SB13-001

Colorado Legislative Council Staff Fiscal Note

FINAL FISCAL NOTE

Drafting Number:	LLS 13-0419	**Date:**	June 6, 2013
Prime Sponsor(s):	Sen. Kefalas; Morse Rep. Kagan	**Bill Status:**	Signed into Law
		Fiscal Analyst:	Ron Kirk (303-866-4785)

TITLE: CONCERNING INCOME TAX CREDITS TO SUPPORT WORKING FAMILIES, AND, IN CONNECTION THEREWITH, ENACTING THE "COLORADO WORKING FAMILIES ECONOMIC OPPORTUNITY ACT OF 2013" AND MAKING AN APPROPRIATION.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015	FY 2015-2016
State Revenue General Fund - Child Tax Credit*	($11.4 million)	($23.0 million)	($23.3 million)
General Fund - Earned Income Tax Credit**	See State Revenue Section		
State Expenditures General Fund*	$60,000	$131,684	$214,269
FTE Position Change*		2.7 FTE	4.5 FTE
Effective Date: The bill was signed into law by the Governor on June 5, 2013, and takes effect August 7, 2013, assuming no referendum petition is filed. Tax changes are effective beginning tax year 2014, subject to triggers.			
Appropriation Summary for FY 2013-2014: See State Appropriations Section.*			
Local Government Impact: None.			

* *This fiscal impact is conditional, predicated on the trigger on the child tax credit having been met for tax year 2014. In particular, it is conditional predicated on the passage by Congress of the Marketplace Fairness Act of 2013 or similar legislation, and the adoption of House Bill 13-1295.*

** *The earned income tax credit is not made permanent until the tax year immediately following the first tax year for which it is used to refund a TABOR surplus.*

Summary of Legislation

This bill makes the refundable Colorado earned income tax credit, currently a TABOR refund mechanism, permanent beginning the first tax year immediately after it is next used to refund a TABOR surplus. In addition, the bill creates a refundable Colorado child tax credit, effective upon passage by Congress of the Marketplace Fairness Act of 2013 (or similar legislation) and adoption of House Bill 13-1295, which simplifies the collection of sales taxes from out-of-state retailers to meet the requirements the Marketplace Fairness Act. The Marketplace Fairness Act is a federal bill that requires out-of-state retailers to collect and remit sales taxes to states that have met minimum simplification requirements for sales tax administration.

Table 1 compares Colorado state income tax credits under current law to those under Senate Bill 13-001. More information about these credits and how they relate to their federal tax credit counterparts is contained within the background section.

Table 1. Colorado State Income Tax Credits Available Under SB13-001

Colorado Income Tax Credits	**Treatment for Income Tax Credits**	
	Current Law	**Senate Bill 13-001**
Colorado Child Tax Credit	Federal credit available. State credit not available.	Refundable state income tax credit equal to a percentage of the actual federal child tax credit claimed under Section 24 of the Internal Revenue Code. Children age 5 and under qualify. As a tax filer's income increases, the amount of the credit decreases. The credit is capped for single filers with federal adjusted gross income (AGI) of $75,000, and married filers with $85,000 of AGI. ***Effective only if Congress passes the Marketplace Fairness Act of 2013 (or similar legislation) and HB13-1295 is adopted.****
Colorado Earned Income Tax Credit (EITC)	Refundable state income tax credit equal to 10% of federal EITC claimed. ***Available only during years for which the state has a TABOR surplus.***	Permanent refundable state income tax credit equal to 10% of the federal EITC, beginning with the first tax year after which the EITC is again available as a TABOR refund mechanism.

* On May 6, 2013, the U.S. Senate passed the Marketplace Fairness Act of 2013 (S.743). At the time of release of this final fiscal note, the Act is in the U.S. House of Representatives. On May 28, 2013, HB 13-1295 was signed into law by Colorado's Governor.

Background

The following provides historical and background information on the state and federal child and earned income tax credits and the changes under SB13-001. The federal credits are described because state credits are a percentage of their federal counterpart.

Colorado child tax credit. There is no state credit under current law. However, the state had previously extended a refundable child tax credit equal to $300 per child age 5 and under during years when the state had a sufficiently large TABOR surplus. Last available in 2000 and 2001, the credit was used as a mechanism to refund the TABOR surplus until it was repealed in 2010. Taxpayers claimed $30.5 million in FY 2000-01 and $37.4 million in FY 2001-02.

