

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 10-0738.01 Esther van Mourik

HOUSE BILL 10-1192

HOUSE SPONSORSHIP

Pommer,

SENATE SPONSORSHIP

Heath,

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE STATE SALES AND USE TAX OF STANDARDIZED**
102 **SOFTWARE, AND MAKING AN APPROPRIATION THEREFOR.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill repeals a special regulation promulgated by the department of revenue related to the type of software subject to sales or use tax.

The bill specifies that standardized software is included in the definition of tangible personal property and defines standardized

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
Amended 2nd Reading
January 29, 2010

software.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Repeal of special regulation of the department**
3 **of revenue.** (1) Special Regulation 7: Computer Software, which rule
4 was adopted March 28, 2006, concerning the type of software subject to
5 sales or use tax (1 CCR 201-5), is repealed, effective March 1, 2010.

6 (2) The office of legislative legal services shall forward a copy of
7 House Bill 10-____, enacted in 2010, to the secretary of state for purposes
8 of informing the secretary of state of the general assembly's action
9 repealing Special Regulation 7. The secretary of state shall delete Special
10 Regulation 7 from the code of Colorado regulations and include an
11 appropriate reference of such repeal in the code of Colorado regulations
12 consistent with the provisions of section 24-4-103 (11), Colorado Revised
13 Statutes.

14 **SECTION 2.** 39-26-102 (15), Colorado Revised Statutes, is
15 amended, and the said 39-26-102 is further amended BY THE
16 ADDITION OF A NEW SUBSECTION, to read:

17 **39-26-102. Definitions.** As used in this article, unless the context
18 otherwise requires:

19 (13.5) (a) (I) "STANDARDIZED SOFTWARE" MEANS:

20 (A) COMPUTER SOFTWARE, INCLUDING PREWRITTEN UPGRADES,
21 THAT IS NOT DESIGNED OR DEVELOPED TO THE SPECIFICATIONS OF A
22 SPECIFIC PURCHASER; OR

23 (B) COMPUTER SOFTWARE DESIGNED AND DEVELOPED TO THE
24 SPECIFICATIONS OF A SPECIFIC PURCHASER BUT THEN SOLD TO ANOTHER
25 PURCHASER.

1 (II) "STANDARDIZED SOFTWARE" INCLUDES STANDARDIZED
2 SOFTWARE THAT IS MODIFIED OR ENHANCED TO ANY DEGREE EVEN IF SUCH
3 MODIFICATION OR ENHANCEMENT IS DESIGNED AND DEVELOPED TO THE
4 SPECIFICATIONS OF A SPECIFIC PURCHASER, UNLESS SUCH STANDARDIZED
5 SOFTWARE IS A DE MINIMIS COMPONENT OF SUCH SOFTWARE.

6 "STANDARDIZED SOFTWARE" SHALL NOT INCLUDE SOFTWARE THAT
7 MODIFIES OR ENHANCES STANDARDIZED SOFTWARE IF THERE IS A
8 REASONABLE, SEPARATELY STATED CHARGE, INVOICE, OR OTHER
9 STATEMENT OF PRICE GIVEN TO THE PURCHASER FOR SUCH SOFTWARE
10 THAT MODIFIES OR ENHANCES THE STANDARDIZED SOFTWARE.

11 (III) "STANDARDIZED SOFTWARE" INCLUDES THE COMBINATION OF
12 TWO OR MORE STANDARDIZED SOFTWARE PROGRAMS OR PORTIONS
13 THEREOF.

14 (IV) "STANDARDIZED SOFTWARE" EXCLUDES MAINTENANCE
15 AGREEMENTS FOR THE MAINTENANCE OF STANDARDIZED SOFTWARE.

16 (b) FOR PURPOSES OF THIS SUBSECTION (13.5), "COMPUTER
17 SOFTWARE" MEANS A SET OF CODED INSTRUCTIONS DESIGNED TO CAUSE
18 A COMPUTER OR AUTOMATIC DATA PROCESSING HARDWARE TO PERFORM
19 A TASK.

