SB11-056

Colorado Legislative Council Staff Fiscal Note

FINAL FISCAL NOTE

Drafting Number:	LLS 11-0417	**Date:**	May 16, 2011
Prime Sponsor(s):	Sen. Lundberg Rep. Balmer	**Bill Status:**	Postponed Indefinitely
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TITLE: CONCERNING A USE TAX EXEMPTION FOR PURCHASES OF TANGIBLE PERSONAL PROPERTY MADE BY COLORADO PURCHASERS FROM OUT-OF-STATE RETAILERS THAT DO NOT COLLECT COLORADO SALES TAX.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue General Fund	at least ($146.9 million)	at least ($196.5 million)
State Expenditures General Fund	($306,455)	($32,980)
FTE Position Change	(1.0)	(0.5)
Effective Date: The bill was postponed indefinitely by the Senate State, Veterans, and Military Affairs Committee on February 14, 2011.		
Appropriation Summary for FY 2011-2012: See the State Appropriations section.		
Local Government Impact: See the Local Government Impact section.		

Summary of Legislation

This bill exempts from use tax the storage, use, or consumption of any tangible personal property purchased by Colorado purchasers from an out-of-state retailer that does not collect Colorado sales tax. This bill also eliminates the aviation use tax that is collected from out-of-state vendors who sell fuel to users in Colorado. Use tax for within-state purchases is not affected by this bill. The bill would affect purchases made after August 10, 2011.

This bill will eliminate the out-of-state use tax for special districts that have a statutory cross-reference to the state tax base, such as the Football Stadium District (FSD), Regional Transportation District (RTD), Scientific and Cultural Facilities District (SCFD), and Regional Transportation Authorities (RTAs). The intra-state use tax will remain for these districts.

Background

Under current law, Colorado residents are required to pay sales or use tax on non-exempt tangible personal property that is sold, leased, or delivered in Colorado for use, storage, distribution, or consumption in the state. Use tax, also referred to as "consumer use tax," is payable to the state when sales tax is due but has not been collected. This occurs when the seller did not collect sales tax, such as when using an out-of-state retailer who does not collect Colorado sales tax on a taxable item.

Colorado's state use tax rate is the same as the sales tax rate—2.9 percent. For individuals, use tax is due by April 15 for the prior tax year. For businesses, tax may be remitted annually (due on January 20 of the following year), if the total tax due is less than $300 per year. A monthly return (due by the 20th of the following month) must be filed when tax due totals $300 or more at the end of the any month.

State Revenue

General fund revenue will decline **at least $149.6 million in FY 2011-12** and **at least $196.5 million in FY 2012-13.** The revenue impact for FY 2011-12 would be for 11 months because July 2011 tax collections are for sales made in June 2011. This estimate was generated using the Legislative Council Staff December 2010 forecast for use tax revenue.

Some use tax is collected as sales tax on the sales tax form. This is assumed to be primarily intra-state use tax that will not be affected by the bill and was not included in the revenue estimate.

The fiscal impact does not include an expected reduction in sales tax revenue because there is expected to be an increase in individuals and businesses purchasing items out of state to avoid paying taxes on the purchase. The cost savings from purchasing out of state will be largest for big-ticket items, such as motor vehicles, boats, and big trucks, so the loss of revenue could be nontrivial. It is expected that out-of-state vendors will vigorously advertise this cost saving.

State Expenditures

This bill decreases state General Fund expenditures by **$306,455 and 1.0 FTE in FY 2011-12** and **$32,980 and 0.5 FTE for FY 2012-13**. This reduction includes decreases to both the Department of Revenue and the Department of Law.

Department of Revenue: will incur one-time expenses in FY 2011-12 to notify taxpayers that out-of-state purchases will no longer be subject to the use tax. The department anticipates 8 hours of programming costs to modify tax collection systems at a cost of $592.

The Department of Revenue will have an expenditure reduction of $65,959 in FY 2011-12 and $32,980 for FY 2012-13 as a result of reduced workload from elimination of use tax compliance efforts and the likely dismissal of litigation in the Direct Marketing Association (DMA) v. Huber case, which is challenging House Bill 10-1193. These funds had been appropriated to the department with House Bill 10-1193 to provide additional staff support. The department was appropriated a permanent 0.5 FTE to maintain records regarding online retailers and 0.5 FTE for FY 2010-11 and FY 2011-12 for policy and legal research.

Department of Law: ($241,088) in FY 2011-12. Assuming the dismissal of the DMA v. Huber case, legal services and litigation costs for the Department of Law will be reduced by $241,088 for FY 2011-12. These costs are paid by the Department of Revenue.

Table 1. Expenditures Under SB11-056

Cost Components	**FY 2011-12**	**FY 2012-13**
Personal Services	($65,959)	($32,980)
FTE	1.0	0.5
Programming Costs	$592	
Legal Services	($241,088)	
TOTAL	**($306,455)**	**($32,980)**

Local Government Impact

Statutory local governments will not be impacted by this bill because they can not collect use tax under current law. Special districts that have a statutory cross-reference to the state tax base, such as the Football District (FD), Regional Transportation District (RTD), Scientific and Cultural Facilities District (SCFD), and Regional Transportation Authorities (RTAs), will have a revenue loss because they will be prohibited from collecting inter-state use tax. The RTD estimates this revenue loss at $33 million for FY 2011-12. The intra-state use tax will remain for these districts.

State Appropriations

For FY 2011-12, the General Fund appropriation to the Department of Revenue should be reduced by $306,455 and 1.0 FTE. Reappropriated funds to the Department of Law should be reduced by $241,088.

Departments Contacted

Revenue Special Districts RTD Law