HB13-1295

Colorado Legislative Council Staff Fiscal Note

STATE AND LOCAL CONDITIONAL FISCAL IMPACT

Drafting Number:	LLS 13-0490	**Date:**	April 23, 2013
Prime Sponsor(s):	Rep. Ferrandino Sen. Heath	**Bill Status:**	House Finance
		Fiscal Analyst:	Larson Silbaugh (303-866-4720)

TITLE: CONCERNING THE IMPLEMENTATION OF THE MINIMUM SIMPLIFICATION REQUIREMENTS OF THE PROPOSED FEDERAL "MARKETPLACE FAIRNESS ACT OF 2013" IN ORDER FOR THE STATE TO BE AUTHORIZED BY THE FEDERAL GOVERNMENT TO REQUIRE REMOTE SELLERS TO COLLECT SALES TAX ON TAXABLE SALES MADE WITHIN THE STATE.

Fiscal Impact Summary	FY 2013-14	FY 2014-15	FY 2015-16
State Revenue General Fund*	$0	$73.6 million	$76.3 million
State Expenditures General Fund*	$2.5 million	$289,398	$625,130
FTE Position Change	0.0 FTE	2.8 FTE	8.0 FTE
Effective Date: July 1, 2014, assuming passage of the federal Marketplace Fairness Act.			
Appropriation Summary for FY 2013-2014: See State Appropriations Section.			
Local Government Impact: See Local Government Section.			

**These impacts are conditional on the passage of federal legislation.*

Summary of Legislation

This bill simplifies the collection of sales taxes from out-of-state retailers to meet the requirements of federal legislation known as the "Marketplace Fairness Act." The Department of Revenue would be responsible for collecting and auditing sales taxes from out-of-state retailers, and distributing this revenue to the appropriate local taxing jurisdiction. Home-rule jurisdictions are not allowed to administer sales taxes from out-of-state retailers under the federal act. Sales taxes would be calculated based on the location of where the order was shipped to or the billing address.

The revenue and the expenditures in this fiscal note are conditional on passage of the Marketplace Fairness Act, or a similar bill, at the federal level. The Marketplace Fairness Act would not allow Colorado to collect sales taxes from out-of-state retailers until the first day of the calendar quarter six months after the passage of the federal legislation. The July 1, 2014 effective date is only applicable if the Marketplace Fairness Act passes before December 31, 2013.

Background

The U.S. Supreme Court has ruled that states cannot force out-of-state retailers to collect and remit sales taxes if those retailers do not have a physical presence, or nexus, in the state. The court ruled that only Congress can pass a law requiring out-of-state retailers to collect sales taxes in states where they do not have nexus. If federal law is not changed, then certain provisions in this bill are unenforceable.

The Marketplace Fairness Act is a federal bill that would require out-of-state retailers to collect and remit sales taxes to states that have met minimum simplification requirements for sales tax administration. For out-of-state retailers, the state would have to meet the following requirements:

- create a uniform sales tax base;
- remit sales taxes to a single entity;
- audit sales tax collection through a single entity;
- provide for the electronic remittance of sales taxes;
- provide software to calculate sales taxes anywhere in the state; and
- provide a single form for the remittance of all sales taxes.

Currently, there is not a uniform sales tax base in the state or a single entity responsible for collecting, processing, or auditing sales tax returns. This bill meets the minimum requirements in the Marketplace Fairness Act by meeting these conditions for out-of-state retailers, but it does not change how sales taxes are administered for in-state retailers.

When no sales taxes are collected, but should have been paid, use tax is legally owed on those goods. However, few taxpayers are aware of the use tax requirements. Use tax on goods purchased from out-of-state retailers is rarely paid to the Department of Revenue or local jurisdictions.

State Revenue

If the Marketplace Fairness Act, or similar legislation, becomes law, this bill will allow Colorado to start receiving revenue sales tax revenue from out-of-state retailers. General Fund revenue will increase by **$73.6 million in FY 2014-15** and **$76.3 million in FY 2015-16.**

Based on a recent study by the University of Tennessee, there was an estimated $172.7 million in uncollected state and local sales tax revenue in Colorado from purchases made from out-of-state retailers in 2012. In the most recent year available, the U.S. Census Bureau reported that the state receives about 41.1 percent of sales tax revenue in Colorado, and the remaining 58.9 percent is received by local governments. The state share of uncollected sales and use tax revenue from out-of-state retailers was estimated to be $70.9 million in 2012.

