

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 10-0739.01 Esther van Mourik

HOUSE BILL 10-1193

HOUSE SPONSORSHIP

Pommer,

SENATE SPONSORSHIP

Heath,

House Committees

Finance
Appropriations

Senate Committees

Finance
Appropriations

SENATE
Am ended 3rd Reading
February 10, 2010

A BILL FOR AN ACT

101 **CONCERNING THE COLLECTION OF SALES AND USE TAXES ON SALES**
102 **MADE BY OUT-OF-STATE RETAILERS, AND MAKING AN**
103 **APPROPRIATION THEREFOR.**

SENATE
Am ended 2nd Reading
February 8, 2010

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>.)

HOUSE
3rd Reading Unam ended
February 1, 2010

Section 1 of the bill relates to current law requiring a retailer to collect sales tax from a person residing in this state only if the retailer has sufficient connections with this state. Commencing March 1, 2010, section 1 articulates a presumption that any out-of-state retailer that has

HOUSE
Am ended 2nd Reading
January 29, 2010

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.

a referral relationship with an affiliate has an obligation to collect sales tax. The bill specifies that the presumption may be rebutted by the out-of-state retailer if the retailer can show that the affiliate with whom the retailer has such a relationship did not engage in active solicitation. The bill defines an affiliate as a person residing in this state that solicits business by means of a public forum in this state.

Section 2 specifies that, for purposes of any efforts to collect use tax, the executive director of the department of revenue may issue a subpoena to any out-of-state retailer if the out-of-state retailer refuses to voluntarily furnish specific information when requested and may take the out-of-state retailer's testimony under oath. If the out-of-state retailer fails or refuses to respond to the subpoena and give testimony, the executive director may apply to any judge of the district court of the state of Colorado for an attachment against the out-of-state retailer for contempt.

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

2 **SECTION 1.** 39-26-102 (3) (b) and (8), Colorado Revised
3 Statutes, are amended to read:

4 **39-26-102. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (3) "Doing business in this state" means the selling, leasing, or
7 delivering in this state, or any activity in this state in connection with the
8 selling, leasing, or delivering in this state, of tangible personal property
9 by a retail sale as defined in this section, for use, storage, distribution, or
10 consumption within this state. This term includes, but shall not be limited
11 to, the following acts or methods of transacting business:

12 (b) (I) The soliciting, either by direct representatives, indirect
13 representatives, manufacturers' agents, or by distribution of catalogues or
14 other advertising, or by use of any communication media, or by use of the
15 newspaper, radio, or television advertising media, or by any other means
16 whatsoever, of business from persons residing in this state and by reason
17 thereof receiving orders from, or selling or leasing tangible personal

1 property to, such persons residing in this state for use, consumption,
2 distribution, and storage for use or consumption in this state.

3 (II) COMMENCING MARCH 1, 2010, IF A RETAILER THAT DOES NOT
4 COLLECT COLORADO SALES TAX IS PART OF A CONTROLLED GROUP OF
5 CORPORATIONS, AND THAT CONTROLLED GROUP HAS A COMPONENT
6 MEMBER THAT IS A RETAILER WITH PHYSICAL PRESENCE IN THIS STATE,
7 THE RETAILER THAT DOES NOT COLLECT COLORADO SALES TAX IS
8 PRESUMED TO BE DOING BUSINESS IN THIS STATE. FOR PURPOSES OF THIS
9 SUBPARAGRAPH (II), "CONTROLLED GROUP OF CORPORATIONS" HAS THE
10 SAME MEANING AS SET FORTH IN SECTION 1563 (a) OF THE FEDERAL
11 "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND "COMPONENT
12 MEMBER" HAS THE SAME MEANING AS SET FORTH IN SECTION 1563 (b) OF
13 THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED. THIS
14 PRESUMPTION MAY BE REBUTTED BY PROOF THAT DURING THE CALENDAR
15 YEAR IN QUESTION, THE COMPONENT MEMBER THAT IS A RETAILER WITH
16 PHYSICAL PRESENCE IN THIS STATE DID NOT ENGAGE IN ANY
17 CONSTITUTIONALLY SUFFICIENT SOLICITATION IN THIS STATE ON BEHALF
18 OF THE RETAILER THAT DOES NOT COLLECT COLORADO SALES TAX.

19 (8) "Retailer" or "vendor" means a person doing a ~~retail~~ business
20 IN THIS STATE, known to the trade and public as such, and selling to the
21 user or consumer, and not for resale.

