\$58,890,647	(\$14,858,693)	\$73,749,340	\$58,890,647	(\$14,858,693)
Cash Funds	\$601,532,262	\$700,913,301	\$99,381,039	\$601,532,262	\$608,193,036	\$6,660,774
HUTF	\$14,029,440	\$20,937,559	\$6,908,119	\$14,029,440	\$20,937,559	\$6,908,119
Reappropriated Funds	\$1,398,939	\$1,361,184	(\$37,755)	\$1,398,939	\$1,361,184	(\$37,755)
Federal Funds	\$1,487,744	\$723,701	(\$764,043)	\$1,487,744	\$723,701	(\$764,043)
Total Funds	\$692,197,725	\$782,826,392	\$90,628,667	\$692,197,725	\$690,106,127	(\$2,091,598)

<sup>1</sup> Does not include appropriations associated with S.B. 10-141 (Transfer Bingo from Secretary of State to Department of Revenue), totaling \$455,560 cash funds and 6.0 FTE. This appropriation was conditional upon voter approval; the measure was not approved in the November 2010 election.

Excluding the informational adjustment for the Limited Gaming Commission in FY 2011-12, the difference between the FY 2009-10 appropriation and the FY 2011-12 request is a *net decrease* of \$2,091,598. The FY 2011-12 request includes a Limited Gaming Commission adjustment of \$92.7 million cash funds and 16.0 FTE. The Limited Gaming Commission is authorized to pay all ongoing expenses of the Commission and any other state agency related to the administration of Limited Gaming without appropriation by the General Assembly. The Department has historically included the Limited Gaming Commission's adjustments in its budget for informational purposes.

Maintaining funding at the FY 2009-10 appropriated level would require an increase of \$14.9 million General Fund, a correlating decrease in cash fund spending authority, and the repeal of significant legislation, including H.B. 10-1284 (Regulation and Enforcement of Medical Marijuana) and H.B. 10-1113 (Transfer of Ports of Entry to Colorado State Patrol).

Major changes from FY 2009-10 to FY 2011-12 include:

- **Tax Law Compliance and Revenue Collection Initiatives:** The Department has identified several initiatives to support tax compliance and revenue collection, including the Out-of-State Audit program enhancement, the Data Conversion Identification Program, the 1099 Program, and the Voluntary Compliance Program. To enhance collection of delinquent taxes, the Department is participating in the Treasury Offset Program which allows the State to intercept a federal income tax refund to satisfy income tax debts owed to the State of Colorado. Additionally, the Department will expand the number of billings sent to individuals with delinquent income tax accounts and proposes to implement a similar action with holders of delinquent sales tax accounts. In aggregate, these initiatives are expected to generate \$50.9 million of additional General Fund revenue to the State.
  - **OIT Staff Consolidation:** The consolidation of statewide information technology personnel resulted in the transfer of 106.2 FTE from the Department to the Governor's Office of Information Technology and a reduction in total funds allocated to Departmental information technology resources.
  - **H.B. 10-1284 (Regulation and Enforcement of Medical Marijuana):** Legislation authorized in the 2010 Session appropriated over \$10.0 million of cash funds and 110.0 FTE to the Department for the creation of the Medical Marijuana Enforcement Division.
  - **H.B. 10-1113 (Transfer of Ports of Entry to Colorado State Patrol):** Legislation authorized in the 2010 Session transferred the Motor Carrier Safety Assistance Program from the Department of Revenue, Ports of Entry to the Colorado State Patrol, effective August 15, 2010. This transfer moved 10.0 annualized FTE positions and associated expenses.
  - **Special License Plate Legislation:** Over the course of the past two Legislative Sessions, various bills have created seven new special license plate types and appropriated \$544,866 in additional resources for manufacturing and distribution expenses.
  - **OSPB-initiated Budget Balancing Initiatives:** Initiatives include significant refinancing in the Division of Motor Vehicles and the elimination of the Cigarette Tax Rebate.
4. How much does the Department spend, both in terms of personnel time and/or money, dealing with Colorado WINs?

**Response:** The Department of Personnel and Administration, Division of Human Resources, developed technical guidance for employee work release time to attend and participate in Employee Partnership activities. The process was implemented in March 2009. Prior to that time, employees were required to use and record annual leave for this purpose.

Since March 2009 through June 2010, Department of Revenue employees that worked on the partnership with Colorado WINS have expended approximately 801 work release hours

equating to approximately \$18,912 during this period of time. Many of the hours were expended developing the Memorandum of Understanding between Colorado WINS and the Department of Revenue. The MOU was signed on March 4, 2010. After that time, the work release hours recorded decreased significantly, whereby only 45 hours have been recorded for the first 6 months of FY 2010-11.

**2:00-2:15      2010 SESSION SALES TAX EXEMPTION REPEALS AND SUSPENSIONS**

5. How did the Department provide instructions to retailers regarding the implementation of the repeal or suspension of sales tax exemptions (especially in regard to the exemption for candy and products that may be considered candy except that the product contains flour)?

**Response:** The Department mailed a notice to all 143,000 sales tax account holders in February 2010, which described all changes to sales tax exemption laws that the General Assembly enacted in the 2010 session. Additionally, the Department posted information on its website and published specific newsletters for retailers, which delineated changes to sales and use tax exemptions, including changes enacted during the 2010 session. For guidance on defining “candy” and “soda”, the Department refers to the definitions in Section 39-26-707, (1.5) (b) (I) and (II), C.R.S. and published information on this particular topic on its website. For more information about specific guidelines, please see the “FYI Sales 4 – Taxable and Tax Exempt Sales of Food and Related Items” in Appendix A of this document.

6. How were the fiscal notes estimated if the Department cannot track the revenue generated after the fact?

**Response:** The revenue estimates for the fiscal notes for HB10-1189 through HB10-1196 and HB10-1199 were developed by Legislative Council economists. The Department, however, did provide information to the group that may or may not have informed their analyses. Information provided to the economists with regard to sales tax exemptions were based on estimates of the value of the particular sales tax exemptions that the Department develops on an annual basis. This information is not available from information provided on sales tax returns; therefore, the information provided to Legislative Council economists was the data and methodology used by the Department to develop the estimates. Most of the estimates are based on federal survey data (Census, Consumer Expenditure, American Veterinary Medical Association, U.S. Energy Information Administration, etc.) gathered at the national and sometimes state level. Data provided to the economists with regard to the corporate income tax deductions were based on historical sample corporate data.



