

**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. 10-0738.01 Esther van Mourik

HOUSE BILL 10-1192

HOUSE SPONSORSHIP

Pommer,

SENATE SPONSORSHIP

Heath,

House Committees

Finance
Appropriations

Senate Committees

Finance
Appropriations

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
3rd Reading Unamended
February 1, 2010

HOUSE
Amended 2nd Reading
January 29, 2010

software.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that House Bill 10-1192, enacted in 2010, is not
4 intended to:

5 (a) Tax separately stated information technology services or
6 separately stated custom software that is a part of what is known in the
7 industry as "modified off-the-shelf software"; and

8 (b) Tax information technology services or custom software where
9 those services or software constitute what is known in the industry as
10 "pure" custom software, including software designed and developed for
11 a developer's own use.

12 (2) The general assembly further finds and declares that House
13 Bill 10-1192, enacted in 2010, is intended to allow developers of
14 standardized software to take advantage of the exemption for machinery
15 and machine tools contained in section 39-26-709, C.R.S.

16 (3) The general assembly further finds and declares that House
17 Bill 10-1192, enacted in 2010, is not intended to alter, other than the
18 designation of standardized software as tangible personal property, the tax
19 treatment of what is known in the industry as "digital goods", "application
20 service providers", "software as a service", or "cloud computing".
21 Nothing contained in said House Bill 10-1192, including the repeal of
22 Special Regulation 7 or the requirement that tax be apportioned in the
23 case of a business purchase of software for its own users operating both
24 within and outside of the state, shall be read as expressing the general
25 assembly's intent regarding the treatment of such methods of transacting

1 business.

2 **SECTION 2. 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 3.** 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.

26 (II) (A) "STANDARDIZED SOFTWARE" INCLUDES STANDARDIZED
27 SOFTWARE THAT IS MODIFIED OR ENHANCED _____ EVEN IF SUCH

1 MODIFICATION OR ENHANCEMENT IS DESIGNED AND DEVELOPED TO THE
2 SPECIFICATIONS OF A SPECIFIC PURCHASER, UNLESS SUCH STANDARDIZED
3 SOFTWARE IS A DE MINIMIS COMPONENT OF SUCH SOFTWARE.

4 (B) "STANDARDIZED SOFTWARE" SHALL NOT INCLUDE SOFTWARE
5 OR INFORMATION TECHNOLOGY SERVICES THAT MODIFY OR ENHANCE
6 STANDARDIZED SOFTWARE IF THERE IS A REASONABLE, SEPARATELY
7 STATED CHARGE, INVOICE, OR OTHER STATEMENT OF PRICE GIVEN TO THE
8 PURCHASER FOR SUCH SOFTWARE OR INFORMATION TECHNOLOGY
9 SERVICES THAT MODIFY OR ENHANCE THE STANDARDIZED SOFTWARE.

10 (C) PRIOR TO JANUARY 1, 2011, IT SHALL BE SUFFICIENT IF THE
11 REASONABLE, SEPARATELY STATED CHARGE, INVOICE, OR OTHER
12 STATEMENT OF PRICE REFERRED TO IN SUB-SUBPARAGRAPH (B) OF THIS
13 SUBPARAGRAPH (II) IS SEPARATELY IDENTIFIABLE BASED ON THE BOOKS
14 AND RECORDS OF THE VENDOR AND NEED NOT BE SEPARATELY STATED.

15 (III) "STANDARDIZED SOFTWARE" INCLUDES THE COMBINATION OF
16 TWO OR MORE STANDARDIZED SOFTWARE PROGRAMS OR PORTIONS
17 THEREOF.

18 (IV) "STANDARDIZED SOFTWARE" EXCLUDES MAINTENANCE
19 AGREEMENTS FOR THE MAINTENANCE OF STANDARDIZED SOFTWARE.

20 (V) "STANDARDIZED SOFTWARE" SHALL NOT INCLUDE SOFTWARE
21 DEVELOPED FOR A PERSON'S OR AFFILIATE'S OWN USE. HOWEVER, IF SUCH
22 SOFTWARE IS SUBSEQUENTLY SOLD, SUCH SOFTWARE SOLD SHALL BE
23 CONSIDERED STANDARDIZED SOFTWARE.

