

# 2019

Report to the Colorado General Assembly

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## Sales and Use Tax Simplification Task Force



Prepared by Legislative Council Staff  
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# **Sales and Use Tax Simplification Task Force**

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Representative Tracy Kraft-Tharp, Chair  
Representative Kevin Van Winkle, Vice-Chair  
Senator Jack Tate  
Senator Angela Williams

Bryan Archer	Paul Archer
Kristin Baumgartner	Kevin Bommer
Ben Dahlman	Steve Ellington
Heather Pezzella	Neil Pomerantz
Brendon Reese	Judith Vorndran
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***November 2019***



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*This report is also available online at:*

*<https://leg.colorado.gov/committees/sales-and-use-tax-simplification-task-force/2019-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 Jack Tate, appointed by the Minority Leader of the Senate;
- Representative Kevin Van Winkle, appointed by the Minority Leader of the House of Representatives;
- Senator Angela Williams, appointed by the President of the Senate;
- 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, Deputy City Manager, City of Lone Tree, appointed by the Colorado Municipal League, representing the medium population category;
- Kevin Bommer, Executive Director, Colorado Municipal League;
- Ben Dahlman, Finance Director, Adams County, representing Colorado Counties, Inc.;
- Steve Ellington, Treasurer, City and County of Denver, appointed by the Colorado Municipal League, representing the largest population category;
- 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, Acting Senior Director, Taxation Division, Colorado Department of Revenue;
- Judith Vorndran, Partner, TaxOps, appointed by the Governor as someone with state and local sales and use tax accounting experience; and
- Ryan Woods, Tax Consultant, Xcel Energy, appointed by the Governor as a member of the statewide chamber of commerce.

## **Background**

The task force is charged with studying sales and use tax simplification between the state and local governments, including home rule municipalities, given that Colorado’s system of state and local sales and use taxes is one of the most complicated in the country.

**State tax.** Colorado is one of 45 states to assess a state sales tax.<sup>1</sup> 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.<sup>2</sup> The state use tax is assessed when sales tax was due but was not collected. 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 Colorado Department of Revenue (DOR).

**County taxes.** With voter approval, counties are authorized to assess a sales tax, use tax, or both.<sup>3</sup> 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.<sup>4</sup> 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 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.

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<sup>1</sup>Alaska, Delaware, Montana, New Hampshire, and Oregon do not assess statewide sales taxes.

<sup>2</sup>Section 39-26-104, C.R.S.

<sup>3</sup>Section 29-2-103, C.R.S.

<sup>4</sup>Section 29-2-105 (1)(d), C.R.S.



*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.<sup>5</sup> 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.<sup>6</sup> 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 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.<sup>7</sup> 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. According to the DOR, 70 home rule municipalities collect and administer their own sales taxes.<sup>8</sup> 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;

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<sup>5</sup>Section 29-2-102, C.R.S.

<sup>6</sup>Section 29-2-105 (1)(d), C.R.S.

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

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

- 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.

**Out-of-state sales tax.** The June 2018 U.S. Supreme Court decision in *South Dakota v. Wayfair* 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.

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 retailers with sales exceeding \$100,000. These rules were codified into law with the adoption of House Bill 19-1240 and went into effect on June 1, 2019.

## Task Force Activities

The task force held five meetings during the 2019 interim. Briefings and presentations were made by the Office of Legislative Legal Services, the Colorado Department of Revenue (DOR), the Governor's Office of Information Technology (OIT), the Colorado Municipal League, the Tax Foundation, the Coalition to Simplify Colorado Sales Tax, the Office of the State Auditor, and members of the public on a wide range of topics, including:

- 2019 sales and use tax legislation;
- the implementation of Senate Bill 19-006;
- the Colorado Municipal League's standardized definitions project;
- the evaluation of tax expenditures by the Office of the State Auditor;
- the state's use tax;
- third-party administration; and
- the sunset review of the task force by the Colorado Department of Regulatory Agencies.