22 **SECTION 2.** 39-21-112, Colorado Revised Statutes, is amended
23 BY THE ADDITION OF A NEW SUBSECTION to read:

24 **39-21-112. Duties and powers of executive director.**
25 (3.5) (a) IF ANY RETAILER THAT DOES NOT COLLECT COLORADO SALES
26 TAX REFUSES VOLUNTARILY TO FURNISH ANY OF THE INFORMATION
27 SPECIFIED IN SUBSECTION (1) OF THIS SECTION WHEN REQUESTED BY THE

1 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE OR HIS OR HER
2 EMPLOYEE, AGENT, OR REPRESENTATIVE, THE EXECUTIVE DIRECTOR, BY
3 SUBPOENA ISSUED UNDER THE EXECUTIVE DIRECTOR'S HAND, MAY
4 REQUIRE THE ATTENDANCE OF THE ___ RETAILER AND THE PRODUCTION BY
5 HIM OR HER OF ANY OF THE FOREGOING INFORMATION IN THE _____
6 RETAILER'S POSSESSION AND MAY ADMINISTER AN OATH TO HIM OR HER
7 AND TAKE HIS OR HER TESTIMONY. IF THE ___ RETAILER FAILS OR REFUSES
8 TO RESPOND TO SAID SUBPOENA AND GIVE TESTIMONY, THE EXECUTIVE
9 DIRECTOR MAY APPLY TO ANY JUDGE OF THE DISTRICT COURT OF THE
10 STATE OF COLORADO TO ENFORCE SUCH SUBPOENA BY ANY APPROPRIATE
11 ORDER, INCLUDING, IF APPROPRIATE, AN ATTACHMENT AGAINST THE ___
12 RETAILER AS FOR CONTEMPT, AND UPON HEARING, SAID JUDGE HAS, FOR
13 THE PURPOSE OF ENFORCING OBEDIENCE TO THE REQUIREMENTS OF SAID
14 SUBPOENA, POWER TO MAKE SUCH ORDER AS, IN HIS OR HER DISCRETION,
15 HE OR SHE DEEMS CONSISTENT WITH THE LAW FOR PUNISHMENT OF
16 CONTEMPTS.

17 (b) FOR PURPOSES OF THIS SUBSECTION (3.5), "RETAILER" SHALL
18 HAVE THE SAME MEANING AS SET FORTH IN SECTION 39-26-102 (8).

19 (c) (I) EACH RETAILER THAT DOES NOT COLLECT COLORADO SALES
20 TAX SHALL NOTIFY COLORADO PURCHASERS THAT SALES OR USE TAX IS
21 DUE ON CERTAIN PURCHASES MADE FROM THE RETAILER AND THAT THE
22 STATE OF COLORADO REQUIRES THE PURCHASER TO FILE A SALES OR USE
23 TAX RETURN.

24 (II) FAILURE TO PROVIDE THE NOTICE REQUIRED IN SUBPARAGRAPH
25 (I) OF THIS PARAGRAPH (c) SHALL SUBJECT THE RETAILER TO A PENALTY
26 OF FIVE DOLLARS FOR EACH SUCH FAILURE, UNLESS THE RETAILER SHOWS
27 REASONABLE CAUSE FOR SUCH FAILURE.

1 (d) (I) (A) EACH RETAILER THAT DOES NOT COLLECT COLORADO
2 SALES TAX SHALL SEND NOTIFICATION TO ALL COLORADO PURCHASERS BY
3 JANUARY 31 OF EACH YEAR SHOWING SUCH INFORMATION AS THE
4 COLORADO DEPARTMENT OF REVENUE SHALL REQUIRE BY RULE AND THE
5 TOTAL AMOUNT PAID BY THE PURCHASER FOR COLORADO PURCHASES
6 MADE FROM THE RETAILER IN THE PREVIOUS CALENDAR YEAR. SUCH
7 NOTIFICATION SHALL INCLUDE, IF AVAILABLE, THE DATES OF PURCHASES,
8 THE AMOUNTS OF EACH PURCHASE, AND THE CATEGORY OF THE PURCHASE,
9 INCLUDING, IF KNOWN BY THE RETAILER, WHETHER THE PURCHASE IS
10 EXEMPT OR NOT EXEMPT FROM TAXATION. THE NOTIFICATION SHALL
11 STATE THAT THE STATE OF COLORADO REQUIRES A SALES OR USE TAX
12 RETURN TO BE FILED AND SALES OR USE TAX PAID ON CERTAIN COLORADO
13 PURCHASES MADE BY THE PURCHASER FROM THE RETAILER.

