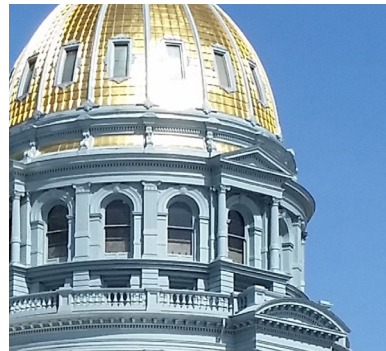


2018

Report to the Colorado General Assembly



Sales and Use Tax Simplification Task Force



Prepared by Legislative Council Staff
Research Publication No. 703
November 2018

Sales and Use Tax Simplification Task Force

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Senator Tim Neville, Vice-Chair

Senator Angela Williams

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November 2018

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This report is also available on line at:

<https://leg.colorado.gov/committees/salesandusetaxsimplificationtaskforce/2018-regular-session>

Task Force Charge and Membership

The Sales and Use Tax Simplification Task Force (task force) was created pursuant to House Bill 17-1216. According to the bill, the task force is charged with studying the following policy issues:

- the necessary components of a simplified sales and use tax system for both state and local governments, including home rule municipalities and counties;
- opportunities and challenges within existing fiscal frameworks to adopt innovative revenue-neutral solutions that do not require constitutional amendments or voter approval;
- the feasibility of having a third-party entity responsible for state or local sales and use tax administration, return processing, and audits;
- the feasibility of making audits of retailers more uniform for all state and local taxing jurisdictions in the state;
- the feasibility of utilizing certified software for sales and use tax administration and collection of state and local sales and use tax; and
- the feasibility of utilizing a single sales and use tax return for state and local taxing jurisdictions.

The bill also requires the task force to submit a report to Legislative Council by November 1 of each year, which may or may not include recommendations for legislation.

In total, there are fifteen members on the task force:

- Representative Tracy Kraft-Tharp, Chair, appointed by the Speaker of the House of Representatives;
- Senator Tim Neville, Vice-Chair, appointed by the President of the Senate;
- Senator Angela Williams, appointed by the Minority Leader of the Senate;
- Representative Kevin Van Winkle, appointed by the Minority Leader of the House of Representatives;
- Bryan Archer, Director of Finance, City of Arvada, appointed by the Colorado Municipal League, representing the large population category;
- Paul Archer, Owner, Automated Business Products of Colorado, appointed by the Governor as a member of a statewide association of small businesses that is addressing the simplification of sales and use tax collection;
- Kristin Baumgartner, Assistant City Manager and Finance Director, City of Lone Tree, appointed by the Colorado Municipal League, representing the medium population category;
- Kevin Bommer, Deputy Director, Colorado Municipal League;
- Tracy Hines, Sales Tax Administrator, Larimer County, representing Colorado Counties, Inc.;
- Steve Ellington, Treasurer, City and County of Denver, appointed by the Colorado Municipal League, representing the largest population category;
- Bruce Nelson, Director of State and Local Tax, EKS&H, appointed by the Governor as a member of the statewide chamber of commerce;
- Heather Pezzella, Revenue Services Administrator, Town of Breckenridge, appointed by the Colorado Municipal League, representing the small population category;

- Neil Pomerantz, Partner, Silverstein & Pomerantz, appointed by the Governor as a state and local sales tax law practitioner;
- Brendon Reese, Deputy Director of Taxation Policy and Legal Analysis, Colorado Department of Revenue; and
- Judith Vorndran, Partner, TaxOps, appointed by the Governor as someone with state and local sales and use tax accounting experience.

Task Force Activities

The task force held four meetings during the 2018 interim. Briefings and presentations were made by the Office of Legislative Legal Services, Legislative Council Staff, the Colorado Department of Revenue (DOR), the Colorado Municipal League, the Council on State Taxation, the Streamlined Sales Tax Governing Board, the National Conference of State Legislatures, the Center for State Fiscal Reform, and members of the public on a wide range of topics, including:

- the current Colorado sales and use tax system, with an emphasis on use tax;
- other states' efforts to simplify their sales and use tax system;
- the Colorado Municipal League's standardized definitions project;
- a request for information for an electronic sales tax system issued pursuant to House Bill 18-1022; and
- implementation of online sales tax collections following the U.S. Supreme Court *South Dakota v. Wayfair* decision.

The following sections discuss the task force's activities during the 2018 interim.

Overview of the Current Colorado Sales and Use Tax System

Colorado's system of state and local sales and use taxes is one of the most complicated in the country. During the 2018 interim, the task force heard presentations from DOR about legislation that passed during the 2018 legislation session that affected sales and use tax and an overview of the state's use tax. The task force also heard presentations from Legislative Council Staff and construction, auto, and aviation industry experts about the use tax. These presentations testified to the complexity of the current system and the need for sales and use tax simplification.

State tax. Colorado is one of 45 states to assess a state sales tax.¹ Among states with a sales tax, Colorado's state sales tax is assessed at the lowest rate, 2.9 percent. The tax base includes all sales of tangible personal property except those that are specifically exempted, and exempts all sales of services except those that are specifically subject to the tax.² The state use tax is assessed when sales tax was due but was not collected, such as cases where a good was purchased from an out-of-state seller. In these cases, the purchaser is required to remit use tax directly to the state. The state sales and use tax is administered by the DOR.

¹Alaska, Delaware, Montana, New Hampshire, and Oregon do not assess sales taxes.

²Section 39-26-104, C.R.S.

