

# Colorado Enacts Sales Tax Legislation

## Overview

Colorado recently enacted several pieces of legislation impacting Colorado sales tax. On May 23, 2019, Colorado Governor Jared Polis signed into law House Bill 19-1240 ("H.B. 1240").<sup>1</sup> H.B. 1240 codifies the Colorado Department of Revenue's ("DOR") recently adopted economic nexus regulations<sup>2</sup> concerning out-of-state retailers' sales tax collection obligations requiring retailers with over \$100,000 in Colorado retail sales to collect sales tax.<sup>3</sup> The bill further requires retailers with Colorado nexus to collect state-administered local taxes (statutory cities, counties, and special districts), regardless of whether they have nexus with those local jurisdictions.<sup>4</sup> Finally, H.B. 1240 imposes sales tax collection obligations upon marketplace facilitators.<sup>5</sup>

On May 17, 2019, Governor Polis signed into law House Bill 19-1245 ("H.B. 1245").<sup>6</sup> This bill raises the sales tax vendor fee from 3.33% to 4.0%<sup>7</sup> and caps the total vendor fee for to \$1,000 monthly beginning January 1, 2020.<sup>8</sup>

Lastly, on April 12, 2019, Governor Polis signed into law Senate Bill 19-006 ("S.B. 6")<sup>9</sup>, which requires the DOR and the Office of Information Technology ("OIT") to solicit bids for an online sales and use tax simplification system.<sup>10</sup> The online sales and use tax simplification system will enable taxpayers to simplify acceptance of returns and processing of payments.<sup>11</sup>

This Tax Alert summarizes some of the key changes implemented by the new Colorado legislation.

## Nexus for Out-of-State Retailers

H.B. 1240 establishes economic nexus and sales tax collection as well as remittance obligations for out-of-state retailers with over \$100,000 in retail sales during the previous calendar year.<sup>12</sup> There is no specified number of transactions necessary to create nexus for out-of-state retailers. The economic nexus provisions take effect June 1, 2019.<sup>13</sup> Retailers with less than \$100,000 in Colorado sales that have physical presence in Colorado must also continue to collect and remit sales taxes.<sup>14</sup>

Marketplace facilitators, who will now also be required to collect sales tax if they meet the \$100,000 sales threshold,<sup>15</sup> will have to comply starting October 1, 2019.<sup>16</sup> If the \$100,000 threshold is first reached in the current calendar year, out-of-state retailers must begin collecting and remitting sales tax within 90 days after meeting the threshold.<sup>17</sup>

<sup>1</sup> H.B. 1240, 72<sup>nd</sup> Gen. Assembly (2019).

<sup>2</sup> 1 Colo. Code Regs. 39-26-204(2).

<sup>3</sup> H.B. 19-1240, Sec. 1, amending Colo. Rev. Stat. § 39-26-102(3)(c).

<sup>4</sup> H.B. 19-1240, Sec. 3, adding Colo. Rev. Stat. §§ 39-26-104(3).

<sup>5</sup> H.B. 19-1240, Sec. 4, amending Colo. Rev. Stat. §§ 39-26-102(6); 39-26-102(8); and adding Colo. Rev. Stat. §§ 39-26-102(3)(c)(II); 39-26-102(5.9); 39-26-102(6.2); 39-26-105(1.5).

<sup>6</sup> H.B. 1245, 72<sup>nd</sup> Gen. Assembly (2019).

<sup>7</sup> H.B. 19-1245, Sec. 5, amending Colo. Rev. Stat. § 39-26-105(1)(c).

<sup>8</sup> H.B. 19-1245, Sec. 5, adding Colo. Rev. Stat. § 39-26-105(1)(d).

<sup>9</sup> S.B. 6, 72<sup>nd</sup> Gen. Assembly (2019).

<sup>10</sup> S.B. 19-006, Sec. 2, adding Colo. Rev. Stat. § 39-26-802.7.

<sup>11</sup> *Id.* at Sec. 1.

<sup>12</sup> H.B. 19-1240, Sec. 1, amending Colo. Rev. Stat. § 39-26-102(3)(c).

<sup>13</sup> H.B. 19-1240, Sec. 17.

<sup>14</sup> Colo. Rev. Stat. § 39-26-102.

