

CHAPTER 119

TAXATION

SENATE BILL 22-032

BY SENATOR(S) Bridges and Woodward, Cooke, Donovan, Fields, Ginal, Hisey, Holbert, Kolker, Lee, Liston, Lundeen, Moreno, Pettersen, Priola, Rankin, Scott, Simpson, Smallwood, Winter, Zenzinger, Fenberg;
also REPRESENTATIVE(S) Kipp and Van Winkle, Amabile, Bennett, Bird, Bockenfeld, Boesenecker, Exum, Herod, Hooton, Jodeh, Lindsay, Lontine, Lynch, McCormick, McLachlan, Roberts, Sandridge, Snyder, Titone, Van Beber, Weissman.

AN ACT

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.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 39-26-802.9 as follows:

39-26-802.9. Retailers without physical presence or with only incidental physical presence in local taxing jurisdictions - streamlined application process and no fee for local general business license - legislative declaration - definitions. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) LICENSING OF RETAILERS THAT ARE SUBJECT TO PAYMENT OF SALES AND USE TAXES IN ONE OR MORE LOCAL TAXING JURISDICTIONS BUT EITHER DO NOT HAVE PHYSICAL PRESENCE IN OR HAVE ONLY INCIDENTAL PHYSICAL PRESENCE IN THOSE LOCAL TAXING JURISDICTIONS IS A MATTER OF STATEWIDE CONCERN;

(b) THE STATE'S ELECTRONIC TAX ADMINISTRATION INFRASTRUCTURE, INCLUDING THE ELECTRONIC SALES AND USE TAX SIMPLIFICATION SYSTEM CREATED AND BROUGHT ONLINE PURSUANT TO SECTION 39-26-802.7 AND COMMONLY KNOWN AS SUTS, CAN BE USED TO MAKE THE IMPOSITION, COLLECTION, AND ADMINISTRATION OF LOCAL SALES AND USE TAXES COLLECTED BY RETAILERS THAT EITHER DO NOT HAVE PHYSICAL PRESENCE OR HAVE ONLY INCIDENTAL PHYSICAL PRESENCE IN THE LOCAL TAXING JURISDICTIONS IMPOSING THE TAXES SIMPLER AND MORE EFFICIENT SO LONG AS:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(I) EACH LOCAL TAXING JURISDICTION IS REQUIRED TO GRANT A GENERAL BUSINESS LICENSE, FREE OF CHARGE, TO ANY RETAILER THAT HAS A STATE STANDARD RETAIL LICENSE AND EITHER DOES NOT HAVE PHYSICAL PRESENCE OR HAS ONLY INCIDENTAL PHYSICAL PRESENCE WITHIN THE LOCAL TAXING JURISDICTION SO LONG AS THE LOCAL TAXING JURISDICTION HAS NOT PREVIOUSLY REVOKED THE RETAILER'S GENERAL BUSINESS LICENSE DUE TO THE RETAILER'S FAILURE TO COMPLY WITH THE LOCAL TAXING JURISDICTION'S REQUIREMENTS FOR HOLDING A GENERAL BUSINESS LICENSE; AND

(II) SUFFICIENT INFORMATION ABOUT ANY SUCH RETAILER IS COLLECTED WHEN THE RETAILER APPLIES FOR A STATE STANDARD RETAIL LICENSE TO ADDRESS ANY LOCAL TAXING JURISDICTION CONCERNS, INCLUDING BUT NOT LIMITED TO CONCERNS RELATING TO ADMINISTRATIVE EFFICIENCY, RETAILER COMPLIANCE, AND COLLECTION OF SALES AND USE TAX REVENUE;

(c) BECAUSE IT IS IMPORTANT TO ENSURE THAT THE CONCERNS OF LOCAL TAXING JURISDICTIONS ARE ADDRESSED, IT IS NECESSARY AND APPROPRIATE TO REQUIRE THE DEPARTMENT OF REVENUE TO CONSULT WITH LOCAL TAXING JURISDICTIONS WHEN MODIFYING APPLICATION REQUIREMENTS FOR THE STATE STANDARD RETAIL LICENSE AS REQUIRED BY THIS SECTION; AND

