

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated May 3, 2011)

Drafting Number: LLS 11-1047

Date: May 10, 2011

Prime Sponsor(s): Sen. Tochtrop
Rep. Becker

Bill Status: House Finance

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TITLE: CONCERNING CLARIFICATION OF THE STATE SALES TAX EXEMPTION FOR SALES OF MEDICAL PRODUCTS.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue General Fund	at least (\$240,582)	at least (\$246,597)
State Expenditures General Fund	\$33,654	\$8,390
FTE Position Change	0.3	0.2
Effective Date: July 1, 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 reengrossed bill would exempt from sales tax prescription and nonprescription drugs and materials when furnished as part of professional services provided to a patient or client by a *licensed medical provider* who is not a physician. The bill defines licensed provider as any person authorized to prescribe drugs. This includes an advance practice nurse, a dentist, an optometrist, a physician, a physician assistant, a podiatrist, and a veterinarian. For example, this bill would exempt drugs and materials furnished at medical spas, walk-in clinics, and veterinarian offices.

Under current law, all prescription drugs purchased with a written prescription are exempt from sales tax. When prescription and nonprescription drugs and materials are furnished to the patient without a prescription, these items are exempt from sales tax only when furnished by a *licensed physician*. This bill would broaden the sales tax exemption to include prescription and nonprescription drugs and materials when furnished by a licensed provider.

The bill also exempts sales of therapeutic devices, appliances, or related accessories, with a retail value of more than one hundred dollars, sold to correct or treat a human physical disability or surgically created abnormality when sold in accordance with a written recommendation from a licensed provider. This could include paraphernalia used with medical marijuana.

State Revenue

Sales tax revenue to the General Fund will decrease at least **\$240,582** in FY 2011-12 and at least **\$246,597** in FY 2012-13.

Revenue estimates are based on the average amount of household expenditures in the western region of the United States on *nonprescription* drugs. These data were obtained from the 2006-2009 Consumer Expenditure Surveys published by the U.S. Bureau of Labor Statistics. The number of households in Colorado projected by the State Demography Office was used to estimate the total statewide amount of household purchases. According to these data, households in Colorado spend an average of about \$79 annually on nonprescription drugs. Five percent of these purchases, or \$3.94 per household, is assumed to be affected by this bill.

This estimate does not include the following:

- purchases of therapeutic devices, appliances, or related accessories, with a retail value of more than one hundred dollars, that are sold to correct or treat a human physical disability or surgically created abnormality when sold in accordance with a written recommendation from a licensed provider.
- the sale of prescription drugs when furnished by a licensed provider as part of professional services provided to a patient or client. For example, the sale of chemicals or other materials when furnished by a veterinarian or at a medical spa. Many medical spa procedures include an injection or application of chemicals, such as collagen, acids used for chemical peels, and Botulinum Toxin Type A, including Botox and Dysport. State sales taxes on these items account for an estimated \$750,000 per year, although some purchases are already exempt. This estimate is based on an analysis of U.S. expenditures on non-surgical procedures from the American Society for Aesthetic Plastic Surgery. The Department of Revenue indicates that these facilities have not been audited, and it is possible that the state is not currently collecting sales tax on these products;
- the sale of materials, such as bandages and other medical supplies, when recommended by a licensed provider at a retail-based or walk-in clinic; and
- the sale of nonprescribed flu or shingles vaccines administered by non-physicians, such as those obtained from a walk-in clinic or pharmacy. It is possible that sales tax is not currently being collected on these vaccines.

State Expenditures

Department of Revenue: \$33,654 and 0.3 FTE in FY 2011-12 and \$8,390 and 0.2 FTE in FY 2012-13 and ongoing. The Department of Revenue will incur an increase in calls with questions about the change in legislation and an increase in refunds from taxpayers who believe they

were charged in error. Calls and refunds are expected to decrease in the second year, but the increase in workload is expected to be ongoing. First-year personal services will be supplemented by temporary staff. Table 1 summarizes costs incurred by the Department of Revenue.

Table 1. Expenditures Under SB11-263		
Cost Components	FY 2011-12	FY 2012-13
Postage, document imaging, and other operations for processing refunds.	\$770	
Personal Services	\$32,884	\$8,390
FTE	0.3	0.2
TOTAL	\$33,654	\$8,390

Local Government Impact

This bill will result in an undetermined decrease in revenue for local government entities. Many local governments apply their sales tax to the same base of taxable items as the state.

State Appropriations

For FY 2011-12, the bill requires a General Fund appropriation of \$33,654 to the Department of Revenue and 0.3 FTE.

Departments Contacted

Revenue
Regional Transportation District
Special District Association

Law
Colorado Municipal League
Colorado Counties, Inc.