The Marketplace Fairness Act exempts out-of-state retailers with fewer than $1 million in annual sales from having to remit sales taxes to states where they do not have nexus. According to the Department of Revenue, 6.8 percent of retail sales are made by stores with fewer than $1 million in annual sales. Assuming this percentage applies to out-of-state purchases, about $66.1 million in sales tax revenue would have been collected from out-of-state retailers with over $1 million in sales in 2012.

This bill allows out-of-state retailers to retain a vendor fee equal to 3.33 percent of sales taxes collected. The vendor fee is intended to cover the retailer's costs associated with collecting and remitting sales taxes on behalf of the state. Accounting for the vendor fee and applying the estimated sales tax growth from the March 2013 Legislative Council Staff revenue forecast, sales tax revenue from out-of-state retailers would increase by $73.6 million in FY 2014-15 and $76.3 million in FY 2015-16.

State Expenditures

If the Marketplace Fairness Act is passed, this bill will cost the Department of Revenue **$2.5 million in FY 2013-14, $278,198 and 2.8 FTE in FY 2014-15, and $593,130 and 8.0 FTE in FY 2015-16.** Even though the bill requires the Department of Revenue to provide simplified sales tax administration for out-of-state retailers, they would only make the required changes if the Marketplace Fairness Act were to pass and all provisions of the bill were enforceable.

Computer programming costs. Section 6 of this bill meets the simplified remittance and tax calculation requirements of the Marketplace Fairness Act. In order to meet the requirements, the Department of Revenue will have to create a way for out-of-state retailers to calculate and remit sales taxes through the state's tax administration software. The existing sales tax structure does not require a uniform sales tax base or a single sales tax form, so meeting the requirements of the Marketplace Fairness Act will require significant programming costs. This addition to the state's tax administration software will cost $2,140,000 in FY 2013-14.

In addition, the Department of Revenue will work with the Office of Information Technology to make a GIS database available for out-of-state retailers to determine the combined state and local sales tax rate for any address in Colorado. Developing this database will cost $327,038 in FY 2013-14 and the equipment and services to make this database available to out-of-state retailers or their software vendors will cost $35,748 in FY 2013-14. Updating the database will cost $101,052 per year and providing it to out-of-state retailers will cost $22,748 per year.

Tax Administration. The Department of Revenue will require an additional 2.8 FTE to process tax returns, work with 71 home-rule jurisdictions, answer questions from out-of-state retailers, and work through refund claims. This will cost $154,398 in FY 2014-15 and $147,664 in FY 2015-16. In FY 2015-16, the Department of Revenue will start conducting audits of out-of-state retailers, which will take 5.2 FTE and cost $321,666 per year.

Table 1. Conditional Expenditures Under HB13-1295			
Cost Components	**FY 2013-14**	**FY 2014-15**	**FY 2015-16**
Personal Services			
Information Technology	$327,038	$101,052	$101,052
Taxpayer Services	$0	$138,570	$144,909
Compliance	$0	$0	$278,046
FTE	0.0	2.8	8.0
Operating Expenses and Capital Outlay			
Enchantment to Tax Administration Software	$2,140,000	$0	$0
Information Technology	$35,748	$22,748	$22,748
Taxpayer Services	$0	$15,828	$2,755
Compliance	$0	$0	$43,620
TOTAL	**$2,502,786**	**$278,198**	**$593,130**

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 2.

Table 2. Expenditures Not Included Under HB13-1295*			
Cost Components	**FY 2013-14**	**FY 2014-15**	**FY 2015-16**
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$0	$18,810	$53,796
Supplemental Employee Retirement Payments	$0	$10,739	$32,779
Leased Space	$0	$11,200	$32,000
TOTAL	**$0**	**$40,749**	**$118,575**

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

Local Government Impact

State administered local taxing jurisdictions will receive an estimated $23.6 million in sales tax revenue on sales made by out-of-state retailers in FY 2014-15. Home-rule jurisdictions must elect for the state to collect sales taxes from out-of-state retailers. If all home-rule jurisdictions elect to receive sales taxes from out-of-state retailers, they will collectively receive $81.8 million in FY 2014-15.

State Appropriations

The Department of Revenue will require a General Fund appropriation of $2,502,789 in FY 2013-14. The appropriation is conditional on the passage of the Marketplace Fairness Act.

The appropriation is required before the effective date of the bill.

Departments Contacted

Revenue	Law	Counties
Cities	RTD	