HB 23-1008

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated February 10, 2023)

Drafting Number:	LLS 23-0486	**Date:**	March 30, 2023
Prime Sponsors:	Rep. Weissman Sen. Fields; Hinrichsen	**Bill Status:**	Senate Finance
		Fiscal Analyst:	Louis Pino | 303-866-3556 louis.pino@coleg.gov

Bill Topic: **FOOD ACCESSIBILITY**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☐ State Transfer
☒ TABOR Refund
☐ Local Government
☐ Statutory Public Entity

The bill creates a tax credit and requires that certain federal income tax deductions be added back when computing state taxable income. On net, it increases state revenue in FY 2023-24 and FY 2024-25, and reduces state revenue from FY 2025-26 through FY 2030-31; it also increases state expenditures from FY 2023-24 through FY 2030-31.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of $360,413 to the Department of Agriculture. See State Appropriation section.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill.

Table 1
State Fiscal Impacts Under HB 23-1008

		Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26
Revenue	General Fund	$1.3 million	$1.1 million	($0.3 million)
	Total Revenue	**$1.3 million**	**$1.1 million**	**($0.3 million)**
Expenditures	General Fund	$360,413	$616,455	$459,865
	Centrally Appropriated	$58,402	$81,860	$76,346
	Total Expenditures	**$418,815**	**$698,315**	**$536,211**
	Total FTE	**3.0 FTE**	**4.4 FTE**	**4.1 FTE**
Transfers		-	-	
Other Budget Impacts	TABOR Refund	$1.3 million	$1.1 million	($0.3 million)
	General Fund Reserve	$54,062	$92,468	$68,980

Summary of Legislation

The bill creates a state income tax credit for small food retailers, small family farms, and consortium members of the Community Food Access Program. The bill also requires that certain federal income tax deductions be added back when computing state taxable income. These provisions are discussed below.

Income tax credit. The bill creates a tax credit for any consortium member and any small food business or small family farm that purchases small food business recovery and resilience grant program equipment. For the members of the consortium, the credit is equal to 75 percent of the amount spent on completing their duties and responsibilities, after subtracting any amount they receive through the Community Food Access Program. For small food retailers and small family farms, the credit is equal to 75 percent of the costs for the purchase, tax paid on, and shipment of equipment from among listed items. Qualifying purchases include cold storage, display shelving, produce scales, and point of sales systems. The tax credit is available for tax years 2024 through 2030. The tax credit is refundable, meaning if the amount exceeds the taxpayer's state income tax liability, the balance is refunded to the taxpayer. The amount of credits is capped at $10 million for each year. The Department of Agriculture is responsible for verifying and issuing tax credit certificates, which taxpayers must attach to their state income tax return to claim the credit.

Income tax addition. For corporate and individual taxpayers that claim the business meal expenses income tax deduction on their federal income tax return, the bill requires these taxpayers to add back the amount they claimed when computing their state tax liability for the 2024 through 2030 tax years.

Background

House Bill 22-1380 created the Community Food Access Program in the Department of Agriculture to improve access to and lower prices for healthy foods in low-income or underserved areas in Colorado by supporting small grocery retailers. The program includes a small business consortium to provide technical assistance and subsidies to Colorado food producers and small retailers, a small food business recovery and resilience grant program that provides one-time grants to small food retailers and family farms, and an advisory committee to assist with the grant program. Under current law, the food access program is repealed on September 1, 2027.

Assumptions

Data from the Department of Revenue show that individual Colorado taxpayers deducted business meal expenses totaling $148 million on federal tax forms for 2019. State-level data on corporate deductions were not available. However, data from the U.S. Department of the Treasury on the revenue impact of federal corporate deductions were adjusted for Colorado’s share of U.S. taxable income and for an assumed federal effective income tax rate, to arrive at an assumed deduction of $69 million for corporate taxpayers in Colorado. Therefore, it is assumed that Colorado taxpayers deducted $217 million for business meal expenses in 2019. The fiscal note uses this estimate as a starting point and increases it each year through the estimation period. By tax year 2025, the fiscal note assumes approximately $224 million will be added back to Colorado taxable income, increasing state revenue by about $9.7 million per year.

The fiscal note also assumes that in the first year the income tax credit is available, approximately $7.0 million will be claimed as small food retailers, small family farms, and members of the consortium become aware of the credit. After the first year, it is assumed the full $10.0 million allowed will be claimed each year the credit is available.

State Revenue

The bill is expected to increase General Fund revenue by $1.3 million in FY 2023-24 (half-year impact) and $1.1 million in FY 2024-25 and decrease state revenue by $0.3 million in FY 2025-26 and by similar amounts each year through FY 2029-30, and with a half-year impact in FY 2030-31, when the required income tax addition and tax credit are repealed. The revenue increase is the net difference from requiring individuals and corporations to add their meal expenses federal deduction back to their Colorado taxable income, which raises state revenue, and the state credits allowed under the bill, which reduces state revenue. The bill impacts individual income tax revenue, which is subject to TABOR. Table 2 shows the net difference between the individual and corporate add backs and the amount of credits claimed on a calendar year basis.

