



Legislative
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FISCAL NOTE

Drafting Number:	LLS 19-0621	Date:	February 14, 2019
Prime Sponsors:	Sen. Woodward Rep. Van Winkle; Arndt	Bill Status:	Senate Finance
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Bill Topic: SALES TAX COLLECTION REQUIREMENTS FOR IN-STATE RETAILERS

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure (<i>minimal</i>)	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill codifies Department of Revenue rules regarding where sales should be sourced for sales tax purposes for local governments and sets a *de minimus* threshold for retailers with physical presence that must comply with these rules.

Appropriation Summary: This bill does not require an appropriation.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Summary of Legislation

This bill codifies the Department of Revenue's December 1, 2018, emergency rules regarding the change from origin to destination sales tax sourcing for both purchases and leases, as well as exempting retailers that do not meet a *de minimus* threshold from the aforementioned rules.

The bill specifies the following order to determine where a sale is sourced for sales tax purposes:

- the seller's location, if the purchaser takes possession of goods or services at the physical location of the seller;
- the point of delivery, if the purchaser does not take possession of the goods or services at the seller's location;
- the purchaser's address on file with the seller, if the first two sourcing locations do not apply;
- any address available to the seller, including the address associated with the form of payment received, if the first three sourcing locations do not apply; and
- the seller's location, if the first four sourcing locations do not apply and the seller does not have an address for the purchaser.

The sale, lease, or rental of transportation equipment is sourced the same as a retail sale.

For the lease or rental of tangible personal property or of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, the following sourcing rules apply:

- for a lease or rental with recurring payments, the first payment is sourced the same as a sale, while subsequent payments are sourced to the primary property location; and
- for a lease or rental not requiring recurring payments, the payment is sourced the same as a sale.

The destination sourcing rules above do not apply to retailers with physical presence if they make less than \$100,000 in gross revenue during a calendar year outside the taxing jurisdiction where they are physically located. For these retailers, sales are instead sourced to the seller's physical location regardless of where the goods are delivered.

Background

In June 2018, the U.S. Supreme Court ruled in the *South Dakota v. Wayfair* case that states may require out-of-state retailers to collect sales tax on purchases made by an in-state consumer, even if the retailer does not maintain a physical presence in the consumer's state. Following the Wayfair decision, the Colorado Department of Revenue (DOR) moved toward requiring retailers without physical presence in Colorado to collect state sales tax and the sales taxes levied by state-collected counties and municipalities. The new requirements do not affect self-collected home rule cities.

DOR issued emergency rules for both in-state and out-of-state retailers. Under these rules, DOR will now require that all out-of-state retailers collect and remit sales tax when they ship goods into the state. The sales tax will be collected based on the consumer's address. Out-of-state retailers that have less than \$100,000 in sales, or fewer than 200 transactions in Colorado during the current or previous calendar years are not required to collect and remit sales tax to the state.

For in-state retailers, the department modified how sales taxes are collected when a consumer purchases an item from a retailer that is not located in the same taxing jurisdiction. This applies only to goods that are shipped from the retailer to the consumer. Previously, collections were based on the source of the item, or the retailer's address, known as origin-based sales tax collection. Under the new rule and this bill, collections are based on the destination, or the consumer's address for delivery, known as destination-based sales tax collection. If a consumer purchases an item at the retailer's place of business, nothing changes, and the sales tax is collected based on the retailer's location.

Assumptions

This fiscal note uses DOR rules requiring out-of-state retailers to collect and remit sales taxes in the state, which are scheduled to take effect on June 1, as the current law baseline for this analysis.

State Expenditures

Any changes in sales tax forms related to this bill may increase the workload at the Department of Personnel and Administration concerning processing of tax documents. This impact is assumed to be minimal and can be accomplished within existing appropriations.

Local Government

By setting a *de minimus* threshold for retailers required to comply with these rules, this bill may have distributional impacts on local sales tax jurisdiction collections.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Counties	Information Technology	Local Affairs
Municipalities	Personnel	Regional Transportation District
Revenue	Special Districts	Law