County taxes. With voter approval, counties are authorized to assess a sales tax, use tax, or both.³ County sales taxes are imposed on the same collection of goods and services as the state sales tax, except that certain state sales tax exemptions are not by default extended to counties.⁴ In these cases, boards of county commissioners may adopt an ordinance or resolution to extend the exemption(s). Notable state sales tax exemptions that are not necessarily available at the county level include the exemptions for: machinery; electricity, gas, and heating oil; food for home consumption; sales by charities; and retail marijuana. Sales taxes assessed by 50 counties are administered by the state DOR, which collects tax revenue and remits the tax to the appropriate county. The provisions governing county taxes do not apply to the consolidated city-county governments of Denver and Broomfield, each of which has a home rule charter. Twelve counties do not assess a sales tax.

Municipal taxes. Provisions for municipal taxes vary greatly according to whether the municipality has adopted a home rule charter pursuant to Article XX of the Colorado Constitution. Municipalities that have not adopted a home rule charter are authorized in statute to assess sales or use taxes in a manner similar to the county taxes described above. Municipalities that have adopted a home rule charter have broad jurisdiction over their own sales taxes and generally are not bound by statutory sales tax requirements.

Statutory municipalities. With voter approval, municipalities that have not adopted a home rule charter (statutory municipalities) are authorized to assess a sales tax, use tax, or both.⁵ Sales taxes assessed by these municipalities are imposed on the same collection of goods and services as the state sales tax, except that certain state sales tax exemptions are not by default extended to municipalities.⁶ In these cases, the city or town council may adopt an ordinance or resolution to extend the exemption(s). Municipal sales taxes are administered by the state DOR, which collects tax revenue and remits the tax to the appropriate municipality.

Home rule municipalities. Article XX, Section 6, of the Colorado Constitution empowers any municipality with a population of 2,000 people or more to adopt a home rule charter with voter approval. Home rule municipalities have broad latitude to govern themselves in matters of local concern.⁷ With voter approval, home rule municipalities may assess sales or use taxes on a locally determined collection of goods and services. Because municipal taxes need not be assessed on the same tax base as the state, home rule municipalities may variously tax transactions that are exempted at the state level or exempt transactions that are taxed at the state level. Additionally, home rule municipalities may tax specific goods or services at a different rate from others. For example, the City and County of Denver, a home rule government, assesses a tax of 3.65 percent on most taxable transactions, but assesses a tax of 4.00 percent on sales of food for immediate consumption, e.g., at restaurants.

Home rule municipalities may choose whether to collect and administer their sales taxes locally. Municipalities that choose to collect their own sales taxes may develop their own systems for licensure, remittance, and auditing. There are 96 home rule municipalities that assess a sales tax.

³Section 29-2-103, C.R.S.

⁴Section 29-2-105 (1)(d), C.R.S.

⁵Section 29-2-102, C.R.S.

⁶Section 29-2-105 (1)(d), C.R.S.

⁷City and County of Denver v. Qwest Corp., 18 P.3d 748 (Colo. 2001).

According to the DOR, 70 home rule municipalities collect and administer their own sales taxes.⁸ The DOR collects and administers sales taxes for home rule municipalities that choose not to administer taxes at the local level.

Special districts. With voter approval, certain special districts and other limited purpose governmental entities are permitted to assess sales taxes up to certain tax rate limits. Special districts authorized to assess sales taxes include:

- the Regional Transportation District (RTD) in the Denver metropolitan area;
- the Scientific and Cultural Facilities District (SCFD) in the Denver metropolitan area;
- local improvement districts in Boulder, Broomfield, Douglas, Jefferson, and Mesa Counties;
- mass transportation systems in Eagle, Pitkin, and Summit Counties; local improvement districts in Boulder, Broomfield, Douglas, Jefferson, and Mesa Counties;
- mass transportation systems in Eagle, Pitkin, and Summit Counties;
- regional transportation authorities in Eagle, El Paso, Garfield, Gunnison, Logan, Pitkin, and San Miguel Counties;
- a multi-jurisdictional housing authority in Summit County;
- a public safety improvement district in Montrose and Mesa Counties;
- metropolitan districts in Eagle and Jefferson Counties;
- a health services district in parts of Montezuma, Park, and Otero Counties; and
- local marketing districts in Alamosa, Eagle, Gunnison, Larimer, Moffat, and Routt Counties.

Statutory requirements for each special district sales tax are included in the portion of state law that authorizes creation of the particular type of special district. In general, all special district sales taxes are collected and administered at the state level. The tax base for special districts is generally consistent with the state tax base, and changes to the state base (i.e., via the creation or repeal of a sales tax exemption) are extended by default to special districts.

TABOR. Article X, Section 20, of the Colorado Constitution was added via ballot initiative in 1992. This section, known as the Taxpayer’s Bill of Rights or TABOR, prohibits the state government and all local governments from enacting or increasing taxes without voter approval. TABOR complicates simplification efforts because proposals to narrow the tax base, e.g., in local jurisdictions that have not enacted sales tax exemptions found at the state level, require voter approval to enact corresponding tax rate increases in order to offset revenue loss. Thus, jurisdictions that currently assess sales taxes on a broader collection of goods and services than those taxed by the state must either maintain their dissimilar tax base, narrow the base while increasing tax rates with voter approval, or narrow the base without voter approval and experience a decrease in revenue.

