

**First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 19-0621.01 Esther van Mourik x4215

**SENATE BILL 19-131**

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**SENATE SPONSORSHIP**

**Woodward, Tate**

**HOUSE SPONSORSHIP**

**Van Winkle and Arndt, Larson**

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**Senate Committees**  
Finance

**House Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING AN EXEMPTION FOR CERTAIN BUSINESSES FROM THE**  
102             **DESTINATION SOURCING RULE FOR SALES TAX COLLECTION**  
103             **REQUIREMENTS.**

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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://leg.colorado.gov>.)*

On December 18, 2018, the department of revenue adopted various emergency rules related to sales tax collection, including a new destination sourcing rule that requires retailers to collect sales tax based on where the tangible personal property or service will be delivered instead of based on the taxing jurisdiction in which the retailer is located.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

The bill specifies that the new destination sourcing rule does not apply to any retailer with physical presence that has generated less than \$100,000 in gross revenue from the sale of tangible personal property or services outside of the taxing jurisdiction where the retailer is located. For those particular retailers with physical presence, the sale is sourced to the retailer's location, regardless of whether the tangible personal property or service is delivered outside of the taxing jurisdiction in which the retailer is located. The bill also adds the same exception to the statutory retailer's use tax collection requirement.

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

2           **SECTION 1.** In Colorado Revised Statutes, 39-26-104, **add** (3)  
3 as follows:

4           **39-26-104. Property and services taxed - sourcing of sales for**  
5 **retailers with physical presence - definitions.** (3) (a) EXCEPT AS  
6 PROVIDED IN SUBSECTIONS (3)(b) AND (3)(c) OF THIS SECTION, FOR  
7 PURPOSES OF DETERMINING WHETHER A SALE OF TANGIBLE PERSONAL  
8 PROPERTY OR SERVICES IS MADE IN THE STATE BY A RETAILER WITH  
9 PHYSICAL PRESENCE AS DESCRIBED IN SECTION 39-26-102 (3)(a), THE  
10 FOLLOWING RULES APPLY:

11           (I) WHEN TANGIBLE PERSONAL PROPERTY OR SERVICES ARE  
12 RECEIVED BY THE PURCHASER AT A BUSINESS LOCATION OF THE SELLER,  
13 THE SALE IS SOURCED TO THAT BUSINESS LOCATION;

14           (II) WHEN TANGIBLE PERSONAL PROPERTY OR SERVICES ARE NOT  
15 RECEIVED BY THE PURCHASER AT A BUSINESS LOCATION OF THE SELLER,  
16 THE SALE IS SOURCED TO THE LOCATION WHERE RECEIPT BY THE  
17 PURCHASER OCCURS, INCLUDING THE LOCATION INDICATED BY  
18 INSTRUCTIONS FOR DELIVERY TO THE PURCHASER, IF THAT LOCATION IS  
19 KNOWN TO THE SELLER;

20           (III) WHEN SUBSECTION (3)(a)(I) OR (3)(a)(II) OF THIS SECTION

1 DOES NOT APPLY, THE SALE IS SOURCED TO THE LOCATION INDICATED BY  
2 AN ADDRESS FOR THE PURCHASER THAT IS AVAILABLE FROM THE BUSINESS  
3 RECORDS OF THE SELLER THAT ARE MAINTAINED IN THE ORDINARY COURSE  
4 OF THE SELLER'S BUSINESS WHEN USE OF THIS ADDRESS DOES NOT  
5 CONSTITUTE BAD FAITH;

6 (IV) WHEN SUBSECTION (3)(a)(I), (3)(a)(II), OR (3)(a)(III) OF THIS  
7 SECTION DOES NOT APPLY, THE SALE IS SOURCED TO THE LOCATION  
8 INDICATED BY AN ADDRESS FOR THE PURCHASER OBTAINED DURING THE  
9 CONSUMMATION OF THE SALE, INCLUDING THE ADDRESS OF A PURCHASER'S  
10 PAYMENT INSTRUMENT, IF NO OTHER ADDRESS IS AVAILABLE, WHEN USE  
11 OF THIS ADDRESS DOES NOT CONSTITUTE BAD FAITH; OR

12 (V) WHEN SUBSECTION (3)(a)(I), (3)(a)(II), (3)(a)(III), OR  
13 (3)(a)(IV) OF THIS SECTION DOES NOT APPLY, INCLUDING THE  
14 CIRCUMSTANCE IN WHICH THE SELLER IS WITHOUT SUFFICIENT  
15 INFORMATION TO APPLY THE RULES SET FORTH IN subsection (3)(a)(I),  
16 (3)(a)(II), (3)(a)(III), OR (3)(a)(IV) OF THIS SECTION, THEN THE LOCATION  
17 WILL BE DETERMINED BY THE ADDRESS FROM WHICH TANGIBLE PERSONAL  
18 PROPERTY WAS SHIPPED.

