



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

**HB 19-1240**

# FINAL FISCAL NOTE

<b>Drafting Number:</b>	LLS 19-0744	<b>Date:</b>	August 5, 2019
<b>Prime Sponsors:</b>	Rep. Kraft-Tharp; Van Winkle Sen. Court; Tate	<b>Bill Status:</b>	Signed into Law
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**Bill Topic:** SALES & USE TAX ADMINISTRATION

**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill codifies the Department of Revenue's rules that establish economic nexus for out-of-state retailers and in-state destination-based sourcing rules, as well as requiring marketplace facilitators to collect and remit sales taxes on behalf of their vendors. It is expected to increase revenue on an ongoing basis starting in FY 2019-20.

**Appropriation Summary:** No appropriation is required for this bill.

**Fiscal Note Status:** The final fiscal note reflects the enacted bill.

**Table 1  
State Fiscal Impacts Under HB 19-1240**

		<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>Revenue</b>	General Fund	\$40.5 million - \$47.2 million	\$54.9 million - \$65.7 million
<b>Expenditures</b>		-	-
<b>Transfers</b>		-	-
<b>TABOR Refund</b>		-	-

## Summary of Legislation

This bill codifies the Department of Revenue's rules regarding the requirement that out-of-state retailers collect and remit sales tax, establishes destination-based sourcing rules, and requires marketplace facilitators to collect and remit sales tax on behalf of their third-party vendors.

**Economic nexus.** This bill establishes economic nexus for purposes of retail sales made by retailers without physical presence. This nexus applies to out-of-state retailers with over \$100,000 in sales into the state during the last calendar year. If this sales threshold was not met in the last calendar year, once it is met during the current calendar year, the retailer will have 90 days from the time it is met to start collecting and remitting sales taxes. Marketplace facilitators are required to start collecting and remitting sales taxes into the state beginning on October 1, 2019, if they met the threshold during the 2018 calendar year.

**Destination sourcing.** Regarding in-state sales tax sourcing rules, this bill codifies and expands upon Department of Revenue emergency rules regarding the change from origin-based to destination-based sales tax sourcing for both purchases and leases, and exempts retailers that do not meet the de minimus threshold. The bill specifies the following order to determine where a sale is sourced for sales tax purposes:

- the seller's location, if the purchaser takes possession of goods or services at the physical location of the seller;
- the point of delivery, if the purchaser does not take possession of the goods or services at the seller's location;
- the purchaser's address on file with the seller, if the first two sourcing locations do not apply;
- any address available to the seller, including the address associated with the form of payment received, if the first three sourcing locations do not apply; and
- the seller's location, if the first four sourcing locations do not apply and the seller does not have an address for the purchaser.

The sale, lease, or rental of transportation equipment is sourced the same as a retail sale.

For the lease or rental of tangible personal property or of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, the following sourcing rules apply:

- for a lease or rental with recurring payments, the first payment is sourced the same as a sale, while subsequent payments are sourced to the primary property location; and
- for a lease or rental not requiring recurring payments, the payment is sourced the same as a sale.

The destination sourcing rules above only apply to retailers with physical presence that have over \$100,000 in retail sales in the state during the previous calendar year. If a retailer does not meet the threshold, the sale is sourced to the business location of the retailer regardless of where the goods are delivered. This threshold will remain effective until 90 days after the state is notified that a geographic information system (GIS) address location system, which must meet the requirements established in the request for solicitation, for sales tax jurisdictions is online and available for use by retailers. After the GIS system is available, all sales will be sourced to the delivery location. Additionally, if a sale is sourced to the seller's location but would otherwise be sourced to an out-of-state location, the sale is exempt from taxation.

**Motor vehicles.** This bill exempts from sales tax personal property on which a specific ownership tax has been paid if the purchaser is not a resident of the taxing district and the personal property is registered outside of the taxing district. This includes motor vehicles, other vehicles that required registration or a certificate of title, off-highway vehicles, and mobile homes.

**Marketplace facilitators.** This bill defines marketplace facilitators for sales tax purposes and requires them to start collecting and remitting sales tax in Colorado. A marketplace can be either online or physical, including a store, a website, a catalog, or a software. A marketplace facilitator is defined as an entity that facilitates sales of marketplace sellers to purchasers on its platform and that may retain a fee for this service. Additionally, the marketplace facilitator communicates the offer between the buyer and seller, as well as providing a payment processing service for both parties.

