

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0739.01 Esther van Mourik

**HOUSE BILL 10-1193**

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**HOUSE SPONSORSHIP**

**Pommer,**

**SENATE SPONSORSHIP**

**Heath,**

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**House Committees**

Finance  
Appropriations

**Senate Committees**

Finance  
Appropriations

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**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.**

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**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>.)*

**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

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  
3rd Reading Unamended  
February 1, 2010

HOUSE  
Amended 2nd Reading  
January 29, 2010

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.

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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 ALL PURCHASES MADE FROM THE RETAILER AND THAT THE  
22 COLORADO DEPARTMENT OF REVENUE REQUIRES THE PURCHASER TO FILE  
23 A SALES OR USE 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 THE TOTAL AMOUNT PAID BY THE  
4           PURCHASER FOR COLORADO PURCHASES MADE FROM THE RETAILER IN THE  
5           PREVIOUS CALENDAR YEAR. THE NOTIFICATION SHALL STATE THAT THE  
6           COLORADO DEPARTMENT OF REVENUE REQUIRES A SALES OR USE TAX  
7           RETURN TO BE FILED AND SALES OR USE TAX PAID ON THE COLORADO  
8           PURCHASES MADE BY THE PURCHASER FROM THE RETAILER.

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

15          (II) (A) EACH RETAILER THAT DOES NOT COLLECT COLORADO  
16          SALES TAX SHALL FILE AN ANNUAL STATEMENT FOR EACH PURCHASER TO  
17          THE DEPARTMENT OF REVENUE ON SUCH FORMS AS ARE PROVIDED OR  
18          APPROVED BY THE DEPARTMENT SUMMARIZING THE TOTAL COLORADO  
19          PURCHASES OF SUCH PURCHASERS DURING THE PRECEDING CALENDAR  
20          YEAR OR ANY PORTION THEREOF, AND SUCH ANNUAL STATEMENT SHALL  
21          BE FILED ON OR BEFORE MARCH 1 OF EACH YEAR.

22          (B) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE  
23          MAY REQUIRE ANY RETAILER THAT DOES NOT COLLECT COLORADO SALES  
24          TAX THAT MAKES TOTAL COLORADO SALES OF MORE THAN ONE HUNDRED  
25          THOUSAND DOLLARS IN A YEAR TO FILE THE ANNUAL STATEMENT  
26          DESCRIBED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) BY  
27          MAGNETIC MEDIA OR ANOTHER MACHINE-READABLE FORM FOR THAT

1 YEAR.

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

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

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

15 **39-21-122. Revenue impact of 2010 tax legislation - tracking**  
16 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL  
17 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1193,  
18 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS  
19 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY  
20 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE  
21 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

22 **SECTION 4.** Part 1 of article 75 of title 24, Colorado Revised  
23 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
24 read:

25 **24-75-113. 2010 bills to increase state revenue - prohibition on**  
26 **hiring of new state employees.** NO MONEYS DERIVED FROM THE  
27 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE

1 BILL 10-1193, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE  
2 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE  
3 EMPLOYEES, EXCEPT FOR ANY FULL TIME EQUIVALENT STATE EMPLOYEES  
4 NECESSARY TO ENFORCE THE PROVISIONS OF SAID HOUSE BILL 10-1193.

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

12 (2) In addition to any other appropriation, there is hereby  
13 appropriated to the department of law, for the fiscal year beginning July  
14 1, 2010, the sum of forty thousand dollars (\$40,000), or so much thereof  
15 as may be necessary, for the provision of legal services to the department  
16 of revenue related to the implementation of this act. Said sum shall be  
17 from reappropriated funds received from the department of revenue out  
18 of the appropriation made in subsection (1) of this section.

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