SB13-045

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL FISCAL IMPACT

Drafting Number: LLS 13-0541
Prime Sponsor(s): Sen. Hill
Date: January 28, 2013
Bill Status: Senate SVMA
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TITLE: CONCERNING THE EXPANSION OF THE SALES TAX EXEMPTION FOR FOOD TO INCLUDE FOOD THAT IS NOT PREPARED FOR DOMESTIC HOME CONSUMPTION.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue General Fund - reduction	($245.9 million)	($256.0 million)
State Expenditures General Fund	$14,220	$0
Effective Date: July 1, 2013.		
Appropriation Summary for FY 2013-2014: See the state appropriations section.		
Local Government Impact: See local government impact section.		

Summary of Legislation

This bill expands the state sales and use tax exemption for food to cover prepared food, effective July 1, 2013.

Background

Under current law, food for home consumption is exempt from the state sales and use tax. Generally, the current exemption applies to groceries. This bill extends that sales and use tax exemption to food for immediate consumption or prepared food. Typically, this food is purchased at restaurants, the deli counter of the grocery store, cafeterias, caterers, and convenience stores. Alcoholic beverages would remain taxable for state sales and use taxes, even if purchased with prepared food. Sales taxes from food not prepared for home consumption accounts for 10.6 percent of all sales taxes collected by the state.

State Revenue

This bill reduces General Fund revenue from sales and use taxes by an estimated **$245.9 million in FY 2013-14 and $256.0 million in FY 2014-15**. This estimate is from the following three retail sectors: 1) food services and drinking places, 2) grocery stores, and 3) convenience stores and gas stations. A description of the estimation methodology for each sector is provided below.

Table 1 summarizes the reduction in state sales tax revenue by sector.

Table 1. Historical Sales Tax Revenue from Prepared Food, by Sector	
Retail Sector	**FY 2011-12**
Food Services and Drinking Establishments	$207.3 million
Grocery Stores	8.7 million
Convenience Stores and Gas Stations	5.9 million
TOTAL	**$221.8 million**

Food services and drinking places. In FY 2011-12, food services and drinking places remitted $246.2 million in state sales taxes. This sector includes food service contractors, caterers, mobile food services, drinking places, restaurants, cafeterias and buffets, and snack and coffee bars. It is estimated that 15.8 percent of the sales in this sector is for alcoholic beverages. Therefore, it is assumed that $207.3 million was paid in sales and use taxes on food that would be exempt under this bill in FY 2011-12.

Grocery stores. Many grocery stores sell prepared food from a deli counter or other area of the store that is currently subject to the state sales and use tax. It is estimated that approximately 3.3 percent of grocery store sales are from the deli department. In FY 2011-12, grocery stores in Colorado had retail sales of $9.3 billion. This implies that $305.3 million in retail sales is from the deli department, which would generate $8.7 million in sales tax revenue in FY 2011-12.

Convenience stores. In FY 2011-12, convenience stores and gas stations remitted $34.8 million in state sales tax revenue. According to the National Association of Convenience Stores, 16.9 percent of in-store sales are from prepared food. Assuming convenience stores in Colorado have a similar distribution of sales as the nation, prepared food would have accounted for $5.9 million in state sales tax revenue in FY 2011-12.

Over and under-estimates. There are other types of establishments that may sell prepared food that would be exempt from the state sales tax. Some examples include hotels, bowling alleys, golf courses, amusement parks, and sports stadiums. These sales are not captured in the above estimates. However, the above estimates include some sales of taxable items such as t-shirts or souvenirs from restaurants. It is impossible to identify the amounts associated with taxable items sold by the above sectors or identify non-taxable items sold by other sectors, but it is assumed that the over-estimates and the under-estimates would offset each other.

The total amount of the sales tax revenue reduction from these three sectors is assumed to grow at the same rate as sales tax collections as a whole. Sales taxes are forecast to grow 6.4 percent in FY 2012-13, 4.2 percent in FY 2013-14, and 4.1 percent in FY 2014-15. Exempting prepared food from the state sales tax, would reduce state sales tax revenue about 10.6 percent annually.

State Expenditures

This bill will increase Department of Revenue expenditures by **$14,220 in FY 2013-14** to respond to questions from taxpayers. There are approximately 13,232 sales tax account holders that sell prepared food that would be affected by this bill. In the past, approximately 35 percent of affected taxpayers call the Department of Revenue when there is a change in tax laws, and each call takes about 10 minutes. After the first year, there will be a minimal amount of phone calls.

Local Government Impact

This bill will reduce sales tax revenue for local taxing jurisdictions that use the state definition of food for sales tax purposes. According to the Department of Revenue, at least 26 cities, 20 counties, and many special districts, including the Regional Transportation District, would be affected. Some of these districts can take action to adopt new definitions of food excluding prepared food, but others are required to use the state definitions. For taxing jurisdictions with the same sales tax base as the state, this bill will reduce sales tax revenue by about 10.6 percent annually.

State Appropriations

The Department of Revenue would require a General Fund appropriation of $14,220 in FY 2013-14.

Departments Contacted

Revenue Counties Municipalities