

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 - rules.** As used in this article, unless the  
5 context 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  
16 CONSTITUTIONAL means whatsoever, of business from persons residing  
17 in this state and by reason thereof receiving orders from, or selling or

1 leasing tangible personal property to, such persons residing in this state  
2 for use, consumption, distribution, and storage for use or consumption in  
3 this state.

4 (II) (A) COMMENCING MARCH 1, 2010, IF A RETAILER ENTERS INTO  
5 AN AGREEMENT WITH A NONEXEMPT AFFILIATE UNDER WHICH THE  
6 NONEXEMPT AFFILIATE, FOR A COMMISSION OR OTHER CONSIDERATION,  
7 DIRECTLY OR INDIRECTLY REFERS POTENTIAL CUSTOMERS, WHETHER BY  
8 A LINK ON AN INTERNET WEB SITE OR OTHERWISE, TO THE RETAILER, THEN  
9 THE NONEXEMPT AFFILIATE SHALL BE PRESUMED TO HAVE SOLICITED  
10 BUSINESS ON BEHALF OF SUCH RETAILER AND SUCH RETAILER IS DEEMED  
11 TO BE DOING BUSINESS IN THIS STATE. THIS PRESUMPTION SHALL NOT  
12 APPLY UNLESS THE CUMULATIVE GROSS RECEIPTS FROM SALES BY THE  
13 RETAILER TO CUSTOMERS IN THE STATE WHO ARE REFERRED TO THE  
14 RETAILER BY ALL NONEXEMPT AFFILIATES WITH THIS TYPE OF AN  
15 AGREEMENT WITH THE RETAILER ARE IN EXCESS OF TEN THOUSAND  
16 DOLLARS DURING THE PRECEDING CALENDAR YEAR. THIS PRESUMPTION  
17 MAY BE REBUTTED BY PROOF THAT THE NONEXEMPT AFFILIATE WITH  
18 WHOM THE RETAILER HAS AN AGREEMENT DID NOT ENGAGE IN ANY  
19 SOLICITATION IN THIS STATE ON BEHALF OF THE RETAILER THAT WOULD  
20 SATISFY THE NEXUS REQUIREMENT OF THE UNITED STATES CONSTITUTION  
21 DURING THE CALENDAR YEAR IN QUESTION. NOTHING IN THIS  
22 SUBPARAGRAPH (II) SHALL BE CONSTRUED TO NARROW THE SCOPE OF ANY  
23 TERM FOR PURPOSES OF THIS ARTICLE.

24 (B) IN THE EVENT THE EXECUTIVE DIRECTOR OF THE DEPARTMENT  
25 OF REVENUE DETERMINES AN EXEMPT AFFILIATE IS OPERATING AS A  
26 NONEXEMPT AFFILIATE FOR PURPOSES OF ITS RELATIONSHIP WITH ONE OR  
27 MORE RETAILERS, THE EXECUTIVE DIRECTOR SHALL ISSUE A WRITTEN

1 NOTICE NOTIFYING THE EXEMPT AFFILIATE THAT, FOR PURPOSES OF ITS  
2 RELATIONSHIP WITH A PARTICULAR RETAILER, IT IS IN VIOLATION OF ITS  
3 EXEMPT STATUS. THE EXECUTIVE DIRECTOR SHALL PROVIDE A COPY OF  
4 THE NOTICE TO SUCH RETAILER AT THE SAME TIME. THE EXEMPT  
5 AFFILIATE SHALL HAVE THIRTY DAYS AFTER RECEIPT OF THE NOTICE TO  
6 SUBMIT EVIDENCE TO THE DEPARTMENT ESTABLISHING THAT, FOR  
7 PURPOSES OF THE RELATIONSHIP WITH THE RETAILER, THE EXEMPT  
8 AFFILIATE DID NOT VIOLATE THE EXEMPT STATUS. IF THE EXEMPT  
9 AFFILIATE FAILS TO RESPOND TO THE NOTICE OR REMAINS IN VIOLATION OF  
10 THE EXEMPT STATUS, THE EXECUTIVE DIRECTOR SHALL GIVE NOTICE TO  
11 THE RETAILER OF THE NAME AND ADDRESS OF SUCH EXEMPT AFFILIATE  
12 THAT FAILED TO RESPOND OR THAT REMAINS IN VIOLATION OF THE EXEMPT  
13 STATUS, AND THE RETAILER MAY TERMINATE THE RELATIONSHIP WITH THE  
14 EXEMPT AFFILIATE WITHIN THIRTY DAYS AFTER THE RETAILER'S RECEIPT  
15 OF THE DEPARTMENT'S NOTICE. IN THE EVENT THE RETAILER DOES NOT  
16 TERMINATE THE RELATIONSHIP WITH THE PREVIOUSLY NOTIFIED EXEMPT  
17 AFFILIATE WITHIN THE THIRTY-DAY PERIOD, THE RETAILER SHALL BE  
18 DEEMED TO BE DOING BUSINESS IN THIS STATE. AN EXEMPT AFFILIATE  
19 WITH EXEMPT STATUS FOR PURPOSES OF ITS RELATIONSHIPS WITH ONE OR  
20 MORE RETAILERS MAY SIMULTANEOUSLY BE A NONEXEMPT AFFILIATE FOR  
21 PURPOSES OF ITS RELATIONSHIPS WITH ONE OR MORE DIFFERENT  
22 RETAILERS.

23 (C) FOR PURPOSES OF THIS SUBPARAGRAPH (II), "NONEXEMPT  
24 AFFILIATE" MEANS A PERSON RESIDING IN THIS STATE THAT PUBLICLY  
25 SOLICITS BUSINESS FOR A RETAILER OTHER THAN FOR ITSELF BY MEANS OF  
26 ITS PHYSICAL PRESENCE IN THIS STATE AND SHALL NOT INCLUDE AN  
27 EXEMPT AFFILIATE.

