

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 24, 2013
Date

Committee on Finance.

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

HB13-1295 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, page 3, line 11, strike "Bill 13-____." and substitute
2 "Bill 13-1295."

3 Page 3, line 25, strike "37, OR 42," and substitute "37, 42, OR 43,".

4 Page 4, line 4, strike "BILL 13-____." and substitute "BILL 13-1295."

5 Page 4, line 10, strike "BILL 13-____" and substitute "BILL 13-1295".

6 Page 4, strike lines 17 through 27.

7 Page 5, strike lines 1 through 4 and substitute:

8 "(7.7) "REMOTE SELLER" MEANS A PERSON WHO MAKES A REMOTE
9 SALE; EXCEPT THAT A REMOTE SELLER DOES NOT INCLUDE A SMALL
10 SELLER AS DEFINED IN AN ACT OF CONGRESS THAT AUTHORIZES STATES TO
11 REQUIRE CERTAIN RETAILERS TO PAY, COLLECT, OR REMIT STATE OR LOCAL
12 SALES TAXES."

13 Page 5, line 10, strike "OCCURS" and substitute "IS MADE".

14 Page 7, strike lines 10 through 12 and substitute:

15 "(2) UPON THE EFFECTIVE DATE OF AN ACT OF CONGRESS THAT
16 AUTHORIZES STATES TO REQUIRE CERTAIN RETAILERS TO PAY, COLLECT,
17 OR REMIT STATE OR LOCAL SALES TAXES:

1 (a) (I) WITH RESPECT TO REMOTE SALES THERE IS".

2 Page 7, strike line 17 and substitute "SECTION 39-26-106. ANY
3 EXEMPTIONS WITH RESPECT TO PART 1 OF THIS ARTICLE AS SET FORTH IN
4 THIS TITLE ARE APPLICABLE.

5 (II) IN ADDITION TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a),
6 EVERY REMOTE SELLER SHALL COLLECT".

7 Page 7, strike lines 22 through 24 and substitute "SECTION. ANY
8 EXEMPTIONS WITH RESPECT TO PART 1 OF THIS ARTICLE AS SET FORTH IN
9 THIS TITLE ARE APPLICABLE."

10 Page 7, line 26, before "TAX" insert "OR USE".

11 Page 8, line 16, strike "29-2-110," and substitute "29-2-109,".

12 Page 8, line 20, strike "(2)" and substitute "(2), AND A COPY OF ANY
13 ORDINANCE OR RESOLUTION THAT CHANGES THE LOCAL TAXING
14 JURISDICTION'S BOUNDARIES,".

15 Page 10, strike line 23 and substitute:

16 "(II) EXCEPT AS PROVIDED IN SECTION 39-26-105.3 (8) (b) (III),
17 THE AMOUNT RETAINED BY A RETAILER TO COVER THE".

18 Page 10, line 25, strike "NOT EXCEED AN AMOUNT EQUAL TO" and
19 substitute "BE".

20 Page 13, strike lines 8 through 27.

21 Strike page 14.

22 Page 15, strike lines 1 through 8 and substitute:

23 "SECTION 6. In Colorado Revised Statutes, 39-26-105.3, **amend**
24 (7); and **add** (8), (9), and (10) as follows:
25 **39-26-105.3. Remittance of tax - electronic database - vendor**
26 **held harmless.** (7) ~~The executive director of the department of revenue~~
27 ~~shall promulgate rules for the administration of this section. Such rules~~
28 ~~shall be promulgated in accordance with article 4 of title 24, C.R.S.~~ THE
29 DEPARTMENT OF REVENUE SHALL PROVIDE INFORMATION TO REMOTE
30 SELLERS THAT INDICATES THE TAXABILITY OF PRODUCTS AND SERVICES

1 ALONG WITH ANY PRODUCT AND SERVICE EXEMPTIONS FROM SALES TAX
2 IN THE STATE. THE DEPARTMENT OF REVENUE SHALL ALSO PROVIDE TO
3 REMOTE SELLERS A SALES TAX RATE DATABASE AND A DATABASE OF
4 LOCAL TAXING JURISDICTION BOUNDARIES. THE DEPARTMENT OF REVENUE
5 SHALL NOTIFY REMOTE SELLERS AND CERTIFIED SOFTWARE PROVIDERS OF
6 ANY STATE OR LOCAL SALES TAX RATE CHANGE AT LEAST NINETY DAYS
7 BEFORE THE EFFECTIVE DATE OF SUCH A CHANGE. SUBSEQUENT TO ANY
8 SALES TAX RATE CHANGE, THE DEPARTMENT OF REVENUE SHALL UPDATE
9 THE INFORMATION DESCRIBED THIS SUBSECTION (7) ACCORDINGLY.

