STATE OF COLORADO

DEPARTMENT OF REVENUE
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John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

March 19, 2012

The Honorable Brandon Shaffer
President of the Senate
Colorado General Assembly

The Honorable John Morse
Senate Majority Leader
Colorado General Assembly

The Honorable Bill Cadman
Senate Minority Leader
Colorado General Assembly

The Honorable Frank McNulty
Speaker of the House
Colorado General Assembly

The Honorable Amy Stephens
House Majority Leader
Colorado General Assembly

The Honorable Mark Ferrandino
House Minority Leader
Colorado General Assembly

Dear Senators and Representatives:

Nine bills enacted from the 2010 legislative session require the Department of Revenue to account for, on a quarterly and cumulative basis, all revenue that is attributable to their enactment, to the extent such information is available. These bills are HB10-1189, HB10-1190, HB10-1191, HB10-1192, HB10-1193, HB10-1194, HB10-1195, HB10-1196 and HB10-1199.

The data available to the Department is not adequate to account accurately for all revenue attributable to the enactment of the nine bills mentioned above. The information on sales tax returns provided to the state by vendors on sales tax does not delineate sales to the level of detail that is necessary to isolate the impact of the implementation of the bills. For the Department to report this information, retailers would have to provide detailed information with regard to sales taxes collected for specific items.

To meet the spirit of the tracking requirements of these laws, the Department is reporting information that tracks the sales tax revenues collected by selected industries assumed to be affected by the enactment of HB10-1189, HB10-1190, HB10-1191, HB10-1192, HB10-1194 and HB10-1195, based on industry code classifications. While this data may include changes that are a direct result of the above-mentioned legislation, there are numerous factors that have an impact on the sales tax revenue collections by the selected industries such as:

- Changes in the economy (e.g. business cycles, employment variables, inflation, new businesses)
- Previously passed legislation that became effective during this reporting period
- Regulatory changes
- Inability to identify and isolate all businesses that may have been impacted
- Commodity price changes
- Sales within particular industry code classifications may include taxable items that are not specific to the legislation

Furthermore, additional collections due to implementation of the 2010 legislation are not captured exclusively through sales tax collections. Use tax payments by businesses have been affected by the legislation, as well. Businesses or individuals pay use tax primarily if they purchase goods outside of the state for use in the state when the out-of-state vendor does not charge sales tax. For instance, the sales/use tax liability for purchases of computer software from out-of-state vendors would be submitted by Colorado businesses on use tax returns when sales taxes are not collected by the out-of-state vendor. Because software is purchased by businesses in nearly every industry sector, the Department cannot isolate the impact of increased use tax payments attributable to the repeal of the sales/use tax exemption on computer software by focusing on use tax collections from specific industry codes.

The following explanation is provided as an example of how the factors listed above result in an inability to isolate sales tax revenues from one specific piece of legislation. HB10-1191 eliminated the sales and use tax exemption on the sales of soft drinks and candy. Sales tax returns do not separate soft drinks and candy into a standalone category. So, the Department can only identify taxpayers by the industry codes that may be affected by the legislation. The targeted industry codes of businesses affected by this legislation include grocery stores, convenience stores, and warehouse clubs. However, these businesses sell many other items in addition to soft drinks and candy. The prices or popularity of those other items may increase or decrease, accounting for a resulting increase or decrease in taxable sales. Therefore, while the Department can report the increase in sales tax revenues collected by businesses in the targeted industry codes, some change in revenues are attributable to factors that affect the sales of other taxable items sold by these businesses. Another factor adding to the uncertainty is that there may be other types of businesses that sell candy or soft drinks that are not included in the targeted list (e.g. pizza delivery businesses that sell liter bottles of soft drinks or craft stores that sell candy).

As illustrated in the example and because of the factors listed above, it is impossible for the Department to determine the additional revenue that is attributable directly to the enacted legislation.

