HB 22-1406

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 22-0996	**Date:**	April 27, 2022
Prime Sponsors:	Rep. Herod; Roberts Sen. Coleman	**Bill Status:**	House Finance
		Fiscal Analyst:	David Hansen | 303-866-2633 David.Hansen@state.co.us

Bill Topic: **QUALIFIED RETAILER RETAIN SALES TAX**

Summary of Fiscal Impact:

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

The bill renews a temporary net taxable sales deduction for businesses operating in the food and drinking services sector, including hotel-operated food and drinking services. The bill decreases state revenue in FY 2022-23 and increases state expenditures.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of $106,400 to the Department of Revenue.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 22-1406

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	General Fund	($39.3 million)	-
Expenditures	General Fund	$106,400	$6,400
Transfers		-	-
Other Budget Impacts	TABOR Refund	($39.3 million)	-
	General Fund Reserve	$15,960	$960

Summary of Legislation

The bill allows qualifying retailers to take a temporary deduction from state net taxable sales for sales made from July to September 2022 and retain the sales tax collected. The bill renews the existing deduction for businesses in the food services sector, including hotel food and drinking services. Under the bill, retailers may deduct up to $70,000 from net taxable sales for up to five locations each month, equating to about $2,000 in sales tax collections per retailer per site.

The bill also requires the Department of Revenue to provide a report estimating the number of retailers claiming the deduction and the sales tax revenue reduction.

Background

In December 2020, the Governor signed HB 20B-1004. The bill allowed qualifying retailers, including restaurant, bars, and mobile food services providers, to deduct up to $70,000 monthly from state net taxable sales for up to five sites for a four-month period from November 2020 to February 2021. Based on available Department of Revenue data, the bill reduced state revenue by an estimated $35.6 million and an estimated 5,370 to 6,110 retailers claimed the deduction each month. HB 20B-1004 did not include reporting requirements and the estimates were based on a query of available data.

In June 2021, the Governor signed HB 21-1265 that renewed the provisions of HB 20B-1004 for three months from June to August 2021, but expanded eligibility to caterers, food service contractors, and hotel food and drinking services. The Department of Revenue estimated the bill reduced state revenue by $37.8 million and between 6,693 and 6,792 retailers claimed the deduction each month.

State Revenue

The bill is estimated to reduce General Fund revenue by $39.3 million in FY 2022-23. Sales and use tax revenue is subject to TABOR.

Data and assumptions. The revenue impact estimate is based on available data provided by the Department of Revenue for retailers in qualifying industry sectors for December 2021. Based on these data and estimated utilization of the bill among eligible sites for small retailers from the Department of Revenue's analysis of House Bill 21-1265, an estimated 8,600 retailers could claim the exemption each month. Hotel net taxable sales from food services and drinking places is assumed to comprise about 20 percent of taxable hotel revenue based on a study from the American Hotel & Lodging Association.

State Expenditures

The bill increases state expenditures in the Department of Revenue by $106,400 in FY 2022-23 and $6,400 in FY 2023-24 from the General Fund. Expenditures are displayed in Table 2 and described below.

Table 2
Expenditures Under HB 22-1406

	FY 2022-23	FY 2023-24
Department of Revenue		
Personal Services	$100,000	-
Office of Research and Analysis	$6,400	$6,400
Total Cost	**$106,400**	**$6,400**

Personal Services. The Department of Revenue will use contract services for a tax examiner to process sales tax refund claims and review wrongly filed returns and resolve errors. The analysis assumes processing refund claims and resolution of wrongly filed returns and errors will require about 3,600 hours. Personal services for this work will be billed at an estimated $27.78 per hour.

Office of Research and Analysis. The Office of Research and Analysis will require 200 hours billed at $32 per hour for reporting and analysis in FY 2022-23 and FY 2023-24.

Other Budget Impacts

TABOR refunds. The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the amount shown in the State Revenue section above. This estimate assumes the March 2022 LCS revenue forecast. Because TABOR refunds are paid from the General Fund, decreased General Fund revenue will lower 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 increase the amount of General Fund held in reserve by $15,960 in FY 2022-23 and $960 in FY 2023-24, which will decrease the amount of General Fund available for other purposes.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2022-23, the bill requires an appropriation of $106,400 from the General Fund for the Department of Revenue.

State and Local Government Contacts

Information Technology | Personnel | Revenue