<sup>15</sup> H.B. 19-1240, Sec. 4, amending Colo. Rev. Stat. §§ 39-26-102(6); 39-26-102(8); and adding Colo. Rev. Stat. §§ 39-26-102(3)(c)(II); 39-26-102(5.9); 39-26-102(6.2); 39-26-105(1.5).

<sup>16</sup> H.B. 19-1240, Sec. 17.

<sup>17</sup> H.B. 19-1240, Sec. 1, amending Colo. Rev. Stat. § 39-26-102(3)(c)(I)(B).

### Local Tax Collection - Destination-Based Sourcing

H.B. 1240 substantially increases retailers' collection requirements for state-administered local taxes (statutory city, county, and special districts) by requiring a retailer with Colorado nexus to collect local taxes regardless of whether the retailer has nexus with the local jurisdiction. Until the passage of H.B. 1240, a retailer (whether in-state or out-of-state) with physical presence in Colorado was not required to collect state-administered local sales taxes on sales shipped or delivered to a local jurisdiction for which it lacked a physical presence, and was further not required to collect local sales taxes at the retail store location for sales shipped or delivered to a different local jurisdiction.<sup>18</sup> With the passage of H.B. 1240, a retailer with Colorado nexus having more than \$100,000 in Colorado sales is now required to collect all state-administered local sales taxes based upon the shipping / delivery address regardless of whether the retailer has physical presence or a specified amount of sales with the local jurisdiction.<sup>19</sup>

The destination sourcing requirement does not apply to retailers with physical presence in Colorado that have less than \$100,000 in sales.<sup>20</sup> Rather than collecting local taxes based on the delivery jurisdiction, these retailers are required to collect state-administered local taxes in the origin jurisdiction of the sale.<sup>21</sup> The origin tax collection requirement for retailers with physical presence and less than \$100,000 in sales will remain in effect until 90 days after the DOR implements a geographic information system that will assist retailers with determining the applicable local tax jurisdictions for delivery addresses.<sup>22</sup> When such a system is implemented, these retailers will be required to collect local taxes based on the shipping / delivery address.<sup>23</sup>

### Marketplace Facilitators

H.B. 1240 also imposes sales tax collection and remittance obligations on marketplace facilitators. A "marketplace facilitator" is generally defined as a person who facilitates a marketplace seller's sale for consideration, transmits or communicates the offer or acceptance between a marketplace seller and purchaser, collects payment from the purchaser, and transmits the payment to the marketplace seller.<sup>24</sup> For purposes of determining whether a marketplace facilitator has over \$100,000 in Colorado sales and economic nexus, it is required to include all sales made by marketplace sellers through its marketplace.<sup>25</sup> A marketplace facilitator is considered to be a retailer in respect to sales made in its marketplace and must collect and remit sales tax in respect to sales of marketplace sellers in its marketplace when the marketplace facilitator has total Colorado retail sales exceeding \$100,000.<sup>26</sup>

A "marketplace seller" is a person who has an agreement with a marketplace facilitator and makes sales "through a marketplace owned, operated, or controlled by a marketplace facilitator."<sup>27</sup> A marketplace seller is not required to include any sales made in or through a marketplace facilitator's marketplace for purposes of determining whether it has economic nexus.<sup>28</sup> Thus, a marketplace seller with sales only through the marketplace may not be required to collect Colorado sales tax.<sup>29</sup> However, if a marketplace seller has physical or economic nexus with Colorado (established by \$100,000 in Colorado sales not through the marketplace), then it is required to collect tax on its non-marketplace sales.

All provisions related to marketplace sales are effective October 1, 2019.<sup>30</sup>

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<sup>18</sup> Colo. Rev. Stat. §§ 39-26-204(2); See also Colo. Dept. Rev. FYI Sales 58.

<sup>19</sup> H.B. 19-1240, Sec. 3, adding Colo. Rev. Stat. §§ 39-26-104(3).

<sup>20</sup> H.B. 19-1240, Sec. 3, adding Colo. Rev. Stat. §§ 39-26-104(3)(c)(I).

<sup>21</sup> *Id.*

<sup>22</sup> H.B. 19-1240, Sec. 3, adding Colo. Rev. Stat. §§ 39-26-104(3)(c)(III).

