HB10-1193

Colorado Legislative Council Staff Fiscal Note

FINAL FISCAL NOTE

Drafting Number:	LLS 10-0739	**Date:**	August 18, 2010
Prime Sponsor(s):	Rep. Pommer Sen. Heath	**Bill Status:**	Signed into Law
		Fiscal Analyst:	Fiona Sigalla (303-866-3556)

TITLE: CONCERNING THE COLLECTION OF SALES AND USE TAXES ON SALES MADE BY OUT-OF-STATE RETAILERS, AND MAKING AN APPROPRIATION THEREFOR.

Fiscal Impact Summary	FY 2009-2010	FY 2010-2011	FY 2011-2012
State Revenue General Fund	$20,000	$200,000	$12.5 million
State Expenditures General Fund		$161,584	$85,959
FTE Position Change		1.0	1.0
Effective Date: The bill was signed by the Governor on February 24, 2010. Effective for sales occurring on or after March 1, 2010.			
Appropriation Summary for FY 2010-2011: See the State Appropriations section.			
Local Government Impact: Undetermined revenue gain.			

Summary of Legislation

This bill clarifies the sales and use tax responsibilities of retailers that are not currently collecting sales tax and increases the Department of Revenue's enforcement power with regards to collecting these taxes. There are two sections of the bill.

The first section affects out-of-state retailers that are part of a "controlled group of corporations", which is an IRS designation that defines firms that are legally related to each other. Retailers must collect and remit state and local sales tax from Colorado residents if they are part of a controlled group that has a retailer with a physical presence in the state, and that retailer engages in constitutionally sufficient solicitation in Colorado.

The second section of the bill affects retailers that do not collect Colorado sales tax. These retailers must notify Colorado purchasers that the State of Colorado requires the purchaser to file a use tax return if sales tax has not been paid on taxable purchases. The retailer is also required to send notification to all Colorado purchasers by January 31 of each year showing the total amount paid by the purchaser from the retailer in the previous calendar year. This information must also be filed annually with the Department of Revenue. Retailers will be fined $5 per customer for failing to provide notice of the tax requirement to customers, and $10 per customer for failing to provide notice of the annual sales amount to the Department of Revenue.

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The Executive Director of the Department of Revenue is given subpoena power to enforce the provisions of this bill.

The Department of Revenue is required to account for the revenue attributable to this bill, and make quarterly reports to the legislature about the revenue gain to the extent information is available. The bill directs that no new revenue be used to fund additional state FTE, except for any state employees necessary to enforce the provisions of HB 10-1193.

Background

Colorado residents have always been required to remit sales or use tax on taxable purchases from out-of-state firms. Customers must declare tax obligations and remit payment voluntarily if retailers do not collect sales tax. House Bill 10-1193 creates mechanisms to improve sales and use tax compliance from purchasers who use out-of-state retailers or retailers who do not otherwise collect sales tax.

State Revenue

General Fund revenue will increase by an estimated $20,000 in FY 2009-10, $200,000 in FY 2010-11, and $12.5 million in FY 2011-12. The revenue expected in FY 2009-10 and FY 2010-11 is mostly the result of tax collected from the first section of the bill, related to retailers who are a part of a group of controlled corporations. Revenue generated in FY 2011-12 and beyond is largely driven by estimated consumers use tax collections from the second section of the bill. The revenue estimate for FY 2009-10 represents a partial-year impact from tax incurred between March 1, 2010, and June 31, 2010. Expectations for tax collections in FY 2011-12 will be lower than in later years because awareness of the law and enforcement compliance are expected to be phased in over a few years.

Colorado is expected to collect about 60 percent of uncollected state sales and use tax obligations from out-of-state retailers as a result of the improved enforcement provisions in House Bill 10-1193. This reduced collection rate is due, in part, to a de minimis requirement in the regulation that exempts retailers making less than $100,000 in total gross sales in Colorado.

The estimate for total uncollected sales and use tax is based on a report by Donald Bruce, William F. Fox, and LeAnn Luna of the University of Tennessee.[1] The state's share of sales tax collections are 43.3 percent of total taxes based on state and local sales tax collections from 2007 Census of Government Finance, U.S. Census Bureau. Taxes attributable to Business-to-Consumer transactions is estimated at 49 percent.

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[1] "State and Local Government Sales Tax Revenue Losses from Electronic Commerce" by Donald Bruce, William F. Fox, and LeAnn Luna. The University of Tennessee, April 13, 2009.

State Expenditures

The bill increases state General Fund expenditures in the Department of Revenue (DOR) by an estimated **$161,584 and 1.0 FTE in FY 2010-11** and **$85,959 and 1.0 FTE in FY 2011-12**. These costs are shown in Table 1 and described below.

Table 1. Expenditures Under HB10-1193

Cost Components	FY 2010-11	FY 2011-12
Personal Services	$91,584	$65,959
FTE	1.0	1.0
Legal Services	40,000	20,000
Online Tax Payment System	30,000	-
TOTAL	**$161,584**	**$85,959**

The DOR will need additional staff support to seek out and investigate online retailers, send letters, respond to calls, and build a database to track information. This workload is expected to require 0.5 FTE per year. House Bill 10-1193 provides DOR an additional 0.5 FTE for policy and legal research to respond to potential legal actions by online retailers, as well as temporary staff to answer questions from taxpayers for the first 2 years. An online tax payment system will be developed to make it easier for consumers to pay the taxes owed for online purchases. This system will be developed by the State Internet Portal Authority under contract with the DOR for $30,000 in FY 2010-11.

Legal assistance from the Department of Law was expected to cost $40,000 in FY 2010-11 and $20,000 in FY 2011-12, and these dollars were appropriated. However, on June 30, 2010, the Direct Marketing Association filed a complaint for declaratory and injunctive relief against the Executive Director of the DOR in the United States District Court. As a result of this litigation, the DOR anticipates pursuing a supplemental for additional funding.

Local Government Impact

This bill will result in an undetermined increase in revenue for local government entities because online retailers will collect local sales tax in addition to state sales tax.

State Appropriations

In FY 2010-11, the Department of Revenue requires an appropriation of $161,584 and 1.0 FTE. Of that amount, $40,000 should be reappropriated to the Department of Law. As enacted, the bill includes these appropriations.

Departments Contacted

Ex. 3

Revenue Law