

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0978.02 Esther van Mourik x4215

HOUSE BILL 13-1312

HOUSE SPONSORSHIP

Williams,

SENATE SPONSORSHIP

Steadman,

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE CIRCUMSTANCES UNDER WHICH A PERSON WHO
102 SELLS ITEMS SUBJECT TO SALES TAX MUST COLLECT SUCH SALES
103 TAX ON BEHALF OF THE STATE.

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 state imposes a sales tax collection obligation on every retailer or vendor, and the terms "retailer" and "vendor" are defined to include every person doing business in this state and selling to the user or consumer, and not for resale. The state also imposes a use tax collection

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.

obligation on every retailer doing business in this state and making sales of tangible personal property for storage, use, or consumption in the state. The sales and use tax nexus provisions are contained in the definition of the term "doing business in this state".

The bill modifies and expands the state's sales and use tax nexus provisions by:

- ! Expanding the types of activities that will create nexus with the state if conducted by any person that already has substantial nexus with this state, other than a common carrier acting in its capacity as such, pursuant to an agreement or arrangement with an out-of-state retailer;
- ! Clarifying that the expanded nexus provisions create a rebuttable presumption that the specified activities create substantial nexus for the out-of-state retailer;
- ! Requiring legislative approval of any agreement, executive order, or contract by the state that relieves an out-of-state retailer of its obligation to collect sales and use tax even if the retailer or an affiliated person has substantial nexus;
- ! Requiring an out-of-state retailer to collect and remit sales and use taxes if that retailer contracts with the state for the sale of tangible personal property or taxable services;
- ! Limiting the effect of the expanded nexus provisions to sales and use tax by specifying that the nexus does not apply to franchise, income, or other taxes; and
- ! For local sales or use taxes, requiring the attributed activity creating the nexus for the out-of-state retailer to occur in the boundaries of the local taxing jurisdiction.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-26-102, **amend**
3 (3) as follows:

4 **39-26-102. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (3) (a) "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 OR TAXABLE SERVICES by a retail sale as defined in this section, for use,
10 storage, distribution, or consumption within this state. This term includes,

1 but shall not be limited to, the following acts or methods of transacting
2 business:

3 (a) (I) The ~~maintaining~~ REGULAR AND CONTINUOUS USE within this
4 state ~~directly or indirectly or by a subsidiary~~, of an office, distributing
5 house, ~~salesroom or house~~, SALESROOM, warehouse, or other place of
6 business OWNED OR OPERATED BY ANY PERSON OTHER THAN A COMMON
7 CARRIER ACTING IN ITS CAPACITY AS SUCH; AND

8 (b) (II) The soliciting, either by direct representatives, indirect
9 representatives, OR manufacturers' agents ~~or by distribution of catalogues~~
10 ~~or other advertising, or by use of any communication media, or by use of~~
11 ~~the newspaper, radio, or television advertising media, or by any other~~
12 ~~means whatsoever~~, WITHIN THE STATE of business from persons residing
13 in this state and by reason thereof receiving orders from, or selling or
14 leasing tangible personal property OR SELLING TAXABLE SERVICES to, such
15 persons residing in this state for use, consumption, distribution, and
16 storage for use or consumption in this state.

17 (H) (b) (I) ~~Commencing March 1, 2010, if a retailer that does not~~
18 ~~collect Colorado sales tax~~ IF A RETAILER HAS SUBSTANTIAL NEXUS WITH
19 THIS STATE, AND SUCH RETAILER is part of a controlled group of
20 corporations, ~~and that controlled group has a component member that is~~
21 ~~a retailer with physical presence in this state, the retailer that does not~~
22 ~~collect Colorado sales tax is~~ THEN A COMPONENT MEMBER OF THE
23 CONTROLLED GROUP OF CORPORATIONS THAT SELLS, LEASES, OR DELIVERS
24 TANGIBLE PERSONAL PROPERTY OR TAXABLE SERVICES IS presumed to be
25 doing business in this state. THIS PRESUMPTION MAY BE REBUTTED BY
26 PROOF THAT DURING THE CALENDAR YEAR IN QUESTION, THE COMPONENT
27 MEMBER THAT IS A RETAILER WITH SUBSTANTIAL NEXUS WITH THIS STATE

1 DID NOT ENGAGE IN ANY CONSTITUTIONALLY SUFFICIENT SOLICITATION OR
2 OTHER ACTIVITIES TO ESTABLISH OR MAINTAIN A MARKET IN THIS STATE
3 ON BEHALF OF THE RETAILER THAT IS PRESUMED TO BE DOING BUSINESS IN
4 THIS STATE.