<sup>23</sup> *Id.*

<sup>24</sup> H.B. 19-1240, Sec. 1, adding Colo. Rev. Stat. § 39-26-102(5.9).

<sup>25</sup> H.B. 19-1240, Sec. 1, adding Colo. Rev. Stat. § 39-26-102(3)(c)(II)(A).

<sup>26</sup> H.B. 19-1240, Sec. 4, adding Colo. Rev. Stat. § 39-26-105(1.5)(a).

<sup>27</sup> H.B. 19-1240, Sec. 4, adding Colo. Rev. Stat. § 39-26-102(6).

<sup>28</sup> H.B. 19-1240, Sec. 1, adding Colo. Rev. Stat. § 39-26-102(3)(c)(II)(B).

<sup>29</sup> H.B. 19-1240, Sec. 1, adding Colo. Rev. Stat. § 39-26-102(3)(c)(II)(B); H.B. 19-1240, Sec. 4, adding Colo. Rev. Stat. § 39-26-105(1.5)(c)

<sup>30</sup> H.B. 19-1240, Sec. 17.

### **Amended Vendor Fee**

H.B. 1245 increases the vendor fee from 3.33%<sup>31</sup> to 4% beginning January 1, 2020.<sup>32</sup> The bill also establishes a \$1,000 total monthly vendor fee cap regardless of the retailer's number of locations.<sup>33</sup> Previously vendors were permitted to claim the fee on all retail sales at all locations. Vendors with multiple locations are now also required to register all locations under one account with the DOR.<sup>34</sup>

### **Simplified Online Sales and Use Tax System**

S.B. 6 sets aside a budget and requires the DOR to seek bids and implement an online sales and use tax system that will streamline sales and use tax compliance and payment processes for taxpayers in respect to state-administered local jurisdiction sales and use taxes.<sup>35</sup> Home-rule jurisdictions are not required to use the system, however, can voluntarily opt into using the system.<sup>36</sup> As stated in the bill, the Colorado General Assembly's intent is that every home-rule city will begin using the system within the next three years.<sup>37</sup>

S.B. 6 also requires that the DOR and OIT work with stakeholders, including state-administered and home-rule jurisdictions, as well as businesses, to determine the scope of work before soliciting bids for the new system.<sup>38</sup>

### **Considerations**

As a result of Colorado's sales tax legislation, many retailers may need to evaluate their Colorado tax collection procedures and Colorado tax filings including the local state-collected jurisdictions, which they will now be required to collect. A retailer with economic nexus that is now required to register with the DOR and collect sales taxes should consider whether it was previously in compliance with Colorado's remote seller reporting requirements for non-collecting retailers, given the potential penalty exposure for non-compliance.

It is important to note that Colorado's economic nexus and local tax collection laws do not apply to the various home-rule cities in Colorado. While S.B. 6 contemplates that the home-rule cities will eventually use the simplified online sales tax system, the localities are not required to do so.

## **Contacts**

If you have questions regarding Colorado's new sales tax legislation or any other Colorado sales and use tax matters, please contact the following Deloitte professionals:

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<sup>31</sup> H.B. 19-1245, Sec. 5, amending Colo. Rev. Stat. § 39-26-105(1)(c).

<sup>32</sup> H.B. 19-1245, Sec. 5, amending Colo. Rev. Stat. § 39-26-105(1)(d)(I).

<sup>33</sup> H.B. 19-1245, Sec. 5, adding Colo. Rev. Stat. § 39-26-105(1)(d)(I)-(II).

<sup>34</sup> H.B. 19-1245, Sec. 5, adding Colo. Rev. Stat. § 39-26-105(1)(d)(II).

<sup>35</sup> S.B. 19-006, Sec. 2, adding Colo. Rev. Stat. § 39-26-802.7.

<sup>36</sup> S.B. 19-006, Sec. 2, adding Colo. Rev. Stat. § 39-26-802.7(2)(c).

<sup>37</sup> S.B. 19-006, Sec. 2, adding Colo. Rev. Stat. § 39-26-802.7(2)(c)(II).

<sup>38</sup> S.B. 19-006, Sec. 2, adding Colo. Rev. Stat. § 39-26-802.7(2).

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