

*Colorado Legislative Council Staff Fiscal Note*  
**STATE and LOCAL**  
**REVISED FISCAL IMPACT**

(replaces fiscal note dated January 25, 2010)

**Drafting Number:** LLS 10-0738  
**Prime Sponsor(s):** Rep. Pommer  
 Sen. Heath

**Date:** February 2, 2010  
**Bill Status:** Senate Finance  
**Fiscal Analyst:** Natalie Mullis (303-866-4778)

**TITLE:** CONCERNING THE STATE SALES AND USE TAX OF STANDARDIZED SOFTWARE, AND MAKING AN APPROPRIATION THEREFOR.

<b>Fiscal Impact Summary</b>	<b>FY 2009-2010</b>	<b>FY 2010-2011</b>	<b>FY 2011-2012</b>
<b>State Revenue</b> General Fund	\$4.0 million	\$20.4 million	\$20.7 million
<b>State Expenditures</b> General Fund	<i>at least \$95,892*</i>		
<b>FTE Position Change</b>	<i>at least 0.9 FTE</i>		
<b>Effective Date:</b> Upon signature of the Governor, or upon becoming law without his signature. Effective for sales occurring on or after March 1, 2010.			
<b>Appropriation Summary for FY 2010-2011:</b> See the State Appropriations Section.			
<b>Local Government Impact:</b> See the Local Government Impact Section.			

*\* This amount includes \$1,570 for which no separate appropriation is required because of ongoing appropriations in the Long Bill to the Department of Revenue for computer programming for new legislation.*

**Summary of Legislation**

This reengrossed bill repeals the Department of Revenue regulation on taxable computer software. The regulation defines as tangible personal property, and therefore subjects to the sales and use tax, only pre-packaged software purchased in tangible form by a customer who also receives a license agreement. Examples of software defined as tangible personal property and therefore subject to sales and use tax as a result of this bill include:

- standardized software downloaded from the internet to the customer's computer or other electronic device;
- standardized software that is manually installed on a consumer's computer or electronic device by a vendor's representative.

The department is required to account for the revenue attributable to this bill, and to the extent information is available, make quarterly reports to the legislature about the revenue gain. The bill directs that at least 40 percent of the revenue collected as a result of this bill be spent on preschool through twelfth-grade education and directs that none of it be used to fund additional state FTE.

The bill allows the department to promulgate rules for apportioning tax liability when computer software is purchased for use in more than one state.

### **State Revenue**

State General Fund revenue will increase \$4.0 million in FY 2009-10, \$20.4 million in FY 2010-11, and \$20.7 million in FY 2011-12. The revenue estimate for FY 2009-10 represents a partial-year impact. The revenue impact grows at a slower rate than expectations for growth in computer software sales in FY 2011-12 because, under current law, vendors will begin retaining 3.33 percent of the taxes they collect starting July 1, 2011.

Private expenditures on computer software in Colorado are estimated to be \$1.38 billion in 2010, about half of which are assumed to be affected by this bill. Colorado expenditures were estimated using data from the Bureau of Economic Analysis on U.S. private prepackaged-software sales. Colorado's share of U.S. expenditures is assumed to be the same as Colorado's share of personal income.

### **State Expenditures**

**Department of Revenue: At least \$95,892 and 0.9 FTE in FY 2009-10.** The Department of Revenue will incur one-time expenses in FY 2009-10 to notify vendors of the change and anticipates personnel costs to answer questions from vendors. The department will also incur additional General Fund information technology costs to adjust the state's computer systems. No appropriation for these information technology costs is necessary because of ongoing appropriations to the department for computer programming provided in the Long Bill for new legislation. Table 1 summarizes most of the costs incurred by the Department of Revenue.

Table 1 does not include all of the costs related to this bill. Because the reengrossed bill requires the General Assembly to allocate 40 percent of the revenue resulting from this bill to education, it is incumbent upon the Department of Revenue to determine that amount. The department's current information systems, tax forms, and the information provided by taxpayers would not currently allow the department to accurately quantify this figure. While the department has not yet placed a figure on the associated costs to reconfigure the sales tax accounting system and create new tax forms, it is likely to be a significant amount. This fiscal note will be revised once more information becomes available.

***Economies of scale.*** It should be noted that there are several pieces of legislation currently proposed that, if enacted, would affect sales and use tax account holders. If multiple bills are enacted, no separate appropriation may be required by this bill. The department will send one letter, two pages in length, to each sales and use tax account holder advising them of all enacted changes, rather than sending one notification for each legislative change.

<b>Table 1. Expenditures Under HB10-1192</b>	
<b>Cost Components</b>	<b>FY 2009-2010</b>
Information Technology Services	\$1,570
Personal Services	36,239
<i>FTE</i>	<i>0.9</i>
Operating Expenses	
Printing	5,999
Postage	52,084
<b>TOTAL</b>	<b>\$95,892</b>

**Local Government Impact**

This bill will result in an undetermined increase in revenue for local government entities. The inclusion of new forms of software in the definition of tangible personal property subject to taxation will affect the tax base of many local governments. The Regional Transportation District (RTD) has indicated it expects additional revenue of \$2.8 million each year as a result of this bill.

**State Appropriations**

For FY 2009-10, the bill requires a General Fund appropriation of \$94,322 and 0.9 FTE for the Department of Revenue. If multiple sales and use tax bills are enacted, no separate appropriation may be necessary for this bill.

**Departments Contacted**

Revenue  
 Law

Colorado Counties  
 RTD

Colorado Municipal League