Use tax presentations. The task force received a presentation from Legislative Council Staff about the state’s use tax. The presentation included data illustrating a ten-year history of state use tax collections compared with state sales tax collections and maps illustrating use tax collections by municipality and industry. The presentation highlighted the discrepancies in use tax collections amongst different industries and at the local and state level. The task force also heard a presentation from DOR about

⁸Colorado Department of Revenue form DR 1002. <http://www.colorado.gov/pacific/sites/default/files/DR1002.pdf>.

the administration of the state's use tax. This presentation provided background on the state's past efforts to require use tax remittance by remote sellers.

Industry panels. Over the course of two meetings, the task force heard testimony from two panels made up of experts from the construction, auto, and aviation industries about the collection and remittance of use tax. The panelists reiterated the complexity of the state's sales and use tax system and testified to the resources and costs required to comply with state law. In response to questions from the task force, the construction industry panelists identified four target areas of improvement to the state's sales and use tax system, as follows:

1. create a single point of registration and licensing;
2. create a single point of remittance;
3. create a single tax rate; and
4. create a standardized tax form.

Overview of Other States' Efforts to Simplify Their Sales and Use Tax System

The task force received presentations from the Council on State Taxation and the Streamlined Governing Board, Inc., on the topic of what other states have done to simplify their sales and use tax systems, including efforts organized at a national level. These organizations suggested courses of action that Colorado could follow in order to simplify its relatively complicated sales and use tax system.

The Streamlined Governing Board, Inc. discussed the merits of the Streamlined Sales and Use Tax Agreement (SSUTA). Among its various components, the SSUTA addresses state level administration, including collection and auditing, and uniform state and local tax bases with specific exceptions. The Streamlined organization generally assists states as they work to administer a simpler and more uniform sales and use tax system for all sellers.

The Council on State Taxation reviewed the scoring criteria and basis of the overall "F" score it awarded to Colorado on its 2018 sales tax scorecard.

Simplification efforts in home rule jurisdiction states. The task force heard a presentation from Legislative Council Staff explaining and comparing simplification efforts in three other states with similar local sales tax administration systems: Alabama, Arizona, and Louisiana. Alabama has 801 taxing jurisdictions. As a result of simplification efforts, a taxpayer can now file and pay all state, state-administered, and locally administered sales taxes through a state-run online system; however, the taxpayer must register with each local jurisdiction, and simplification efforts are ongoing. Arizona has 131 taxing jurisdictions. Beginning January 1, 2017, and as a result of simplification efforts, the Arizona Department of Revenue began administering all local sales taxes at the state level. Louisiana has 370 taxing jurisdictions. There are two committees studying ways to simplify sales and use tax collections in the state.

Update on the Colorado Municipal League’s Standardized Definitions Project

Home rule municipalities have the authority to define what is taxable and what is exempt from local sales taxes. As a result, different jurisdictions sometimes use different definitions for the same term. At the urging of the General Assembly in 2014, home rule municipalities and the Colorado Municipal League (CML) began to update a set of standardized definitions that home rule municipalities developed in 1992.⁹ A set of current standardized definitions were finalized in 2017 that can be adopted by self-collecting municipalities.

In 1992, home rule municipalities developed a set of standardized definitions; however, there was no mechanism to maintain the uniformity of definitions across jurisdictions over time. Starting with the 1992 definitions, representatives from each of Colorado’s self-collecting local governments developed new uniform definitions that are consistent with current practice. Several new definitions were added to reflect the use of new terms by three or more jurisdictions.

Once the new definitions were developed by tax professionals representing home rule jurisdictions, they were reviewed by city attorneys and tax professionals in the business community. Some revisions were made following the input of city attorneys and the business community. A model ordinance with finalized definitions is available for adoption by individual municipalities. The definitions were crafted in an attempt to have a minimal impact on revenue.

The Colorado sales tax system will be more uniform as more jurisdictions continue working toward the adoption of the standardized definitions. As of September 20, 2018, the 45 self-collecting jurisdictions listed below have adopted the standardized definitions, representing 63.4 percent of the 71 self-collecting home rule jurisdictions.¹⁰ The number of participating jurisdictions has more than doubled since 2017 reporting. The General Assembly has not enacted the standardized definitions in state law.

Alamosa	Carbondale	Evans	Gypsum	Northglenn
Arvada	Centennial	Federal Heights	La Junta	Parker
Aspen	Cherry Hills Village	Fort Collins	Lamar	Sheridan
Aurora	Cortez	Frisco	Littleton	Silverthorne
Avon	Craig	Glenwood Springs	Longmont	Snowmass Village
Black Hawk	Crested Butte	Golden	Louisville	Timnath
Boulder	Dacono	Greeley	Montrose	Westminster
Broomfield	Denver	Greenwood Village	Mountain Village	Wheat Ridge
Canon City	Edgewater	Gunnison	Mt. Crested Butte	Windsor

⁹ Senate Joint Resolution 14-038

¹⁰ Source: Colorado Municipal League.

Implementation of Online Sales Tax Collections

Following the June 2018 U.S. Supreme Court decision in *South Dakota v. Wayfair*, the task force heard presentations and discussed the implications of the decision at its subsequent meetings.¹¹ The U.S. Supreme Court decision held that a state may require an out-of-state retailer to collect sales tax on purchases made by an in-state consumer, even if the out-of-state retailer does not maintain a physical presence in the taxing state. Until the *Wayfair* decision, taxpayers in Colorado were required to voluntarily pay taxes to the DOR on purchases from online, out-of-state retailers, rather than the tax being collected by the retailer and remitted to DOR.

