

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated April 11, 2011)

Drafting Number: LLS 11-0829 **Date:** May 10, 2011
Prime Sponsor(s): Sen. Steadman **Bill Status:** House Second Reading
 Rep. Ferrandino **Fiscal Analyst:** Natalie Mullis (303-866-4778)

TITLE: CONCERNING TAX REPORTING, AND MAKING AN APPROPRIATION THEREFOR.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012	FY 2012-2013
State Revenue			
Tax Amnesty Cash Fund		\$10.9 Million	
General Fund and Various Other Cash Funds		1.7 million	
Transfers or Diversions /a			
Transfer from the Tax Amnesty Cash Fund:			
1) to the General Fund		(\$1.2 Million)	
2) to the State Education Fund		(9.7 Million)	
State Expenditures /a			
General Fund	\$12,096		
Cash Funds			
Tax Amnesty Cash Fund		\$483,895	\$69,654
FTE Position Change		0.8 FTE	1.0 FTE
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.			
Appropriation Summary for FY 2011-2012: See the State Appropriations section.			
Local Government Impact: Certain counties, municipalities, and special districts may receive additional revenue due to the amnesty program.			

/a *These amounts are conditional, predicated on the Department of Revenue administering the amnesty program independently without contracting with an independent contractor.*

Summary of Legislation

As amended in the House Finance and Appropriations Committees, this bill requires the Department of Revenue to conduct a tax amnesty program and prepare a biannual tax profile and expenditure report. Each of these requirements is discussed below.

Tax Amnesty Program. From October 1 through November 15, 2011, this bill would allow taxpayers to pay certain overdue taxes, including one-half of any interest due, without being subject to any fine or civil or criminal penalty otherwise provided for by law. In order to qualify, the taxpayer cannot have been billed for the overdue taxes before October 1, 2011, and the tax must have been due for returns or reports that were required to have been filed before December 31, 2010. The

taxpayer would be subject to appropriate civil or criminal penalties if the taxpayer fails to pay the full amount of taxes due either during the amnesty period or an agreed-upon payment schedule or commits willful fraud in filing under the terms of the program. The amnesty program would apply to:

- income taxes;
- sales and use taxes;
- gasoline and special fuel taxes;
- cigarette taxes;
- taxes on tobacco products;
- severance taxes;
- county or municipal sales taxes collected by the Department of Revenue;
- certain local improvement district sales taxes;
- sales and use taxes imposed by the Regional Transportation District, the Denver Metropolitan Scientific and Cultural Facilities District, Metropolitan Football Stadium, and regional transportation authorities; and
- local marketing and promotion taxes and county lodging and rental taxes collected by the Department of Revenue.

The bill allows, but does not require, the Department of Revenue to contract with one or more independent contractors to administer all or part of the tax amnesty.

Tax Profile and Expenditure Report. This bill requires the Department of Revenue to prepare a biannual tax profile and expenditure report by January 1, 2013, and by January 1 every two years thereafter. The bill applies to tax expenditures for the federal income tax and all state taxes, including but not limited to income, sales and use, excise, severance, motor fuel, and gaming taxes. The bill defines a tax expenditure as any provision that provides a:

- definition for gross tax or taxable income;
- deduction;
- exemption;
- credit; or
- differentiated rate for certain persons, types of income, transactions, or property that results in reduced tax revenue.

The bill requires the report to quantify the total impact on state revenue from all tax expenditures for the most recent year for which data are available. To the extent data are available, the report must include the following for each expenditure:

- a statutory citation or other legal authority;
- the year of enactment;
- a description of the tax expenditure;
- an estimate of the impact on state revenue for the most recently completed tax or calendar year for which data are available;
- for tax expenditures created or extended in 2012 or later, a statement of the intended purpose of the tax expenditure;

- for state income tax only, the effect on each income class; and
- for the most recent year for which data area available; any information that was included in the Colorado Tax Profile Study 2001 not otherwise included in the study.

The bill requires that legislation in 2012 or thereafter that creates or extends a tax expenditure include a legislative declaration stating the intended purpose of the tax expenditure.

The department is required to present each year's report to the House and Senate Finance Committees biannually on or before the following February 1, and to publish the report on the department's web site.

State Revenue

State revenue is estimated to increase by \$12.6 million in FY 2011-12 as a result of the tax amnesty program. Of this, \$10.9 million is assumed to be collected via the income, sales, or use tax, with the remainder collected by various other tax sources. It should be noted that it is extremely difficult to predict the amount of revenue that would be generated by an amnesty program, and the actual amount could be below or above this amount. Although taxpayers may request payment arrangements to pay their liabilities, for purposes of this fiscal note it is assumed that all revenue will be collected on or before December 31, 2011.

The Department of Revenue last conducted a tax amnesty program in 2003. The \$12.6 million figure is based on the \$23 million collected during the 2003 amnesty, adjusted for the following reasons. First, it has only been eight years since the last amnesty. In 2003, it had been 17 years since the most recent amnesty before that. Second, the department has a computer system and other programs in place that are better at encouraging a higher level of compliance than in the past. Third, the revenue estimate was reduced by \$2.25 million because the amnesty program will use staff resources that would have otherwise been used to research delinquent taxes, notify taxpayers of the delinquent taxes, and collect them. This revenue is not expected to be collected by the amnesty program because, in most cases, these taxpayers tend not to know they owe the tax before the department notifies them of it.

