

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 11-0828.01 Esther van Mourik

HOUSE BILL 11-1318

HOUSE SPONSORSHIP

Stephens and Schafer S., Priola, Wilson, DelGrosso, Brown, Looper, Waller, Williams
A.

SENATE SPONSORSHIP

Spence and Brophy,

House Committees

Economic and Business Development
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE POLICY OF THE STATE OF COLORADO REGARDING**
102 **NOTIFICATION OF USE TAXES DUE ON SALES MADE BY**
103 **OUT-OF-STATE RETAILERS, AND MAKING AN APPROPRIATION**
104 **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 House Bill 10-1193 regarding the collection of sales and use taxes on sales made by out-of-state retailers enacted by the

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
Amended 2nd Reading
May 4, 2011

general assembly and signed into law on February 24, 2010, and repeals related rules promulgated by the department of revenue.

The bill also requires any retailer with gross annual sales totaling \$500,000 or more that does not collect Colorado sales tax and that sells tangible personal property from a place of business outside this state for use in this state to notify the purchaser of Colorado purchases, either on its web site or by an email directed to the purchaser, that use tax may be imposed on the storage, use, or other consumption in this state of any items of tangible personal property purchased. The bill requires the notification to be readily visible. The bill also prohibits a retailer that does not collect Colorado sales tax and that sells tangible personal property from a place of business outside this state for use in this state from advertising that there is no tax due on purchases made from the retailer for use in this state.

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

2 **SECTION 1. Repeal of regulations of the department of**

3 **revenue.** (1) Regulation 39-21-112.3.5, which rule was adopted June 18,

4 2010, is repealed, effective on the effective date of this section.

5 (2) Regulation 39-26-102.3, which rule was adopted June 18,

6 2010, is repealed, effective on the effective date of this section.

7 (3) The office of legislative legal services shall forward a copy of

8 House Bill 11-1318, enacted in 2011, to the secretary of state for purposes

9 of informing the secretary of state of the general assembly's action

10 repealing the rules specified in subsections (1) and (2) of this section.

11 The secretary of state shall delete Regulation 39-21-112.3.5 and

12 Regulation 39-26-102.3 from the code of Colorado regulations and

13 include appropriate references of such repeal in the code of Colorado

14 regulations consistent with the provisions of section 24-4-103 (11),

15 Colorado Revised Statutes.

16 **SECTION 2. Repeal.** 24-75-113 (4), Colorado Revised Statutes,

17 is repealed as follows:

1 **24-75-113. 2010 bills to increase state revenue - prohibition on**
2 **hiring of new state employees.** (4) ~~No moneys derived from the~~
3 ~~increase in state revenues resulting from the passage of House Bill~~
4 ~~10-1193, enacted in 2010, shall be appropriated for the purpose of~~
5 ~~funding additional full-time equivalent state employees, except for any~~
6 ~~full-time equivalent state employees necessary to enforce the provisions~~
7 ~~of said House Bill 10-1193.~~

8 **SECTION 3. Repeal.** 39-21-112 (3.5), Colorado Revised
9 Statutes, is repealed as follows:

10 **39-21-112. Duties and powers of executive director.**
11 (3.5) (a) ~~If any retailer that does not collect Colorado sales tax refuses~~
12 ~~voluntarily to furnish any of the information specified in subsection (1)~~
13 ~~of this section when requested by the executive director of the department~~
14 ~~of revenue or his or her employee, agent, or representative, the executive~~
15 ~~director, by subpoena issued under the executive director's hand, may~~
16 ~~require the attendance of the retailer and the production by him or her of~~
17 ~~any of the foregoing information in the retailer's possession and may~~
18 ~~administer an oath to him or her and take his or her testimony. If the~~
19 ~~retailer fails or refuses to respond to said subpoena and give testimony,~~
20 ~~the executive director may apply to any judge of the district court of the~~
21 ~~state of Colorado to enforce such subpoena by any appropriate order,~~
22 ~~including, if appropriate, an attachment against the retailer as for~~
23 ~~contempt, and upon hearing, said judge has, for the purpose of enforcing~~
24 ~~obedience to the requirements of said subpoena, power to make such~~
25 ~~order as, in his or her discretion, he or she deems consistent with the law~~
26 ~~for punishment of contempts.~~

27 (b) For purposes of this subsection (3.5), "retailer" shall have the

1 same meaning as set forth in section 39-26-102 (8).

