HB14-1269

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL FISCAL IMPACT

Note: This fiscal note is provided pursuant under Joint Rule 22 (b) (2) and reflects strike-below Amendment L.001.

Drafting Number:	LLS 14-0655	**Date:**	February 24, 2014
Prime Sponsor(s):	Rep. Court; Williams Sen. Johnston	**Bill Status:**	House Finance
		Fiscal Analyst:	Larson Silbaugh (303-866-4720)

SHORT TITLE: MARKETPLACE FAIRNESS & SMALL BUSINESS PROTECTION

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue *Revenue Change* General Fund	Up to $67.7 million per year, see State Revenue Section	
State Expenditures		
FTE Position Change		
Appropriation Required: 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

Amendment L.001 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, and requires an out-of-state retailer to collect and remit sales taxes if that retailer contracts with the state.

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 an in-state company 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 $67.7 million per fiscal year. This bill would 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 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 from this source.

Potentially, the bill could also increase General Fund revenue 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 study by economists at the University of Tennessee estimates that uncollected state sales taxes from out-of-state retailers equaled $70.9 million in 2012. The U.S. Census Bureau publishes quarterly estimates of on-line retail sales. Applying the 2013 growth rate in retail sales and the 5 year average growth rate of on line sales derived from this data, it is estimated that $88.7 million in state sales taxes will not be collected on purchases made from out-of-state retailers in FY 2014-15. It is assumed that only out-of-state retailers with a large volume of annual sales will have business models that incorporate in-state firms that would create nexus. According to the most recent Economic Census, about 76.3 percent of retail sales in the electronic shopping and mail order retail sector occur at businesses with annual sales of over $25 million. If this bill creates nexus for 76.3 percent of out-of-state retail sales, the bill could increase state general fund revenue by up to $67.7 million annually.

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 this bill creates nexus with out-of-state retailers and local taxing jurisdictions.

Effective Date

The bill takes effect July 1, 2014.

State and Local Government Contacts

Revenue	Cities	Personnel and Administration
Counties	RTD	