10 (8) (a) THE DEPARTMENT OF REVENUE SHALL MAKE AVAILABLE
11 FREE OF CHARGE SOFTWARE TO RETAILERS THAT:

12 (I) CALCULATES SALES TAXES DUE ON EACH TRANSACTION AT THE
13 TIME THE TRANSACTION IS COMPLETED;

14 (II) FILES SALES TAX RETURNS; AND

15 (III) UPDATES TO REFLECT ANY TAX RATE CHANGES FOR THE STATE
16 OR ANY LOCAL TAXING JURISDICTION.

17 (b) (I) THE DEPARTMENT OF REVENUE MAY CONTRACT WITH ONE
18 OR MORE CERTIFIED SOFTWARE PROVIDERS DESCRIBED IN PARAGRAPH (c)
19 OF THIS SUBSECTION (8), WITHOUT REGARD TO THE REQUIREMENTS IN THE
20 "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, C.R.S., TO
21 PROVIDE THE SOFTWARE OR PROVIDE ACCESS TO THE SOFTWARE
22 DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (8).

23 (II) A RETAILER MAY ELECT TO COLLECT AND REMIT SALES TAX ON
24 ITS OWN, WITHOUT USING THE SERVICES OF A CERTIFIED SOFTWARE
25 PROVIDER DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (8), OR MAY
26 ELECT TO USE THE SERVICES OF A CERTIFIED SOFTWARE PROVIDER.

27 (III) IN PROVIDING SOFTWARE FREE OF CHARGE AS DESCRIBED IN
28 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE CONTRACT NEGOTIATED
29 BETWEEN THE DEPARTMENT OF REVENUE AND THE CERTIFIED SOFTWARE
30 PROVIDERS DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (8) MUST
31 PROVIDE THAT ALL OR A PORTION OF THE AMOUNT DESCRIBED IN SECTION
32 39-26-105 (1) (c) (II), MAY NOT BE RETAINED BY THE RETAILER ELECTING
33 TO UTILIZE THE SERVICES OF A CERTIFIED SOFTWARE PROVIDER BUT WILL
34 INSTEAD BE RETAINED BY THE CERTIFIED SOFTWARE PROVIDER AS
35 PAYMENT FOR ITS SERVICES.

36 (c) THE DEPARTMENT OF REVENUE SHALL ESTABLISH
37 CERTIFICATION PROCEDURES FOR PERSONS TO BE APPROVED AS CERTIFIED
38 SOFTWARE PROVIDERS, WHICH PROCEDURES SHALL INCLUDE A
39 REQUIREMENT THAT SOFTWARE PROVIDED BY CERTIFIED SOFTWARE
40 PROVIDERS BE CAPABLE OF CALCULATING AND FILING SALES AND USE
41 TAXES IN ALL STATES QUALIFIED UNDER THE PROPOSED FEDERAL
42 LEGISLATION KNOWN AS THE "MARKETPLACE FAIRNESS ACT OF 2013"

1 THAT, AS OF THE INTRODUCTION OF HOUSE BILL 13-1295, IS BEING
2 CONSIDERED IN CONGRESS.

3 (9) (a) RETAILERS ARE RELIEVED FROM LIABILITY TO THE STATE OR
4 LOCAL TAXING JURISDICTION FOR THE INCORRECT COLLECTION,
5 REMITTANCE, OR NONCOLLECTION OF SALES TAXES, INCLUDING ANY
6 PENALTIES OR INTEREST, IF THE LIABILITY IS THE RESULT OF AN ERROR OR
7 OMISSION MADE BY A CERTIFIED SOFTWARE PROVIDER DESCRIBED IN
8 PARAGRAPH (c) OF SUBSECTION (8) OF THIS SECTION.

9 (b) CERTIFIED SOFTWARE PROVIDERS DESCRIBED IN PARAGRAPH
10 (c) OF SUBSECTION (8) OF THIS SECTION ARE RELIEVED FROM LIABILITY TO
11 THE STATE OR ANY LOCAL TAXING JURISDICTION FOR THE INCORRECT
12 COLLECTION, REMITTANCE, OR NONCOLLECTION OF SALES TAXES,
13 INCLUDING ANY PENALTIES OR INTEREST, IF THE LIABILITY IS THE RESULT
14 OF MISLEADING OR INACCURATE INFORMATION PROVIDED BY A RETAILER.