2 (c) (I) ~~Each retailer that does not collect Colorado sales tax shall~~
3 ~~notify Colorado purchasers that sales or use tax is due on certain~~
4 ~~purchases made from the retailer and that the state of Colorado requires~~
5 ~~the purchaser to file a sales or use tax return.~~

6 (H) ~~Failure to provide the notice required in subparagraph (I) of~~
7 ~~this paragraph (c) shall subject the retailer to a penalty of five dollars for~~
8 ~~each such failure, unless the retailer shows reasonable cause for such~~
9 ~~failure.~~

10 (d) (I) (A) ~~Each retailer that does not collect Colorado sales tax~~
11 ~~shall send notification to all Colorado purchasers by January 31 of each~~
12 ~~year showing such information as the Colorado department of revenue~~
13 ~~shall require by rule and the total amount paid by the purchaser for~~
14 ~~Colorado purchases made from the retailer in the previous calendar year.~~
15 ~~Such notification shall include, if available, the dates of purchases, the~~
16 ~~amounts of each purchase, and the category of the purchase, including, if~~
17 ~~known by the retailer, whether the purchase is exempt or not exempt from~~
18 ~~taxation. The notification shall state that the state of Colorado requires~~
19 ~~a sales or use tax return to be filed and sales or use tax paid on certain~~
20 ~~Colorado purchases made by the purchaser from the retailer.~~

21 (B) ~~The notification specified in sub-subparagraph (A) of this~~
22 ~~subparagraph (I) shall be sent separately to all Colorado purchasers by~~
23 ~~first-class mail and shall not be included with any other shipments. The~~
24 ~~notification shall include the words "Important Tax Document Enclosed"~~
25 ~~on the exterior of the mailing. The notification shall include the name of~~
26 ~~the retailer.~~

27 (H) (A) ~~Each retailer that does not collect Colorado sales tax shall~~

1 file an annual statement for each purchaser to the department of revenue
2 on such forms as are provided or approved by the department showing the
3 total amount paid for Colorado purchases of such purchasers during the
4 preceding calendar year or any portion thereof, and such annual statement
5 shall be filed on or before March 1 of each year.

6 (B) The executive director of the department of revenue may
7 require any retailer that does not collect Colorado sales tax that makes
8 total Colorado sales of more than one hundred thousand dollars in a year
9 to file the annual statement described in sub-subparagraph (A) of this
10 subparagraph (H) by magnetic media or another machine-readable form
11 for that year.

12 (HH) (A) Failure to send the notification required in subparagraph
13 (I) of this paragraph (d) shall subject the retailer to a penalty of ten dollars
14 for each such failure, unless the retailer shows reasonable cause for such
15 failure.

16 (B) Failure to file the annual statement required in
17 sub-subparagraph (A) of subparagraph (H) of this paragraph (d) shall
18 subject the retailer to a penalty of ten dollars for each purchaser that
19 should have been included in such annual statement, unless the retailer
20 shows reasonable cause for such failure.

21 **SECTION 4. Repeal.** 39-21-122 (5), Colorado Revised Statutes,
22 is repealed as follows:

23 **39-21-122. Revenue impact of 2010 tax legislation - tracking**
24 **by department.** (5) The department of revenue shall account for all
25 revenue attributable to the enactment of House Bill 10-1193, enacted in
26 2010, and shall, to the extent such information is available, make
27 quarterly reports to the general assembly regarding the quarterly and

1 ~~cumulative net revenue gain to the state resulting from the enactment of~~
2 ~~said bill.~~

3 **SECTION 5.** 39-26-102 (3) (b) and (8), Colorado Revised
4 Statutes, are amended to read:

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

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

13 (b) ~~(H)~~ The soliciting, either by direct representatives, indirect
14 representatives, manufacturers' agents, or by distribution of catalogues or
15 other advertising, or by use of any communication media, or by use of the
16 newspaper, radio, or television advertising media, or by any other means
17 whatsoever, of business from persons residing in this state and by reason
18 thereof receiving orders from, or selling or leasing tangible personal
19 property to, such persons residing in this state for use, consumption,
20 distribution, and storage for use or consumption in this state.

21 ~~(H) Commencing March 1, 2010, if a retailer that does not collect~~
22 ~~Colorado sales tax is part of a controlled group of corporations, and that~~
23 ~~controlled group has a component member that is a retailer with physical~~
24 ~~presence in this state, the retailer that does not collect Colorado sales tax~~
25 ~~is presumed to be doing business in this state. For purposes of this~~
26 ~~subparagraph (H), "controlled group of corporations" has the same~~
27 ~~meaning as set forth in section 1563 (a) of the federal "Internal Revenue~~

1 Code of 1986", as amended, and "component member" has the same
2 meaning as set forth in section 1563 (b) of the federal "Internal Revenue
3 Code of 1986", as amended. This presumption may be rebutted by proof
4 that during the calendar year in question, the component member that is
5 a retailer with physical presence in this state did not engage in any
6 constitutionally sufficient solicitation in this state on behalf of the retailer
7 that does not collect Colorado sales tax.

