# HB15-1346

*Colorado Legislative Council Staff Fiscal Note*

# STATE CONDITIONAL FISCAL IMPACT

**Drafting Number:** LLS 15-0660
**Prime Sponsor(s):** Rep. Foote; Pettersen
Sen. Jones; Todd

**Date:** April 14, 2015
**Bill Status:** House Finance
**Fiscal Analyst:** Louis Pino (303-866-3556)

**BILL TOPIC:** TAXATION OF CORP INCOME SHELTERED IN TAX HAVEN

| Fiscal Impact Summary* | FY 2015-2016 | FY 2016-2017 |
|---|---|---|
| **State Revenue** | **$46.2 million** | **$97.1 million** |
| Revenue Change | | |
| General Fund - conditional** | $46.2 million | $97.1 million |
| State Transfers | | |
| General Fund - conditional** | | ($150 million) |
| Cash Funds - conditional** | | $150 million |
| **State Expenditures** | **$96,360** | |
| General Fund - conditional** | $96,360 | |
| **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 impacts are conditional, dependent on a vote of the electorate to retain and spend revenue in excess of constitutional limits.*

## Summary of Legislation

Conditional on voter approval, HB15-1346 requires corporations filing a Colorado combined income tax return to add income from affiliated corporations incorporated in tax haven jurisdictions. The bill lists jurisdictions that are considered tax havens and requires the Department of Revenue to biennially report to the finance committees in the General Assembly with an update of countries that may be considered tax havens. In addition, the bill allows corporations indirectly owned by a parent C corporation to be included as part of an affiliated group of corporations.

The bill refers a measure to the voters authorizing the state to retain and spend revenue received by the taxation of a corporation's income that is held in offshore tax havens. If the voters approve this measure, beginning in FY 2016-17 and thereafter, the bill will require the state controller to transfer $150 million from the General Fund to the State Education Fund (SEF).

## Background

This bill affects corporations that file a “combined” income tax return. A combined income tax return is a state filing method used by certain groups of affiliated corporations. Colorado law defines an affiliated group as one or more chains of corporations connected through stock ownership with a common parent corporation, where the parent corporation owns more than 50 percent of both the voting and nonvoting stock in each includable corporation.

The combined income tax return is required to report the income of all member corporations that have 20 percent or more of their property and payroll within the United States and that meet three out of six designated tests. By requiring corporations that are incorporated in tax haven jurisdictions to be included in the combined report, HB15-1346 adds income from these corporations to the Colorado corporate income tax base.

**Tax havens.** There is no precise definition of a tax haven. In general, a tax haven is a country that offers foreign businesses little or no tax liability in a politically and economically stable environment. Tax havens also provide little or no financial information to foreign tax authorities. In addition, they do not require that the foreign business operate within their country to benefit from its tax policies. Tax havens are defined in the bill to include specific countries, such as the Cayman Islands, Liberia, Malta, and Luxembourg.

## State Revenue

***General Fund revenue - conditional impact.*** **If voters approve this measure, General Fund revenue will increase by $46.2 million in FY 2015-16 and $97.1 million in FY 2016-17,** based on the assumptions below. The figure for FY 2015-16 represents a half-year impact, since the taxation of tax haven income begins in tax year 2016. Of these amounts, $3.3 million in FY 2015-16 and $67.0 million will be diverted to the State Education Fund.

***Assumptions.*** There are no official estimates of the amount of corporate income held in offshore tax havens. Montana has required corporations with affiliates in certain tax havens to include this income in the combined income tax return since 2003. Data shows that corporations in the state reported approximately $16 billion in income from tax haven countries in 2012. Information about which corporations reported tax haven income is not available.

The fiscal note assumes the same amount of tax haven income in Montana would have been reported in Colorado. The estimate will be higher or lower depending on whether or not there are more or fewer affiliated corporations in Colorado. The 2016 Colorado tax haven income estimate was obtained by growing Montana's 2012 tax haven income by the 10-year average annual growth rate (10 percent) in Colorado corporate income taxes. This estimate was then included in Colorado's projected taxable income for tax year 2016. The fiscal note assumes tax haven income will be apportioned by the state's five-year average apportionment ratio (9 percent) for all Colorado corporations filing a combined income tax return.

## State Transfer

*SEF transfers*. Conditional upon voter approval, beginning in FY 2016-17 and each fiscal year thereafter, HB15-1346 will require the state controller to transfer $150 million from the General Fund to the SEF.

## TABOR Impact

If voters approve the referred measure, the bill's revenue increase will not impact TABOR refunds.

## State Expenditures

**General Fund expenditures for the Department of Revenue will increase by $96,360 in FY 2016-17.** The DOR will incur one-time programming costs of $96,360 to update the GenTax system to add a new line on income tax forms 106 and 106SF to track tax haven income. The new lines will be used allow the DOR to identify tax haven income. It is estimated this will require 400 hours at $219 per hour to update the system. The fiscal note assumes 200 corporations will report income from tax haven jurisdictions. The DOR's income and tax audit section can implement the bill using existing appropriations.

***Election expenditure impact (existing appropriations).*** The bill includes a referred measure that will appear before voters at the November 2015 general election. Although no additional appropriation is required in this bill to cover election costs associated with this ballot measure, certain election costs to the state are appropriated as part of the regular budget process. First, state law requires that the state reimburse counties for costs incurred conducting a ballot measure election paid from the Department of State Cash Fund. Second, the text and title of the measure must be published in one legal newspaper per county and an analysis of the measure must be included in the Ballot Information Booklet (Blue Book) mailed to all registered voter households prior to the election paid from the Ballot Analysis Revolving Fund. Table 1 below identifies the anticipated costs for a single statewide ballot measure election in 2015.

**Table 1. Projected Costs of a Single Statewide Ballot Measure Election in 2015**

| Cost Component | Amount |
|---|---|
| County Reimbursement for Statewide Ballot Measures | $2,400,000 |
| Ballot Information Booklet (Blue Book) & Newspaper Publication | $670,000 |
| **TOTAL** | **$3,070,000** |

## Effective Date

The ballot referral in the bill, section 3, takes effect upon the signature of the Governor, or upon law without his signature.

Sections 2, 4, and 5 will take effect on the date of the official declaration of the vote, if approved by voters at the November 2015 general election.

## State and Local Government Contacts

Revenue Personnel Secretary of State