7. Have members of the public crossed state lines to purchase agricultural products in order to avoid paying the sales tax on agricultural products?

**Response:** The Department of Revenue does not have empirical data indicating that members of the public crossed state lines to purchase agricultural products.

8. Regarding H.B. 10-1193: How is the Department going to determine internet sales taxes and collect them?

**Response:** H.B. 10-1193 requires retailers, including on-line retailers, to provide a list of their customers' gross purchases if any customer spent more than \$500 in the preceding year. The Department of Revenue has been sued in federal court by the Direct Marketing Association over, among other things, the provision requiring retailers to provide this information.

Individual consumers are not required to file their use tax returns until April 15, of the following year. The Department will analyze information obtained from retailers and tax returns from individual taxpayers to determine compliance with H.B. 10-1193.

9. Can the Department provide a ten-year history of the amount of revenue that would have been generated had the sales tax exemptions suspended or repealed in the 2010 session had those exemptions not been in place for those ten years?

**Response:** The Department publishes an estimate of sales tax exemptions annually. The estimates, back to 2002, are posted to the Department's website. However, the information posted to the website is only estimates based on information from federal surveys that are published, for the most part, only once every 5 years.

In order to track the actual value of sales tax exemptions, retailers would have to be required to provide much more detailed information on their sales tax returns. Currently, this information is not available so the estimates cannot be verified. Without the detailed information from retailers, the Department cannot provide historical data showing the amount of revenue that would have been generated had the sales tax exemptions been suspended or repealed over the last ten years.

10. What process does the Department use to identify retailers doing in the business in the state without registering with the state? How will the Department identify out-of-state retailers who have sold taxable products to Colorado residents but who have not complied with either the “controlled group of corporations” sales tax collection requirement or the requirement to notify the customer and the Department of sales made to Colorado residents?

**Response:** Field agents employed by the Department verify that business locations have the required and proper licenses. Compliance efforts do include testing retailers’ on-line stores for the proper sales tax calculation. For compliance issues related to the implementation of H.B. 10-1193, please see the discussion in the response to question 8.

**2:15-2:25 COLORADO STATE TITLING AND REGISTRATION SYSTEM**

11. How many vehicles have been registered for the last five years?

**Response:** From the end of 2006 through October 2010 total registrations in Colorado have increased by 5.6%, despite declining automobile sales (see next question). In surrounding states, such as Arizona, total registrations have increased by 6.7%; similar increases in registrations are observable in Utah, Nevada, and Wyoming.

# Registered	Date	% Difference for Prior Year
4,814,432	12/31/2006	1.17%
4,969,539	12/31/2007	3.22%
5,060,679	12/31/2008	1.83%
5,071,682	12/31/2009	0.22%
5,085,968	10/31/2010	0.28%

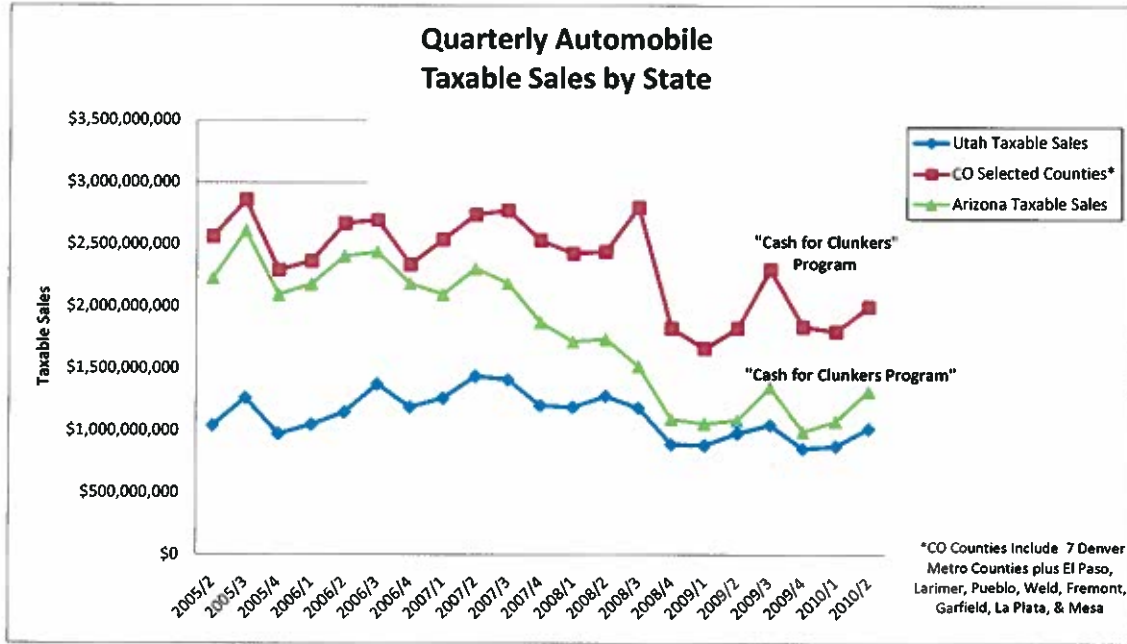
12. Are surrounding states experiencing the same type of declines in vehicle sales? Is this decline the result of a poor economy?

**Response:** Taxable vehicle sales in Colorado’s largest counties<sup>3</sup> are down, largely attributable to the economy. From a peak of \$2.8 billion in the third quarter of calendar year 2008, taxable sales of used and new cars and trucks in Colorado have fallen to as low as \$1.65 billion in the first quarter of 2009. Although taxable sales spiked to \$2.3 billion in the third quarter of 2009 due to the Federal “Cash for Clunkers” program, data from the second

<sup>3</sup>Counties include 7 Denver Metro Counties plus El Paso, Larimer, Pueblo, Weld, Fremont, Garfield, La Plata, & Mesa; Colorado data obtained from Department of Revenue’s Office of Research & Analysis quarterly reports on automobile sales.

quarter of 2010 has sales pegged at \$2 billion, which is down 29% from the peak described above.

The same trend is observable in surrounding states. The chart below displays taxable sales of automobiles in Arizona, Utah, and Colorado's largest counties. The trend in Colorado automobile sales is 85% correlated with sales in both Arizona and Utah, meaning Colorado's auto sales decline is being experienced in surrounding states as well.