8 (8) "Retailer" or "vendor" means a person doing A RETAIL
9 business, in this state, known to the trade and public as such, and selling
10 to the user or consumer, and not for resale.

11 **SECTION 6.** 39-26-202 (1), Colorado Revised Statutes, is
12 amended BY THE ADDITION OF THE FOLLOWING NEW
13 PARAGRAPHS to read:

14 **39-26-202. Authorization of tax - notification.**

15 (1) (d) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
16 PARAGRAPH (d), COMMENCING JULY 1, 2011, ANY RETAILER THAT DOES
17 NOT COLLECT COLORADO SALES TAX AND THAT SELLS TANGIBLE
18 PERSONAL PROPERTY FROM A PLACE OF BUSINESS OUTSIDE THIS STATE FOR
19 USE IN THIS STATE SHALL NOTIFY THE PURCHASER OF COLORADO
20 PURCHASES, ON AT LEAST ONE POST-PURCHASE COMMUNICATION
21 DIRECTED TO THE PURCHASER, THAT USE TAX MAY BE IMPOSED ON THE
22 STORAGE, USE, OR OTHER CONSUMPTION IN THIS STATE OF ANY ITEMS OF
23 TANGIBLE PERSONAL PROPERTY PURCHASED. THE NOTIFICATION SHALL BE
24 READILY VISIBLE AND SHALL PROVIDE ACCESS TO A LINK TO THE OFFICIAL
25 WEB SITE OF THE DEPARTMENT OF REVENUE WHERE THE PURCHASER CAN
26 OBTAIN INFORMATION ON HOW TO REMIT ANY USE TAX DUE. FOR
27 PURPOSES OF THIS SUBPARAGRAPH (I), A POST-PURCHASE COMMUNICATION

1 SHALL INCLUDE BUT SHALL NOT BE LIMITED TO AN EMAIL CONFIRMATION
2 OR INVOICE RELATED TO THE PURCHASE. THE NOTIFICATION PROVISIONS
3 IN THIS SECTION SHALL NOT REQUIRE A RETAILER AS DESCRIBED IN THIS
4 SUBPARAGRAPH (I) TO SEND ANY ADDITIONAL FORMS OF COMMUNICATION
5 THAT SUCH RETAILER IS NOT ALREADY SENDING TO A PURCHASER.

6 (II) THE PROVISIONS OF THIS PARAGRAPH (d) SHALL NOT APPLY TO
7 A RETAILER DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (d)
8 THAT HAS GROSS ANNUAL SALES TOTALING LESS THAN FIVE HUNDRED
9 THOUSAND DOLLARS.

10 (e) A RETAILER THAT DOES NOT COLLECT COLORADO SALES TAX
11 AND THAT SELLS TANGIBLE PERSONAL PROPERTY FROM A PLACE OF
12 BUSINESS OUTSIDE THIS STATE FOR USE IN THIS STATE SHALL NOT
13 ADVERTISE THAT THERE IS NO TAX DUE ON PURCHASES MADE FROM THE
14 RETAILER FOR USE IN THIS STATE.

15 **SECTION 7. Appropriation - adjustments in 2011 long bill.**

16 For the implementation of this act, the general fund appropriation made
17 in the annual general appropriation act for the fiscal year beginning July
18 1, 2011, to the department of revenue, taxation business group, taxpayer
19 service division, for personal services and operating expenses, is
20 decreased by twenty-one thousand four hundred forty-nine dollars
21 (\$21,449) and 0.5 FTE.

22 **SECTION 8. Appropriation - adjustments in 2011 long bill.**

23 For the implementation of this act, appropriations made in the annual
24 general appropriation act for the fiscal year beginning July 1, 2011, shall
25 be adjusted as follows:

26 (1) The general fund appropriation to the department of revenue,
27 executive director's office, for legal services, is decreased by twenty

1 thousand dollars (\$20,000).

2 (2) The reappropriated funds appropriation to the department of
3 law, for legal services to state agencies, is decreased by twenty thousand
4 dollars (\$20,000). Said sum shall be from reappropriated funds received
5 from the department of revenue out of the appropriation made in
6 subsection (1) of this section.

7 (3) The general fund appropriation to the department of revenue,
8 taxation business group, taxpayer service division, for personal services
9 and operating expenses, is decreased by thirty-one thousand four hundred
10 fifty-seven dollars (\$31,457) and 0.5 FTE.

11 **SECTION 9. Effective date.** (1) Except as otherwise provided
12 in subsection (2) of this section, this act shall take effect upon passage.

13 (2) Section 8 of this act shall take effect only if the executive
14 director of the department of revenue files written notice with the revisor
15 of statutes that civil case no. 10-cv-01546-REB-CBS, *The Direct*
16 *Marketing Association v. Huber*, has been dismissed.

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