

OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY



DIRECTOR

Sharon L. Eubanks

DEPUTY DIRECTORS

Jeremiah B. Barry Julie A. Pelegrin

REVISOR OF STATUTES

Jennifer G. Gilroy

ASSISTANT DIRECTORS

Christine B. Chase Michael J. Dohr
Jason A. Gelender

SENIOR ATTORNEY FOR SPECIAL PROJECTS

Edward A. DeCecco

SENIOR ATTORNEY FOR ANNOTATIONS

Michele D. Brown

MANAGING SENIOR ATTORNEYS

Jennifer A. Berman Nicole H. Myers
Kristen J. Forrestal Jane M. Ritter

SENIOR ATTORNEYS

Brita Darling Jery Payne
Conrad Imel Richard Sweetman
Yelana Love Megan Waples

STAFF ATTORNEYS

Jacob Baus Megan L. McCall
Jessica L. Herrera Chelsea Princell
H. Pierce Lively Alana Rosen
Sarah Lozano Shelby L. Ross

PUBLICATIONS COORDINATOR

Kathy Zambrano

200 EAST COLFAX AVENUE SUITE 091
DENVER, COLORADO 80203-1716

TEL: 303-866-2045 FAX: 303-866-4157

E-MAIL: OLLS.GA@STATE.CO.US

MEMORANDUM

TO: Sales and Use Tax Simplification Task Force

FROM: Jason Gelender and Jessica Herrera, Office of Legislative Legal Services

DATE: July 13, 2022

SUBJECT: SUMMARY OF SALES AND USE TAX LEGISLATION ENACTED DURING THE
2022 LEGISLATIVE SESSION

Scope of this Memorandum

This memorandum provides a brief summary of all acts relating to sales and use tax that the General Assembly enacted during the 2022 legislative session. The summary is organized into the following four sections: (1) Acts recommended by the Sales and Use Tax Simplification Task Force (Task Force) last year; (2) Acts that provide temporary deductions or vendor fee increases for retailers; (3) Acts that create, extend, expand or repeal sales and use tax exemptions; and (4) Miscellaneous Acts. Each bill is identified by its number and by its full title, as enacted.

Summary of Legislation

1. **Bills Recommended by the Task Force Last Year.**
 - a. **Senate Bill 22-032 (Task Force Bill A): Concerning simplification of local sales and use tax compliance and administration for retailers that make retail sales in local taxing jurisdictions where they have limited physical presence, and, in connection therewith, making an appropriation.**

The act streamlines the imposition, collection, and administration of local sales and use taxes imposed on retail sales made by retailers that have a state standard retail license and either do not have physical presence within or have only incidental

physical presence within a local taxing jurisdiction (affected retailers) by streamlining application requirements for and eliminating fees for local general business licenses. The department of revenue (department) must require sufficient information to be collected from an affected retailer, when the affected retailer applies for or renews a state standard retail business license, and made available to local taxing jurisdictions to ensure that such jurisdictions' concerns relating to administrative efficiency, affected retailer compliance, and collection of sales and use tax revenue are addressed. The department must consult with local taxing jurisdictions and affected retailers when determining what information to collect and how to make the information collected available to local taxing jurisdictions.

The department must accomplish these tasks expeditiously so that by July 1, 2023, an affected retailer can make retail sales within a local taxing jurisdiction without having to obtain a general business license from the local taxing jurisdiction. On and after July 1, 2022, a local taxing jurisdiction is prohibited from charging a fee for a local general business license to an affected retailer. On and after July 1, 2023, a local taxing jurisdiction is prohibited from requiring an affected retailer to apply separately to the local taxing jurisdiction for a general business license. Instead, a local taxing jurisdiction must automatically issue a general business license to an affected retailer unless the local taxing jurisdiction has previously revoked a general business license held by the affected retailer for a violation of its local code.

b. House Bill 22-1027 (Task Force Bill B): Concerning the extension of the small retailer exception to the sales and use tax destination sourcing rules.

The act keeps in place for an additional 8 months the exemption from destination sourcing requirements that allows small retailers with less than \$100,000 in annual retail sales to source their sales to the business' location regardless of where a purchaser receives the tangible personal property or service. The exemption had been scheduled to be repealed on February 1, 2022, but is now scheduled to be repealed on October 1, 2022.

c. House Bill 22-1039 (Task Force Bill C): Concerning simplification of the means by which proof of eligibility for sales and use tax exemptions is established.

For those exemptions from state and state-collected local sales and use taxes for which a claimant must complete a form created by the department of revenue (department), the act requires the department to examine the forms and requirements relating to their use and, to the extent feasible without impairing the proper administration of the exemptions, simplify the forms and related

requirements. Exceptions to existing statutory requirements relating to the forms are made for any simplifications made by the department.