14 (B) THE NOTIFICATION SPECIFIED IN SUB-SUBPARAGRAPH (A) OF
15 THIS SUBPARAGRAPH (I) SHALL BE SENT SEPARATELY TO ALL COLORADO
16 PURCHASERS BY FIRST-CLASS MAIL AND SHALL NOT BE INCLUDED WITH
17 ANY OTHER SHIPMENTS. THE NOTIFICATION SHALL INCLUDE THE WORDS
18 "IMPORTANT TAX DOCUMENT ENCLOSED" ON THE EXTERIOR OF THE
19 MAILING. THE NOTIFICATION SHALL INCLUDE THE NAME OF THE RETAILER.

20 (II) (A) EACH RETAILER THAT DOES NOT COLLECT COLORADO
21 SALES TAX SHALL FILE AN ANNUAL STATEMENT FOR EACH PURCHASER TO
22 THE DEPARTMENT OF REVENUE ON SUCH FORMS AS ARE PROVIDED OR
23 APPROVED BY THE DEPARTMENT SHOWING THE TOTAL AMOUNT PAID FOR
24 COLORADO PURCHASES OF SUCH PURCHASERS DURING THE PRECEDING
25 CALENDAR YEAR OR ANY PORTION THEREOF, AND SUCH ANNUAL
26 STATEMENT SHALL BE FILED ON OR BEFORE MARCH 1 OF EACH YEAR.

27 (B) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE

1 MAY REQUIRE ANY RETAILER THAT DOES NOT COLLECT COLORADO SALES
2 TAX THAT MAKES TOTAL COLORADO SALES OF MORE THAN ONE HUNDRED
3 THOUSAND DOLLARS IN A YEAR TO FILE THE ANNUAL STATEMENT
4 DESCRIBED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) BY
5 MAGNETIC MEDIA OR ANOTHER MACHINE-READABLE FORM FOR THAT
6 YEAR.

7 (III) (A) FAILURE TO SEND THE NOTIFICATION REQUIRED IN
8 SUBPARAGRAPH (I) OF THIS PARAGRAPH (d) SHALL SUBJECT THE RETAILER
9 TO A PENALTY OF TEN DOLLARS FOR EACH SUCH FAILURE, UNLESS THE
10 RETAILER SHOWS REASONABLE CAUSE FOR SUCH FAILURE.

11 (B) FAILURE TO FILE THE ANNUAL STATEMENT REQUIRED IN
12 SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (d)
13 SHALL SUBJECT THE RETAILER TO A PENALTY OF TEN DOLLARS FOR EACH
14 PURCHASER THAT SHOULD HAVE BEEN INCLUDED IN SUCH ANNUAL
15 STATEMENT, UNLESS THE RETAILER SHOWS REASONABLE CAUSE FOR SUCH
16 FAILURE.

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

20 **39-21-122. Revenue impact of 2010 tax legislation - tracking**
21 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL
22 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1193,
23 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS
24 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY
25 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE
26 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

27 **SECTION 4.** Part 1 of article 75 of title 24, Colorado Revised

1 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
2 read:

3 **24-75-113. 2010 bills to increase state revenue - prohibition on**
4 **hiring of new state employees.** NO MONEYS DERIVED FROM THE
5 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE
6 BILL 10-1193, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE
7 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE
8 EMPLOYEES, EXCEPT FOR ANY FULL TIME EQUIVALENT STATE EMPLOYEES
9 NECESSARY TO ENFORCE THE PROVISIONS OF SAID HOUSE BILL 10-1193.

10 **SECTION 5. Appropriation.** (1) In addition to any other
11 appropriation, there is hereby appropriated, out of any moneys in the
12 general fund not otherwise appropriated, to the department of revenue, for
13 allocation to the taxation business group, for the fiscal year beginning
14 July 1, 2010, the sum of one hundred thirty-one thousand five hundred
15 eighty-four dollars (\$131,584) and 1.0 FTE, or so much thereof as may
16 be necessary, for the implementation of this act.

17 (2) In addition to any other appropriation, there is hereby
18 appropriated to the department of law, for the fiscal year beginning July
19 1, 2010, the sum of forty thousand dollars (\$40,000), or so much thereof
20 as may be necessary, for the provision of legal services to the department
21 of revenue related to the implementation of this act. Said sum shall be
22 from reappropriated funds received from the department of revenue out
23 of the appropriation made in subsection (1) of this section.

24 (3) In addition to any other appropriation, there is hereby
25 appropriated, out of any moneys in the general fund not otherwise
26 appropriated, to the department of revenue, for allocation to the taxpayer
27 service division for the fiscal year beginning July 1, 2010, the sum of

1 thirty thousand dollars (\$30,000), or so much thereof as may be
2 necessary, for the implementation of this act.

3 **SECTION 6. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, and safety.