

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 4, 2010
Date

Committee on Finance.

After consideration on the merits, the Committee recommends the following:

HB10-1193 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend reengrossed bill, page 2, line 4, strike "**Definitions.**" and
2 substitute "**Definitions - rules.**".

3 Page 2, line 15, after "other" insert "CONSTITUTIONAL".

4 Page 3, strike line 4 and substitute "AN AGREEMENT WITH A NONEXEMPT
5 AFFILIATE UNDER WHICH THE NONEXEMPT AFFILIATE, FOR A".

6 Page 3, line 7, before "AFFILIATE" insert "NONEXEMPT".

7 Page 3, line 12, before "AFFILIATES" insert "NONEXEMPT".

8 Page 3, line 15, before "AFFILIATE" insert "NONEXEMPT".

9 Page 3, strike lines 22 through 25 and substitute:

10 "(B) IN THE EVENT THE EXECUTIVE DIRECTOR OF THE DEPARTMENT
11 OF REVENUE DETERMINES AN EXEMPT AFFILIATE IS OPERATING AS A
12 NONEXEMPT AFFILIATE FOR PURPOSES OF ITS RELATIONSHIP WITH ONE OR
13 MORE RETAILERS, THE EXECUTIVE DIRECTOR SHALL ISSUE A WRITTEN
14 NOTICE NOTIFYING THE EXEMPT AFFILIATE THAT, FOR PURPOSES OF ITS
15 RELATIONSHIP WITH A PARTICULAR RETAILER, IT IS IN VIOLATION OF ITS
16 EXEMPT STATUS. THE EXECUTIVE DIRECTOR SHALL PROVIDE A COPY OF
17 THE NOTICE TO SUCH RETAILER AT THE SAME TIME. THE EXEMPT

1 AFFILIATE SHALL HAVE THIRTY DAYS AFTER RECEIPT OF THE NOTICE TO
2 SUBMIT EVIDENCE TO THE DEPARTMENT ESTABLISHING THAT, FOR
3 PURPOSES OF THE RELATIONSHIP WITH THE RETAILER, THE EXEMPT
4 AFFILIATE DID NOT VIOLATE THE EXEMPT STATUS. IF THE EXEMPT
5 AFFILIATE FAILS TO RESPOND TO THE NOTICE OR REMAINS IN VIOLATION OF
6 THE EXEMPT STATUS, THE EXECUTIVE DIRECTOR SHALL GIVE NOTICE TO
7 THE RETAILER OF THE NAME AND ADDRESS OF SUCH EXEMPT AFFILIATE
8 THAT FAILED TO RESPOND OR THAT REMAINS IN VIOLATION OF THE EXEMPT
9 STATUS, AND THE RETAILER MAY TERMINATE THE RELATIONSHIP WITH THE
10 EXEMPT AFFILIATE WITHIN THIRTY DAYS AFTER THE RETAILER'S RECEIPT
11 OF THE DEPARTMENT'S NOTICE. IN THE EVENT THE RETAILER DOES NOT
12 TERMINATE THE RELATIONSHIP WITH THE PREVIOUSLY NOTIFIED EXEMPT
13 AFFILIATE WITHIN THE THIRTY-DAY PERIOD, THE RETAILER SHALL BE
14 DEEMED TO BE DOING BUSINESS IN THIS STATE. AN EXEMPT AFFILIATE
15 WITH EXEMPT STATUS FOR PURPOSES OF ITS RELATIONSHIPS WITH ONE OR
16 MORE RETAILERS MAY SIMULTANEOUSLY BE A NONEXEMPT AFFILIATE FOR
17 PURPOSES OF ITS RELATIONSHIPS WITH ONE OR MORE DIFFERENT
18 RETAILERS.

19 (C) FOR PURPOSES OF THIS SUBPARAGRAPH (II), "NONEXEMPT
20 AFFILIATE" MEANS A PERSON RESIDING IN THIS STATE THAT PUBLICLY
21 SOLICITS BUSINESS FOR A RETAILER OTHER THAN FOR ITSELF BY MEANS OF
22 ITS PHYSICAL PRESENCE IN THIS STATE AND SHALL NOT INCLUDE AN
23 EXEMPT AFFILIATE.

24 (D) FOR PURPOSES OF THIS SUBPARAGRAPH (II), "EXEMPT
25 AFFILIATE" MEANS ANY NONEXEMPT AFFILIATE THAT, FOR PURPOSES OF ITS
26 RELATIONSHIP WITH A PARTICULAR RETAILER, UTILIZES ELECTRONIC
27 MEDIA TO A DEGREE GREATER THAN EIGHTY PERCENT TO SOLICIT BUSINESS
28 FOR A RETAILER.

29 (E) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE
30 MAY PROMULGATE RULES AS MAY BE NECESSARY TO ADMINISTER AND
31 ENFORCE ANY PROVISION OF THIS SUBPARAGRAPH (II). THE RULES SHALL
32 BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S."

33 Page 4, line 5, strike "OUT-OF-STATE RETAILER" and substitute "RETAILER
34 THAT DOES NOT COLLECT COLORADO SALES TAX".

35 Page 4, line 11, strike "OUT-OF-STATE".

1 Page 4, line 12, strike "OUT-OF-STATE".

2 Page 4, line 14, strike "OUT-OF-STATE".

3 Page 4, line 19, strike "OUT-OF-STATE".

4 Page 4, after line 25 insert:

5 (c) ALL RETAILERS THAT DO NOT COLLECT COLORADO SALES TAX
6 SHALL NOTIFY COLORADO PURCHASERS THAT SALES OR USE TAX IS DUE ON
7 ALL PURCHASES MADE FROM THE RETAILER AND THAT THE COLORADO
8 DEPARTMENT OF REVENUE REQUIRES THE PURCHASER TO FILE A SALES OR
9 USE TAX RETURN.

10 (d) ALL RETAILERS THAT DO NOT COLLECT COLORADO SALES TAX
11 SHALL SEND NOTIFICATION TO ALL COLORADO PURCHASERS BY JANUARY
12 31 OF EACH YEAR SHOWING THE TOTAL AMOUNT PAID BY THE PURCHASER
13 FOR COLORADO PURCHASES MADE FROM THE RETAILER IN THE PREVIOUS
14 CALENDAR YEAR. THE NOTIFICATION SHALL STATE THAT THE COLORADO
15 DEPARTMENT OF REVENUE REQUIRES A SALES OR USE TAX RETURN TO BE
16 FILED AND SALES OR USE TAX PAID ON THE COLORADO PURCHASES MADE
17 BY THE PURCHASER FROM THE RETAILER."

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