SB 18-179

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

REVISED FISCAL NOTE

(replaces fiscal note dated April 3, 2018)

Drafting Number:	LLS 18-0894	**Date:**	April 9, 2018
Prime Sponsors:	Sen. Hill; Williams A. Rep. Hooton; Pabon	**Bill Status:**	Consideration of House Amendments
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Bill Topic: EXTEND CREDIT FOR OUT-OF-STATE TOBACCO SALES

Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☐ State Transfer
- ☒ TABOR Refund
- ☒ Local Government *(minimal)*
- ☐ Statutory Public Entity

This bill changes the tax treatment of non-cigarette tobacco products that are sold out of state, returned, or destroyed. It requires one-time implementation expenditures and reduces state and local government revenue on an ongoing basis.

Appropriation Summary: For FY 2018-19, the bill requires, but does not currently include, a General Fund appropriation of $39,039 to the Department of Revenue.

Fiscal Note Status: This fiscal note reflects the rerevised bill.

Table 1
State Fiscal Impacts Under SB 18-179

		FY 2018-19	FY 2019-20
Revenue	General Fund	(at least $6,250)	(at least $7,500)
	Cash Funds	(at least $6,250)	(at least $7,500)
	Total	**(at least $12,500)**	**(at least $15,000)**
Expenditures	General Fund	$39,039	-
	Centrally Appropriated	$4,004	-
	Total	**$43,043**	**-**
	Total FTE	**0.2 FTE**	**-**
Transfers		-	-
TABOR Refund		(at least $6,250)	(at least $7,500)

Summary of Legislation

This bill changes the tax treatment of tobacco products that are sold to out-of-state retailers or consumers, returned to the manufacturer, or destroyed. Under current law, these products are subject to an excise tax when they are brought into the state, and the entire amount of the tax paid is allowed as a refundable tax credit when the product is shipped out-of-state, returned, or destroyed. This bill repeals these credits and instead allows an equivalent adjustment to the quantity of purchased tobacco on which the tax is paid.

The bill also amends record keeping requirements for tobacco distributors. Under current law, distributors are not required to keep records of sales to any end consumer. The bill requires distributors to keep records of sales to out-of-state end consumers only.

Background

Tobacco tax. Non-cigarette tobacco products are subject to an excise tax equal to 40 percent of the manufacturer's list price. Examples of non-cigarette tobacco products include cigars, chewing tobacco, and loose tobacco used for roll-your-own cigarettes. The tax is assessed at the time when tobacco products are brought into the state and is remitted by distributors to the Department of Revenue.

Half of the tobacco excise tax is deposited in the General Fund and is available for annual appropriation at the discretion of the General Assembly. Pursuant to Amendment 35, the other half of tobacco excise tax revenue is deposited in the Tobacco Tax Cash Fund and disbursed as follows:

- 46 percent to the Department of Health Care Policy and Financing (HCPF) for the Children's Basic Health Plan and Medicaid;
- 19 percent to HCPF for comprehensive primary care;
- 16 percent to the Department of Public Health and Environment (CDPHE) for tobacco education programs;
- 16 percent to CDPHE for cancer, cardiovascular, and pulmonary programs; and
- 3 percent to state and local governments.

Only the General Fund share of the tobacco excise tax is subject to TABOR.

Current law credits. Credits for tobacco that is sold to out-of-state retailers, returned to the manufacturer, or destroyed are permanently authorized in law. The credit for tobacco sold to out-of-state consumers has been available since September 1, 2015, and is set to expire on September 1, 2018.

State Revenue

This bill is estimated to reduce state revenue by at least $12,500 in FY 2018-19 and at least $15,000 in FY 2019-20 and subsequent years. The bill is expected to reduce General Fund and Tobacco Tax Cash Fund revenue in equal amounts, reducing Tobacco Tax Cash Fund disbursements as shown in Table 2. The estimates for FY 2018-19 represent a ten-month impact only for tobacco sales to out-of-state consumers beginning September 1, 2018.

Assumptions. Changing these tax expenditures from credits to deductions is not expected to affect the tax benefit available to taxpayers. Timing of revenue impacts may shift within fiscal years, but the net revenue impact across fiscal years is expected to be minimal.

The bill is assumed to reduce state revenue because it extends the tax expenditure for sales to out-of-state consumers beyond its current repeal date. Data on actual amounts of this tax credit claimed for 2016 and 2017 cannot be disclosed because a majority of the credit amount is claimed by fewer than five taxpayers. The estimates in this fiscal note reflect credit information provided for earlier tax years, grown by the March 2018 forecast for tobacco tax revenue. This amount is assumed to reflect credits claimed by small tobacco distributors who will continue to sell tobacco products to out-of-state consumers regardless of whether the credit is available. Extension of the credit reduces the tax liability for these taxpayers, thereby reducing state revenue.