The decline in automobile sales observed in Colorado is attributable to the state's economy over the past few years. The automobile sales trend is 77% correlated with quarterly changes in the state's unemployment rate, meaning increasing joblessness explains a great deal of the decline in automobile sales.

Similarly, Colorado automobile sales are more than 71% correlated with average quarterly changes in the Federal Reserve's Leading Indicators Index, which is a composite of economic indicators including: Colorado initial unemployment insurance claims, non-farm payroll employment, state-level housing permits average hours worked in manufacturing, the state unemployment rate, wage and salary disbursements deflated by the consumer price index, delivery times from the Institute for Supply Management (ISM) manufacturing survey, and the interest rate spread between the 10-year Treasury bond and the 3-month Treasury bill.

13. Does the Department anticipate that vehicle registrations will increase at some point in the future? If so, when does the department anticipate that increase will begin?

**Response:** Vehicle registrations have increased since December 31, 2006 (see table for question 11). Although the growth of registrations slowed in calendar year 2009 the growth rate in calendar year 2010 exceeded the 2009 rate by 0.06%. Based on this upward trend and 10-year average vehicle registration studies, the Department anticipates vehicle registrations to continue increasing over the next two years to the forecasted 10-year average registered vehicle growth rate of 2.3% annually.

For the first two quarters of calendar year 2010 taxable automobile sales have been 9% higher than over the same time period in 2009, which indicates automobile sales are beginning to pick up and will continue to do so as economic conditions improve in Colorado.

14. Are there variances in how county clerks offices handle special license plates? How many types of special license plates are authorized by the state?

**Response:** The Department is unaware of any differences in the way special license plates are handled by county clerks offices. Currently there are six different fee structures for special plates.

Specialty License Plate Fee Structures							
Fee Structure Type	New / Renew	Number of Plates	Licensing Services Cash Fund	Highway Users Tax Fund	Breast and Cervical Cancer	Pet Overpopulation Fund	Total Cost
Exempt Special Plate Fee (First issued plate per applicant)	New	10	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Renew	10	\$25.00	\$25.00	\$0.00	\$0.00	\$50.00
No Special Plate Fee Assessed	New	1	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Renew	1	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Assessed both Highway Users Tax Fund and Licensing Services Cash Fund	New	49	\$25.00	\$25.00	\$0.00	\$0.00	\$50.00
	Renew	49	\$25.00	\$25.00	\$0.00	\$0.00	\$50.00
Exempt Highway Users Tax Fund, Assessed Licensing Services Cash Fund Only	New	5	\$25.00	\$0.00	\$0.00	\$0.00	\$25.00
	Renew	5	\$25.00	\$25.00	\$0.00	\$0.00	\$50.00
Assessed Highway Users Tax Fund, Licensing Services Cash Fund and Breast and Cervical Cancer Prevention Treatment Fund	New	2	\$25.00	\$25.00	\$25.00	\$0.00	\$75.00
	Renew	2	\$25.00	\$25.00	\$25.00	\$0.00	\$75.00
Assessed Highway Users Tax Fund, Licensing Services Cash Fund and Pet Overpopulation Fund	New	1	\$25.00	\$25.00	\$0.00	\$30.00	\$80.00
	Renew	1	\$25.00	\$25.00	\$0.00	\$25.00	\$75.00

15. If the state were to standardize the rates paid for special license plates at the level of the highest charge for a special plate, how much additional revenue would be generated?

**Response:** The highest specialty license plate fee is the Adopt-a-Pet plate. The Adopt-a-Pet license plate includes a fee of \$80.00 for a new plate and \$75.00 to renew. Additional revenue realized if the Adopt-a-Pet license plate fee structure was collected on all specialty license plates would be an increase of \$2,702,960 for issuance of new plates, \$14,206,525 if renewal fees are adjusted to match and \$16,909,485 if increases are made on both issuance and renewals of specialty plates.

16. Will there be enough money in the CSTAR account to pay for the programming costs of legislation?

**Response:** The cash funds appropriation in the Programming Costs for Session Legislation line item is annotated as "various sources" each fiscal year based on the propensity for legislation requiring programming changes to be funded from a variety of cash sources, based on the contents of the bills. Several legislative initiatives impact the CSTAR Account on a regular basis, including changes or additions to special license plate types and changes in fees or surcharges collected upon vehicle registration (i.e., POST or Emergency Medical Services fees). Consequently, the CSTAR Account is often charged for programming expenses each year. Including costs from the 2010 Session, the five-year average annual expense to the CSTAR Account is \$66,417. The Department anticipates programming expenses for CSTAR-related bills each year and includes such expenses into the fund projections. At this time, the Department anticipates that revenues are sufficient to cover programming expenses.

17. What is the county clerks' fee for titling and registration and what does it pay for?

**Response:** Fees retained by county clerks are identified in the table below. Fees retained by the Counties support the administration of motor vehicle activities.

Titles and Registration Fees Retained by County			
Fee Type	Fee Description	Fee Total	Retained by County
Title	Duplicate Title	\$8.20	\$6.50
Title	Manufactured Home - County	\$7.20	\$4.00
Title	Manufactured Home - Assigned VIN	\$3.50	\$2.50
Title	Record Search	\$2.20	\$2.10
Title	Title Application	\$7.20	\$4.00
Title	Lien Extension	\$1.50	\$1.50
Title	Lean Release	\$7.20	\$4.00
Title	Assigned VIN Trailer ID	\$3.50	\$2.50
Registration	Adopt-a-Pet Plate Renewal	\$25.00	\$2.00
Registration	Clerk Hire	\$4.00	\$4.00
Registration	Customer Inquiry	\$2.20	\$0.10
Registration	Duplicate Registration	\$2.20	\$2.10
Registration	Emissions Clean Screen - Basic Area	\$15.00	\$0.50
Registration	Emissions Clean Screen - Enhanced Area	\$25.00	\$0.83
Registration	Honorably Discharged Vet and Disabled Veteran License Plate	\$25.00	\$1.00
Registration	Late Fee	\$25-\$100	\$10.00
Registration	Late Fee - Trailers	\$10.00	\$10.00
Registration	License Plate Mailing Fee	\$5.00	\$5.00
Registration	Peace Officer Standards Training Fund Class A, B, C Only	\$0.60	\$0.03
Registration	Personalized Plate - Designer or Basic Issuance	\$35.00	\$2.00
Registration	Personalized Plate - Designer or Basic Renewal	\$25.00	\$2.00
Registration	County Road and Bridge	\$1.50	\$1.50
Registration	Rental Fee	\$1.00	\$1.00
Registration	Specific Ownership Tax (SOT)	Tax Class & MSRP	All but \$0.50
Registration	Specific Ownership Tax (SOT) Collection Fee	Larger of \$500 or 2x SOT	All
Registration	Special Mobile Machinery Administrative Fee	\$5.00	\$2.00
Registration	Special Mobile Machinery Rental Decal	Tax Class & MSRP	\$0.50
Registration	Temporary Registration Permit - Individual	\$2.00	\$1.60
Registration	Temporary Registration Permit - Dealer Packs of 25	\$12.50	\$6.25
Registration	Transfer Fee, Personalized License Plates	\$12.00	\$2.00