State Transfers or Diversions

The bill requires that moneys received from the amnesty program related to the income, sales, or use tax that would have otherwise been deposited into the General Fund be distributed as shown in Table 1.

Table 1. Movement of Income, Sales, and Use Amnesty Tax Collections Under SB11-184 /a		
Time-line	Requirement	Dollar Estimate
October 1, 2011 to December 31, 2011	This money is required to be deposited into the newly created Tax Amnesty Cash Fund.	\$10.9 million
December 31, 2011	The balance in the Tax Amnesty Cash Fund is transferred to the State Education Fund: <i>except for the following:</i> \$1 million; intended to cover the costs of administering the amnesty program and the first two tax profile and expenditure studies. Transfer to the Family Medicine Residency Training Program, should a supplemental appropriation be adopted.	\$9.7 million \$1,000,000 \$175,000
June 30, 2012	whatever amount spent to date out of the General Fund to administer the tax amnesty program will be transferred to the General Fund	\$12,096 /b
June 30, 2015	The balance of the Tax Amnesty Cash Fund transferred to the General Fund.	\$232,689 /c

Totals may not sum due to rounding errors.

/a Revenue collected from other tax sources, estimated to be \$1.7 million, are distributed based on current law.

/b This money backfills the General Fund for amnesty program expenses appropriated from the General Fund to the Department of Revenue for FY 2010-11.

/c Although taxpayers may request payment arrangements to pay their liabilities, for purposes of this fiscal note it is assumed that all amnesty revenue will be collected on or before December 31, 2011. This amount is equal to \$1,000,000 less the amount estimated to be appropriated from the Tax Amnesty Cash Fund to the Department of Revenue to administer the amnesty program and the first two Tax Profile and Expenditure Reports. The figure does not include interest earned in the fund.

State Expenditures

Department of Revenue — \$12,096 General Fund in FY 2010-11, \$483,895 Cash Fund and 0.8 FTE in FY 2011-12, \$69,654 Cash Fund and 1.0 FTE in FY 2012-13, and \$67,222 Cash Fund and 1.0 FTE each year thereafter through FY 2015-16. Table 2 summarizes expenditures for Senate Bill 11-184. The cost components for the tax amnesty program and the tax expenditure report are summarized separately below.

Tax Amnesty Program — \$12,096 General Fund in FY 2010-11, \$423,239 Cash Fund in FY 2011-12, and \$2,432 Cash Fund in FY 2012-13. These expenditures are conditional, predicated on the Department of Revenue administering the program independently, without contracting with

an independent contractor. Temporary staff will be required in FY 2010-11 and FY 2011-12 to adjust the Department's computer system to accommodate amnesty return processing, process returns, research the eligibility of and respond to protests on amnesty returns, and answer taxpayer questions. It is anticipated that the Department of Revenue will contract with a marketing company in the amount of \$240,000 in FY 2011-12. Postage, imaging, and data entry costs will occur in FY 2011-12 and FY 2012-13.

Tax Profile and Expenditure Report — \$60,656 Cash Fund and 0.8 FTE in FY 2011-12 and \$67,222 and 1.0 FTE in FY 2012-13 and each year thereafter (Cash Fund through FY 2015-16 and General Fund thereafter). The department will require 0.8 FTE Statistical Analyst III in FY 2011-12 and 1.0 FTE in FY 2012-13 and each year thereafter. This position will be necessary to collect and analyze data, develop incidence and expenditure data, and develop reports as required by the bill. Annual operating costs are estimated at \$760 in FY 2011-12 and \$950 each year thereafter, with a one-time capital cost of \$4,670 for computers and office equipment.

Table 2. Department of Revenue Expenditures Under SB11-184			
Cost Components	FY 2010-11	FY 2011-12	FY 2012-13
Tax Amnesty Program /a			
Personal Services - <i>Temporary Staff</i>	\$12,096	\$101,911	\$0
FTE	0	0	0
Operating Expenses and Capital Outlay	0	321,328	2,432
Tax Profile and Expenditure Report			
Personal Services		\$55,226	\$66,272
FTE		0.8	1.0
Operating Expenses and Capital Outlay		5,430	950
TOTAL General Fund	\$12,096	\$0	\$0
TOTAL Tax Amnesty Cash Fund	0	483,895	69,654
FTE	0	0.8	1.0

/a These expenditures are conditional, predicated on the Department of Revenue administering the amnesty program independently without contracting with an independent contractor to administer the program. If the Department administers the program itself, expenditures will decrease.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 3.

Table 3. Expenditures Not Included Under SB11-184*		
Cost Components	FY 2011-12	FY 2012-13
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$5,680	\$7,100
Supplemental Employee Retirement Payments	2,789	3,943
TOTAL	\$8,469	\$11,043

**More information is available at: <http://colorado.gov/fiscalnotes>*

Local Government Impact

Counties, municipalities, and special districts for which the department collects the following types of taxes or to which the following types of taxes are otherwise distributed may receive additional revenue due to the amnesty program:

- sales and use taxes;
- gasoline and special fuel taxes;
- cigarette taxes;
- severance taxes;
- local marketing and promotion taxes; and
- county lodging and rental taxes.

The department collected a total of \$2.1 million in revenue for local governments during the 2003 amnesty program.

State Appropriations

An appropriation of \$12,096 General Fund should be made to the Department of Revenue in FY 2010-11.

An appropriation of \$483,895 and 0.8 FTE should be made from the Tax Amnesty Cash Fund to the Department of Revenue in FY 2011-12.

Departments Contacted

Revenue Legislative Council Staff