2. Bills that provide temporary deductions or vendor fee increases for retailers

- a. Senate Bill 22-006: Concerning an increase in the amount of sales tax revenue that a retailer may retain to cover the retailer's expense in collecting and remitting the tax, and, in connection therewith, making an appropriation.**

Subject to a cap of \$1,000 of retained sales tax per filing period, the act increases the percentage of sales tax that a retailer may retain (vendor fee) to cover the expense of collecting and remitting sale tax revenue from 4% to 5.3 % for sales made during any 2023 filing period if the retailer had total taxable sales of \$100,000 or less in the filing period. The act also allows the executive director of the department of revenue to deduct processing costs from the electronic payment of taxes and fees in lieu of imposing a convenience fee, which encourages persons required to pay various taxes and fees to the department to do so electronically.

- b. House Bill 22-1406: Concerning a temporary deduction from state net taxable sales for certain retailers in the state, and, in connection therewith, making an appropriation.**

Renews a temporary deduction of up to \$70,000 from net taxable sales each month for businesses with up to five locations in the food service sector, including hotel food and drinking services, from July 2022 to September 2022, which allows a retailer to retain approximately \$2,000 in sales tax collections per site.

3. Bills that create, extend, expand, or repeal sales and use tax exemptions.

- a. Senate Bill 22-051: Concerning policies to reduce emissions from the built environment.**

- Exempts all sales, storage, and use of eligible decarbonizing building materials from state sales and use tax beginning on July 1, 2024, until July 1, 2034. Defines "eligible decarbonizing building materials" as building materials that have a maximum acceptable global warming potential as determined by the office of the state architect (office) and that are on a list of eligible materials maintained by the office.

- Exempts all sales, storage, and use of heat pump systems or heat pump water heaters that are used in commercial or residential buildings from state sales and use tax beginning on January 1, 2023, until January 1, 2033.
- Exempts all sales, storage, and use of energy storage systems that are used in a residential dwelling from state sales and use tax beginning on January 1, 2023, until January 1, 2033.

b. House Bill 22-1055: Concerning a sales and use tax exemption for essential hygiene products.

Exempts all sale, storage, use, and consumption of incontinence produces, diapers, and period products from state sales and use tax indefinitely beginning on January 1, 2023.

c. House Bill 22-1025: Concerning the repeal of infrequently used tax expenditures, and, in connection therewith, making an appropriation.

Repeals the sales and use tax exemption for the transfer of complimentary promotional materials to an out-of-state vendee.

d. House Bill 22-1024: Concerning an expansion of the existing sales and use tax exemption for construction and building materials used for the building of public works to require that home rule cities exempt such tax on sales of such materials when used for public school construction, and, in connection therewith, making an appropriation.

All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works have been exempt from the sales and use tax levied by the state and certain local governments. But home rule municipalities have continued to levy the tax on sales of construction and building materials within their jurisdictions. The act extends this exemption for sales of such construction and building materials to the sales and use tax levied by home rule cities on such materials.

Pending lawsuit summary: On June 30, 2022, the city and county of Denver, the city of Boulder, the city of Commerce City, the city of Pueblo and the city of Westminster, all home rule municipalities, filed a lawsuit against the state and Governor Polis over HB 22-1024. In the complaint

for expedited declaratory relief, plaintiffs allege that HB22-1024 violates Article XX, section 6 of the Colorado constitution, which grants home rule municipalities self-governance authority in matters of local and municipal concern. The Plaintiffs allege that their home rule authority includes the authority to levy and self-collect their own sales and use taxes.

Plaintiffs estimate that requiring home rule municipalities to exempt construction and building materials used in public school construction from sales and use taxes will, on an annual basis, prevent Denver from collecting \$2 to 4 million in revenue, Boulder from collecting \$450,000, Commerce city from collecting \$600,000, Pueblo from collecting \$3 to \$4 million, and Westminster from collecting \$100,000.

As of July 11, 2022, a pretrial order has been filed but nothing has been scheduled yet. Plaintiffs have filed a motion for expedited hearing, the Office of the Colorado Attorney General has opposed. No further updates.

4. Miscellaneous bills.

a. **House Bill 22-1118: Concerning limitations on purchasers' claims for sales and use tax refunds.**

Requires interest on a sales and use tax overpayment refund claim to accrue after 180 days from the date the purchaser files a claim. Allows the director of the department of revenue to assess a civil penalty against purchasers who file claims for refunds that are duplicative and claims for refunds that lack a reasonable basis in law or fact.

b. **House Bill 22-1312: Concerning modifications to sales tax statutes in order to address certain defects and anachronisms.**

Corrects incorrect cross references to sales tax filing and remittance requirements.