**2:25-2:35 FUNDING DRIVER AND VEHICLE SERVICES**

18. Why did S.B. 09-274 or H.B. 10-1387 come before the House Finance Committee?

**Response:** Although the Finance Committee is the Department’s committee of oversight, based on the bills’ histories, both S.B. 09-274 and H.B. 10-1387 were heard before the Appropriations Committee.

19. Is the Department of Revenue losing money on driver’s licenses?

**Response:** In FY 2009-10, prior fund balance and fees allocated to the Licensing Services Cash Fund (LSCF) for special plate fees allowed the Department to start FY 2010-11 with a positive fund balance. At present the Department estimates that it will fully spend all revenues generated in FY 2010-11 and all cash fund reserves carried over from FY 2009-10. This trend will continue into FY 2011-12 (See Table 19.1). Without funds allocated from HUTF “off-the-top” and special license plates fees the Department would not be able to maintain operations for the current driver’s license offices. Document fees by themselves have not proved sufficient to cover operational costs.

<b>Table 19.1: Cash Flow for Issuance of Photo Identification Documents</b>			
<b>Item</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>FY 2011-12</b>
Licensing Services Cash Fund Revenues <sup>1</sup>	\$14,976,296	\$19,265,168	\$24,313,068
ID Security Revenues	\$528,502	\$681,798	\$844,296
<b>Total Revenues</b>	<b>\$15,504,798</b>	<b>\$19,946,966</b>	<b>\$25,157,365</b>
Driver's License Expenditures <sup>2</sup>	\$15,331,499		
ID Security Fund	\$499,128		
<b>Total Expenditures</b>	<b>\$15,830,627</b>		
Driver's License Appropriation/Request		\$22,712,627	\$25,696,364
ID Security Fund Appropriation/Request		\$731,495	\$1,051,486
<b>Total Appropriation/Request</b>		<b>\$23,444,122</b>	<b>\$26,747,850</b>
<b>Difference</b>	<b>(\$325,829)</b>	<b>(\$3,497,156)</b>	<b>(\$1,590,485)</b>
<sup>1</sup> This number excludes special plate fees allocated to the Licensing Services Cash Fund. Although special plate fees are allocated to the fund, these fees are generated from license plate activities rather than photo identification activities. The amount excluded was \$2,130,274 for FY 2009-10.			
<sup>2</sup> This number excludes the \$2,589,894 fund transfer to the GF.			

Technically the Department cannot spend more than is available in the cash fund. To avoid overspending the cash fund and ensure that sufficient balance was available to transfer to the General Fund in FY 2009-10, the Department initiated a series of short-term cost saving measures, including a division hiring freeze, restricting office hours in certain locations, restricting operational expenditures, laying off temporary employees, and postponing the implementation of system upgrades. This has had significant impacts on wait times in driver’s license offices.

In FY 2010-11 the Department has held 12.0 vacancies but beginning in June 2010, transition from ten year to five year driver's licenses have significantly increased the number of documents issued. This will continue to push wait times up as the Department does not have enough funds available in the LSCF to fully staff offices even with increased revenues.

The increased revenue from additional document issuance is being partially offset by additional expenditures allocated to LSCF in FY 2010-11 that were previously being covered by HUTF "off-the-top" and a broader refinance of General Fund as identified in HB 10-1387. In FY 2009-10, HUTF "off-the-top" \$4,064,830 was used to partially offset the General Fund decrease of \$16,177,257. In FY 2010-11, the HUTF "off-the-top" amount decreased to \$2,702,602 and the General Fund offset increased to \$19,961,127 to include POT expenditures in the Executive Director's Office such as Health, Life, and Dental. The total impact to LSCF was an increase of \$4,337,388 in refinanced expenses. In FY 2011-12 the remaining HUTF "off-the-top" amount of \$2,702,602 will be refinanced to LSCF which will amount to the entire GF offset of \$19,961,127 (See Table 19.2).

Ultimately, the Department has placed significant restrictions on spending and operations to maintain a positive fund balance in the LSCF. These restrictions are short-term fixes and severely hamper the operations of the program. Wait times have increased significantly and are expected to increase even further. Based on customer comment cards, average wait times increased from 28 minutes in the first quarter of FY 2009-10 to 59 minutes in the first quarter of FY 2010-11. In addition, the driver's license system is more the 20 years old and will require replacement in the near future. Given the Department's inability to fully fund base operations, the Department has been unable to address the need for longer term infrastructure and capital projects.

<b>Table 19.2: Impact of SB 09-274 and HB 10-1387 on the Licensing Services Cash Fund</b>				
<b>Item</b>	<b>TF</b>	<b>GF</b>	<b>LSCF</b>	<b>HUTF</b>
SB 09-274 FY 2009-10	\$808,719	(\$16,177,257)	\$12,921,137	\$4,064,839
<b>Total FY 2009-10 Impact</b>	<b>\$808,719</b>	<b>(\$16,177,257)</b>	<b>\$12,921,137</b>	<b>\$4,064,839</b>
SB 09-274 FY 2010-11	(\$808,719)	\$16,177,257	(\$12,921,137)	(\$4,064,839)
HB 10-1387 FY 2010-11	\$0	(\$19,961,127)	\$17,258,525	\$2,702,602
<b>Total FY 2010-11 Impact</b>	<b>\$0</b>	<b>(\$19,961,127)</b>	<b>\$17,258,525</b>	<b>\$2,702,602</b>
HB 10-1387FY 2011-12	\$0	\$0	\$2,702,602	(\$2,702,602)
<b>Total FY 2010-11 Impact</b>	<b>\$0</b>	<b>(\$19,961,127)</b>	<b>\$19,961,127</b>	<b>\$0</b>



20. How many driver's licenses does the Department issue per Year? Please provide a ten-year history.

**Response:** The table below illustrates document issuance, including actual figures from FY 2001-02 through FY 2009-10, and projections for FY 2010-11 through FY 2012-13.