The following sections discuss the task force's activities during the 2019 interim.

### Review of 2019 Sales and Use Tax Legislation

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During the 2019 legislative session, several bills that affect how sales tax is administered in the state were passed.

**House Bill 19-1240.** This bill, entitled *Sales and Use Tax Administration*, was passed by the General Assembly and signed into law by the Governor on May 23, 2019. This bill has four main provisions, including:

- codifying economic nexus for out-of-state retailers;
- codifying the Department of Revenue's destination sourcing rules;
- requiring marketplace facilitators to collect sales tax on behalf of their marketplace sellers; and
- cleaning up statutory language to remove references to remote sellers, a vestige of House Bill 13-1295 that never took effect.

The first two provisions codified rules promulgated by the DOR that were enacted as a response to the *South Dakota v. Wayfair* U.S. Supreme Court decision in 2018. Both provisions went into effect on June 1, 2019, as did the fourth provision. The third provision took effect on October 1, 2019. This bill is expected to increase sales tax collections due to the marketplace facilitator provision.

**House Bill 19-1245.** This bill changed the sales tax vendor fee, or the amount of sales taxes collected that retailers are allowed to keep in exchange for collecting and remitting sales taxes to the state, from 3.33 percent to 4.00 percent, and capped the amount a retailer is allowed to retain to \$1,000 per filing period. Additionally, a retailer with multiple locations is now considered as one retailer for purposes of the vendor fee under this bill. The bill was signed into law by the Governor on May 17, 2019, and will take effect on January 1, 2020. Sales tax revenue is expected to increase by \$23.1 million in the first half-year and by \$47.9 million in the second year.

## **Updates Related to the Implementation of Senate Bill 19-006**

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Senate Bill 19-006 evolved out of House Bill 18-1022, and directs the Governor's Office of Information Technology (OIT) to solicit an electronic sales and use tax simplification system through the state's procurement process. OIT and the DOR must work with stakeholders to determine the scope of work for the system before soliciting bids for the creation of the system. The two main aspects of the SB 19-006 system are an online sales and use tax filing system and a Geographic Information System (GIS) database to identify tax rates.

**Sales and use tax simplification system.** The DOR and OIT updated the task force on the status of procuring the sales and use tax simplification system. They worked with stakeholders, including members of the task force, to determine the system requirements and what capabilities the system should have. The system must balance the needs of the DOR, local governments that collect their own sales taxes, and businesses that file sales taxes with multiple jurisdictions. DOR issued an intent to negotiate for the sales and use tax filing system and expects to select a vendor in November 2019.

**Geographic Information System.** A second component of SB 19-006 is developing a GIS database capable of accurately identifying tax rates for each individual address in Colorado. OIT updated the task force with their progress on the GIS database. OIT is developing the GIS database in-house and is working with counties to obtain address GIS files for each address in the state. Many counties have provided address information to the state, and OIT will work with remaining counties or develop their own address information to ensure statewide coverage. OIT will also work with the DOR and local governments to build a GIS files of sales tax jurisdictions.

The GIS database will need to be maintained to regularly ensure that new addresses are added to the database and any changes in tax rates or area boundaries are current. OIT is working with local governments to develop a process to maintain and update the GIS database into the future. The system must be accurate and complete so that taxpayers can rely on the information when paying sales taxes to the state and all local jurisdictions.

The DOR and OIT committed to keeping the General Assembly, task force members, and the public updated on the progress of both the sales tax payment system and the GIS database. The task force received several updates from OIT and DOR on the progress made during the 2019 interim.

## **Update on the Colorado Municipal League's Standardized Definitions Project**

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Home rule municipalities have the authority to define what is taxable and what is exempt from their 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.<sup>9</sup> A set of current standardized definitions were finalized in 2017 that can be adopted by self-collecting municipalities.

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<sup>9</sup>Senate Joint Resolution 14-038.

