HB10-1193

JBC STAFF FISCAL ANALYSIS
SENATE APPROPRIATIONS COMMITTEE

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

Prime Sponsors:	Representative Pommer	JBC Analyst:	David Meng
	Senator Heath	Phone:	303-866-2061
		Date Prepared:	February 8, 2010

Summary of Amendments Made to the Bill After the 02/08/10 Legislative Council Staff Revised Fiscal Note Was Prepared

None.

JBC Staff Concurrence with Legislative Council Staff Fiscal Note

XXX	**Concurs**		**Does Not Concur**		**Updated Analysis**

Amendments/Appropriation Status

The bill, as amended by the Appropriations Committee, requires but does not contain an appropriation clause. Staff has prepared amendment **J.005** (attached) that amends the Appropriations Committee report dated February 5,2010 to add a provision appropriating $131,584 General Fund and 1.0 FTE to the Department of Revenue in FY 2010-11 to enforce the provisions of this bill. Of this amount, $40,000 will be reappropriated to the Department of Law for anticipated expenses defending the State from lawsuits by retailers.

Of the FTE appropriated to the Department of Revenue, 0.5 FTE will be ongoing and will seek out and investigate retailers, sending out letters, responding to calls and building a database to track information. The second 0.5 FTE, which will be for two years, will assist with policy and legal research to respond to potential legal action by retailers.

The bill will require $30,000 General Fund for programming costs identified in the attached Legislative Council Staff Fiscal Note dated February 5, 2010 to develope an on-line tax payment system. The Department of Revenue does not require an appropriation for the programming costs in this bill because it is anticipated that the FY 2010-11 Long Bill will include an appropriation to the Department of Revenue to implement legislation that requires computer programming hours.

Bill Sponsor Amendments

Sponsor amendment **L.031** (attached) strikes the Senate Finance report dated February 4, 2010 and replaces it with the following changes to the reengrossed bill:

- Specifies that a retailer that does not collect Colorado sales tax and is part of a "controlled group of corporations" that has a "component member" that has a retail presence in the state is presumed to be doing business in the state. Defines the terms "controlled group of corporations" and "component member" as having the same meaning as set forth in the Federal Internal Revenue Code of 1986, as amended. Provides that the retailer may rebut the presumption by proving that the component member with an in-state presence did not engage in sufficient solicitation on behalf of the retailer that does not collect Colorado sales tax.

- Requires a retailer that does not collect Colorado sales tax to notify Colorado purchasers that sales or use tax is due on all purchases made from the retailer and the purchaser is required to file a sales or use tax return. Provides for a penalty of $5 for each failure by the retailer to provide the notification.

- Requires a retailer that does not collect Colorado sales tax to notify Colorado purchasers by January 31 of the year following any purchases made from the retailer that sales or use tax is due. Specifies that the notice shall be a separate first class mailing and not be included with other shipments.

- Provides authorization for the Department of Revenue to require a retailer that does not collect Colorado sales tax to notify the Department of Revenue through an annual statement of purchases made by each Colorado resident summarizing the total Colorado purchases made by each purchaser. This statement must be made by March 1 of each year and if the retailer's total Colorado sales exceed $100,000 in a year, that report must be by magnetic media or another machine readable form. Provides a penalty of $10 for each violation.

- Provides an exception from the provision in the reengrossed bill prohibiting the State from hiring FTE with moneys from increased state revenues derived from this bill. The exception allows the Department of Revenue to hire employees necessary to enforce the provisions of this bill.

This amendment incorporates elements of the Finance Committee Report regarding the reporting requirements of retailers that do not collect Colorado sales or use tax. Legislative Council Staff, in its Memorandum dated February 8, 2010, estimates that this amendment will not change the bills revenues or expenditures. Based on information available to date, JBC staff agrees with this assessment. **As such, J.005 is still required if L.031 passes.**