5 (II) For purposes of this ~~subparagraph (H)~~ PARAGRAPH (b):

6 (A) "Controlled group of corporations" has the same meaning as
7 set forth in section 1563 (a) of the federal "Internal Revenue Code of
8 1986", as amended, and "component member" has the same meaning as
9 set forth in section 1563 (b) of the federal "Internal Revenue Code of
10 1986", as amended. ~~This presumption may be rebutted by proof that
11 during the calendar year in question, the component member that is a
12 retailer with physical presence in this state did not engage in any
13 constitutionally sufficient solicitation in this state on behalf of the retailer
14 that does not collect Colorado sales tax.~~

15 (B) "CONTROLLED GROUP OF CORPORATIONS" AND "COMPONENT
16 MEMBER" ALSO INCLUDE ANY ENTITY THAT, NOTWITHSTANDING ITS FORM
17 OF ORGANIZATION, BEARS THE SAME OWNERSHIP RELATIONSHIP TO THE
18 RETAILER AS A CORPORATION THAT WOULD QUALIFY AS A "COMPONENT
19 MEMBER" OF THE SAME "CONTROLLED GROUP OF CORPORATIONS" AS THE
20 RETAILER.

21 (c) (I) A PERSON SELLING, LEASING, OR DELIVERING TANGIBLE
22 PERSONAL PROPERTY OR TAXABLE SERVICES IS PRESUMED TO BE DOING
23 BUSINESS IN THIS STATE IF SUCH PERSON ENTERS INTO AN AGREEMENT OR
24 ARRANGEMENT WITH ANOTHER PERSON WITH SUBSTANTIAL NEXUS WITH
25 THIS STATE, OTHER THAN A PERSON ACTING IN ITS CAPACITY AS A COMMON
26 CARRIER, FOR THAT OTHER PERSON WITH SUBSTANTIAL NEXUS TO:

27 (A) SELL TANGIBLE PERSONAL PROPERTY OR TAXABLE SERVICES

1 SIMILAR TO THAT SOLD BY THE PERSON PRESUMED TO BE DOING BUSINESS
2 IN THIS STATE, AND TO DO SO UNDER THE SAME OR A SIMILAR BUSINESS
3 NAME;

4 (B) MAINTAIN AN OFFICE, DISTRIBUTION FACILITY, WAREHOUSE,
5 STORAGE PLACE, OR SIMILAR PLACE OF BUSINESS IN THIS STATE TO
6 FACILITATE THE DELIVERY OF TANGIBLE PERSONAL PROPERTY OR TAXABLE
7 SERVICES SOLD BY THE PERSON PRESUMED TO BE DOING BUSINESS IN THIS
8 STATE TO THE CUSTOMERS OF THE PERSON PRESUMED TO BE DOING
9 BUSINESS IN THIS STATE;

10 (C) USE TRADEMARKS, SERVICE MARKS, OR TRADE NAMES IN THIS
11 STATE THAT ARE THE SAME OR SUBSTANTIALLY SIMILAR TO THOSE USED
12 BY THE PERSON PRESUMED TO BE DOING BUSINESS IN THIS STATE;

13 (D) DELIVER, INSTALL, ASSEMBLE, OR PERFORM MAINTENANCE
14 SERVICES IN THIS STATE FOR TANGIBLE PERSONAL PROPERTY SOLD TO
15 CUSTOMERS RESIDING IN THIS STATE BY PERSONS PRESUMED TO BE DOING
16 BUSINESS IN THIS STATE;

17 (E) FACILITATE THE DELIVERY OF TANGIBLE PERSONAL PROPERTY
18 TO IN-STATE CUSTOMERS OF THE PERSON PRESUMED TO BE DOING
19 BUSINESS IN THIS STATE BY ALLOWING SUCH CUSTOMERS TO PICK UP
20 TANGIBLE PERSONAL PROPERTY SOLD BY THE PERSON PRESUMED TO BE
21 DOING BUSINESS IN THIS STATE AT AN OFFICE, DISTRIBUTION FACILITY,
22 WAREHOUSE, STORAGE PLACE, OR SIMILAR PLACE OF BUSINESS
23 MAINTAINED IN THIS STATE; OR

24 (F) CONDUCT ANY OTHER ACTIVITIES IN THIS STATE THAT ARE
25 SIGNIFICANTLY ASSOCIATED WITH THE ABILITY OF THE PERSON PRESUMED
26 TO BE DOING BUSINESS IN THIS STATE TO ESTABLISH AND MAINTAIN A
27 MARKET IN THIS STATE FOR SALES OF TANGIBLE PERSONAL PROPERTY OR