Photo Identification Documents							
Fiscal Year	Driver's Licenses	Commercial Driver's Licenses	Identification Cards	Driving Permits	Extensions	Other <sup>1</sup>	Total
FY 2000-01 <sup>2</sup>	849,074	N/A	217,375	142,774	N/A	N/A	1,209,223
FY 2001-02	1,049,124	36,445	155,102	176,963	3,949	50	1,421,633
FY 2002-03	1,012,217	42,237	127,405	158,479	4,286	21	1,344,645
FY 2003-04	740,862	51,937	116,953	165,428	3,753	10	1,078,943
FY 2004-05	862,739	43,922	110,987	152,195	3,571	10	1,173,424
FY 2005-06	759,765	38,458	112,873	141,977	3,622	15	1,056,710
FY 2006-07	584,006	44,436	135,514	132,429	2,393	6	898,784
FY 2007-08	576,877	52,902	126,540	149,866	2,205	3	908,393
FY 2008-09	546,390	46,210	118,231	153,606	1,890	5	866,332
FY 2009-10	611,637	36,744	111,897	143,099	2,458	1	905,836
FY 2010-11 Projections	816,861	37,333	125,562	144,460	2,458	0	1,126,673
FY 2011-12 Projections	1,072,179	46,264	142,185	144,074	2,458	0	1,407,161
FY 2012-13 Projections	1,076,905	44,105	149,475	144,199	2,458	0	1,417,141

<sup>1</sup>Includes Motorcycle Licenses, Probationary Driver's Licenses and Commercial Driver's License Tests.

<sup>2</sup>Data from FY 2000-01 was obtained from the Colorado Department of Revenue 2001 Annual Report. All other actual fiscal years are available through the driver's license system. As a result, data reported for FY 2000-01 may not be directly comparable to later years.

**2:35-2:45 GENERAL TOPICS**

21. Explain the FY 2009-10 capital development request for the purchase of equipment for remittance processing.

**Response:** In 2008, the Department submitted a preliminary request to purchase commercially available off-the-shelf software and to lease hardware to replace its current, antiquated remittance processing system. New remittance systems can capture images of checks, tax returns and other documents and will concurrently extract tax data from the documents and banking information from the checks. The request was not recommended for funding by the Governor's Office or the Capital Development Committee, based on lack of available funds. Currently, the Department is reviewing options to save taxpayer money and protect taxpayer records. At this time, no additional requests have been submitted for review by the General Assembly.

22. What is happening with Department of Revenue portion being moved out of Pueblo? Who made this decision and why?

**Response:** No data entry or imaging work is being moved from Pueblo at this time. It is important to note that if the Department of Revenue were to replace its remittance processing system, no jobs will be moved from Pueblo to Denver; rather, manual processes will be automated at both the Department of Revenue and the Department of Personnel and Administration. It is anticipated that automating manual processes will result in a savings to taxpayers. As part of its effort to explore ways to save the state taxpayers' money, the Department requested and received a waiver from services provided by the Department of Personnel and Administration. This is one step in a long process to obtain a new remittance processing system. As has been discussed, the Department estimates that the State could save a considerable amount of money if it were to automate data entry and imaging processes.

The Department of Personnel and Administration is the entity responsible for granting waivers from its services, as set forth in Section 24-30-1104 (1) (I), C.R.S.

23. What is the need for the Department of Revenue to receive a waiver from the executive order regarding the use of the Integrated Document center in Pueblo?

**Response:** The Department of Revenue needs to replace its aging remittance processing infrastructure. Newer remittance processing systems have the capability to not only remit payments to banks, but also to automatically identify and pull relevant data from returns and to digitally image documents at the same time.

The Department of Revenue is appropriated approximately \$4.5 million General Fund for remittance and document processing. The budget is sufficient to process all paper checks and payments (2.8 million checks worth \$3.2 billion annually) and to capture a percentage of the relevant data and image documents for storage. Of the \$4.5 million budgeted for this process, 50 percent of the costs are for manual data entry and back-end imaging, which are the largest expenditures for this process.

24. Will the equipment that is being purchased in that request be located in the Data Center in Pueblo? If not, where will it be located?

**Response:** No funding has been appropriated to purchase a new remittance processing system and the Department has not submitted a request to the General Assembly to do so for FY 2011-12. If, in the future, funding for a new remittance processing system is provided, it will be located at the Department of Revenue's State Capitol Annex building. The Department of Revenue is the State's subject matter expert concerning remittance and banking money.

25. Please provide information of the process of preparing documents that are going into the imaging system. Are the documents stored and if not, are they shredded?

**Response:** All imaging preparation is performed by Department of Personnel and Administration staff and occurs at the Pueblo location. The Department of Revenue tracks the location of documents by bar code scanning that serves as the control point at all times. The Department of Revenue compares paper documents and their images for quality control to ensure each return was imaged properly. Documents are then stored for a short period of time, generally between 60 and 90 days. Document destruction is handled by a private vendor under contract with the Department of Revenue.

26. Please explain the Department of Revenue's process for document security (both paper and electronic).

**Response:** The Department secures paper documents by limiting access to the Department's offices and work areas. Visitors can only access the building through the front door and require escorts at all times. Access is also controlled by proximity card. Internally, documents are tracked by batch and serial number. However, documents leave the Department of Revenue's custody twice in the process, first for data entry and second for imaging. Once documents are image archived, the Department contracts with an outside vendor to securely shred tax returns.

27. What was the "Blue Book" estimate on the amount of revenue for Amendment 50? How far below the original estimate are the actual estimates coming in?

**Response:** Legislative Council provided the following revenue estimates for Amendment 50 on behalf of the Limited Gaming Division in March 2008:

Year 1 (FY 2009-10) = \$39 million  
Year 2 (FY 2010-11) = \$44 million  
Year 3 (FY 2011-12) = \$63 million  
Year 4 (FY 2012-13) = \$71 million  
Year 5 (FY 2013-14) = \$86 million

In year 1, actual revenue totaled \$9,915,588 or \$29,084,412 below the original blue book projection.

