



## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Revised Fiscal Note

(replaces fiscal note dated January 20, 2023)

**Drafting Number:** LLS 23-0123  
**Prime Sponsors:** Rep. Bird  
Sen. Liston

**Date:** February 16, 2023  
**Bill Status:** House Appropriations  
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**Bill Topic:** TAXATION TOBACCO PRODUCTS REMOTE RETAIL SELLERS

**Summary of Fiscal Impact:**

- |   |  |
|---|--|
| <input type="checkbox"/> State Revenue                | <input type="checkbox"/> TABOR Refund            |
| <input checked="" type="checkbox"/> State Expenditure | <input type="checkbox"/> Local Government        |
| <input type="checkbox"/> State Transfer               | <input type="checkbox"/> Statutory Public Entity |

The bill makes several adjustments and clarifications to the remittance of taxes on tobacco and nicotine products. It increases workload on an ongoing basis beginning in FY 2023-24.

**Appropriation Summary:** No appropriation is required.

**Fiscal Note Status:** The fiscal note reflects the introduced bill, as amended by the House Finance Committee. The bill was initially recommended by the Legislative Oversight Committee Concerning Tax Policy.

## Summary of Legislation

The bill makes several adjustments to the remittance of taxes on tobacco and nicotine products.

First, the bill separates the tobacco tax treatment of out-of-state retailers, which was established in Proposition EE, into two distinct but parallel tax treatments. The bill excludes cigars and pipe tobacco from the existing definition of “delivery sale,” and defines “remote retail sale” for sales of cigars and pipe tobacco from out-of-state retailers. Remote retail sales will be taxed in the same manner as delivery sales.

Second, the bill clarifies how the “manufacturer’s list price” (the price used to determine the amount of taxes owed) should be calculated in specific instances. For a manufacturer who is also a remote retail seller or a delivery seller of tobacco or nicotine, the bill sets the manufacturer’s list price equal to the cost to manufacture the product. In cases where it is impracticable to determine the invoice price from the manufacturer, the average of the price paid for the product’s stock in the previous calendar year may be used. This codifies current practice.

## Background

Proposition EE, approved by voters in 2020, raised taxes on cigarettes and tobacco products, created a new tax for nicotine products, and created a minimum price for cigarette sales. The proposition also clarified that tobacco “delivery sellers,” defined as sellers who reside outside of the state and sell directly to consumers in the state via the internet or other means, are subject to tobacco taxes at the time of the sale to the consumer.

## State Expenditures

The bill will minimally increase workload for the Department of Revenue on an ongoing basis starting in FY 2023-24 to administer the parallel tax treatments. This workload can be accomplished within existing appropriations.

## Effective Date

The bill takes effect January 1, 2024, assuming no referendum petition is filed.

## State and Local Government Contacts

Revenue