HB11-1293

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL FISCAL IMPACT

Drafting Number:	LLS 11-0069	**Date:**	April 12, 2011
Prime Sponsor(s):	Rep. Stephens; Murray	**Bill Status:**	House Economic & Business Development
		Fiscal Analyst:	Fiona Sigalla (303-866-3556)

TITLE: CONCERNING THE REPEAL OF HOUSE BILL 10-1192 REGARDING THE STATE SALES AND USE TAX OF STANDARDIZED SOFTWARE ON JULY 1, 2012.

Fiscal Impact Summary	FY 2011-12	FY 2012-13	FY 2013-14
State Revenue General Fund		($21.6 million)	($25.2 million)
State Expenditures General Fund	$4,280		
FTE Position Change			
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.			
Appropriation Summary for FY 2011-12: See the State Appropriations section.			
Local Government Impact: See the Local Government Impact section.			

Summary of Legislation

This bill defines tangible personal property to exclude standardized computer software, effectively restoring a sales and use tax exemption that was repealed by House Bill 10-1192. This tax law change would be effective July 1, 2012.

Computer software will be subject to tax only if it is prepackaged for repeated sale or license, governed by a tear-open nonnegotiable license agreement, and delivered to the customer in a tangible medium. Examples of software that will be exempt from sales and use tax as a result of this bill include:

- software downloaded from the internet to the customer's computer or other electronic device;
- software that is manually installed on a consumer's computer or electronic device by a vendor's representative; and
- custom software.

The bill also codifies into statute the Department of Revenue's special regulation related to the sales or use tax attributable to sales of computer software that was in effect prior to the effective date of HB 10-1192.

State Revenue

Sales tax revenue to the General Fund will decrease **$21.6 million** in FY 2012-13 and **$25.2 million** in FY 2013-14. The revenue impact grows at a slower rate than expectations for growth in computer software sales in FY 2012-13 and FY 2013-14 because, under current law, vendors will begin retaining 3.33 percent of the taxes they collect starting July 1, 2011.

Private expenditures on computer software in Colorado are estimated to be $1.9 billion in 2011 based on Gross Domestic Product (GDP) data from the Bureau of Economic Analysis. GDP estimates for personal consumption expenditures and business investment on software for 2009 are assumed to grow by the same percentage as the LCS March 2011 forecast growth for GDP. Colorado's share of U.S. expenditures is assumed to be the same as Colorado's share of personal income.

Colorado sales and use tax collections on *all* software purchases is estimated to be $56.0 million in FY 2012-13. The industry is shifting towards electronic delivery for all sales, and electronic sales are growing rapidly. For example, the Symantec company, which has historically been a packaged goods software business, reports that approximately 85 percent of its consumer software is currently delivered electronically. In addition, many new computer devices, such as tablets and Macbook Airs, do not have optical drives to transfer software to the device by tangible means.

It is assumed that 40 percent of private expenditures are affected by this bill in 2012 and 45 percent in 2013. These assumptions are based on conversations with industry participants and analysts because there are no data available to estimate the share of software sales that are delivered electronically.

This estimate is larger than the Department of Revenue's estimate based on sales tax collections for April through September 2010. The department's estimate excludes use tax from all vendors and sales tax collections from manufacturers that sell software. These manufacturers sell a significant amount of software, both in stores and electronically. Further, sales tax collections for companies included in the estimate are from vendors that collect sales taxes for many other products, making it difficult to extract changes as a result of House Bill 11-1293.

State Expenditures

Department of Revenue: $4,280 in FY 2011-12. The Department of Revenue will incur additional information technology costs of $2,960 to adjust the state's computer systems and one-time expense of $1,320 for postage to notify vendors of the change in sales tax treatment for standardized software. Table 1 summarizes costs incurred by the Department of Revenue.

Table 1. Expenditures Under HB 11-1293	
Cost Components	**FY 2011-12**
Programming to adjust state computer systems	$2,960
Postage to Notify Retailers	$1,320
TOTAL	**$4,280**

Local Government Impact

This bill will result in an undetermined decrease in revenue for local government entities because the exclusion of electronic software from the definition of tangible personal property will affect the tax base of many local governments.

State Appropriations

For FY 2011-12, the bill requires a General Fund appropriation of $4,280 for the Department of Revenue.

Departments Contacted

Revenue	Colorado Counties	Colorado Municipal League
Law	RTD	