



Legislative Council Staff *Nonpartisan Services for Colorado's Legislature*

Fiscal Note

Drafting Number: LLS 22-0158
Prime Sponsors: Rep. McKean
Sen. Hisey

Date: March 2, 2022
Bill Status: House Finance
Fiscal Analyst: David Hansen | 303-866-2633
David.Hansen@state.co.us

Bill Topic: **EXPAND SALES & USE TAX EXEMPTION FOR FOOD**

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input checked="" type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill expands the existing sales and use tax exemption for food for domestic home consumption, to all food beginning January 1, 2023. The bill decreases state revenue on an ongoing basis, will minimally increase state workload during implementation, and will decrease ongoing local government and special district revenue for those that conform to the state tax base.

Appropriation Summary: No appropriation is required.

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

**Table 1
State Fiscal Impacts Under HB 22-1062**

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	General Fund	(\$220.2 million)	(\$462.3 million)
Expenditures		-	-
Transfers	Housing Development Grant Fund	(\$3.3 million)	(\$6.9 million)
Other Budget Impacts	TABOR Refund	(\$220.2 million)	(\$462.3 million)

Summary of Legislation

The bill expands the existing sales and use tax exemption for food for domestic home consumption, to all sales of food beginning January 1, 2023.

Background

Existing sales and use tax exemption for food for domestic home consumption. The state's existing exemption for food for home consumption was enacted in 1979. The exemption applies to most food purchased and consumed off-premise of a retailer, although prepared food from restaurants and other food services is taxable regardless of where it is consumed. The exemption does not include a number of items including food to be eaten in the store, deli trays and prepared salads, soft drinks and candy, seeds and plants, and alcohol. In 2019, the estimated revenue impact of the current exemption was \$333.6 million according to a report by the Colorado Office of the State Auditor, available here:

https://leg.colorado.gov/sites/default/files/2021_te11_food_home_consumption_retirement_communities_exemptions.pdf

House Bill 19-1245. Recent legislation modified the vendor fee over the past few years. Beginning January 1, 2020, House Bill 19-1245 increased the fee from 3.33 percent to 4.00 percent and capped the fee at \$1,000 per retailer per filing period. The revenue raised by the cap is credited to the Housing Development Grant Fund, administered by the Division of Housing in the Department of Local Affairs.

State Revenue

The bill is estimated to decrease General Fund revenue by \$220.2 million in FY 2022-23 and by \$462.3 million in FY 2023-24, with ongoing impacts in subsequent years that will grow with population growth and inflation. The impact in FY 2022-23 represents a half-year impact. Sales and use tax revenue is subject to TABOR.

Data and assumptions. The bill will impact taxable retail sales in a number of industries including food and beverage stores, gas station convenience stores, entertainment and recreation venues, food services and drinking places, and accommodations. According to data from the Department of Revenue, net taxable sales for these industries totaled about \$25.8 billion in FY 2018-19 before the pandemic, and comprised about 24.6 percent of state sales tax revenue. Based on industry data, the percent of net taxable sales in each industry that would be exempt under the bill could range from as low as 7.5 percent for industries such as movie theaters that serve prepared foods, to as high as 70 percent for restaurants and drinking places. Overall, this fiscal note assumes that about 46 percent of net taxable sales of food in these industries will be exempt under the bill, or about 11.4 percent of the state tax base. Assuming the December 2021 Legislative Council Staff forecast for sales tax revenue, and that exempt sales under the bill will comprise a similar share of state tax revenue, the bill will decrease revenue to the General Fund in the amounts shown above.

State Transfers

A significant decrease in state sales tax revenue will lower the amount of revenue raised by the \$1,000 cap on vendor fees and reduce revenue that is transferred from the General Fund to the Housing Development Grant Fund. Assuming the percent decline in state sales tax revenue generates a proportional drop in transfers to the fund, the bill will reduce revenue to the Housing Development Grant Fund by an estimated \$3.3 million in FY 2022-23 (half-year impact) and by \$6.9 million in FY 2023-24 with similar impacts in subsequent years.

State Expenditures

The Department of Revenue will need to update form instructions and guidance for implementing the bill. The expanded exemption will also require sales and use tax system (SUTS) programming costs; however, these costs are expected to be covered by the department's maintenance contract with the contractor. The fiscal note assumes that workload impacts can be met with existing resources.

Other Budget Impacts

TABOR refunds. The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the December 2021 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. 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. When the state is not in a TABOR surplus situation, the bill will reduce the amount of General Fund revenue available to spend or save.

Local Government

The bill will decrease revenue for state-collected city and county governments that currently exempt food for home consumption. The bill modifies the existing local option for the exemption, resulting in lower tax revenue. Currently, 34 statutory cities and towns and 21 counties take the food for home consumption exemption option. The impact of the bill at the local level depends on the mix of business and industry within each jurisdiction. For instance, towns that rely on tourist activities with higher concentrations of businesses in the food services and accommodations industries will have a larger impact, while those with few restaurants and hotels will have a smaller impact. The distribution of the impact among the state's local districts cannot be estimated due to data availability.

The bill will also decrease revenue for state-collected special districts that conform to the state tax base. Among the largest special districts are the Regional Transportation District (RTD) and the Scientific and Cultural Facilities District (SCFD). Based on the size of each district's tax base compared with the state tax base, decreased revenue is estimated as follows:

- RTD – The bill will reduce revenue to RTD by an estimated \$41.2 million in FY 2022-23 (half-year impact) and \$86.5 million in FY 2023-24.

- SCFD – The bill will reduce revenue to SCFD by an estimated \$4.2 million in FY 2022-23 (half-year impact) and \$8.8 million in FY 2023-24.

The bill will decrease revenue for other special districts including regional transportation authorities, metro districts, housing authorities, and health services districts across the state, but the impact cannot be estimated due to data availability.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, except the sales and use tax exemption is effective January 1, 2023.

State and Local Government Contacts

Counties	Information Technology
Municipalities	Personnel
Regional Transportation District	Revenue
School Districts	Special Districts
State Auditor	