15 (c) RETAILERS AND CERTIFIED SOFTWARE PROVIDERS DESCRIBED
16 IN PARAGRAPH (c) OF SUBSECTION (8) OF THIS SECTION ARE RELIEVED
17 FROM LIABILITY TO THE STATE OR ANY LOCAL TAXING JURISDICTION FOR
18 INCORRECT COLLECTION, REMITTANCE, OR NONCOLLECTION OF SALES
19 TAXES, INCLUDING ANY PENALTIES OR INTEREST, IF THE LIABILITY IS THE
20 RESULT OF INCORRECT INFORMATION OR SOFTWARE PROVIDED BY THE
21 DEPARTMENT OF REVENUE.

22 (d) RETAILERS AND CERTIFIED SOFTWARE PROVIDERS DESCRIBED
23 IN PARAGRAPH (c) OF SUBSECTION (8) OF THIS SECTION ARE RELIEVED
24 FROM LIABILITY FOR COLLECTING SALES TAXES AT THE IMMEDIATELY
25 PRECEDING EFFECTIVE STATE AND LOCAL RATES DURING THE NINETY-DAY
26 NOTICE PERIOD DESCRIBED IN SUBSECTION (7) OF THIS SECTION IF THE
27 REQUIRED NOTICE IS NOT PROVIDED.

28 (10) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE
29 SHALL PROMULGATE RULES FOR THE ADMINISTRATION OF THIS SECTION.
30 SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF
31 TITLE 24, C.R.S."

32 Page 15, line 13, strike "BEFORE" and substitute "ON OR BEFORE".

33 Page 15, line 14, strike "A RETURN" and substitute "AN ELECTRONIC
34 RETURN".

35 Page 15, line 16, strike "INCLUDE" and substitute "ELECTRONICALLY
36 MAKE".

37 Page 15, strike line 27.

1 Page 16, strike lines 1 and 2 and substitute:

2 "(b) THE DEPARTMENT OF REVENUE SHALL BE THE SOLE ENTITY
3 WITHIN THE STATE THAT IS RESPONSIBLE FOR AUDITING REMOTE
4 SELLERS."

5 Page 17, line 16, after "EMPLOYEE" insert "OF THE LOCAL TAXING
6 JURISDICTION".

7 Page 17, strike line 22 and substitute "SHALL PRESCRIBE A STANDARD
8 ELECTRONIC SALES TAX REPORTING FORM".

9 Page 18, after line 20 insert:

10 "SECTION 9. In Colorado Revised Statutes, 29-2-106, amend
11 (2) as follows:

12 **29-2-106. Collection - administration - enforcement.** (2) The
13 effective date of any countywide sales tax or city or town sales tax
14 adopted under the provisions of this article shall be ~~either January 1 or~~
15 ~~July 1 following the date of the election in which such county sales tax~~
16 ~~proposal is approved; and notice of the adoption of any county sales tax~~
17 ~~proposal shall be submitted by the county clerk and recorder or by the~~
18 ~~clerk of the city council or board of trustees of a city or town to the~~
19 ~~executive director of the department of revenue at least forty-five days~~
20 ~~prior to the effective date of such tax. If such a sales tax proposal is~~
21 ~~approved at an election held less than forty-five days prior to the January~~
22 ~~1 or July 1 following the date of election, such tax shall not be effective~~
23 ~~until the next succeeding January 1 or July 1 AS SET FORTH IN SECTION~~
24 ~~39-26-104 (2) (c), C.R.S."~~

25 Renumber succeeding sections accordingly.

26 Page 21, strike line 2 and substitute:

27 "**SECTION 14. Effective date.** (1) Except as otherwise provided
28 in this section, this act takes effect July 1, 2014.

29 (2) Section 6 of this act takes effect only if the proposed federal
30 legislation known as the "Marketplace Fairness Act of 2013" that, as of
31 the introduction of House Bill 13-1295, is being considered in congress
32 is enacted and takes effect either upon the effective date of this act or the
33 effective date of the "Marketplace Fairness Act of 2013", whichever is
34 later. The department of revenue shall send the revisor of statutes written

1 notice that this requirement has been met within thirty days of enactment
2 of the "Marketplace Fairness Act of 2013" by congress.

3 (3) Section 9 of this act takes effect only if congress enacts an act
4 that authorizes states to require certain retailers to pay, collect, or remit
5 state or local sales taxes and takes effect either upon the effective date of
6 this act or the effective date of such act of congress, whichever is later.
7 The department of revenue shall send the revisor of statutes written notice
8 that this requirement has been met within thirty days of enactment of such
9 an act by congress."

10 Renumber succeeding section accordingly.

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