Background. While states have nearly complete authority to tax commercial activities within their own borders, these broad taxing powers are subject to limitations in the U.S. Constitution when the commerce goes beyond the state's borders. The Commerce Clause reserves to Congress the power to "regulate commerce . . . among the several states."¹² In general, a state law cannot discriminate against or unduly burden interstate commerce, even in the absence of federal legislation regulating the activity. In addition, a Supreme Court decision frequently referenced as "the Quill case" stood for the rule that states could not require retailers to collect the sales tax from consumers if the retailer did not have physical presence in the consumer's state of residence.¹³ The Quill case was decided in 1992, well before the era of ecommerce as we know it now. Consequently, the physical presence requirement became a big hurdle for states seeking parity between online purchases and purchases made in local stores. The lost sales tax revenue from online sales provoked many states to deal with this issue in two ways: first, through numerous, unsuccessful attempts to seek congressional action; and second, by individual states passing legislation that challenged the physical presence requirement. In 2016, South Dakota took the most direct position, passing a law requiring a retailer without physical presence in the state to collect sales and use tax on purchases and services at the point of sale. The legislative declaration described the bill as a direct challenge to the Quill case.

Three large ecommerce companies, Wayfair, Overstock, and Newegg, sued South Dakota, arguing that the law was unconstitutional under the Commerce Clause. The South Dakota trial court found for the companies, and the South Dakota Supreme Court agreed, relying on the fact that the Quill case had not yet been overturned and still required physical presence in South Dakota before companies could be forced to collect the sales tax. South Dakota appealed to the U.S. Supreme Court. In its June 21, 2018, opinion, the Supreme Court overruled the Quill case, holding that "the physical presence rule, both as first formulated and as applied today, is an incorrect interpretation of the Commerce Clause." This means that the South Dakota law is constitutional insofar as a company's physical presence is no longer required. However, the case was remanded back to South Dakota to determine whether the law is discriminatory or an undue burden on interstate commerce.

The Supreme Court stated, however, that, "South Dakota's tax system includes several features that appear designed to prevent discrimination against or undue burdens upon interstate commerce." The court focused on the following three particulars:

¹¹ *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018).

¹² U.S. Constitution, Article I, Section 8

¹³ *Quill Corp. v. N.D.*, 504 U.S. 298 (1992).

- The South Dakota law defined "retailer" as a business with annual gross sales revenue in the state exceeding \$100,000 or having made 200 or more separate sales transactions in the state in a year.
- The law was not retroactive; and
- South Dakota is a full-member state in compliance with the Streamlined Sales and Use Tax Agreement.

Implications for Colorado. Following the Wayfair decision, the DOR moved toward requiring retailers without physical presence (out-of-state retailers) to collect state sales tax and the sales taxes levied by statutory municipalities. In addition, the department adopted emergency rules to assist in administering sales tax collections and, among other things, to specify that the state's collection requirement would not be retroactive and would apply to the same definition of retailer that South Dakota adopted.

However, Colorado has not adopted the SSUTA. In the Wayfair decision the Supreme Court described the agreement as follows:

This system standardizes taxes to reduce administrative and compliance costs: It requires a single, state level tax administration, uniform definitions of products and services, simplified tax rate structures, and other uniform rules. It also provides sellers access to sales tax administration software paid for by the State. Sellers who choose to use such software are immune from audit liability.

The Colorado Constitution provides home rule jurisdictions the full right of self-government in both local and municipal matters, including the "assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes... ." ¹⁴ This constitutional authority of home rule jurisdictions to levy and collect taxes is arguably an obstacle to statewide uniformity as contemplated by the SSUTA. Currently, home rule jurisdictions have no coordinated requirement for out-of-state retailers to collect sales taxes.

Responses to House Bill 18-1022 RFI

The task force recommended one bill during the 2017 interim. This bill, which was introduced as House Bill 18-1022, directed the Department of Revenue to issue a request for information (RFI) regarding the potential to contract for an electronic sales and use tax simplification system. Pursuant to the bill, the system should be available for use by the state and local governments, at their discretion, and provide:

- accurate address location information;
- a single application process for sales tax licenses;
- a uniform sales tax remittance form;
- a single point of remittance for sales and use tax; and
- a taxability or exemption matrix of each item subject to sales or use tax in the state and local jurisdictions.

¹⁴ Colorado Constitution, Article XX, Section 6(g)

The information provided must identify initial costs and ongoing annual costs, as well as methods for payment by different public or private entities.

The bill was signed into law by the Governor on March 1, 2018, and the department issued the RFI on March 16, 2018. A copy of the RFI is appended as Attachment A.

Responses to RFI. Responses to the RFI were due May 31, 2018. The department received responses from four vendors. In June, the DOR established a 14-member team to review responses to the RFI. Four members of the task force participated on the review team. The department shared information at the committee's June and August meetings about responses to the RFI and about potential next steps. Based on this testimony, the task force voted to draft a bill to move forward with seeking proposals for the development of an electronic sales and use tax simplification system.

