

## **2019 Potential Legislation**

### **An update or new attempt at House Bill 13-1295**

#### **Legislative Overview:**

In 2013, the General Assembly passed House Bill 13-1295 that implemented the minimum simplification requirements set out in the federal "Marketplace Fairness Act of 2013". Many of the operative provisions of the bill were to be enacted upon "congressional action". Because the *South Dakota v. Wayfair* case, which overturned the *Quill* decision, is judicial action and not "congressional action", the language enacted through House Bill 13-1295 needs to be updated or re-enacted. These minimum simplifications could place the state, statutory local governments, and home rule local governments in the best position to start requiring remote sellers to collect sales tax.

#### **The key provisions of House Bill 13-1295 provided that:**

- The sales tax base for remote sales was set as the then current state's base plus tax on direct mail advertising materials, tax on candy and soft drinks, and tax on nonessential articles and containers, minus any exemptions in the then current statute;
- Remote sellers would collect 2.9% of that base for the state and would collect the sales tax rate levied by a local taxing jurisdiction of that same base for statutory local governments and any home rule jurisdiction that opted-in;
- Local governments would not be allowed to collect a sales or use tax on remote sales except as provided in the law;
- The Department of Revenue was required to:
  - Administer the tax and distribute it to the local governments;
  - Provide taxability of products and services along with any product and service exemptions, a sales tax rate database, and a database of local taxing jurisdiction boundaries;
  - Make available, free of charge, software that calculates sales taxes due on each transaction, files sales tax returns, and updates to reflect any tax rate changes for the state or any local taxing jurisdiction;
    - If such software was used there was relief of liability for incorrect collection, remittance, or noncollection of sales taxes, including any penalties or interest, if the liability was the result of an error or omission;
- Remote sellers were entitled to 3.33% of all sales reported as a vendor fee for the collection of the tax (this amount would be reduced if they use the free software and such reduction would instead be paid to the software providers);
- A central audit bureau was established that would be sole entity within the state responsible for auditing remote sellers;
- Local governments had no auditing authority;

- Home rule jurisdictions could opt into the Act by passing an ordinance or resolution accepting the state's administration and distribution of its local sales tax on remote sales.