Based on the calculation set forth in 47.1-2403, C.R.S., revenue for a particular year can only be determined at the end of the fiscal year. There is no method for calculating year-to-date revenue attributable to Amendment 50. However, year-to-date gaming tax revenue for FY

2010-11 is down 2.9% overall. If that trend continues, the Division estimates FY 2010-11 Amendment 50 revenue will total approximately \$9.6 million.

28. What is the Department of Revenue Position on the funding of programming costs for session legislation?

**Response:** The Department's primary concern is receiving the necessary funding for the programming costs related to enacted legislation. The Department provides estimated costs for all legislative proposals that require programming changes in its fiscal note submission to Legislative Council. In the 2010 Session, the Department responded to 153 pieces of legislation, 57 of which included a programming impact. However, only 26 of those bills ultimately require resources to perform programming changes in FY 2010-11. As such, the Department has submitted a supplemental request to adjust the Programming Costs for Session Legislation line item for these bills this fiscal year.

The line item was created through an agreement between the Joint Budget Committee Staff, Legislative Council Staff, Office of State Planning and Budgeting Staff, and the Department. The current process requires the Department to submit an annual supplemental request to adjust the appropriation for legislative programming costs. The process provides an opportunity for the Department to identify economies of scale in programming changes for similar types of legislation.

If the General Assembly provides funding through the appropriations process, similar to all other departments, bills with fiscal impacts generated from programming changes will require a hearing before the Appropriations committees. Additionally, economies of scale for similar types of legislation would not be recognized in this process. However, fiscal notes and corresponding appropriations clauses would identify the full cost of each bill requiring programming changes.

It should be noted that beginning in FY 2010-11, the rate and estimated hours for legislative programming changes will be determined by the Governor's Office of Information Technology, rather than by the Department.

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

1. Please provide a table comparing the actual number of department FTEs in FY 2000-01 and the requested number of department FTEs in FY 2011-12, by division or program.

**Response:** The following table illustrates actual and appropriated FY 2000-01 FTE compared to request FY 2011-12 FTE.

Division	FY 2000-01 Appropriated	FY 2000-01 Actual	FY 2011-12 Request	Appropriation Difference
Executive Director's Office	42.0	40.5	48.8	6.8
Central Department Operations Division	134.6	125.7	104.6	(30.0)
Information Technology Division*	122.5	110.8	2.2	(120.3)
Taxation Business Group	316.6	311.4	352.8	36.2
Division of Motor Vehicles	450.6	431.3	448.6	(2.0)
Motor Carrier Services Division	155.0	148.7	133.2	(21.8)
Enforcement Business Group*	176.0	167.7	304.0	128.0
State Lottery Division	128.0	124.1	126.0	(2.0)
<b>Department Total</b>	<b>1,525.3</b>	<b>1,460.2</b>	<b>1,520.2</b>	<b>(5.1)</b>

\*The FY 2011-12 requested FTE in the Information Technology Division reflect the reduction of 110.7 FTE for the Office of Information Technology Consolidation per SB 08-155, and the FY 2011-12 requested FTE for the Enforcement Business Group includes 106.8 FTE for the Regulation and Enforcement of Medical Marijuana Enforcement per HB 10-1284. The FY 2011-12 requested FTE for the Enforcement Business Group has been reduced by 6.0 FTE for the Bingo ballot measure that failed.

2. Please provide a table comparing the actual number of FTEs in FY 2008-09 and FY 2009-10 to the appropriated level of FTE for each of those fiscal years, by division or program.

**Response:** The following table compares actual FTE to appropriated FTE for FY 2008-09 and FY 2009-10.

Division	FY 2008-09 Appropriated	FY 2008-09 Actual	FY 2009-10 Appropriated	FY 2009-10 Actual*
Executive Director's Office	48.7	44.4	47.9	42.8
Central Department Operations Division	109.9	106.7	103.6	99.3
Information Technology Division	113.6	105.1	108.8	99.0
Taxation Business Group	326.4	303.9	334.5	289.8
Division of Motor Vehicles	444.3	419.7	447.2	405.3
Motor Carrier Services Division	144.2	137.8	143.5	136.0
Enforcement Business Group	183.7	168.3	179.2	171.8
State Lottery Division	126.0	115.5	126.0	113.1
<b>Department Total</b>	<b>1,496.8</b>	<b>1,401.4</b>	<b>1,490.7</b>	<b>1,357.1</b>

\*Underutilized FTE in FY 2009-10 is primarily due to a backlog of vacant positions from the FY 2008-09 hiring freeze, along with budget balancing actions. Other contributing factors include high turnover and increased retirements.

3. Why does the percentage of refunds by electronic funds transfer (EFT) differ from the percentage of tax forms filed electronically? Is this due to different marketing strategies by the Department?

**Response:** Comparing the percentage of electronically filed taxes and refunds requested by electronic funds transfer is not feasible because they are different data sets and are not necessarily correlated. Taxpayers who opt for electronic filing may not necessarily elect to receive their refunds by direct deposit, and the opposite is also true. The Department does perform outreach on electronic filing, especially with tax preparers and individual businesses. Electronic filing and direct deposit are both promoted on Department forms and booklets, in email communications, and on the Department's taxation information website ([www.taxcolorado.com](http://www.taxcolorado.com)).

4. Please provide a list of all counties that are in the vehicle emission testing program and how many testing (both for diesel and gasoline) stations there are in each county. How many vehicles are tested annually?

**Response:** Currently there are emission testing stations in ten counties. Of those, five counties are fully covered by emissions testing regulations and five counties are partially covered (see table below). All stations are privately owned and licensed by the state. The Department is responsible for licenses, audits, and enforces the applicable laws for vehicle emissions. In 2008, there were 997,209 total initial emission inspections performed including 937,389 gasoline vehicles and 59,820 diesel vehicles. In 2009, there were 1,019,433 total initial emission inspections performed including 955,757 gasoline vehicles and 63,676 diesel vehicles.