1 TAXABLE SERVICES.

2 (II) THE PRESUMPTIONS SET FORTH IN SUBPARAGRAPH (I) OF THIS
3 PARAGRAPH (c) MAY BE REBUTTED BY DEMONSTRATING THAT THE
4 ACTIVITIES CONDUCTED IN THIS STATE ARE PROTECTED BY THE UNITED
5 STATES CONSTITUTION OR ARE NOT SIGNIFICANTLY ASSOCIATED WITH THE
6 ABILITY OF THE PERSON PRESUMED TO BE DOING BUSINESS IN THIS STATE
7 TO ESTABLISH OR MAINTAIN A MARKET IN THIS STATE FOR SUCH PERSON'S
8 SALES OF TANGIBLE PERSONAL PROPERTY OR TAXABLE SERVICES.

9 (d) A PERSON DESCRIBED IN PARAGRAPH (a), (b), OR (c) OF THIS
10 SUBSECTION (3) MAY NOT BE REQUIRED TO COLLECT SALES OR USE TAXES
11 IMPOSED BY A LOCAL TAXING JURISDICTION, INCLUDING A LOCAL TAXING
12 JURISDICTION GOVERNED BY A HOME RULE CHARTER, UNLESS THE
13 ACTIVITIES DESCRIBED IN PARAGRAPH (a), (b), OR (c) OCCUR WITHIN THE
14 BOUNDARIES OF SUCH LOCAL TAXING JURISDICTION. THE PROVISIONS OF
15 THIS SUBSECTION (3) DO NOT AFFECT THE IMPOSITION OR SOURCING OF
16 SALES OR USE TAXES ON INTRASTATE SALES.

17 (e) THIS SUBSECTION (3) AFFECTS THE IMPOSITION, APPLICATION,
18 OR COLLECTION OF SALES OR USE TAXES ONLY.

19 **SECTION 2.** In Colorado Revised Statutes, 39-26-103, **add** (3.5)
20 as follows:

21 **39-26-103. Licenses - fee - revocation.** (3.5) A PERSON MAY
22 ONLY SELL, LEASE, OR DELIVER TANGIBLE PERSONAL PROPERTY OR
23 TAXABLE SERVICES TO THE STATE, EITHER THROUGH THE "PROCUREMENT
24 CODE", ARTICLES 101 TO 112 OF TITLE 24, C.R.S., OR OTHERWISE, IF SUCH
25 PERSON, OR ANY COMPONENT MEMBER OF A CONTROLLED GROUP OF
26 CORPORATIONS AS DEFINED IN SECTION 39-26-102 (3) (b) (II) THAT
27 INCLUDES THAT PERSON, OBTAINS A RETAIL SALES TAX LICENSE AS

1 SPECIFIED IN THIS SECTION, AND SUCH PERSON IS RESPONSIBLE FOR THE
2 COLLECTION OF SALES TAXES ON ALL ITS SALES, LEASES, OR DELIVERIES OF
3 TANGIBLE PERSONAL PROPERTY OR TAXABLE SERVICES IN THIS STATE AS
4 SPECIFIED IN SECTION 39-26-105.

5 **SECTION 3.** In Colorado Revised Statutes, **add** 39-26-104.5 as
6 follows:

7 **39-26-104.5. Decisions to release a retailer from collecting**
8 **sales tax.** ANY AGREEMENT, EXECUTIVE ORDER, OR CONTRACT, WHETHER
9 WRITTEN OR ORAL, EXPRESS OR IMPLIED, BETWEEN A PERSON AND THE
10 STATE THAT RELEASES A PERSON FROM THE REQUIREMENT TO COLLECT
11 STATE-ADMINISTERED SALES AND USE TAX IN THIS STATE DESPITE THE
12 PERSON'S SUBSTANTIAL NEXUS WITH THIS STATE IS NULL AND VOID UNLESS
13 SUCH AGREEMENT, EXECUTIVE ORDER, OR CONTRACT IS SPECIFICALLY
14 APPROVED BY THE GENERAL ASSEMBLY ACTING BY BILL.

15 **SECTION 4. Severability.** If any provision of this act or the
16 application thereof to any person or circumstance is held invalid, such
17 invalidity does not affect other provisions or applications of the act that
18 can be given effect without the invalid provision or application, and to
19 this end the provisions of this act are declared to be severable.

20 **SECTION 5. Effective date.** This act takes effect July 1, 2013.

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