

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL  
FISCAL IMPACT**

**Drafting Number:** LLS 13-0978  
**Prime Sponsor(s):** Rep. Williams  
Sen. Steadman

**Date:** April 23, 2013  
**Bill Status:** House Finance  
**Fiscal Analyst:** Larson Silbaugh (303-866-4720)

**TITLE:** CONCERNING THE CIRCUMSTANCES UNDER WHICH A PERSON WHO SELLS ITEMS SUBJECT TO SALES TAX MUST COLLECT SUCH SALES TAX ON BEHALF OF THE STATE.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue General Fund	Up to \$67.1 million per year, see State Revenue Section	
State Expenditures General Fund	Indeterminate: See State Expenditures Section	
FTE Position Change	0.0 FTE	0.0 FTE
<b>Effective Date:</b> July 1, 2013.		
<b>Appropriation Summary for FY 2013-2014:</b> See State Expenditures Section.		
<b>Local Government Impact:</b> See Local Government Impact Section.		

**Summary of Legislation**

This bill expands the definition of "nexus" for sales tax purposes, broadening the types of business activities that create taxable sales. Specifically, this bill expands the definition of nexus to include certain methods of delivering a taxable good or providing services through an agreement with an in-state company. In addition, the bill creates a presumption that an out-of-state retailer has substantial nexus, requires an out-of-state retailer to collect and remit sales taxes if that retailer contracts with the state, and requires legislative approval of any agreement that relieves an out-of-state retailer with substantial nexus from collecting sales taxes.

**Background**

Colorado cannot collect sales taxes from out-of-state retailers that do not have substantial nexus in the state. This bill would expand the nexus definition so that out-of-state retailers with a relationship with in-state companies would be required to collect state sales taxes on all purchases. One example of this expanded nexus definition could apply to an out-of-state retailer who has an agreement with an in-state company to provide same day delivery for the products that are sold

through the out-of-state retailer. The expanded nexus definition would require the out-of-state retailer to collect Colorado sales taxes.

### **State Revenue**

This bill may increase state sales tax revenue in two ways: through audit collections and through creating nexus with out-of-state retailers. Total collections could reach up to \$67.1 million per fiscal year.

This bill creates a rebuttable presumption of nexus for companies. Under current law, the Department of Revenue must demonstrate that a retailer has nexus. This bill requires the retailer to prove that they do not have nexus. This may make it easier for the department to reach a settlement with taxpayers. More favorable settlements or sales tax audit findings would increase state general fund revenue. Until the results of such audits are known, it is impossible to quantify any additional revenue.

The second potential to increase General Fund revenue is through the expanded definition of nexus. Currently, out-of-state retailers with a significant business relationship with an in-state business do not have to collect sales tax revenue on behalf of the state of Colorado. This bill could make some out-of-state businesses collect and remit sales taxes to Colorado. Until the precise business relationships between in-state and out-of-state retailers is known, it is impossible to estimate the increase in sales tax revenue. *Potentially, this expanded definition of nexus could mean that Colorado sales taxes are collected on most purchases from out-of-state retailers.*

A recent Legislative Council Staff analysis calculated that collecting sales taxes on all out-of-state purchasers could increase sales tax revenue by about \$78.5 million per year. According to the most recent Economic Census, about 85.5 percent of retail sales in the electronic shopping and mail order retail sector occur at businesses with annual sales of over \$25 million. It is assumed that these out-of-state retailers have more sophisticated business arrangements which could give them nexus under this bill. If this bill creates nexus for 85.5 percent of out-of-state retail sales, then the bill would increase state general fund revenue by \$67.1 million annually.

### **State Expenditures**

The change in nexus for sales tax purposes may create an indeterminate increase in the number of sales tax returns processed and an indeterminate increase in the workload of the compliance division within the Department of Revenue. These costs would be paid from the General Fund. Until the exact business relationship is known between out-of-state retailers and in-state businesses, it is impossible to determine any additional workload. These workload impacts will be addressed through the annual budget process.

**Local Government Impact**

If the activity that creates nexus within the state occurs in a local taxing jurisdiction, then that local taxing jurisdiction may collect more sales tax revenue. It is impossible to calculate the local government impact until the precise business relationship is known between in-state and out-of-state retailers.

**Departments Contacted**

Revenue