24 (b) FOR PURPOSES OF THIS SUBSECTION (13.5), "COMPUTER
25 SOFTWARE" MEANS A SET OF CODED INSTRUCTIONS DESIGNED TO CAUSE
26 A COMPUTER OR AUTOMATIC DATA PROCESSING HARDWARE TO PERFORM
27 A TASK.

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

9 (b) (I) "TANGIBLE PERSONAL PROPERTY" INCLUDES STANDARDIZED
10 SOFTWARE WITHOUT REGARD TO HOW SUCH STANDARDIZED SOFTWARE IS
11 ACQUIRED BY THE PURCHASER OR DOWNLOADED TO THE PURCHASER'S
12 COMPUTER.

13 (II) THE DEPARTMENT OF REVENUE MAY PROMULGATE RULES FOR
14 APPORTIONING TAX IN THOSE INSTANCES IN WHICH STANDARDIZED
15 SOFTWARE IS TRANSFERRED FOR USE IN MORE THAN ONE STATE. SUCH
16 RULES SHALL BE BASED ONLY ON THOSE EMPLOYEES OR USERS BASED
17 PERMANENTLY IN THE STATE.

18 SECTION 4. 39-26-709 (1) (c) (III), Colorado Revised Statutes,
19 is amended to read:

20 39-26-709. Machinery and machine tools. (1) (c) As used in
21 this subsection (1):

22 (III) "Manufacturing" means the operation of producing a new
23 product, article, substance, or commodity, OR PRODUCING STANDARDIZED
24 SOFTWARE AS DEFINED IN SECTION 39-26-102 (13.5) (a), different from
25 and having a distinctive name, character, or use from raw or prepared
26 materials.

27 SECTION 5. Part 1 of article 21 of title 39, Colorado Revised

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

3 **39-21-122. Revenue impact of 2010 tax legislation - tracking**
4 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL
5 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1192,
6 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS
7 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY
8 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE
9 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

10 **SECTION 6.** Part 1 of article 26 of title 39, Colorado Revised
11 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
12 read:

13 **39-26-102.3. Inclusion of standardized software in state sales**
14 **tax base - use revenues generated for education.** NOTWITHSTANDING
15 ANY OTHER PROVISION OF LAW, THE GENERAL ASSEMBLY SHALL
16 APPROPRIATE AT LEAST FORTY PERCENT OF THE AMOUNT OF ANY
17 ESTIMATED INCREASE IN NET STATE SALES TAX REVENUES RESULTING
18 FROM THE AMENDMENT OF THE DEFINITION OF TANGIBLE PERSONAL
19 PROPERTY SET FORTH IN SECTION 39-26-102 (15) BY HOUSE BILL 10-1192,
20 ENACTED IN 2010, TO INCLUDE STANDARDIZED SOFTWARE FOR THE
21 PURPOSE OF FUNDING PRESCHOOL THROUGH TWELFTH GRADE PUBLIC
22 EDUCATION. SUCH FUNDING SHALL SUPPLEMENT AND NOT SUPPLANT ANY
23 OTHER MONEYS USED FOR SAID PURPOSE.

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

27 **24-75-113. 2010 bills to increase state revenue - prohibition on**

1 **hiring of new state employees.** NO MONEYS DERIVED FROM THE
2 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE
3 BILL 10-1192, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE
4 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE
5 EMPLOYEES.

6 **SECTION 8. Appropriation.** In addition to any other
7 appropriation, there is hereby appropriated, out of any moneys in the
8 general fund not otherwise appropriated, to the department of revenue, for
9 allocation to the taxation business group, taxation and compliance
10 division, for the fiscal year beginning July 1, 2009, the sum of ninety-four
11 thousand three hundred twenty-two dollars (\$94,322) and 0.9 FTE, or so
12 much thereof as may be necessary, for the implementation of this act.

13 **SECTION 9. Specified effective date - applicability.** This act
14 shall take effect March 1, 2010, and shall apply to sales of standardized
15 software made on or after said date.

16 **SECTION 10. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.