Summary of Public Comment

The task force heard from the following individuals representing various municipalities and organizations at one or more of the task force's 2018 meetings:

- Brandy Alger, Senior Project Accountant, Mortenson Construction
- Cheryl Cheney, Contract Administrator, Brannon Sand and Gravel Company
- Jeff Hansen, Finance Director, City of Golden
- Christine Heath, Regional Controller, Adolfson & Peterson Construction
- Phil Horwitz, State and Local Tax Director, Moss Adams
- Vickie Hurst, Director, US Indirect Tax, LafargeHolcim
- Ty Little, Carrier & Little
- Johnny Medved, Medved Auto
- Gini Pingnot, Legislative Director, Colorado Counties, Inc.
- Scott Van Deren, Business Development, Drake-Williams Steel
- Laura Williams, Sales & Use Tax Analyst, Martin Marietta
- Ryan Woods, Tax Consultant, Xcel Energy
- Stephanie Ziegler, Assistant Controller, Brannon Sand and Gravel Company

Summary of Recommendations

The task force considered one bill for recommendation to the Legislative Council for consideration in the 2018 session. At its meeting on October 15, 2018, the Legislative Council approved one recommended bill for introduction. The approved bill is described below.

Bill A — Electronic Sales & Use Tax Simplification System

The bill requires DOR to procure an electronic sales and use tax simplification system. The department is directed to involve stakeholders in the procurement process. Once a new system is online, the department is directed to accept any returns and payments processed through the system for sales and use taxes collected by the state. It is the General Assembly's intent that at least three home rule jurisdictions opt in to the system after it is online and that additional home rule jurisdictions opt in to the system every year so that no later than three years after Bill A is adopted, all home rule jurisdictions voluntarily use the system. Finally, the bill requires DOR to provide updates about the procurement of the system to the Sales and Use Tax Simplification Task Force during the 2019 legislative interim.

Resource Materials

Meeting summaries are prepared for each meeting of the task force and contain all handouts provided to the task force. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-2055). The listing below contains the dates of task force meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<http://leg.colorado.gov/committees/sales-and-use-tax-simplification-task-force/2018-regular-session>

Meeting Dates and Topics Discussed

July 12, 2018

- ◆ Task force member and staff introductions
- ◆ Overview of request for information issued pursuant to House Bill 18-1022
- ◆ Updates about changes to sales and use tax system made through 2018 legislation
- ◆ Update on CML standard definitions project
- ◆ Review of U.S. Supreme Court decision in South Dakota v. Wayfair
- ◆ Presentation from Streamlined Sales Tax Governing Board and Council on State Taxation
- ◆ Public comment

July 26, 2018

- ◆ Presentation on South Dakota v. Wayfair decision
- ◆ Discussion about responses to House Bill 18-1022 request for information
- ◆ Discussion about paying costs of an electronic sales and use tax simplification system
- ◆ Presentations on use tax
- ◆ Construction industry panel discussion on use tax
- ◆ Public comment

August 22, 2018

- ◆ Continued discussion about responses to House Bill 18-1022 request for information
- ◆ Auto and aviation industry panel discussion on use tax
- ◆ Presentation on collection of sales and use tax in states with home rule jurisdictions
- ◆ Public comment
- ◆ Bill requests

September 27, 2018

- ◆ Update from the Department of Revenue about the implementation of online sales and use tax collections from remote sellers following South Dakota v. Wayfair decision
- ◆ Public comment
- ◆ Bill draft voting
- ◆ Discussion about potential task force meetings and activities during the 2019 legislative interim



COLORADO
Department of Revenue

Request for Information (“RFI”)

RFI #DOR18018

Electronic Sales and Use Tax Simplification System

I. GLOSSARY OF TERMS

The RFI contains references to many acronyms, abbreviations and terms that may be unique and specific to the RFI. The following glossary is presented to offer a quick reference to assist the reader in understanding the terminology, acronyms, abbreviations used throughout the RFI.

CORA – Colorado Open Records Act

CRS – Colorado Revised Statutes, a compilation of Colorado State laws

Department – Colorado Department of Revenue, a department of the State of Colorado

Home Rule Jurisdiction – Colorado’s self-collecting municipalities, currently seventy (70), with authority derived from Article XX of the Colorado Constitution and their home rule charter

OIT – Governor’s Office of Information Technology, a department of the State of Colorado

Offeror – Any individual or entity that submits a response, or intends to submit a response to the RFI

RFI - Request for Information

Solicitation –all documents and related information whether attached or incorporated by reference published on an electronic bidding system in conjunction with a procurement prior to the response deadline

State - State of Colorado, including Departments of the Executive Branch

Task Force - Sales and Use Tax Simplification Task Force, a task force created in §39-26-802 Colorado Revised Statute (“CRS”)

VSS - Colorado Vendor Self Service, the State’s electronic bidding system. VSS website link: www.colorado.gov/VSS.

II. ADMINISTRATIVE INFORMATION

A. Introduction

As provided in §24-103-201.5 CRS, the State of Colorado, Department of Revenue (“Department”) is issuing the RFI pursuant to House Bill 18-1022 to meet the Sales and Use Tax Simplification Task Force (“Task Force”) objective with the bill. The Department is issuing the RFI in an effort to receive preliminary information about available electronic sales and use of tax simplification systems.

THIS IS NOT A SOLICITATION FOR GOODS OR SERVICES.

The intent of this information gathering is to assist the Department in preparing specifications or a scope of work for a system. Information that an Offeror wishes to submit is done so voluntarily and with the understanding that the RFI is for information gathering purposes only and no award will result from the request. Pricing information will be used solely for the purposes of establishing potential budget and pricing options. Pricing information presented during this information gathering process will not be considered as responsive to any formal or informal solicitation subsequently issued. The Department reserves the right to contact Offerors for additional information at its sole discretion.

The Department may elect to use all or part of the information submitted as a response to the RFI for the development of a solicitation. A formal or informal solicitation may be issued as a result of the RFI. Any future solicitation may be published through Colorado Vendor Self Service (“VSS”) at www.colorado.gov/VSS.

