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Revised Fiscal Note

(replaces fiscal note dated April 22, 2021)

Drafting Number: LLS 21-0899 Date: April 29, 2021
Prime Sponsors: Rep. Mullica; Van Winkle Bill Status: House Appropriations
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Bill Topic: QUALIFIED RETAILER RETAIN SALES TAX FOR ASSISTANCE

- Summary of Fiscal Impact:
[X] State Revenue [ ] TABOR Refund
[X] State Expenditure [ ] Local Government
[ ] State Transfer [ ] Statutory Public Entity

The bill continues a temporary net taxable sales deduction for restaurants, bars, and mobile food vendors for three months in 2021 and expands eligibility to caterers, food service contractors, and hotel food and drinking services. The bill decreases state revenue in FY 2021-22 and results in a one-time increase in state expenditures.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of \$101,600 to the Department of Revenue.

Fiscal Note Status: This fiscal note reflects the introduced bill as amended by the House Finance committee.

Table 1
State Fiscal Impacts Under HB 21-1265

Table with 4 columns: Category, Fund, Budget Year FY 2021-22, and Out Year FY 2022-23. Rows include Revenue, Expenditures, Transfers, and TABOR Refund.

## Summary of Legislation

The bill allows qualifying retailers to take a temporary deduction from state net taxable sales for sales made from June to August 2021 and retain the sales tax collected as relief from the disruption and lost revenue caused by COVID-19. The bill continues the existing deduction for businesses in the restaurant, drinking places, and mobile-food vendors industries created by HB 20B-1004, and expands eligibility to caterers and food service contractors, an industry that includes businesses providing food services at places such as sporting events, convention facilities, airlines, and cafeterias, and to food and drinking places operated by hotels and hotel catering. Qualifying retailers may deduct up to \$70,000 each month from state net taxable sales for up to five locations, 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 of the number of retailers claiming the deduction and the sales tax revenue reduction attributable to this bill.

## 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. Therefore, these estimates are based on a query of available data.

## State Revenue

The bill is estimated to reduce General Fund revenue by \$45.1 million in FY 2021-22. The actual revenue impact will depend on public health orders, consumer behavior, and business operating decisions. For example, if rising COVID-19 case counts result in restrictions on business activity and reduced consumer spending, the revenue reduction could be less than estimated.

**Data and assumptions.** The revenue impact estimate is based on available data provided by the Department of Revenue for retailers impacted by HB 20B-1004. Additionally, the estimate relies on a query of sales tax data for caterers and food services contractors. Based on these data and potential growth in sites, the bill would result in a reduction of \$15 million in sales tax revenue each month. The analysis assumes the number of sites for qualifying food services and drinking places retailers increase about 32 percent from February 2021 levels based on numbers of returns filed and expectations that restrictions ease and demand increases compared to the initial HB 20B-1004 deduction period. 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 from the General Fund by \$101,600 in FY 2021-22 only. Expenditures are displayed in Table 2 and described below.

**Table 2**  
**Expenditures Under HB 21-1265**

<b>Cost Components</b>	<b>FY 2021-22</b>
<b>Department of Revenue</b>	
Contractor Services	\$100,000
Office of Research and Analysis	\$1,600
<b>Total</b>	<b>\$101,600</b>

**Contractor services.** The Department of Revenue will use a contractor to process sales tax refund claims and review wrongly filed returns and resolve errors. The analysis assumes processing refund claims will require 1,200 hours, and another 2,400 hours will be required for resolution of wrongly filed returns and errors. It is estimated that this work will cost \$27.78 per hour.

**Other Costs.** The Office of Research and Analysis will require 50 hours of contractor time for reporting and analysis in FY 2021-22. This work will cost an estimated \$32 per hour.

**TABOR refunds.** The bill decreases state revenue subject to TABOR for FY 2021-22 only. The March 2021 LCS forecast projects revenue to fall short of the TABOR limit in this year. If actual revenue exceeds the limit, the bill will decrease the amount required to be refunded to taxpayers from the General Fund in FY 2022-23.

## Effective Date

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

## State Appropriations

For FY 2021-22, the bill requires a General Fund appropriation of \$101,600 to the Department of Revenue.

## State and Local Government Contacts

Information Technology

Personnel

Revenue