However, as indicated above, the Department has identified the industry codes that are most likely to distinguish businesses affected by six of the house bills and is providing the following table that indicates the net change in state sales tax revenues collected by the targeted industries, comparing collections in the third quarter of CY 2009 (the last third quarter period when the bills had not yet been enacted) to those in third quarter of CY 2011. The cumulative amount is the total increase in sales taxes collected by the targeted industries since the second quarter of CY 2010.

Net Change in Sales Tax Collections from Industries Affected by Sales Tax Budgetary Measures in Thousands of Dollars*

Bill	Title	3rd Quarter, CY 2011 Net Change**	Cumulative Net Change
HB10-1189	Direct Mail	$55	$390
HB10-1190	Industrial Energy	6,394	26,078
HB10-1191	Candy and Soft Drinks	5,404	32,638
HB10-1192	Software Regulation	1,776	9,979
HB10-1194	Food Containers	417	2,436
HB10-1195	Agricultural Products	***	5,877

* Please see Appendix A for industry code classifications used above to estimate net change in sales tax collections
** Net change is compared to 3rd Quarter, CY 2009.
*** HB11-1005 repealed HB10-1195, effective July 1, 2011.

Appendix A

BILL #	Brief Description	Impacted Industries Code Classifications
HB10-1189	Direct Mail	▪ Direct Mail Advertising
HB10-1190	Industrial Energy	▪ Electric Power Generation, Transmission and Distribution ▪ Natural Gas Distribution ▪ Water, Sewage and Other Systems
HB10-1191	Candy and Soft Drinks	▪ Supermarkets and Other Grocery (except Convenience) Stores ▪ Convenience Stores ▪ Confectionary and Nut Stores ▪ Pharmacies and Drug Stores (except Medical Marijuana Dispensaries) ▪ Food (Health) Supplement Stores ▪ Warehouse Clubs and Supercenters
HB10-1192	Software Regulation	▪ Computer and Computer Peripheral Equipment and Software Merchant Wholesalers ▪ Computer and Software Stores ▪ Software Publishers
HB10-1194	Food Containers	▪ Service Establishment Equipment and Supplies Merchant Wholesalers ▪ Industrial and Personal Service Paper Merchant Wholesalers ▪ General Line Grocery Merchant Wholesalers
HB10-1195	Agricultural Products	▪ Crop Production ▪ Animal Production ▪ Support Activities for Agriculture and Forestry ▪ Other Farm Product Raw Material Merchant Wholesalers ▪ Restricted Use Pesticide Dealers

The table does not include revenues associated with the passage of HB10-1193, HB10-1196 and HB10-1199 for the following reasons:

- The requirements for complying with HB10-1193 have been challenged in federal court by the Direct Marketing Association. The court has issued a preliminary injunction prohibiting the enforcement of the notification provision of the law. As a result, use tax revenues from purchases covered by HB10-1193 are not expected to increase significantly until the preliminary injunction is resolved.

- HB10-1196 establishes a $6,000 limit on the amount of income tax credit allowed for certain vehicles that are fuel efficient (category 7 vehicles) purchased on or after January 1, 2010 but before January 1, 2011 and eliminates the credit, thereafter. The Department is unable to report the revenue change due to this legislation as the amount of the credit that could have been claimed above the $6,000 limit is not reported by the taxpayer and therefore cannot be data captured. For periods after January 1, 2011, the Department cannot determine the amount of credits that would have been claimed if the credit had not been repealed.

- HB10-1199 establishes a temporary cap of $250,000 on the net operating loss that may be claimed by a company. This cap is in place for income tax years 2011, 2012 and 2013. Net operating loss may be carried forward one additional year for each tax year that a company is prohibited from claiming additional net operating loss. The Department will be unable to report the revenue impact of this legislation because the amount of a deduction carried forward by a corporation is not separately tracked by the Department's accounting system (although this information is available on a case-by-case basis to auditors by manually reviewing a submitted return).

Please contact Mark Couch, legislative liaison for the Department of Revenue, with questions that you may have about this letter. Mark may be reached at 303-866-2819 or mcouch@spike.dor.state.co.us.

Sincerely,

Barbara J Brohl

Barbara J. Brohl
Executive Director
Colorado Department of Revenue