Emission Testing Stations by County							
County	Type of Program	Envirotest Stations <sup>1,3</sup>	Independent Stations <sup>1,4</sup>	Fleets Stations <sup>1,5</sup>	Diesel Stations <sup>2</sup>	# of Stations	# of Lanes
<b>Full Counties</b>							
Boulder	Gas/Diesel	2	0	2	2	6	13
Broomfield	Gas/Diesel	1	0	0	2	3	6
Denver	Gas/Diesel	2	2	9	5	18	28
Douglas	Gas/Diesel	3	0	0	3	6	13
Jefferson	Gas/Diesel	4	2	2	2	10	32
<b>Total Testing Stations in Full Counties</b>		<b>12</b>	<b>4</b>	<b>13</b>	<b>14</b>	<b>43</b>	<b>92</b>
<b>Partial Counties</b>							
Adams	Gas/Diesel	1	0	4	6	11	17
Arapahoe	Gas/Diesel	1	0	5	4	10	17
El Paso	Diesel	0	0	0	2	2	3
Larimer	Gas/Diesel	2	0	0	7	9	19
Weld	Gas/Diesel	2	0	0	4	6	10
<b>Total Testing Stations in Partial Counties</b>		<b>6</b>	<b>0</b>	<b>9</b>	<b>23</b>	<b>38</b>	<b>66</b>
<b>Total Testing Stations</b>		<b>18</b>	<b>4</b>	<b>22</b>	<b>37</b>	<b>81</b>	<b>158</b>
<sup>1</sup> Inspect gasoline vehicles only.							
<sup>2</sup> Diesel stations test light duty, heavy duty, or both light and heavy duty diesel vehicles only.							
<sup>3</sup> Envirotest stations are multiple-lane facilities that do the bulk of all gasoline testing for light duty, heavy duty and 1981 and							
<sup>4</sup> Independent stations are licensed to do testing on 1981 and older vehicles only.							
<sup>5</sup> Fleet Stations are licensed to test gasoline fleet vehicles for entities owning/operating fleets and do no retail testing.							

5. How does the Hazardous Materials Permitting Program differ from the Nuclear Materials Transportation program?

**Response:** The Hazardous Materials Permitting program and the Nuclear Materials Transportation program are separate programs that were administered by the Department until HB 10-1113 transferred the responsibility of the Nuclear Materials Transportation program to the Department of Public Safety starting in FY 2010-11. The Department of Revenue continues to oversee the administration, enforcement, and issuance of single trip permits for the Hazardous Materials Permitting program. This program covers materials such as paint, household cleaners, gasoline, fertilizer, battery acid and chlorine. The Department of Public Safety now oversees the Nuclear Materials Transportation program which includes shipments involving radioactive materials, nuclear waste and transuranic waste. The Colorado State Patrol and the Public Utilities Commission are responsible for promulgating rules for permitting and route designation for both programs. The designated routes can be found on the Colorado Hazardous Materials and Nuclear Materials Route Restrictions map attached.

6. What happens to unclaimed Lottery prizes, and is this dictated by statute? Is this handled in the same way as in other states?

**Response:** Pursuant to 24-35-212 (2), C.R.S., "any person who fails to claim a prize which is held by the division or its designee during such time shall forfeit all rights to the prize, and the amount of the prize shall remain in the lottery fund." Therefore, unclaimed prizes increase the proceeds available for distribution to the designated recipients. Every state handles unclaimed prizes differently, but there are several states that treat unclaimed prizes in a similar fashion as Colorado, such as Illinois, Ohio, Oregon, and Pennsylvania.

7. How many members are there on the Limited Gaming Control Commission?

**Response:** There are five commissioners on the Limited Gaming Control Commission, pursuant to Section 12-47.1-301, C.R.S.

8. Please outline any ramifications of eliminating Prizes and PowerBall Prize Variance as a line item in the Lottery.

**Response:** Eliminating the Prizes and Powerball Prize Variance line item from the annual appropriations bill would not have any negative ramifications. Non-Appropriated appropriation codes in COFRS would still be required, and the Lottery would work with the Office of the State Controller to set the appropriation amounts to reasonable levels each year based on the most recent sales projections.

## APPENDIX A

Colorado Department of Revenue  
Taxpayer Service Division  
09/10

### FYI Sales 4

## Taxable and Tax Exempt Sales of Food and Related Items



The following guidelines should be used to determine whether a food item is exempt from sales tax. Colorado's principal sales tax exemption guideline is based upon what can be purchased for home consumption with food stamps and WIC vouchers. (WIC is the federal supplemental food program for women, infants and children.) Colorado statute also imposes other criteria, in addition to the food stamp/WIC guidelines. [Reg. 39-26-102.4.5]

#### **FOOD PURCHASES EXEMPT FROM COLORADO SALES TAX**

Food is defined in Department of Agriculture guidelines 7 U.S.C. section 2012 (g). Exempt items eligible for purchase with food stamps or WIC vouchers include:

1. Food purchased for human consumption at home.
2. Seeds and plants which produce food for human consumption.
3. Food purchased with food stamps or WIC vouchers. (§39-26-707, C.R.S.)

#### **FOOD AND RELATED ITEMS NOT EXEMPT FROM COLORADO SALES TAX**

The Department of Agriculture guidelines prohibit the use of food stamps or WIC vouchers for the purchase of the following items. These items are sales **taxable**:

1. Nonfood items such as pet foods, soaps, paper products and household supplies, grooming items and cosmetics.
2. Alcoholic beverages. (Cooking wine and wine vinegar are exempt.)
3. Cigarettes, Tobacco and tobacco products.
4. Food to be eaten in the store, hot foods ready to eat and any food marketed to be heated in the store.
5. Food preservation equipment and items.
6. Vitamins and medicines. (Prescription drugs are exempt under [Reg. 39-26-717.1].)

#### **ITEMS EXEMPT FROM TAX IF PURCHASED WITH FOOD STAMPS OR WIC VOUCHERS -- BUT TAXABLE WHEN PAID WITH CASH**

The following items, if purchased with food stamps or WIC vouchers/checks are exempt from the 2.9% state sales tax, but are taxable if purchased with cash:

1. Carbonated water marketed in containers.
2. Soft drinks.
3. Chewing gum.
4. Candy
5. Seeds and plants to produce food for human consumption.



6. Prepared salads and salad bar items.
7. Cold sandwiches.
8. Deli trays.

Sales and purchases of food sold through vending machines are exempt from Colorado sales tax.

**NOTE:** Food used by a business or commercial entity, such as coffee served to customers or employees, is subject to state sales tax.

In addition, all food and drink sold by the following establishments are taxable: restaurants, snack shops, carryout shops, pushcarts and other sellers of food and drink as specified in §39-26-104 (1) (e), C.R.S. However, meals provided at no cost or reduced cost to employees of restaurants and other such establishments are exempt if the meal is considered part of the employee's income.

