

*Colorado Legislative Council Staff Fiscal Note*

**FINAL  
FISCAL NOTE**

<b>Drafting Number:</b> LLS 14-0655	<b>Date:</b> August 12, 2014
<b>Prime Sponsor(s):</b> Rep. Court; Williams Sen. Johnston	<b>Bill Status:</b> Signed into Law
	<b>Fiscal Analyst:</b> Larson Silbaugh (303-866-4720)

**SHORT TITLE:** MARKETPLACE FAIRNESS & SMALL BUSINESS PROTECTION

<b>Fiscal Impact Summary*</b>	<b>FY 2014-2015</b>	<b>FY 2015-2016</b>
<b>State Revenue</b> <i>Revenue Change</i> General Fund	Indeterminate Revenue Increase. See State Revenue Section	
<b>State Expenditures</b>		
<b>FTE Position Change</b>		
<b>Appropriation Required:</b> None		

\* This summary shows changes from current law under the bill for each fiscal year. Transfers and diversions result in no net change to state revenue. Parentheses indicate a decrease in funds.

\*\* These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

**Summary of Legislation**

House Bill 14-1269 codifies the types of business activities that create taxable sales for a controlled group of corporations. In addition, the amendment creates a presumption that an out-of-state retailer has substantial nexus.

**Background**

Colorado cannot require out-of-state retailers that do not have physical presence in the state to collect and remit sales taxes. This bill codifies the types of business activities that create physical presence for a controlled group of corporations. If an out-of-state retailer has a physical presence because of the business practices identified in this bill, that retailer would be required to collect and remit sales taxes for all sales made in Colorado.

**State Revenue**

This bill may increase state sales tax revenue in two ways: through audit collections and through creating a physical presence with out-of-state retailers. The bill will not have any revenue impact if federal legislation passes requiring out-of-state retailers to collect and remit sales taxes to Colorado.

**Assumptions.** This bill creates a rebuttable presumption of physical presence for out-of-state retailers. Under current law, the Department of Revenue must demonstrate that a retailer has physical presence within the state and is required to collect and remit sales taxes. This bill requires the retailer to prove that they do not have physical presence for sales tax purposes. This may make it easier for the department to reach a settlement with out-of-state retailers. More favorable settlements or sales tax audit findings will increase state General Fund revenue. Until the results of such audits are known, it is impossible to quantify any additional revenue from this source.

The bill could also increase General Fund revenue through the codification of the types of business activities that create a physical presence. Currently, out-of-state retailers without a physical presence in the state do not have to collect sales tax revenue on behalf of the State of Colorado. By identifying specific types of business activities that would create taxable sales, this bill may make some out-of-state businesses collect and remit sales taxes to Colorado. Until the precise business relationships between in-state companies and out-of-state retailers is known, it is impossible to estimate the potential increase in sales tax revenue.

Legislative Council Staff estimated a total of \$67.7 million in uncollected sales taxes that may be affected by this bill. The \$67.7 million in sales taxes represents a maximum amount of General Fund revenue that may be collected. The actual amount will depend on the business practices of retailers that are currently not collecting Colorado sales taxes and how they react to the compliance activities of the Department of Revenue.

### **State Expenditures**

The Department of Revenue can accommodate any change in business practices within existing resources.

**Assumptions.** This bill will likely increase the number of phone calls that the department may receive, but these additional calls can be accommodated by the existing call center staff.

### **Local Government Impact**

This bill could increase local government revenue to the extent that out-of-state retailers start to collect taxes on behalf of local taxing jurisdictions.

### **Effective Date**

The bill was signed into law by the Governor on June 6, 2014, and became effective on July 1, 2014.

### **State and Local Government Contacts**

Revenue  
Counties

Cities  
RTD

Personnel and Administration