Table 2
Net Difference Between Add Backs and Credits Claimed Under HB 23-1008

	2024	2025	2026	2027
State Tax Credits Claimed	($7.0 million)	($10.0 million)	($10.0 million)	($10.0 million)
Add Backs (Individual Taxpayers)	$6.3 million	$6.3 million	$6.3 million	$6.2 million
Add Backs (Corporate Taxpayers)	$3.2 million	$3.4 million	$3.5 million	$3.6 million
Net Difference	$2.5 million	($0.3 million)	($0.3 million)	($0.1 million)

State Expenditures

The bill increases state expenditures by $418,815 in FY 2023-24, $698,315 in FY 2024-25, and $536,211 in FY 2025-26 and later years. Expenditures are shown in Table 3 and detailed below.

Table 3
Expenditures Under HB 23-1008

	FY 2023-24	FY 2024-25	FY 2025-26
Department of Revenue (DOR)			
Personal Services	-	$85,773	$62,212
Operating Expenses	-	$2,295	$1,485
Capital Outlay Costs	-	$12,006	$6,670
GenTax Programming and Testing	-	$119,456	-
Data Reporting	-	$7,392	$7,392
Document Management and Tax Form Changes	-	$51,630	$48,437
Centrally Appropriated Costs[1]	-	$23,458	$17,944
FTE – Personal Services	-	1.4 FTE	1.1 FTE
DOR Subtotal	**-**	**$299,510**	**$137,406**
Department of Agriculture (CDA)			
Personal Services	$270,423	$270,423	$270,423
Operating Expenses	$4,050	$4,050	$4,050
Capital Outlay Costs	$20,010	-	-
Legal Services	$44,411	$44,411	$44,411
Translation Services	$15,050	$15,050	$15,050
Travel	$6,469	$6,469	$6,469
Centrally Appropriated Costs[1]	$58,402	$58,402	$58,402
FTE – Personal Services	3.0 FTE	3.0 FTE	3.0 FTE
CDA Subtotal	**$418,815**	**$398,805**	**$398,805**
Total Costs	**$418,815**	**$698,315**	**$536,211**
Total FTE	**3.0 FTE**	**4.4 FTE**	**4.1 FTE**

Department of Revenue. Beginning in FY 2024-25, expenditures will increase in DOR to administer the income tax credit and income tax addition in the bill.

- **Personal services.** The Department of Revenue will require 1.4 FTE in FY 2024-25. Of this, 0.7 FTE will be used for a term-limited employee for development and testing work in support of GenTax programing. The remaining 0.7 FTE is for staffing in the Taxpayer Service Division to review tax credits claimed, identify and address taxpayer errors, and manage call and correspondence volume associated with the new tax credit. In addition, the department will administer the new add-back provisions for the business meal income tax deduction. Estimated personnel costs for FY 2024-25 assume an October 1, 2024. After FY 2024-25 and for each year the credit is available, the Taxpayer Service Division will require 1.1 FTE to continue to administer the income tax credit and add-back provision.

- **Computer programming and testing.** For FY 2024-25 only, the bill will require changes to DOR's GenTax software system and additional testing. Changes are programmed by a contractor at a cost of $231.75 per hour. Approximately 400 hours of computer programming will be required to implement this bill, totaling $95,200. Additional computer and user acceptance testing are required to ensure programming changes are tested and functioning properly, resulting in an additional $24,256 in expenditures by the department.

- **Data reporting.** Beginning in FY 2024-25, the Office of Research and Analysis (ORA) within DOR will have costs of $7,392 to collect and report data on the new tax credit. The costs are ongoing through FY 2030-31.

- **Document management and tax form changes.** In FY 2025-26, the bill requires changes to nine tax forms and computer testing for paper filings at a cost of $51,630. Expenditure for form changes occur in the Department of Personnel and Administration using reappropriated funds. DPA will require $48,437 in FY 2025-26 to administer paper filings.

Department of Agriculture. Beginning in FY 2023-24, expenditures will increase in CDA to determine if the applicant qualifies for participation in the program. The CDA is also responsible for verifying, approving, and issuing tax credits and accounting for the number of credits don't exceed the $10 million allowable amount each year.

- **Personal services.** The CDA will require 3.0 FTE in FY 2023-24 and FY 2024-25 to administer, monitor, verify and provide oversight for the income tax credit. This will require a senior manager.

- **Legal services.** The department will require legal guidance regarding the tax credits. It is estimated the department will require an initial appropriation of 420 hours in legal services in FY 2023-24 and future years

- **Translation services and travel**. The department will provide communication, outreach, interpretation and translation services in order to meet the targeted communities. The program will require outreach, including for example advertisements and mailers. Lastly, they will utilize personal services of the Department's Communications team to implement and oversee these activities.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 3.

Other Budget Impacts

TABOR refunds. The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above for FY 2023-24 and FY 2024-25. This estimate assumes the March 2023 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25. Because TABOR refunds are paid from the General Fund, increased General Fund revenue will increase the TABOR refund obligation, but result in no net change to the amount of General Fund otherwise available to spend or save.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to decrease the amount of General Fund held in reserve by the amounts shown in Table 1, which will increase the amount of General Fund available for other purposes.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2023-24, the bill requires a General Fund appropriation of $360,413 and 3.0 FTE to the Department of Agriculture.

The bill currently includes an appropriation of $337,878 to the Department of Agriculture and $162,477 to the Department of Revenue based on the prior fiscal note.

State and Local Government Contacts

Agriculture	Personnel	Public Health and Environment
Revenue	State Auditor	