Federal credit. Under Section 24 of the Internal Revenue Code (IRC), the federal government allows a nonrefundable credit equal to $1,000 per qualifying child age 16 and under. The credit is phased-out for taxpayers with a federal adjusted gross income (AGI) over $75,000 for single filers and $110,000 for joint filers. An additional child tax credit is available and allows a portion of the child tax credit to be refundable for certain taxpayers who get less than the full amount of the child tax credit.

Subject to the trigger described above, SB13-001 creates a refundable credit equal to a percentage of the federal credits claimed under Section 24 of the IRC. It includes a percentage of both the federal nonrefundable and refundable child tax credits claimed. The credit is capped for single filers who have $75,000 in federal AGI and joint filers who have $85,000 in federal AGI. Thus, the credit is not available to taxpayers who have incomes above these thresholds.

Taxpayers filing single returns can qualify for a state income tax credit equal to:

- 30 percent of the federal credit claimed whenever federal AGI is below $25,001;
- 15 percent of the federal credit claimed whenever federal AGI is between $25,001 and $50,000; and
- 5 percent of the federal credit claimed whenever federal AGI is between $50,001 and $75,000.

Two taxpayers filing a joint return can qualify for a state income tax credit equal to:

- 30 percent of the federal credit claimed whenever federal AGI is below $35,001;
- 15 percent of the federal credit claimed whenever federal AGI is between $35,001 and $60,000; and
- 5 percent of the federal credit claimed whenever federal AGI is between $60,001 and $85,000.

Earned Income Tax Credit (EITC). The EITC is extended to low- and middle-income taxpayers who have earned income working for another person or from operating a business or farm.

The Colorado EITC is refundable and is equal to 10 percent of the federal EITC. One of three mechanisms in current law used to refund the TABOR surplus, the Colorado credit is only available during years when there is a sufficient TABOR surplus. The Colorado EITC was last used to refund TABOR surpluses in FY 1998-99, FY 1999-00, and FY 2000-01. An average EITC of $159 was received by 210,942 taxpayers in FY 2001-02. The total General Fund tax refund was $32.9 million.

Federal credit. The federal EITC is refundable and varies depending on whether a taxpayer is single or married and the number of children in the home. For example, for tax year 2012, the maximum credit is $5,891 for households with three or more qualifying children and $475 for households with no qualifying children. Taxpayers must have an AGI less than a certain amount; for a taxpayer with three or more qualifying children that amount is $45,060 in 2012.

SB13-001 converts the Colorado EITC from a TABOR refund mechanism into a permanent refundable tax credit, making it available each year regardless of whether a TABOR surplus exists. The change is effective in the first tax year immediately following next use of the EITC as a TABOR refund method.

State Revenue

General Fund revenue will be reduced by the amounts shown in Table 2, conditional on the trigger for the child tax credit being met for tax year 2014. If the trigger is not met until a future tax year, these revenue impacts will be shifted accordingly. No revenue impact is shown for the earned income tax credit because the March 2013 Legislative Council Staff forecast does not anticipate a TABOR refund through at least FY 2015-16.

Table 2. General Fund Revenue Impacts - SB13-001*
Millions of Dollars

	General Fund Revenue Impact		
Colorado Income Tax Credits	**FY 2013-14**	**FY 2014-15**	**FY 2015-16**
Colorado Child Tax Credit*	($11.4)	($23.0)	($23.3)
Colorado Earned Income Tax Credit (EITC)**	$0	$0	$0
Total	**($11.4)**	**($23.0)**	**($23.3)**

Totals may not sum due to rounding. FY 2013-14 represents a half-year impact.
* *These estimates assume the trigger for the child tax credit is met for tax year 2014.*
** *No revenue impact is shown for the EITC because the March 2013 Legislative Council Staff forecast does not anticipate a TABOR refund through at least FY 2015-16.*

Child tax credit: Conditional General Fund revenue reduction of $11.4 million in FY 2013-14 and $23.0 million in FY 2014-15. This bill establishes a child tax credit equal to a percentage of the federal child tax credit claimed. Based on population estimates from the Office of the State Demographer and federal child tax credits claimed in 2010, an estimated 185,587 returns will be filed for children age 5 and under who will qualify for the state credit in tax year 2014.