The Department shall be under no obligation to pay for any information or ideas submitted in response to the RFI or any costs incurred by any party as a result of the RFI.

B. Schedule of Activities

Activity	Date/Time
Published	March 16, 2018
Inquiries Deadline	March 30, 2018
Response Submission Deadline	May 31, 2018/4:00 PM MT

C. Sole Point of Contact

The Department’s purchasing agent is to be the sole point of contact concerning the RFI. All communications regarding the RFI must be directed to the purchasing agent. The preferred method of communication is by email. All email correspondences should include: “RFI #DOR18018/ Electronic Sales and Use Tax Simplification System” in the subject line.

Purchasing Agent: Tara Betz
Email: tara.betz@state.co.us

D. RFI Publication and Means of Communication

The RFI has been published using VSS. In the event that it becomes necessary to revise any part of the RFI, an amendment will be published on VSS. It is important that Offerors check VSS on a regular basis, as this is the sole method for communicating any changes.

An Offeror is not required to be registered on VSS in order to download documents or view information. An Offeror can register or update an existing account through VSS.

VSS Help Desk is available Monday through Friday 8:00 a.m. to 5:00 p.m. MT and can be reached by calling 303-866-6464 or emailing VSSHelp@state.co.us.

E. Inquiries

Inquiries regarding this process, the submission of general or specific information, and any and all other questions shall be submitted in writing. The Purchasing Agent shall be the sole contact for any inquiries. Inquiries may be submitted via email to the purchasing agent on or before the Inquiries Deadline identified in the Schedule of Activities. Any email should contain “RFI #DOR18018/Electronic Sales and Use Tax Simplification System” in the subject line.

Responses to inquiries will be published through VSS.

F. Submission of Responses

The Department requests a response be submitted through email to the purchasing agent on or before the Response Submission Deadline identified in the Schedule of Activities. The email must contain “RFI #DOR18018/Electronic Sales and Use Tax Simplification System” in the subject line.

An Offeror may request confirmation of receipt of a response from the purchasing agent.

G. Meetings/Presentations

An Offeror responding to the RFI may be invited to participate in a meeting or presentation to discuss and share information. However, the Department does not guarantee that submission of information by an Offeror will result in a scheduled meeting or presentation.

The Department may begin scheduling meetings or presentations upon receipt of responses. A meeting or presentation may be conducted in person, via telephone, or via web based conferencing system maintained by the Offeror.

The purchasing agent will schedule and facilitate any meeting or presentation. The dates and times will be coordinated and mutually agreed upon by the Department, other stakeholders, and the Offeror, with the Department making the final decision in the absence of a mutual agreement.

H. Disclosure of Responses

There will be an internal review of the materials but otherwise, the materials submitted in response to this RFI will not be publicly disclosed until such time that a competitive solicitation has been issued and an award has been made by the Department. At such time, all materials will be made available for public disclosure with the exception of those materials determined by the Department to be confidential or proprietary (see Section II. I.).

In the event that the Department determines that a competitive solicitation will not be issued as a result of the RFI process, the information submitted in response to this RFI shall be open to public inspection in accordance with the provisions of the "Colorado Open Records Act".

I. Confidential/Proprietary Information

Any restrictions of use or inspection of material contained within the response outside the process identified in Section II.H. shall be clearly stated in Offeror's response. Written requests for confidentiality shall be submitted by the Offeror along with a justification for the materials should be considered confidential or proprietary. The Offeror must state specifically what elements of its proposal are considered confidential or proprietary and/or those considered intellectual property of the Offeror.

Confidential/proprietary information must be readily identified, marked and packaged separately from the rest of the response. Co-mingling of confidential/proprietary and/or intellectual property and other information is NOT acceptable. Neither a response, in its entirety, nor response price information will be considered confidential and proprietary. Materials that would not be considered confidential in response to a solicitation will NOT be considered confidential for the RFI response.

The purchasing agent will make a written determination as to the apparent validity of any written request for confidentiality. In the event the Department does not concur with the Offeror's request for confidentiality, the written determination will be sent to the Offeror. (refer to CRS §24-72-201 et. seq., as amended, Public (open) Records)

III. BACKGROUND AND OVERVIEW**A. Background**

The Task Force has heard testimony from both businesses and local governments about the complex nature of the State and local sales and use tax system. The Colorado Sales/Use Tax Rates document shows the complexity. (see Attachment A, Colorado Sales/Use Tax Rates)

The Department administers a wide variety of taxes, licenses, and fees from individuals and business entities which are the principle source of revenues for Colorado state government. Each business that sells tangible personal property or services must obtain a sales tax license. This license is renewed every two years. Any business that holds a sales tax license is required to file a tax return on a monthly, quarterly, or annual basis, depending on sales volume. The return must contain tax collected for all tangible personal property and services subject to sales tax for the State and State-collected jurisdictions (counties, statutory cities and towns, and special districts). Sales tax returns can be filed in several ways:

1. A paper sales tax return, the [DR 0100](#);
2. A [revenue online](#) return (the State's free tax portal); or
3. A spreadsheet or xml file uploaded into revenue online, after approval is received by the Department.

A business can contract with a third party vendor to file returns on the business's behalf using one of the methods identified above. The tax return must include, among other things, taxable sales, exemptions, and tax rates for each jurisdiction that a business is located. Each business must file a separate return for each jurisdiction in which it operates. If a business purchases tangible personal property and did not pay sales tax on the purchase, then use tax may be due. A business may file a use tax return using a DR 252, 251, or 173. Use tax returns can also be filed on revenue online.

