SB 19-130

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

Drafting Number:	LLS 19-0537	**Date:**	August 1, 2019
Prime Sponsors:	Sen. Gardner Rep. Rich; Larson	**Bill Status:**	Postponed Indefinitely
		Fiscal Analyst:	Meredith Moon | 303-866-2633 Meredith.Moon@state.co.us

Bill Topic: SALES TAX ADMINISTRATION

Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☐ State Transfer
- ☐ TABOR Refund
- ☒ Local Government
- ☐ Statutory Public Entity

This bill would have simplified the sales tax administration system in order to collect sales tax from out-of-state retailers under the *South Dakota v. Wayfair* Supreme Court decision. It also would have codified destination-based sourcing rules for local sales taxes. This bill would have increased state expenditures, and potentially state revenue, on an ongoing basis.

Appropriation Summary: For FY 2019-20, the bill would have required an appropriation of at least $2.8 million from the General Fund to the Department of Revenue.

Fiscal Note Status: This fiscal note reflects the introduced version of the bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under SB 19-130

		FY 2019-20	FY 2020-21
Revenue		-	-
Expenditures	General Fund	At least $2.8 million	At least $610,000
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

This bill simplifies the collection of sales taxes from out-of-state retailers to comply with provisions from the *South Dakota v. Wayfair* U.S. Supreme Court decision. It also modifies the Department of Revenue's sales tax sourcing rules to exempt in-state retailers from the destination sourcing change.

Regarding out-of-state retailer sales tax collection administration, this bill:

- requires retailers without physical presence to collect and remit sales taxes only if they meet annual de minimus thresholds of $100,000 in gross sales or 200 transactions;
- sets the state sales tax base for all transactions with retailers without physical presence;
- requires that sales taxes are collected based on destination sourcing for retailers without physical presence; and
- establishes a single form for sales tax returns for both state and local sales tax returns.

Additionally, this bill requires the Department of Revenue to:

- be the sole point of remittance for state and local sales tax collections, including home rule municipalities who opt in;
- create a sales tax database that provides a taxability matrix, sales tax rates, and local taxing jurisdiction boundaries;
- provide software free-of-charge to retailers that calculates sales tax due on each transaction and files sales tax returns, which will be updated with sales tax rate changes and paid for by a reduction in the vendor fee; and
- create a central audit bureau that is solely responsible for the audits of retailers without physical presence for both the state and local taxing jurisdictions.

Regarding in-state sales tax sourcing rules, this bill codifies and expands upon Department of Revenue emergency rules regarding the change from origin to destination sales tax sourcing for both purchases and leases, and exempting retailers that do not meet the de minimus thresholds.

Destination Sourcing. 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 $100,000 in gross revenue outside of their physical location's taxing jurisdiction during a calendar year. If a retailer does not meet the threshold, the sale is sourced to the seller's physical location regardless of where the goods are delivered.

Background

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 the Wayfair decision, the Colorado Department of Revenue (DOR) moved toward 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.

DOR issued emergency rules for both in-state and out-of-state retailers. 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 transaction in Colorado during the current or previous calendar years are not required to collect and remit sales tax to the state.

For in-state retailers, the department modified how sales taxes are collected when a consumer purchases an item from a retailer that is not located in the same taxing jurisdiction. 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.

House Bill 13-1295. This bill contains similar language to House Bill 13-1295, which was signed into law. However, the provisions of that bill 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.

Assumptions

This fiscal note uses the Department of Revenue's rules requiring out-of-state retailers to collect and remit sales taxes in the state, which are scheduled to take effect on June 1, as the current law baseline for this analysis.

State Revenue

This bill simplifies sales tax collection for retailers without physical presence in Colorado. This bill may increase state General Fund revenue to the extent that additional state revenue is collected due to higher rates of retailer compliance than under the current sales tax administration system.

State Expenditures

This bill increases state General Fund expenditures by at least $2.8 million in FY 2019-20 and by at least $610,000 in FY 2020-21. Ongoing annual expenditures will be at least $60,000. These estimates are based on incomplete information and may be updated as more information becomes available. These amounts do not include the cost of the point-of-sale tax remittance system that is required by the bill, and will be funded in part through a retention of a portion of the state vendor fee by the software provider.

Department of Revenue. The DOR's costs will total at least $2.5 million in FY 2019-20, and at least $290,000 in FY 2020-21. These costs include computer programming costs and testing, personal costs, and taxpayer services and compliance costs. As more information becomes available, these costs will be updated. The DOR is required to make the point-of-sale system available free of charge to retailers without physical presence. To the extent that the retained vendor fee does not cover the costs of the system, an additional General Fund appropriation may be required to implement the software system in the bill.

Office of Information Technology. The creation of sales tax databases and the certification of software providers will require oversight by the Office of Information Technology. This requires $135,000 in expenditures on project management in both FY 2019-20 and FY 2020-21 to oversee the projects and coordinate with any external vendors. Additionally, expenditures for independent verification and validation will total $125,000 in both FY 2019-20 and FY 2020-21 to ensure that the new databases and software are able to interface with existing state systems and have the correct information for the databases and software. Ongoing annual costs total $60,000 for network and security operations, as well as equipment. These costs will be paid using reappropriated funds from the DOR.

Department of Personnel Administration. This bill may temporarily increase the workload for the Department of Personnel Administration (DPA) in FY 2019-20, while potentially decreasing its workload on an ongoing basis in the future. Any sales tax form changes and testing of the changes will increase the DPA's workload once the bill is implemented. If the creation of a more simplified process to collect and remit sales taxes induces vendors to use the electronic system instead of filing a paper return, the workload for the DPA will decrease because it is responsible for processing paper returns.

TABOR Refund

If state revenue is increased due to this bill, state revenue subject to TABOR will increase by the same amount.

Local Government

As this bill simplifies sales tax collection for retailers without physical presence, additional local revenue may be collected if these out-of-state retailers comply at higher rates than under the current sales tax system.

Departmental Difference

The Department of Revenue estimates that the cost of software system outlined in the bill will be in excess of $18 million. This cost is based off of the Request for Information the Department of Revenue issued in conjunction with House Bill 18-1022 to create a simplified electronic sales and use tax system, which they assume to be a less robust system than the system contemplated in this bill. This fiscal note does not include this cost, since it is assumed the system will be paid for in part by the portion of the vendor fee retained by the software provider and because information to directly estimate the cost of the system is not available at this time.

Effective Date

The bill was postponed indefinitely by the Senate Finance Committee on February 12, 2019.

State Appropriations

For FY 2019-20, the bill requires an appropriation of at least $2.8 million from the General Fund to the Department of Revenue. Of this amount, $320,000 is reappropriated to the Office of Information Technology.

State and Local Government Contacts

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