

  
*Colorado Legislative Council Staff Fiscal Note*  
**LOCAL**  
**FISCAL IMPACT**

**Drafting Number:** LLS 12-0306

**Date:** January 23, 2012

**Prime Sponsor(s):** Sen. Hodge  
Rep. Szabo

**Bill Status:** Senate Business, Labor and Technology

**Fiscal Analyst:** Harry Zeid (303-866-4753)

**TITLE:** CONCERNING CLARIFICATION OF THE DEFINITION OF FOOD USED IN STATE SALES TAX LAWS TO ENSURE THAT THE TREATMENT FOR SALES TAX PURPOSES OF A FOOD PRODUCT SOLD FOR DOMESTIC HOME CONSUMPTION BY A GROCERY STORE, SUPERMARKET, OR CONVENIENCE STORE DOES NOT CHANGE SOLELY BECAUSE THE STORE SELLS THE FOOD PRODUCT OR MARKETS THE FOOD PRODUCT FOR SALE AS A CONVENIENCE FOOD.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
<b>State Revenue</b>		
<b>State Expenditures</b>		
<b>FTE Position Change</b>		
<b>Effective Date:</b> July 1, 2012, and applies to sales of food occurring on or after that date.		
<b>Appropriation Summary for FY 2012-2013:</b> None required.		
<b>Local Government Impact:</b> See the Local Government section.		

**Summary of Legislation**

The bill modifies the definition of "food" used in state sales tax statutes. The change is meant to ensure that the treatment for sales tax purposes of a food product sold for domestic home consumption by a grocery store, supermarket, or convenience store does not change solely because the store sells the food product or markets the food product for sale as a convenience food. It should be noted that the term "convenience food" is not defined in statute.

**Background**

Under current law, food for home consumption is exempt from state sales tax. Statutory cities and counties do have the option of levying sales tax on food. Laws affecting home rule cities vary on the taxability of food purchased for home consumption. Some home rule cities even have a different sales tax rate for food. Prepared food from restaurants, delicatessens, and convenience stores are taxable by the State if the food is intended to be consumed right away. Taxable food items include prepared sandwiches, salads, and hot foods including those heated at the store.

The bill is intended to ensure that identical food items are taxed consistently regardless of where the item is purchased. However, the Department of Revenue's interpretation of the taxability of food sold by delicatessens, supermarkets, and convenience stores already ensures that identical items are taxed consistently at the state level. Therefore, the bill has no state fiscal impact.

### **Local Government Impact**

It is believed that some home rule cities tax certain types of food items differently based on the place of purchase. The change in the definition of food may result in a revenue reduction for some home rule cities by exempting certain food purchases in certain locations from local sales tax. Specific home rule cities where this might occur have not been identified. This fiscal note will be updated as additional information becomes available.

State sales tax and state-collected city and county sales tax is administered by the Department of Revenue. For these entities, the department treats food purchases that are exempt from taxation in a similar manner regardless of whether the item is purchased in a grocery store or a convenience store. Home rule cities and counties administer their own sales taxes. The department does not mandate sales tax collection rules or ordinances on home rule jurisdictions.

### **Departments Contacted**

Revenue

Local Affairs

Legislative Council Staff