



US Multistate Tax Alert

Colorado - Significant New Developments in Home Rule Municipalities

Overview

The purpose of this Tax Alert is to provide a summary of two major developments impacting Colorado home rule municipalities in the wake of the Supreme Court's decision in *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018). To simplify the tax reporting process, Colorado is launching its first centralized portal for collecting and remitting sales and use tax, the Sales and Use Tax System ("SUTS"). Additionally, as part of the state's simplification efforts, certain home rule municipalities have adopted the Colorado Municipal League's ("CML") Model Ordinance on economic nexus and marketplace facilitators. There are a small minority of home rule municipalities that have drafted slight variations to the CML's ordinances.

Home Rule Municipalities

Under Colorado law, municipalities may impose sales and use tax separately from the state's tax. The items taxed and rates used by these municipalities are often distinct from the state. The municipalities that elect to self-collect are known as "home rules." Currently, there are 72 home rule municipalities in Colorado.¹ Without a centralized taxing regime or reporting system, sales and use tax collection and remittance in Colorado has historically been difficult to manage for many businesses.

Colorado Sales and Use Tax System (SUTS)

On April 12, 2019, Colorado Governor, Jared Polis, signed Senate Bill 19-006 into law. The bill instructed the Colorado Department of Revenue ("DOR") and the Office of Information Technology to create a state sponsored system that would simplify and centralize the processing, collection, and remittance of sales and use taxes throughout the state and its localities. Home rule jurisdictions are not required to use the system, but they may voluntarily opt into using the system.¹ The Colorado General Assembly's intent was that every home rule municipality will begin using the system within the next three years.²

Businesses can now sign up to participate in the SUTS; however, it is not currently operational. There is no definitive release date, but once launched the portal will allow retailers to file sales tax returns for state, state-collected

local jurisdictions, and home rule municipalities that have opted into the system. As of December 30, 2020, 43 home rule municipalities are participating in the SUTS.³ There are 19 home rule municipalities that are reviewing and evaluating the system, and 9 have started the process of implementing the system, pending signatures.⁴

Colorado Municipal League's ("CML") Model Ordinance

The CML's Model Ordinance is designed to achieve the benefits offered under *Wayfair* and create a uniform economic nexus standard at the local level.⁵ Colorado has an economic nexus threshold of \$100,000 in retail sales, but until recently, a seller was not required to collect local level tax on sales delivered into a home rules jurisdiction unless it had physical presence in that jurisdiction.⁶ The Model Ordinance for home rules sets an economic nexus standard that mirrors the state.⁷ The ordinance also defines a marketplace facilitator, requiring collection and filing obligations for sellers and marketplaces that have economic nexus with the city.⁸ The ordinance threshold is \$100,000 of retail sales into the city within 90 days of the current calendar year or the previous calendar year.⁹ If the threshold sales standard is met, then nexus is established, despite not having a physical presence with the state.¹⁰ As of December 31, 2020, 31 home rules have adopted the CML's Model Ordinance.¹¹

Considerations

As a result of the ever-evolving landscape with sales and use taxes in Colorado, taxpayers should continue to monitor DOR and CML websites for additional home rule jurisdictions adopting the Model Ordinance. As more home rule jurisdictions adopt the CML's Model Ordinance and opt into the SUTS, taxpayers should evaluate their sales periodically to ensure they comply with newly adopted registration and collection requirements. It is worth reiterating that participation in the SUTS is completely optional. The home rule cities' new economic nexus standards are not directly tied to the SUTS. Since these cities essentially operate as independent jurisdictions, businesses should be mindful of the specific home rule requirements. A taxpayer operating in a jurisdiction not participating in the SUTS could still have economic nexus with a city and may be required to file a standard return in that city. Additionally, new economic nexus and marketplace facilitator ordinances are currently in place, so until the SUTS is up and running, businesses should consider filing in certain cities.

As the SUTS goes live, two big questions remain unanswered. The SUTS does not currently provide for a centralized registration portal. Thus, once the SUTS is functional, taxpayers may still have to register with each city individually. Further, it is difficult to tell whether businesses may remit use tax through the portal. As a result, taxpayers should evaluate whether they need to file separate use tax returns with the various jurisdictions. We will continue to monitor for additional guidance as necessary.

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Footnotes

¹ Colorado Department of Revenue DR1002.

² S.B. 19-006, sec. 2, *adding* Colo. Rev. Stat. § 39-26-802.7(2)(c).

³ S.B. 19-006, sec. 2, *adding* Colo. Rev. Stat. § 39-26-802.7(2)(c)(II).

⁴ SUTS Status Report Timeline December 30, 2020.

[https://tax.colorado.gov/sites/tax/files/Report on Home Rules Joining SUTS 12-30-2020.pdf](https://tax.colorado.gov/sites/tax/files/Report%20on%20Home%20Rules%20Joining%20SUTS%2012-30-2020.pdf).

⁵ *Id.*

⁶ *Id.*

⁷ CML's Model Ordinance Memo. https://www.cml.org/docs/default-source/uploadedfiles/issues/taxation/cml-model-ordinance---economic-nexus-marketplace-facilitators/model-ordinance-memo---as-of-may-2020.pdf?sfvrsn=8efcd09d_2.

⁸ Colo. Rev. Stat. §39-26-102(3)(c)(I), *as added* by 2019 Colo. H.B. 1240, *effective* June 1, 2019; *see* Model Ordinance, section 1.

⁹ CML Model Ordinance – Economic Nexus & Marketplace Facilitators.

<https://www.cml.org/home/advocacy-legal/Members39-Guide-to-Legal-Consulting-Services-and-Amicus-Briefs/cml-model-ordinance---economic-nexus-marketplace-facilitators>.

¹⁰ *See* Model Ordinance, section 3.

¹¹ *Id.*

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