19 (b) (I) THE LEASE OR RENTAL OF TANGIBLE PERSONAL PROPERTY,  
20 BUT NOT PROPERTY IDENTIFIED IN SUBSECTION (3)(b)(II) OR (3)(b)(III) OF  
21 THIS SECTION, NOT LEASES OR RENTALS BASED ON A LUMP SUM OR  
22 ACCELERATED BASIS, AND NOT ON THE ACQUISITION OF PROPERTY FOR  
23 LEASE, ARE SOURCED AS FOLLOWS:

24 (A) FOR A LEASE OR RENTAL THAT REQUIRES RECURRING PERIODIC  
25 PAYMENTS, THE FIRST PERIODIC PAYMENT IS SOURCED THE SAME AS A  
26 RETAIL SALE IN ACCORDANCE WITH SUBSECTION (3)(a) OF THIS SECTION.  
27 PERIODIC PAYMENTS MADE SUBSEQUENT TO THE FIRST PAYMENT ARE

1 SOURCED TO THE PRIMARY PROPERTY LOCATION FOR EACH PERIOD  
2 COVERED BY THE PAYMENT. THE PRIMARY PROPERTY LOCATION IS AS  
3 INDICATED BY AN ADDRESS FOR THE PROPERTY PROVIDED BY THE LESSEE  
4 THAT IS AVAILABLE TO THE LESSOR FROM ITS RECORDS MAINTAINED IN  
5 THE ORDINARY COURSE OF BUSINESS, WHEN USE OF THIS ADDRESS DOES  
6 NOT CONSTITUTE BAD FAITH. THE PROPERTY LOCATION IS NOT ALTERED BY  
7 INTERMITTENT USE AT DIFFERENT LOCATIONS, SUCH AS USE OF BUSINESS  
8 PROPERTY THAT ACCOMPANIES EMPLOYEES ON BUSINESS TRIPS AND  
9 SERVICE CALLS.

10 (B) FOR A LEASE OR RENTAL THAT DOES NOT REQUIRE PERIODIC  
11 PAYMENTS, THE PAYMENT IS SOURCED THE SAME AS A RETAIL SALE IN  
12 ACCORDANCE WITH SUBSECTION (3)(a) OF THIS SECTION.

13 (II) THE LEASE OR RENTAL OF MOTOR VEHICLES, TRAILERS,  
14 SEMI-TRAILERS, OR AIRCRAFT THAT DO NOT QUALIFY AS TRANSPORTATION  
15 EQUIPMENT IS SOURCED AS FOLLOWS:

16 (A) FOR A LEASE OR RENTAL THAT REQUIRES RECURRING PERIODIC  
17 PAYMENTS, EACH PERIODIC PAYMENT IS SOURCED TO THE PRIMARY  
18 PROPERTY LOCATION. THE PRIMARY PROPERTY LOCATION IS AS INDICATED  
19 BY AN ADDRESS FOR THE PROPERTY PROVIDED BY THE LESSEE THAT IS  
20 AVAILABLE TO THE LESSOR FROM ITS RECORDS MAINTAINED IN THE  
21 ORDINARY COURSE OF BUSINESS, WHEN USE OF THIS ADDRESS DOES NOT  
22 CONSTITUTE BAD FAITH. THE LOCATION DOES NOT CHANGE BY  
23 INTERMITTENT USE AT DIFFERENT LOCATIONS.

24 (B) FOR A LEASE OR RENTAL THAT DOES NOT REQUIRE RECURRING  
25 PERIODIC PAYMENTS, THE PAYMENT IS SOURCED THE SAME AS A RETAIL  
26 SALE IN ACCORDANCE WITH SUBSECTION (3)(a) OF THIS SECTION.

27 (III) NOTWITHSTANDING SUBSECTION (3)(b)(II) OF THIS SECTION,

1 THE RETAIL SALE, INCLUDING THE LEASE OR RENTAL, OF TRANSPORTATION  
2 EQUIPMENT IS SOURCED IN THE SAME MANNER AS A RETAIL SALE IN  
3 ACCORDANCE WITH SUBSECTION (3)(a) OF THIS SECTION.

4 (c) (I) THE RULES SET FORTH IN SUBSECTIONS (3)(a) AND (3)(b) OF  
5 THIS SECTION APPLY ONLY TO A RETAILER WITH PHYSICAL PRESENCE AS  
6 DESCRIBED IN SECTION 39-26-102 (3)(a) THAT IN THE PREVIOUS CALENDAR  
7 YEAR OR IN THE CURRENT CALENDAR YEAR HAS GENERATED GROSS  
8 REVENUE FROM THE SALE OF TANGIBLE PERSONAL PROPERTY OR SERVICES  
9 OUTSIDE OF THE TAXING JURISDICTION WHERE THE RETAILER IS LOCATED  
10 IN AN AMOUNT EXCEEDING ONE HUNDRED THOUSAND DOLLARS.

