



COLORADO

Department of Revenue

Taxation Division

October 26, 2018

Who: All businesses that sell tangible goods to Colorado customers

What: Background regarding sales tax regulation changes

When: Formal Permanent Rulemaking Hearing on November 30, 2018 (an emergency rule is currently in place)

Background: On June 21, 2018, the Supreme Court of the United States overturned the physical presence requirement in the Wayfair v. South Dakota case and ruled that out-of-state-retailers will be subject to collecting state sales tax in states they ship taxable goods into. As part of implementing the regulatory change, the Department of Revenue has [proposed a rule](#) requiring that sales tax must be collected and remitted based on the jurisdiction's tax rate at the point of delivery for the taxable good when delivered outside the retailer's jurisdiction. Because out-of-state retailers do not have a physical location this is the only way to source sales tax. The Department cannot have two different sets of rules for in-state and out-of-state retailers.

Key Facts:

- **The new rules will require businesses that sell to Colorado customers to consistently collect and remit state and local jurisdiction sales taxes applicable at the point of delivery for the taxable good.**
 - This clarification is part of an effort to standardize Colorado sales tax laws.
 - 33 other states (see <https://blog.taxjar.com/charging-sales-tax-rates/>) have adopted similar rules for determining the taxes applicable to deliveries and many others are moving in this direction (see www.streamlinedsalestax.org)
 - There is no change for businesses where the customer purchases the taxable good at the seller's place of business or the retailer does not deliver outside their own taxing jurisdiction.
- **Levels the playing field**
 - Taxing jurisdictions should never be the deciding factor when purchasing goods within Colorado -- the free market should.
 - The new sales tax changes will level the playing field for all businesses so no business has a particular advantage from a sales tax perspective
 - This has not always been the case. Under current practice, taxes are only collected where the seller and the buyer have jurisdictions in common. This creates discrepancies on the taxes due and paid based on who and where the buyer purchases from.

- For example:

I decide to purchase a new bike for \$1,000 which will be delivered to my home. The current practice is that the retailer would only collect sales tax for the jurisdictions the retailer and I have in common.

| Example 1 If I purchase a bike at a retailer in my home jurisdiction I will pay: | | | Example 2 If I purchase the bike at a retailer outside my home jurisdiction (e.g., different county, city) I will pay: | | |
|---|------|----------------|---|------|----------------|
| Purchase Price | Tax | \$1,000 | Purchase Price | Tax | \$1,000 |
| CO State Tax | 2.9% | \$29 | CO State Tax | 2.9% | \$29 |
| RTD | 1.0% | \$10 | RTD | 1.0% | \$10 |
| SCFD | 0.1% | \$1 | SCFD | 0.1% | \$1 |
| County Tax | 1.0% | \$10 | | | |
| City Tax | 4.0% | \$40 | | | |
| Total | | \$1,090 | Total | | \$1,040 |

Under the proposed rule, the purchaser would owe the same tax regardless of where the retailer is located. This prevents the tax from being a market advantage and encouraging taxpayers to purchase delivered goods from outside their home jurisdiction.

- **The Wayfair Decision evened the playing field for in-state and out-of-state retailers.**
 - Where previously only in-state retailers were required to collect and remit sales tax, now all businesses that sell taxable goods in the state of Colorado must collect and remit.
 - Adapts to the consumer shift from brick and mortar stores to e-commerce.
- **This will be challenging for some businesses, but the Department is here to help.**
 - To ensure retailers have sufficient time to make the required systems changes, the Department will offer a grace period through March 31, 2019, to comply with these clarifications. Businesses will not need to ask for the extension, rather, we will automatically grant the waiver until then
 - The Department has a [website](#) dedicated to information for in-state retailers.
 - The Department has improved the registration process for adding new taxing jurisdictions and non-physical locations. (see [website](#))
 - If you don't currently file your sales tax return online, [create a Revenue Online Account](#) to do so.
 - If you have suggestions on how the Department can make this transition easier for in-state businesses (within the law) email us at DOR_SalesTaxChanges@state.co.us
 - Please be aware that the Department can only function within the constraints of existing Colorado law.

Timeline of Events

- September 27, 2017 – Announcement of Work Group scheduled on November 15, 2017. Posted on our website the same day.
 - Received an email saying the Colorado Government Finance Officers Association Annual Conference is that week and that a majority of active stakeholders from municipalities will be participating in this conference.
- September 29, 2017 – Announcement that the Work Group was Rescheduled to December 5, 2017. Deadline for application to be included on the work group was November 14, 2017. Posted on our website the same day.
- November 29, 2017 - Emailed stakeholders who signed up to be on the Work Group to remind them of the Work Group and send out the agenda.
- December 5, 2017 – Work Group held
- August 23, 2018 – Sent draft of rule to stakeholders soliciting comments by Friday September 7, 2018. Posted on our website the same day.
- September 11, 2018 – Adopted emergency rules, including the sourcing rule. Asked for comments by September 25, 2018 prior to permanently adopting the rules. Posted on our website the same day.
- October 1, 2018 – Announcement of permanent rulemaking hearing. If public wants to submit comments on the proposed rules to be considered at the hearing, they must submit by November 30, 2018. Posted on our website the same day.
- November 30, 2018 - Permanent rulemaking hearing.