(d) IT IS APPROPRIATE TO ELIMINATE THE COST OF A GENERAL BUSINESS LICENSE TO A RETAILER THAT HAS A STATE STANDARD RETAIL LICENSE AND EITHER DOES NOT HAVE PHYSICAL PRESENCE IN A LOCAL TAXING JURISDICTION OR HAS ONLY INCIDENTAL PHYSICAL PRESENCE WITHIN THE LOCAL TAXING JURISDICTION BY PROHIBITING A LOCAL TAXING JURISDICTION FROM CHARGING A FEE FOR A GENERAL BUSINESS LICENSE TO SUCH A RETAILER UNTIL SUCH TIME AS THE LOCAL TAXING JURISDICTION IS REQUIRED TO ALLOW ANY SUCH RETAILER TO MAKE RETAIL SALES WITHIN THE LOCAL TAXING JURISDICTION WITHOUT APPLYING SEPARATELY TO THE LOCAL TAXING JURISDICTION FOR A GENERAL BUSINESS LICENSE.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

(b) "GENERAL BUSINESS LICENSE" MEANS A LICENSE ISSUED BY A LOCAL TAXING JURISDICTION THAT A RETAILER MUST OBTAIN TO LEGALLY MAKE RETAIL SALES IN THE LOCAL TAXING JURISDICTION REGARDLESS OF WHETHER THE LICENSE IS CALLED A BUSINESS LICENSE, A SALES AND USE TAX LICENSE, OR BY ANOTHER NAME. AN OCCUPATIONAL LICENSE OR ANY OTHER LICENSE REQUIRED TO ENGAGE IN A BUSINESS ACTIVITY OTHER THAN MAKING RETAIL SALES OF GOODS IS NOT A GENERAL BUSINESS LICENSE.

(c) "INCIDENTAL PHYSICAL PRESENCE" MEANS, WITH RESPECT TO A LOCAL TAXING JURISDICTION, PHYSICAL PRESENCE AS DESCRIBED IN SUBSECTION (2)(e)(I)(B), (2)(e)(I)(C), OR (2)(e)(I)(E) OF THIS SECTION, OR ANY COMBINATION OF SAID SUBSECTIONS, WITHIN THE LOCAL TAXING JURISDICTION THAT OCCURS INFREQUENTLY AND IS NOT REGULARLY SCHEDULED WITHIN THE ORDINARY COURSE OF AN INDIVIDUAL OR ENTITY'S BUSINESS ACTIVITIES.

(d) "LOCAL TAXING JURISDICTION" HAS THE MEANING SET FORTH IN SECTION

39-26-802.7 (1)(b).

(e) (I) "PHYSICAL PRESENCE" MEANS, WITH RESPECT TO A LOCAL TAXING JURISDICTION, PERFORMING OR PROVIDING SERVICES OR SELLING, LEASING, RENTING, DELIVERING, OR INSTALLING TANGIBLE PERSONAL PROPERTY FOR STORAGE, USE, OR CONSUMPTION WITHIN THE LOCAL TAXING JURISDICTION. PHYSICAL PRESENCE INCLUDES ANY OF THE FOLLOWING ACTIVITIES:

(A) DIRECTLY OR INDIRECTLY BY A SUBSIDIARY MAINTAINING A BUILDING, STORE, OFFICE, SALESROOM, WAREHOUSE, OR OTHER PLACE OF BUSINESS WITHIN THE LOCAL JURISDICTION;

(B) SENDING ONE OR MORE EMPLOYEES, AGENTS, OR COMMISSIONED SALESPERSONS INTO THE LOCAL JURISDICTION TO SOLICIT BUSINESS, TO INSTALL, ASSEMBLE, REPAIR, SERVICE, OR ASSIST IN THE USE OF ITS PRODUCTS, OR FOR DEMONSTRATION OR OTHER REASONS;