11 (II) FOR A RETAILER THAT IN THE PREVIOUS CALENDAR YEAR OR  
12 IN THE CURRENT CALENDAR YEAR HAS GENERATED LESS THAN ONE  
13 HUNDRED THOUSAND DOLLARS IN GROSS REVENUE FROM THE SALE OF  
14 TANGIBLE PERSONAL PROPERTY OR SERVICES OUTSIDE OF THE TAXING  
15 JURISDICTION WHERE THE RETAILER IS LOCATED, A SALE IS SOURCED TO  
16 THE BUSINESS' LOCATION REGARDLESS OF WHERE THE PURCHASER  
17 RECEIVES THE TANGIBLE PERSONAL PROPERTY OR SERVICE.

18 (d) AS USED IN THIS SUBSECTION (3), UNLESS THE CONTEXT  
19 OTHERWISE REQUIRES:

20 (I) "PURCHASER" MAY INCLUDE A DONEE WHO IS DESIGNATED AS  
21 SUCH BY THE PURCHASER.

22 (II) "RECEIPT" OR "RECEIVE" MEANS TAKING POSSESSION OF  
23 TANGIBLE PERSONAL PROPERTY OR MAKING FIRST USE OF SERVICES, BUT  
24 DOES NOT INCLUDE POSSESSION BY A SHIPPING COMPANY ON BEHALF OF  
25 THE PURCHASER.

26 (III) "TRANSPORTATION EQUIPMENT" MEANS:

27 (A) LOCOMOTIVES AND RAILCARS THAT ARE UTILIZED FOR THE

1 CARRIAGE OF PERSONS OR PROPERTY IN INTERSTATE COMMERCE;  
2 (B) TRUCKS AND TRUCK-TRACTORS WITH A GROSS VEHICLE  
3 WEIGHT RATING OF TEN THOUSAND ONE POUNDS OR GREATER, TRAILERS,  
4 SEMI-TRAILERS, OR PASSENGER BUSES THAT ARE REGISTERED UNDER THE  
5 INTERNATIONAL REGISTRATION PLAN AND OPERATED UNDER AUTHORITY  
6 OF A CARRIER AUTHORIZED AND CERTIFICATED BY THE UNITED STATES  
7 DEPARTMENT OF TRANSPORTATION OR ANOTHER FEDERAL OR FOREIGN  
8 AUTHORITY TO ENGAGE IN THE CARRIAGE OF PERSONS OR PROPERTY IN  
9 INTERSTATE OR FOREIGN COMMERCE;

10 (C) AIRCRAFT THAT ARE OPERATED BY AIR CARRIERS AUTHORIZED  
11 AND CERTIFICATED BY THE UNITED STATES DEPARTMENT OF  
12 TRANSPORTATION OR ANOTHER FEDERAL OR FOREIGN AUTHORITY TO  
13 ENGAGE IN THE CARRIAGE OF PERSONS OR PROPERTY IN INTERSTATE OR  
14 FOREIGN COMMERCE; AND

15 (D) CONTAINERS DESIGNED FOR USE ON AND COMPONENT PARTS  
16 ATTACHED OR SECURED ON THE ITEMS SET FORTH IN SUBSECTIONS  
17 (3)(d)(III)(A) TO (3)(d)(III)(C) OF THIS SECTION.

18 **SECTION 2.** In Colorado Revised Statutes, 39-26-204, **amend**  
19 (2) as follows:

20 **39-26-204. Periodic return - collection.** (2) (a) Every retailer,  
21 EXCEPT THOSE RETAILERS DESCRIBED IN SUBSECTION (2)(b) OF THIS  
22 SECTION, doing business in this state and making sales of tangible  
23 personal property for storage, use, or consumption in the state, and not  
24 exempted as provided in part 7 of this ~~article~~ ARTICLE 26, at the time of  
25 making such sales or taking the orders therefor, or, if the storage, use, or  
26 consumption of such tangible personal property is not then taxable under  
27 this part 2, then at the time such storage, use, or consumption becomes

1 taxable under this part 2, shall collect the tax imposed by section  
2 39-26-202, from the purchaser and give to the purchaser a receipt  
3 therefor, which receipt shall identify the property, the date sold or the date  
4 ordered, and the tax collected and paid. The tax required to be collected  
5 by such retailer from such purchaser shall be displayed separately from  
6 the advertised price listed on the forms or advertising matter on all sales  
7 checks, orders, sales slips, or other proof of sales.

8 (b) SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY TO A  
9 RETAILER WITH PHYSICAL PRESENCE AS DESCRIBED IN SECTION 39-26-102  
10 (3)(a) THAT IN THE PREVIOUS CALENDAR YEAR OR IN THE CURRENT  
11 CALENDAR YEAR HAS GENERATED GROSS REVENUE FROM THE SALE OF  
12 TANGIBLE PERSONAL PROPERTY OR SERVICES OUTSIDE OF THE TAXING  
13 JURISDICTION WHERE THE RETAILER IS LOCATED IN AN AMOUNT  
14 EXCEEDING ONE HUNDRED THOUSAND DOLLARS.

15 **SECTION 3. Safety clause.** The general assembly hereby finds,  
16 determines, and declares that this act is necessary for the immediate  
17 preservation of the public peace, health, and safety.