#### **DETERMINING WHETHER LOCAL TAX AND SPECIAL DISTRICT TAXES ARE DUE ON FOOD**

Cities and counties have the option of taxing food. However, if they exempt food from sales tax they must use the same criteria as the state in determining which items are taxable and which are exempt. This includes home-rule cities that administer their own sales tax. Localities that elect to tax food still must exempt purchases made with food stamps or WIC vouchers.

To find out whether a city or county taxes food, retailers should refer to Colorado Sales/Use Taxes (DR 1002). This publication, updated every January and July, lists tax rate information for Colorado cities and counties and indicates which counties and statutory cities have a sales tax exemption for food. The publication can be obtained on our Web site at [www.TaxColorado.com](http://www.TaxColorado.com)

Contact home-rule cities directly to find out if they exempt food from sales tax.

Regional Transportation District (RTD) tax, Scientific and Cultural Facilities District (CD) tax and Metropolitan Football Stadium District (FD) taxes are due on any food item sold within RTD/CD/FD boundaries that is subject to the state sales tax. (The boundaries of these three special districts encompass most of the seven-county Denver metropolitan area.) The DR 1002 provides boundaries and tax rates. If the item is not subject to state sales tax, no RTD/CD/FD tax is due.

The Rural Transportation Authority (RTA) tax is due on any food item sold within the RTA boundaries that is subject to the state sales tax. The DR 1002 will list the various boundaries and tax rates.

All state sales tax and, if applicable, state-collected local and RTD/CD/FD, or RTA taxes must be reported and remitted with the Combined Retail Sales Tax Return (DR 0100).

**Effective March 1, 2010** sales and purchases of nonessential food items and packaging provided with purchased food and beverage items are taxable at the state sales and use tax rate of 2.9%.

Nonessential articles or containers furnished in connection with sale of taxable food. On or after March 1, 2010, a retailer of food, meals, or beverages who purchases nonessential food items or nonessential containers or bags and furnishes the article or container to a consumer in connection with the taxable retail sale of food, meals, or beverages, must pay sales or use tax on the purchase of the nonessential article or container.

**Nonessential articles and containers.** An article or container is nonessential if it is primarily used for the convenience of the consumer and is not necessary to effectuate the sale of food.

Examples of nonessential articles or containers include, but are not limited to, non-reusable:

- utensils
- skewers

- napkins and towelettes
- bibs
- serving trays, platters, and dome lid covers to plates or platters
- placemats, tray liners, and tablecloths
- sacks
- grocery bags
- bags and bag ties for bulk grocery produce or bread
- carryout containers for leftover food sold for immediate consumption
- straws
- toothpicks
- stirring sticks
- cup sleeves
- portion dividers
- single-use baking dishes
- condiments, including ketchup, mustard, relish, and spices that are not incorporated into a prepared meal at the time it is transferred to the consumer but, rather, are provided separately from the transfer of the meal to the consumer, such as at a convenience counter. Condiments sold as food for domestic home consumption (for example, condiment sales sold in grocery stores) are exempt from state sales and use tax.

**Examples of essential articles or containers include, but are not limited to, non-reusable:**

- plates, cups, or bowls (and lids for such items) on, or in which, unwrapped or unpackage hot or prepared food and beverages are served to the consumer;
- Cups used in vending machines dispensing beverages;
- Disposable containers or packaging material\* on, or in which, food is transferred to the consumer, including pizza delivery box, sleeve for French fries, buckets, clamshells or other containers if the retailer cannot transfer the food to the consumer without such article or container. However, a carryout container used by a consumer to carry leftover meals from the restaurant is not essential.

\*packaging material used in a non-essential manner would be taxable. Example: butcher paper used as a table liner would not be considered an essential use.

Articles or containers not furnished to consumer. A retailer is liable for sales or use tax for its purchase, use, storage, or consumption of an article or container, regardless of whether it is essential to the consumer, if the article or container is not transferred to the consumer. An article or container is treated as transferred to the consumer if the food retailer makes the article or container available to consumers on the food retailer's premises.

**Examples of non-transferred articles include, but are not limited to:**

Reusable articles such as glassware, ceramic plates, cloth napkins, and silverware;

- Non-reusable articles the retailer uses to cook or store food, such as plastic storage wrap for storage, aluminum foil used primarily for cooking, food labels, single use baking dish, and cooking tray liners.

**Taxable Food.** Articles or containers that are essential to the consumer and, therefore, otherwise exempt under this regulation, may be taxable if the purchase of the food by the consumer is not subject to tax.

**Example: Free Samples.** For example, free beverage samples furnished in disposable paper cups; food furnished with napkins, or with disposable utensils. In such cases, there is no retail sale from the food retailer to the consumer and there is no tax due on the transfer of the free article to the consumer. However, the retailer is responsible to pay the tax on both the food and the container.

**Separate charge for essential article or container.** Sales of an article or container by a food retailer to a consumer is subject to tax, regardless of whether the article or container is essential to the consumer, if the food retailer separately states on the consumer's invoice a charge for such article or container or if the food retailer separately sells the article or container for a charge and not as part of a retail sale of food.

**Example 1: A theater sells a canned beverage and cup for a single charge.** Prior to March 1, 2010, the theater could purchase the cup from suppliers as an exempt wholesale purchase for resale. After March 1, 2010, the theater must pay sales or use tax on its purchase of cups from suppliers.

**Example 2: Same facts as Example No. 1, except the theater sells non-reusable cups to consumers who do not also purchase a beverage.** Theater may purchase such cups as an exempt wholesale purchase and must collect sales tax on the charge for the cup.

**Example 3: Airport food retailer separately charges for food and disposable utensils used by the consumer.** Retailer may purchase the utensils from suppliers as an exempt wholesale purchase for resale to consumer and must collect sales tax on the sale of utensils to the consumer.

**Example 4: Food retailer sells plastic bottles or cups with beverage for a single charge, but the plastic bottle is designed for reuse by the consumer.** Retailer may purchase the reusable bottle or cup from the supplier as an exempt wholesale purchase and collect sales tax from the consumer.

**Who collects and remits this tax?** The vendor or supplier of the items known to be nonessential (forks, napkins, lids, straws) is responsible for charging and remitting the sales tax. For those items that may be essential (paper plates used in the restaurant), then become nonessential (paper plates provided along with food already in containers), the restaurant/retailer using or providing those items is responsible for remitting use tax on those items.

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed and/or approved these FYIs.