## Background

**Wayfair decision and DOR rules.** In June 2018, the U.S. Supreme Court ruled in the *South Dakota v. Wayfair* case that states may require out-of-state retailers to collect sales tax on purchases made by an in-state consumer, even if the retailer does not maintain a physical presence in the consumer's state. Following this decision, the Colorado Department of Revenue (DOR) adopted emergency rules requiring retailers without physical presence in Colorado to collect state sales tax and the sales taxes levied by state-collected counties and municipalities. The new requirements do not affect self-collected home rule cities.

Under these rules, DOR will now require that all out-of-state retailers collect and remit sales tax when they ship goods into the state. The sales tax will be collected based on the consumer's address. Out-of-state retailers that have less than \$100,000 in sales, or fewer than 200 transactions in Colorado during the current or previous calendar years are not required to collect and remit sales tax to the state. These rules went into effect December 1, 2018; however, there is an enforcement grace period through May 31, 2019.

**Destination sourcing for in-state retailers.** DOR modified how sales taxes are collected when a consumer purchases an item from a retailer that is not located in the same taxing jurisdiction in state. This applies only to goods that are shipped from the retailer to the consumer. Previously, collections were based on the source of the item, or the retailer's address, known as origin-based sales tax collection. Under the new rule and this bill, collections are based on the destination, or the consumer's address for delivery, known as destination-based sales tax collection. If a consumer purchases an item at the retailer's place of business, nothing changes, and the sales tax is collected based on the retailer's location.

**Marketplace facilitators.** Unlike this bill, marketplace facilitators are not included in DOR's rules for out-of-state retailers. Prior to the Wayfair decision, marketplaces like Amazon only collected taxes when they had a physical presence in a state and only on the sale of their own products, not on those of third party sellers. Examples of marketplace facilitators include Amazon Marketplace, Ebay, and Etsy, among many others. Many sellers on marketplace sites by themselves would not otherwise meet the \$100,000 de minimus threshold set forth in this bill.

**House Bill 13-1295.** This bill removes statutory language added to state law under House Bill 13-1295. The provisions of HB 13-1295 never went into effect because they were contingent upon passage of the federal Marketplace Fairness Act or similar legislation being signed into law, which never occurred. This bill removes statutory language that is no longer relevant since federal legislation was not enacted.

## Assumptions

This fiscal note uses DOR's rules requiring out-of-state retailers to collect and remit sales taxes in the state as the baseline for current law. It also assumes that the majority of marketplace facilitators will meet the de minimus threshold of \$100,000 in sales in Colorado during the first month in which the bill takes effect.

No comprehensive data on marketplace facilitator sales is available. There may be marketplace sellers that are currently collecting and remitting sales taxes in the state; however, this information cannot be known due to taxpayer confidentiality requirements. Therefore, it is assumed that 10 percent of marketplace sales are currently taxed.

## State Revenue

This bill is expected to increase General Fund revenue by between \$40.5 million and \$47.2 million in FY 2019-20, and by between \$54.9 million and \$65.7 million in FY 2020-21, with ongoing revenue increases in future years. Sales tax revenue affected by the bill is subject to TABOR; however, no refund is expected in FY 2019-20 and FY 2020-21, according to Legislative Council Staff's March 2019 forecast.

This bill requires marketplace facilitators to collect and remit sales tax on behalf of their third-party sellers, which is not required under current law or DOR rules. Additional sales tax revenue of between \$48.6 million and \$56.7 million in FY 2019-20 is estimated to be collected based on available information on the sales attributable to marketplace facilitators. The revenue increase during FY 2019-20 has been prorated to between \$40.5 million and \$47.2 million due to the October 1, 2019, implementation date for marketplace facilitators under the bill. The expected increase in revenue will depend on the number of marketplaces that voluntarily comply and the amount of sales they make into the state.

## Local Government

As this bill requires marketplace facilitators to collect and remit sales tax into the state, state-collected local governments will see additional sales tax revenue from higher collections. The distributions of that revenue will depend on sales made into each local jurisdiction.

## Effective Date

The bill was signed into law by the Governor on May 23, 2019, and took effect June 1, 2019, except that section 39-26-102 (5.8), (5.9), (6), (6.1), (6.2), (6.3), and (8), C.R.S., as enacted in Section 1, and Section 4 take effect October 1, 2019.

**State and Local Government Contacts**

Counties Personnel	Information Technology Regional Transportation District	Law Revenue	Municipalities Special Districts
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