Virtually unique among the states, Colorado's seventy (70) home rule, self-collecting municipalities may require local businesses to remit directly to a municipality (known as "local collection"), decide their own tax base, and audit local businesses directly. The self-collecting home rule municipalities derive the authority to set their own sales and use tax base, rates, exemptions and to administer these taxes locally from the Colorado State Constitution and their home rule charters. Colorado municipalities are heavily dependent on the sales tax, deriving on average 70% of their tax revenues from this source.

Home rule jurisdictions also administer a wide variety of taxes, licenses, and fees, many of which vary based upon the location of the sale within the jurisdiction. Additionally, these local governments may currently have varying renewal and cancellation processes for licenses.

B. Overview

The Department is interested in a system that the Department, any local government, or special district that levies a sales or use tax, including a home rule jurisdiction could choose to use that would provide administrative simplification to the State and local sales and use tax system.

The intent of the Task Force is to begin the process of identifying options for the building of a system to simplify certain administrative details of the State and local sales and use tax system that could be piloted on an elective basis.

An Offeror providing a response to the RFI shall not expect or anticipate that the state or any local government that levies a sales or use tax and that might use the electronic sales and use tax simplification system will, for simplification purposes: adjust their sales and use tax base or rate; adopt uniform definitions; or unify their audit authority and processes in any fashion.

The Department is interested in responses addressing system information, including the ability to:

1. Protect the important legal authority of any home rule jurisdiction set forth in section 6 article XX of the Colorado Constitution

2. Access the data that the State or any local government may need for purposes of auditing taxpayers or for reconciling sales and use tax revenue projections.
3. Provide accurate address location information to be used by a retailer to determine the correct taxing jurisdiction for which the retailer should collect and remit sales or use tax
4. Interface, to the maximum extent practicable, with all existing account systems used by retailers, the Department or local governments
5. Update configurations due to changes in the sales and use tax base or rates of the State or local government that levies a sales or use tax and to maintain a history and effective date of the changes
6. Collect applicable taxes on specific items that have imposition rates that differ from the standard rate within a single jurisdiction
7. Update configurations due to changes in jurisdictional boundaries of a local government that levies a sales or use tax and maintain a history and effective date of the changes
8. Provide a single application process for State and local sales tax licenses
9. Include a uniform sales and use tax remittance form
10. Include a single point of remittance for State and local sales and use tax
11. Include a taxability or exemption matrix
12. Comply with Office of Information Technology information security standards and policies. The State's Information Security Standards and Policies, available at: <http://www.oit.state.co.us/ois>

IV. RESPONSE INFORMATION AND FORMAT

Based on the information provided in the RFI, please respond to the items below. In addition to the specific items, any information and ideas submitted may also address, in general terms, any features, conditions or provisions the Offeror feels should be considered that would generate additional value in terms of effectiveness and efficiency for a system.

A. Offeror Information

1. Identify Offeror point of contact for any questions or concerns specific to its response
2. Provide name, title, address, telephone number, and e-mail address for point of contact
3. Provide a brief introduction of Offeror's company to include public or private sectors currently served and nature of the service offering

B. System Information

4. Provide a brief description of the solution or solutions including infrastructure (systems and network) and application design
5. Provide an implementation timeline and process
6. Explain how the system could interface with all existing account systems used by retailers, the Department or local governments
7. Describe how the system will establish accurate address location information including the potential use of internally or externally created address locators
8. Provide capability information of additional licensing requirements for State or local governments
9. Describe potential for the system to collect and report other tax types (e.g. lodging, marijuana) for State and local governments that may have traditionally required multiple forms
10. Detail how the system will administer timing of payments to State or local jurisdictions, as well as handle priority of payment to each authority for partial payments.
11. Describe any value-added elements and incentives including any additional options or services which may be of value to the State and local government

C. Pricing Information

1. Identify initial costs for the system
2. Identify any ongoing annual costs
3. Explain how the initial and ongoing costs could be paid by business subscribers
4. Explain various payment options to pay for the cost of the development or implementation of the system, including contributions by State, local governments, or retailers or any combination.
5. Explain potential pricing and terms for the solution. Projected costs should include major line items as well as a final inclusive cost projection
6. Provide pricing for development, ongoing maintenance and hourly rate for change requests/tasks orders
7. Identify any cost savings to be considered

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

BILL A

LLS NO. 19-0225.01 Esther van Mourik x4215

SENATE BILL

SENATE SPONSORSHIP

Neville T. and Williams A.,

HOUSE SPONSORSHIP

Kraft-Tharp and Van Winkle,

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING AN ELECTRONIC SALES AND USE TAX SIMPLIFICATION**
102 **SYSTEM, AND, IN CONNECTION THEREWITH, REQUIRING THE**
103 **DEPARTMENT OF REVENUE TO CONDUCT A SOURCING METHOD**
104 **FOR THE DEVELOPMENT OF THE SYSTEM AND ESTABLISHING THE**
105 **IMPLEMENTATION OF THE SYSTEM FOR THE ACCEPTANCE OF**
106 **RETURNS AND PROCESSING OF PAYMENTS FOR THE SALES AND**
107 **USE TAX LEVIED BY THE STATE AND ANY LOCAL TAXING**
108 **JURISDICTIONS.**

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

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.*

[http://leg.colorado.gov/.](http://leg.colorado.gov/))

Sales and Use Tax Simplification Task Force. The bill requires the department of revenue (department), within existing resources, to conduct a sourcing method in accordance with the applicable provisions of the procurement code, and any applicable rules, for the development of an electronic sales and use tax simplification system (system). The bill also requires the department to involve stakeholders to develop the scope of work.

