



**Colorado  
Legislative  
Council  
Staff**

**SB16-036**

**REVISED  
FISCAL NOTE**

(replaces fiscal note dated February 4, 2016)

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 16-0501

**Date:** April 22, 2016

**Prime Sponsor(s):** Sen. Neville T.; Jahn  
Rep. Kraft-Tharp; Sias

**Bill Status:** House Business Affairs and Labor  
**Fiscal Analyst:** Greg Sobetski (303-866-4105)

**BILL TOPIC:** SURETY REQUIREMENT FOR APPEALING TAX BILLS CLAIMED DUE

Fiscal Impact Summary	FY 2015-2016 (current year)	FY 2016-2017	FY 2017-2018
<b>State Revenue</b>	Indeterminate decrease.		
General Fund	See State Revenue section.		
Cash Funds			
<b>State Expenditures</b>		<b>\$445,509</b>	<b>\$460,285</b>
General Fund		427,522	439,451
Centrally Appropriated Costs		17,987	20,834
<b>TABOR Impact</b>	Indeterminate decrease.		
<b>FTE Position Change</b>		3.1 FTE	3.1 FTE
<b>Appropriation Required:</b> \$427,522 - Department of Revenue (FY 2016-17).			
<b>Future Year Impacts:</b> Ongoing state revenue decrease and state expenditure increase.			

**Summary of Legislation**

The **reengrossed bill** changes the circumstances under which a taxpayer is required to set aside money when he or she files a notice of appeal of a tax decision with a court. The bill repeals the requirement that a taxpayer set aside money for all appeals to a district court, except in cases of a frivolous tax claim submission as determined by the Department of Revenue (DOR). Rather than setting aside money before a tax case is heard by the district court, a taxpayer does not have to set aside money unless he or she appeals a district court decision to an appellate court or to the Colorado Supreme Court. In these cases, money must be set aside no later than 14 days after the district court ruling.

The amount required to be set aside mirrors current law. The taxpayer may choose to:

- post a surety bond equal to twice the amount of taxes, interest, and other charges stated as due;
- deposit twice the amount stated as due in a saving account, or obtain a certificate of deposit; or
- deposit the amount stated as due with the DOR.

If the taxpayer chooses to deposit the amount stated as due with the DOR, further interest is not accrued while the money is set aside.

## **Background**

Under current law, a taxpayer may request a hearing with the DOR to appeal a tax decision. If the taxpayer is not satisfied with the department's final determination, he or she may appeal the determination to a district court. Within 15 days of filing the notice of appeal, the taxpayer is required to set aside money in either the amount of tax, interest, and penalty, or twice the amount, depending on how money is set aside.

The department may determine that a request for a department hearing is a frivolous submission if the request is based on a position that was previously rejected in a published court opinion.

## **State Revenue**

Beginning in FY 2015-16, the bill reduces revenue to the General Fund and various cash funds by an indeterminate amount.

**Assumptions.** It is assumed that the repeal of the set aside requirement eliminates a deterrent from appeal of tax disputes to a district court. Cases that would be settled with the department under current law will be heard by a court under the bill. State tax revenue will be reduced to the extent that taxpayers prevail in these cases, as will revenue from interest if the taxpayer chooses to set aside money through a direct submission to the DOR. Income, sales, use, and excise tax disputes may reduce revenue to the General Fund. Other tax disputes may reduce revenue to cash funds, including the Highway Users Tax Fund, the Severance Tax Trust Fund, the Limited Gaming Fund, the Marijuana Tax Cash Fund, and others.

## **TABOR Impact**

This bill reduces state revenue from taxes, which will reduce the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. To the extent that the bill reduces revenue to the General Fund, there is no net impact on the amount of money available in the General Fund for the budget during years for which the state collects a TABOR surplus. To the extent that the bill reduces the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will increase.

## **State Expenditures**

The bill increases state General Fund expenditures by **\$445,509 and 3.1 FTE in FY 2016-17, and by \$460,285 and 3.1 FTE in FY 2017-18.** Expenditures are summarized in Table 1 and detailed below.

<b>Table 1. Expenditures Under SB16-036</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Personal Services	\$65,771	\$82,213
FTE	1.0 FTE	1.0 FTE
Operating Expenses and Capital Outlay Costs	5,463	950
Legal Services	356,288	356,288
FTE	2.1 FTE	2.1 FTE
Centrally Appropriated Costs*	17,987	20,834
<b>TOTAL</b>	<b>\$445,509</b>	<b>\$460,285</b>

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

**Department of Revenue.** Beginning in FY 2016-17, the bill is assumed to increase the number of tax disputes appealed to district court by 10 cases annually, representing slightly more than 5 percent of taxpayers currently settling cases during a formal administrative hearing procedure with the DOR's executive director's office. The DOR is the respondent in tax litigation and is responsible both for preparing documents in support of the state's case and for obtaining legal representation from the Department of Law (DOL).

DOR expenditures are for the addition of 1.0 FTE in the Tax Conferee Section to accomplish increased workload associated with 10 additional district court cases. The section is responsible for production of documents, participation in depositions, review of pleas and motions prepared by the DOL, testimony, and preparation of court exhibits.

**Department of Law.** The DOL will incur increased costs associated with its responsibility to represent the DOR in cases appealed to district court. Litigation of each case is expected to require 375 hours of legal services per year, based on historical averages. Expenditures for the legal services required by the bill are estimated at \$356,288 each year, representing 3,750 billed hours at a cost of \$95.01 per hour, or approximately 2.1 FTE.

**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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

<b>Table 2. Centrally Appropriated Costs Under SB16-036</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$8,039	\$8,067
Supplemental Employee Retirement Payments	5,628	7,367
Leased Space	4,320	5,400
<b>TOTAL</b>	<b>\$17,987</b>	<b>\$20,834</b>

### **Local Government Impact**

Beginning FY 2015-16, the bill reduces local government revenue by an indeterminate amount. It is assumed that the repeal of the set aside requirement eliminates a deterrent from appeal of local government sales and use tax disputes to a district court. Cases that would be settled with the Department of Revenue under current law will be heard by a court under the bill. Local government sales and use tax revenue will be reduced to the extent that taxpayers prevail in these cases.

Because these cases are litigated between the Department of Revenue and taxpayers, the bill is not expected to impact local government expenditures.

### **Effective Date**

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed.

### **State Appropriations**

For FY 2016-17, the bill requires a General Fund appropriation of \$427,522 and an allocation of 1.0 FTE to the Department of Revenue. From this amount, the bill requires that \$356,288 be reappropriated to the Department of Law with an allocation of 2.1 FTE.

The reengrossed bill includes a no appropriation clause. The fiscal note assumes that state agencies for which the bill results in increased expenditures will seek additional FY 2016-17 appropriations through the annual budget process.

### **State and Local Government Contacts**

Counties	Information Technology	Judicial
Law	Local Affairs	Municipalities
Regulatory Agencies	Revenue	

### **Research Note Available**

An LCS Research Note for SB16-036 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.