20 (15) (a) "Tangible personal property" means corporeal personal
21 property. The term shall not be construed to include newspapers, as
22 legally defined by section 24-70-102, C.R.S., preprinted newspaper
23 supplements ~~which~~ THAT become attached to or inserted in and
24 distributed with such newspapers, or direct mail advertising materials
25 ~~which~~ THAT are distributed in Colorado by any person engaged solely and
26 exclusively in the business of providing cooperative direct mail
27 advertising.

1 (b) "TANGIBLE PERSONAL PROPERTY" INCLUDES STANDARDIZED
2 SOFTWARE, INCLUDING BUT NOT LIMITED TO ELECTRONIC, TELEPHONIC, OR
3 SIMILAR TRANSFERS OF SUCH SOFTWARE OR SUCH SOFTWARE
4 DOWNLOADED FROM THE INTERNET OR DELIVERED TO THE PURCHASER BY
5 USE OF TANGIBLE STORAGE MEDIA WHERE THE TANGIBLE STORAGE MEDIA
6 IS NOT PHYSICALLY TRANSFERRED TO THE PURCHASER. THE DEPARTMENT
7 OF REVENUE MAY PROMULGATE RULES FOR APPORTIONING TAX IN THOSE
8 INSTANCES IN WHICH STANDARDIZED SOFTWARE IS TRANSFERRED FOR USE
9 IN MORE THAN ONE STATE.

10 **SECTION 3.** Part 1 of article 21 of title 39, Colorado Revised
11 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
12 read:

13 **39-21-122. Revenue impact of 2010 tax legislation - tracking**
14 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL
15 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1192,
16 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS
17 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY
18 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE
19 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

20 **SECTION 4.** Part 1 of article 26 of title 39, Colorado Revised
21 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
22 read:

23 **39-26-102.3. Inclusion of standardized software in state sales**
24 **tax base - use revenues generated for education.** NOTWITHSTANDING
25 ANY OTHER PROVISION OF LAW, THE GENERAL ASSEMBLY SHALL
26 APPROPRIATE AT LEAST FORTY PERCENT OF THE AMOUNT OF ANY
27 INCREASE IN NET STATE SALES TAX REVENUES RESULTING FROM THE

1 AMENDMENT OF THE DEFINITION OF TANGIBLE PERSONAL PROPERTY SET
2 FORTH IN SECTION 39-26-102 (15) BY HOUSE BILL 10-1192, ENACTED IN
3 2010, TO INCLUDE STANDARDIZED SOFTWARE FOR THE PURPOSE OF
4 FUNDING PRESCHOOL THROUGH TWELFTH GRADE PUBLIC EDUCATION.
5 SUCH FUNDING SHALL SUPPLEMENT AND NOT SUPPLANT ANY OTHER
6 MONEYS USED FOR SAID PURPOSE.

7 **SECTION 5.** Part 1 of article 75 of title 24, Colorado Revised
8 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
9 read:

10 **24-75-113. 2010 bills to increase state revenue - prohibition on**
11 **hiring of new state employees.** NO MONEYS DERIVED FROM THE
12 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE
13 BILL 10-1192, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE
14 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE
15 EMPLOYEES.

16 **SECTION 6. Appropriation.** In addition to any other
17 appropriation, there is hereby appropriated, out of any moneys in the
18 general fund not otherwise appropriated, to the department of revenue, for
19 allocation to the taxation business group, taxation and compliance
20 division, for the fiscal year beginning July 1, 2009, the sum of ninety-four
21 thousand three hundred twenty-two dollars (\$94,322) and 0.9 FTE, or so
22 much thereof as may be necessary, for the implementation of this act.

23 **SECTION 7. Specified effective date - applicability.** This act
24 shall take effect March 1, 2010, and shall apply to sales of standardized
25 software made on or after said date.

26 **SECTION 8. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.