The bill specifies that on and after the date the system is online the department is required to accept any returns and payments processed through the system for state sales and use tax and for any sales and use taxes that are collected by the department on behalf of any local taxing jurisdiction.

The bill specifies that it is the general assembly's intent that a certain number of local taxing jurisdictions with home rule charters voluntarily use the system when the system comes online. Additionally, the bill states that it is the general assembly's intent that all local taxing jurisdictions with home rule charters voluntarily use the system within a specified number of years.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) The sales and use tax simplification task force (task force) has
5 met several times in the interim between the 2018 and 2019 legislative
6 sessions and has again heard testimony from both businesses and local
7 governments about the complex nature of our state and local sales and use
8 tax system;

9 (b) In enacting this act, the task force's objective is to take the next
10 step toward the development and implementation of an electronic sales
11 and use tax simplification system to be used by the state and local taxing
12 jurisdictions for the acceptance of returns and processing of payments for
13 the sales and use tax levied by the state and any local taxing jurisdictions;

14 (c) It is the task force's intent that the electronic sales and use tax

1 simplification system allow for various payment options, including
2 contributions by the state, local taxing jurisdictions, or retailers; and

3 (d) It is the task force's intent to move forward with simplifying
4 certain administrative details of the state and local sales and use tax
5 system for the state and local taxing jurisdictions, but on an elective basis
6 for any municipality with a home rule charter in order to protect the
7 important legal authority of such entities as set forth in section 6 of article
8 XX of the state constitution.

9 **SECTION 2.** In Colorado Revised Statutes, **add** 39-26-802.7 as
10 follows:

11 **39-26-802.7. Electronic sales and use tax simplification system**
12 **- sourcing method - implementation - legislative intent - definitions.**

13 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
14 REQUIRES:

15 (a) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

16 (b) "LOCAL TAXING JURISDICTION" MEANS A CITY, TOWN,
17 MUNICIPALITY, COUNTY, SPECIAL DISTRICT, OR AUTHORITY AUTHORIZED
18 TO LEVY A SALES OR USE TAX PURSUANT TO TITLE 24, 25, 29, 30, 31, 32,
19 37, 42, OR 43, AND ANY COUNTY, CITY AND COUNTY, OR MUNICIPALITY
20 GOVERNED BY A HOME RULE CHARTER.

21 (c) "SALES AND USE TAX SIMPLIFICATION TASK FORCE" OR "TASK
22 FORCE" MEANS THE SALES AND USE TAX SIMPLIFICATION TASK FORCE
23 CREATED IN SECTION 39-26-802.

24 (2) (a) THE DEPARTMENT, WITHIN EXISTING RESOURCES, SHALL
25 CONDUCT A SOURCING METHOD IN ACCORDANCE WITH THE APPLICABLE
26 PROVISIONS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF
27 TITLE 24, AND ANY APPLICABLE RULES, FOR THE DEVELOPMENT OF AN

1 ELECTRONIC SALES AND USE TAX SIMPLIFICATION SYSTEM. THE
2 DEPARTMENT SHALL INVOLVE STAKEHOLDERS TO DEVELOP THE SCOPE OF
3 WORK.

4 (b) ON AND AFTER THE DATE THE ELECTRONIC SALES AND USE TAX
5 SIMPLIFICATION SYSTEM IS ONLINE, AND NOTWITHSTANDING ANY LAW TO
6 THE CONTRARY, THE DEPARTMENT SHALL ACCEPT ANY RETURNS AND
7 PAYMENTS PROCESSED THROUGH THE SYSTEM FOR STATE SALES AND USE
8 TAX AND FOR ANY SALES AND USE TAXES THAT ARE COLLECTED BY THE
9 DEPARTMENT ON BEHALF OF ANY LOCAL TAXING JURISDICTION.

10 (c) (I) ON AND AFTER THE DATE THE ELECTRONIC SALES AND USE
11 TAX SIMPLIFICATION SYSTEM IS ONLINE, IT IS THE GENERAL ASSEMBLY'S
12 INTENT THAT AT LEAST THREE LOCAL GOVERNMENTS GOVERNED BY A
13 HOME RULE CHARTER VOLUNTARILY USE THE SYSTEM FOR ACCEPTING
14 RETURNS AND PROCESSING PAYMENTS OF ANY LOCAL SALES AND USE TAX.

15 (II) IT IS THE GENERAL ASSEMBLY'S INTENT THAT THE VOLUNTARY
16 USE OF THE SYSTEM INCREASE EVERY YEAR SO THAT NO LATER THAN
17 THREE YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION ALL LOCAL
18 GOVERNMENTS GOVERNED BY A HOME RULE CHARTER ARE VOLUNTARILY
19 USING THE SYSTEM.

20 (3) IN THE INTERIM BETWEEN THE 2019 AND 2020 LEGISLATIVE
21 SESSIONS, THE DEPARTMENT SHALL REGULARLY PROVIDE THE SALES AND
22 USE TAX SIMPLIFICATION TASK FORCE WITH ANY SUCH DETAILED
23 INFORMATION REGARDING THE SOURCING METHOD PROGRESS AS IS
24 ALLOWED UNDER THE PROCUREMENT CODE.

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