Table 2
Revenue Disbursements Under SB 18-179

Revenue Disbursements	FY 2018-19	FY 2019-20
General Fund	**($6,250)**	**($7,500)**
Tobacco Tax Cash Fund		
HCPF - Children's Basic Health Plan and Medicaid	($2,875)	($3,450)
HCPF - Comprehensive Primary Care	($1,888)	($1,425)
CDPHE - Tobacco Education Programs	($1,000)	($1,200)
CDPHE - Cancer, Cardiovascular, and Pulmonary	($1,000)	($1,200)
State and Local Governments	($188)	($225)
Tobacco Tax Cash Fund (Subtotal)	**($6,250)**	**($7,500)**
Total	**($12,500)**	**($15,000)**

Based on information provided from an industry representative, large tobacco distributors are estimated to claim tax credits worth up to $450,000 per year for sales to out-of-state consumers. Historical tax data indicate that these business operations did not occur in Colorado until the current law credit was authorized in House Bill 15-1301. Because the large tobacco distributors claiming the credit under current law are national companies with a business presence in several states, this fiscal note assumes that out-of-state order fulfillment will no longer occur in Colorado should the credit become unavailable, either because business operations will be relocated elsewhere or because consumers will choose to pay lower prices by purchasing products from other distributors. To the extent that these operations will continue without the passage of this bill, this bill's revenue impact is greater than estimated.

Disbursements. The disbursement amounts in Table 2 represent the constitutional and statutory distributions of tobacco tax revenue. Because disbursed funds are subject to annual appropriation, this bill is assumed not to directly impact expenditures for programs funded with tax revenue but to reduce the amount available for expenditure in FY 2018-19 and subsequent years.

TABOR Impact

This bill reduces General Fund revenue from the tobacco tax, which will reduce the amount of money required to be refunded under TABOR by at least $6,250 in FY 2018-19 and at least $7,500 in FY 2019-20. Reducing Amendment 35 tobacco tax revenue to the Tobacco Tax Cash Fund has no TABOR impact as the Amendment 35 tax is exempt from TABOR as a voter-approved revenue change.

Since the bill reduces revenue to the General Fund and the refund obligation by equal amounts, there is no net impact on the amount of money available in the General Fund for the budget. However, the bill will reduce money for the General Fund budget in the future during years when the state does not collect revenue above the TABOR limit.

State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

State Expenditures

This bill is expected to increase state expenditures by $43,043 and 0.2 FTE in FY 2018-19 only. Expenditures are summarized in Table 3 and described below.

Table 3
Expenditures Under SB 18-179

Cost Components	FY 2018-19	FY 2019-20
Department of Revenue		
Personal Services	$14,999	-
Computer Programming and Testing	$22,840	-
Tax Form Change	$1,200	-
Centrally Appropriated Costs*	$4,004	-
Total	**$43,043**	**-**
Total FTE	**0.2 FTE**	**-**

** Centrally appropriated costs are not included in the bill's appropriation.*

Personal services. The Department of Revenue will require 0.2 FTE in FY 2018-19 only. The bill will increase workload in the department's Office of Research and Analysis to eliminate the current law tobacco tax credits for sales to out-of-state retailers and consumers, returns to manufacturers, and destroyed products, and to create deductions for these products. The tax expenditures will need to be mapped to new reports and tested for accuracy.

Computer programming and testing. This bill requires changes to the department's GenTax software system. Changes are programmed by a contractor at a rate of $250 per hour. The changes in this bill are expected to increase General Fund expenditures by $19,000, representing 76 hours of programming. All GenTax programming changes are tested by department staff. Testing for this bill will require the expenditures for contract personnel totaling $3,840, representing 160 hours of testing at a rate of $24 per hour.

Tax form change. This bill requires changes to one tax form at a cost of $1,200. Tax form changes are completed in the Department of Personnel and Administration and paid for using reappropriated Department of Revenue funds.

Rulemaking. This bill requires changes to department rules that can be accomplished within existing appropriations during the normal rulemaking process.

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, supplemental employee retirement payments, and leased space, are estimated to be $4,004 in FY 2018-19 only.

Local Government

This bill reduces tobacco tax disbursements to counties and municipalities by a minimal amount. Counties and municipalities receive less than 1 percent of Amendment 35 tobacco tax revenue.

Effective Date

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2018-19, the bill requires, but does not currently include, a General Fund appropriation of $39,039 to the Department of Revenue with an allocation of 0.2 FTE. From this amount, $1,200 should be reappropriated to the Department of Personnel and Administration.

State and Local Government Contacts

Counties
Information Technology
Personnel
Revenue
Health Care Policy and Financing
Municipalities
Public Health and Environment