Earned income tax credit. This bill establishes a permanent Colorado EITC equal to 10 percent of the federal EITC beginning the first tax year immediately following the first year the EITC is next used to refund a TABOR surplus. Under current law, the EITC refund mechanism is prioritized first among the mechanisms used to refund the surplus, as long as the TABOR surplus is large enough to trigger it. It is triggered when the TABOR surplus exceeds a threshold which is increased each year by a growth factor equal to Colorado personal income growth. In FY 2012-13, the ETIC threshold is $91.0 million.

Based on the March 2013 Legislative Council Staff forecast, no TABOR surplus is anticipated through at least FY 2014-15, and therefore no TABOR refund is anticipated through at least FY 2015-16. Based on these assumptions, the earliest the earned income tax credit could become permanent under SB13-001 is FY 2017-18. This would require a TABOR surplus in FY 2015-16 of at least $102.5 million, or a TABOR surplus large enough to trigger the use of the EITC as a refund mechanism in FY 2016-17.

For informational purposes only, Table 3 shows the amount of General Fund required to provide a Colorado earned income tax credit equal to 10 percent of the federal credit. Revenue estimates for the earned income tax credit are based on a history of federal earned income tax credits claimed by Colorado taxpayers and expectations for growth in the eligible population and the average earned income tax credit.

Table 3. Earned Income Tax Credit ***This note does not anticipate the Colorado EITC to be available either as a refund mechanism or as a permanent credit through at least tax year tax year 2015.*** ***This information is provided for informational purposes only.***			
	Tax Year 2014	**Tax Year 2015**	**Tax Year 2016**
Total Value of the EITC - General Fund Revenue	$82.1 million	$85.5 million	$89.0 million
Number of Households	385,500	392,500	399,500
Average EITC	$213	$218	$223

State Expenditures

Department of Revenue - General Fund expenditures will increase by the amounts shown in Table 4. These expenditures are to implement the child tax credit only, and are conditional on the trigger on the child tax credit being met for tax year 2014. If the trigger is not met, these expenditures will be shifted forward accordingly. There is no longer any expenditures required to implement the earned income tax credit.

Income Tax and Audit Sections. The income tax and audit sections will require $52,647 and 1.2 FTE in FY 2014-15 and $128,265 and 2.8 FTE in FY 2015-16 for auditing and verification costs. Based on the experience of the Internal Revenue Service, federal refundable tax credits have a higher rate of fraud and carry higher auditing requirements. Based on IRS statistics of income data for 2009 and American Community Survey data, an estimated 185,587 households will be eligible for the child tax credit in tax year 2014. In total, the income tax division is expected to review 10 percent of this amount, or about 18,560 returns before authorizing the credits.

Table 4. Department of Revenue General Fund Expenditures Under SB13-001*			
Cost Components	**FY 2013-14**	**FY 2014-15**	**FY 2015-16**
Personal Services - Income Tax and Auditing Services		$52,647	$128,265
FTE		1.2	2.8
Personal Services - Call Center		$64,362	$72,944
FTE		1.5	1.7
Operating Expenses and Capital Outlay		$14,675	$13,060
Programming Costs	$60,000		
TOTAL	**$60,000**	**$131,684**	**$214,269**

** These estimates assume the trigger for the child tax credit is met for tax year 2014. If the trigger is not met, these expenditure impacts will be shifted forward in time accordingly.*

Call Center. The call center will require $64,362 and 1.5 FTE in FY 2014-15 and $72,944 and 1.7 FTE in FY 2015-16. It is expected that the Taxpayer Services Call Center will need to respond to about 18,560 additional calls related child tax credit.

Programming costs. The department will incur one-time programing costs of $60,000 in FY 2013-14 to modify the GenTax system to verify the identify of the taxpayers claiming the child tax credit. GenTax is the department's new tax accounting program. Maintenance and updating are performed by contracts with the FAST Corporation and estimated at $200 per hour.

Expenditures Not Included

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 summarized in Table 5.

Table 5. Expenditures Not Included Under SB13-001*
These expenditures are conditional,
assuming the trigger for the child tax credit is met for tax year 2014.

Cost Components	FY 2014-15	FY 2015-16
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$27,656	$48,864
Supplemental Employee Retirement Payments	$7,182	$13,973
TOTAL	**$29,670**	**$62,837**

**More information is available at: http://colorado.gov/fiscalnotes*

State Appropriations

The Department of Revenue will require a General Fund appropriation of $60,000 in FY 2013-14.

Departments Contacted

Legislative Council Staff   Revenue