1           (D) FOR PURPOSES OF THIS SUBPARAGRAPH (II), "EXEMPT  
2           AFFILIATE" MEANS ANY NONEXEMPT AFFILIATE THAT, FOR PURPOSES OF ITS  
3           RELATIONSHIP WITH A PARTICULAR RETAILER, UTILIZES ELECTRONIC  
4           MEDIA TO A DEGREE GREATER THAN EIGHTY PERCENT TO SOLICIT BUSINESS  
5           FOR A RETAILER.

6           (E) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE  
7           MAY PROMULGATE RULES AS MAY BE NECESSARY TO ADMINISTER AND  
8           ENFORCE ANY PROVISION OF THIS SUBPARAGRAPH (II). THE RULES SHALL  
9           BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

10           (8) "Retailer" or "vendor" means a person doing a ~~retail~~ business  
11           IN THIS STATE, known to the trade and public as such, and selling to the  
12           user or consumer, and not for resale.

13           **SECTION 2.** 39-21-112, Colorado Revised Statutes, is amended  
14           BY THE ADDITION OF A NEW SUBSECTION to read:

15           **39-21-112. Duties and powers of executive director.**

16           (3.5) (a) IF ANY RETAILER THAT DOES NOT COLLECT COLORADO SALES  
17           TAX REFUSES VOLUNTARILY TO FURNISH ANY OF THE INFORMATION  
18           SPECIFIED IN SUBSECTION (1) OF THIS SECTION WHEN REQUESTED BY THE  
19           EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE OR HIS OR HER  
20           EMPLOYEE, AGENT, OR REPRESENTATIVE, THE EXECUTIVE DIRECTOR, BY  
21           SUBPOENA ISSUED UNDER THE EXECUTIVE DIRECTOR'S HAND, MAY  
22           REQUIRE THE ATTENDANCE OF THE     RETAILER AND THE PRODUCTION BY  
23           HIM OR HER OF ANY OF THE FOREGOING INFORMATION IN THE         
24           RETAILER'S POSSESSION AND MAY ADMINISTER AN OATH TO HIM OR HER  
25           AND TAKE HIS OR HER TESTIMONY. IF THE     RETAILER FAILS OR REFUSES  
26           TO RESPOND TO SAID SUBPOENA AND GIVE TESTIMONY, THE EXECUTIVE  
27           DIRECTOR MAY APPLY TO ANY JUDGE OF THE DISTRICT COURT OF THE

1 STATE OF COLORADO TO ENFORCE SUCH SUBPOENA BY ANY APPROPRIATE  
2 ORDER, INCLUDING, IF APPROPRIATE, AN ATTACHMENT AGAINST THE  
3 RETAILER AS FOR CONTEMPT, AND UPON HEARING, SAID JUDGE HAS, FOR  
4 THE PURPOSE OF ENFORCING OBEDIENCE TO THE REQUIREMENTS OF SAID  
5 SUBPOENA, POWER TO MAKE SUCH ORDER AS, IN HIS OR HER DISCRETION,  
6 HE OR SHE DEEMS CONSISTENT WITH THE LAW FOR PUNISHMENT OF  
7 CONTEMPTS.

8 (b) FOR PURPOSES OF THIS SUBSECTION (3.5), "RETAILER" SHALL  
9 HAVE THE SAME MEANING AS SET FORTH IN SECTION 39-26-102 (8).

10 (c) ALL RETAILERS THAT DO NOT COLLECT COLORADO SALES TAX  
11 SHALL NOTIFY COLORADO PURCHASERS THAT SALES OR USE TAX IS DUE ON  
12 ALL PURCHASES MADE FROM THE RETAILER AND THAT THE COLORADO  
13 DEPARTMENT OF REVENUE REQUIRES THE PURCHASER TO FILE A SALES OR  
14 USE TAX RETURN.

15 (d) ALL RETAILERS THAT DO NOT COLLECT COLORADO SALES TAX  
16 SHALL SEND NOTIFICATION TO ALL COLORADO PURCHASERS BY JANUARY  
17 31 OF EACH YEAR SHOWING THE TOTAL AMOUNT PAID BY THE PURCHASER  
18 FOR COLORADO PURCHASES MADE FROM THE RETAILER IN THE PREVIOUS  
19 CALENDAR YEAR. THE NOTIFICATION SHALL STATE THAT THE COLORADO  
20 DEPARTMENT OF REVENUE REQUIRES A SALES OR USE TAX RETURN TO BE  
21 FILED AND SALES OR USE TAX PAID ON THE COLORADO PURCHASES MADE  
22 BY THE PURCHASER FROM THE RETAILER.

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

26 **39-21-122. Revenue impact of 2010 tax legislation - tracking**  
27 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL

1 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1193,  
2 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS  
3 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY  
4 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE  
5 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

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

9 **24-75-113. 2010 bills to increase state revenue - prohibition on**  
10 **hiring of new state employees.** NO MONEYS DERIVED FROM THE  
11 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE  
12 BILL 10-1193, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE  
13 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE  
14 EMPLOYEES.

15 **SECTION 5. Appropriation.** In addition to any other  
16 appropriation, there is hereby appropriated, out of any moneys in the  
17 general fund not otherwise appropriated, to the department of revenue, for  
18 allocation to the taxation business group, taxation and compliance  
19 division, for the fiscal year beginning July 1, 2009, the sum of ninety-four  
20 thousand three hundred twenty-two dollars (\$94,322) and 0.9 FTE, or so  
21 much thereof as may be necessary, for the implementation of this act.

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