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 August 14, 2019, the 53 self-collecting jurisdictions listed below have adopted the standardized definitions, representing 74.6 percent of the 71 self-collecting home rule jurisdictions.<sup>10</sup> The General Assembly has not enacted the standardized definitions in state law.

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

CML engages in periodic review of the standard definitions with member municipalities and representatives of the business community. Throughout 2020, CML’s Sales Tax Simplification Committee will be undertaking a review and update of the standard definitions, based on feedback from member municipalities and the business community. Based on this work, CML will work with its members on updating local ordinances, as necessary. CML will also continue to assist municipalities that have not yet adopted the standard definitions, although several incorporate the state’s definitions by reference.

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<sup>10</sup>Source: Colorado Municipal League. As of January 1, 2020, Castle Pines will become the 72<sup>nd</sup> home rule municipality in Colorado. Castle Pines will be self-collecting and has incorporated the standard definitions into its home rule charter.

## Other Activities

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**Office of the State Auditor tax expenditure evaluations.** During the 2019 interim, the task force heard a presentation from the Office of the State Auditor related to sales and use tax expenditures that have been evaluated by the office. These included:

- the energy used for industrial & manufacturing purposes exemption;
- the sales to charitable organizations exemption;
- the sales tax vendor allowance;
- the sales tax exemption for certain sales to residents of certain bordering states;
- the farm close-out sales tax exemption;
- the long-term lodging exemption;
- the agricultural inputs sales tax exemption;
- the newsprint & printers ink exemption;
- the newspapers exemption;
- the sales tax exemption for wholesale transactions;
- the on-demand aircraft used outside the state exemption; and
- the biogas production components sales tax exemption.

These sales tax exemptions were also examined by the Tax Expenditure Evaluation Interim Study Committee during the 2019 interim.

**Use tax industry panels.** The task force heard testimony from several experts from the information technology, construction, and landscaping 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.

**Third-party administration.** An individual from the Tax Foundation provided the task force with information related to the use of third-party vendors for local sales tax administration. Examples of a variety of tax administration services provided by third-party vendors from Alabama, Kansas, Louisiana, and several Colorado municipalities were discussed.

**Sunset review.** The task force is currently scheduled to repeal July 1, 2020. Section 39-26-804, C.R.S., required the Colorado Department of Regulatory Agencies (DORA) to conduct a sunset review prior to this repeal date. On October 15, 2019, DORA released its sunset review report, which can be found here (beginning on page 12):

<https://drive.google.com/file/d/1o-QS1JnXT4VOp7ris-vp390DnpyTKDRq/view>

Within the sunset review report, DORA recommended that the General Assembly continue the task force.

## **Summary of Public Comment**

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The task force heard from the following individuals representing various organizations at one or more of the task force's 2019 meetings:

- Patrick O'Neil, Vern's Toffee House
- Laura Williams, Martin Marietta
- Tony Gagliardi, the National Federation of Independent Business and the Coalition to Simplify Colorado Sales Tax
- Alan Smith, Sales Tax Colorado
- Mark Turner, Colorado Nonprofit Association
- Jeff Hansen, City of Golden

## Summary of Recommendations

As a result of the task force's activities, the task force recommended two bills to the Legislative Council for consideration in the 2020 session. Those bills are described below.

### **Bill A — Sales & Use Tax Simplification Task Force Extension**

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This bill extends the sales and use tax simplification task force for five years, modifies the duties of the task force, and removes the requirement that the task force undergo a sunset review by the Department of Regulatory Agencies prior to the repeal of the task force. The duties enumerated in the bill include considering feasible solutions for the following:

- making audits on retailers more uniform for all state and local taxing jurisdictions in the state;
- the utilization of a single sales and use tax return for state and local taxing jurisdictions as part of the electronic sales and use tax simplification system described in SB 19-006;
- streamlining the requirements for state and local sales tax licenses, use tax licenses, and business licenses used for purposes of collecting sales and use taxes;
- making uniform and possibly increasing the filing threshold amount for monthly sales tax filings between the state and local governments, including home rule municipalities;
- simplifying use taxes levied by the state and local governments;
- simplifying the process by which state and local sales and use taxes are collected for the purchase of a motor vehicle;
- simplifying the issuance of local building permits and the levying of use tax on building materials and on mobile and small mobile construction equipment;
- simplifying the process to claim and administer the various state sales and use tax exemptions; and
- simplifying the sales tax collection and remittance requirements for nonprofit organizations.

The bill also requires the task force to:

- seek regular updates from OIT and the DOR regarding the development of the electronic sales and use tax simplification system described in SB 19-006;
- monitor and encourage participation by businesses and home rule municipalities once the above system is online;
- seek regular updates from OIT and the DOR regarding the GIS database;
- review the way in which special districts and specially assessed sales taxes add to the complexity of the state's sales and use tax structure;
- review and compare the state's sales and use tax definitions with the standard sales tax definitions developed by the Colorado Municipal League's Standardized Definitions Project to determine if any simplification might be achieved between the two sets of definitions;
- examine the effects of the changes to the vendor fee implemented pursuant to HB 19-1245;
- review any evaluations of sales and use tax expenditures prepared by the Office of the State Auditor;
- explore options for eliminating a DOR requirement for taxpayers to use branch ID reporting;
- determine whether the state should adopt a sales tax exemption for an isolated or occasional sale of a business in an asset sale;



- regularly review the business impact of the destination sourcing rules; and
- analyze or review any other relevant topic related to the simplification of sales and use tax administration in the state.

### **Bill B — Certain Address Database Systems Used for Sales & Use Tax Collection**

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This bill creates a hold harmless provision for vendors who choose to use the state-provided GIS database when determining to which jurisdiction(s) sales taxes are owed. It also requires DOR to ensure that the GIS database is at least 95 percent accurate, to promulgate rules regarding the administration of this legislation, and to notify vendors immediately when the GIS database is available for use.

This bill also provides for the contingent repeal of Section 39-26-105.3, C.R.S., which holds harmless vendors that use an electronic database of state addresses certified by DOR, 90 days after the GIS database is available for use and meets the defined scope of work determined in the request for solicitation.

## 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/2019-regular-session>

### Meeting Dates and Topics Discussed

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June 12, 2019

- ◆ Task force member introductions
- ◆ Overview of sales and use tax legislation passed during the 2019 session
- ◆ Overview of the sunset review of the task force
- ◆ Update from the Simplify Colorado Sales Tax Coalition
- ◆ Update from the Colorado Municipal League
- ◆ Updates related to Senate Bill 19-006
- ◆ Public comment

July 22, 2019

- ◆ Updates from the Colorado Department of Revenue
- ◆ Presentations related to the state's use tax
- ◆ DOR software system update
- ◆ Updates related to Senate Bill 19-006
- ◆ Presentation on third-party sales tax administration
- ◆ Public comment

August 21, 2019

- ◆ Updates related to Senate Bill 19-006
- ◆ Update from the Colorado Municipal League on the standardized definitions project
- ◆ Presentation on Colorado Department of Revenue guidance for marketplace facilitators
- ◆ Updates related to Senate Bill 19-006
- ◆ Discussion of potential solutions

- ◆ Public comment

September 11, 2019

- ◆ Updates related to Senate Bill 19-006
- ◆ Presentation from the Office of the State Auditor on the evaluation of tax expenditures
- ◆ Presentation on out-of-state retailer sales tax collections
- ◆ Public comment
- ◆ Bill requests

October 24, 2019

- ◆ Updates related to Senate Bill 19-006
- ◆ Discussion of sunset review report produced by the Department of Regulatory Agencies
- ◆ Public comment
- ◆ Bill draft voting
- ◆ Discussion of final report