(C) MAINTAINING ONE OR MORE EMPLOYEES, AGENTS, OR COMMISSIONED SALESPERSONS ON DUTY AT A LOCATION WITHIN THE LOCAL TAXING JURISDICTION;

(D) OWNING, LEASING, RENTING, OR OTHERWISE EXERTING CONTROL OVER REAL OR PERSONAL PROPERTY SALES WITHIN THE LOCAL TAXING JURISDICTION;

(E) ENGAGING IN ACTIVITIES WITHIN THE TAXING JURISDICTION THAT ARE SUBJECT TO OTHER BUSINESS, FIRE, ZONING, OR OTHER REGULATIONS OF THE LOCAL JURISDICTION; OR

(F) BEING SUBJECT TO TAXABLE PRIVILEGES OTHER THAN THE REQUIREMENT TO COLLECT SALES TAX IMPOSED BY THE LOCAL TAXING JURISDICTION.

(II) INCIDENTAL PRESENCE BY EMPLOYEES, AGENTS, OR COMMISSIONED SALESPERSONS WITHIN A LOCAL TAXING JURISDICTION WHEN NOT OTHERWISE ENGAGED IN THE ACTIVITIES SET FORTH IN SUBSECTION (2)(e)(I) OF THIS SECTION DOES NOT CONSTITUTE PHYSICAL PRESENCE.

(f) "STATE STANDARD RETAIL LICENSE" MEANS A LICENSE ISSUED UNDER SECTION 39-26-103 THAT AUTHORIZES A RETAILER TO MAKE RETAIL SALES IN THE STATE.

(g) "SUTS" MEANS THE ELECTRONIC SALES AND USE TAX SIMPLIFICATION SYSTEM CREATED AND BROUGHT ONLINE PURSUANT TO SECTION 39-26-802.7.

(3)(a) IN ORDER TO ENABLE THE STREAMLINING OF THE IMPOSITION, COLLECTION, AND ADMINISTRATION OF SALES AND USE TAXES IMPOSED BY LOCAL TAXING JURISDICTIONS ON RETAIL SALES MADE BY RETAILERS THAT HAVE A STATE STANDARD RETAIL LICENSE AND EITHER DO NOT HAVE PHYSICAL PRESENCE WITHIN A LOCAL TAXING JURISDICTION OR HAVE ONLY INCIDENTAL PHYSICAL PRESENCE WITHIN A LOCAL TAXING JURISDICTION BY STREAMLINING THE APPLICATION PROCESS FOR AND ELIMINATING THE EXPENSE OF GENERAL BUSINESS LICENSES FOR SUCH RETAILERS, THE DEPARTMENT OF REVENUE SHALL REQUIRE SUFFICIENT INFORMATION TO BE COLLECTED FROM SUCH A RETAILER, WHEN THE RETAILER APPLIES FOR OR RENEWS A STATE STANDARD RETAIL BUSINESS LICENSE THROUGH

SUTS OR BY OTHER MEANS OR AT ANY OTHER TIME TO THE EXTENT NECESSARY, AND MADE AVAILABLE TO LOCAL TAXING JURISDICTIONS TO ENSURE THAT CONCERNS OF LOCAL TAXING JURISDICTIONS, INCLUDING BUT NOT LIMITED TO CONCERNS RELATING TO ADMINISTRATIVE EFFICIENCY, RETAILER COMPLIANCE, AND COLLECTION OF SALES AND USE TAX REVENUE, ARE ADDRESSED. IN DETERMINING WHAT INFORMATION TO COLLECT AND HOW TO MAKE THE INFORMATION COLLECTED AVAILABLE TO LOCAL TAXING JURISDICTIONS AS REQUIRED BY THIS SUBSECTION (3)(a), THE DEPARTMENT SHALL CONSULT WITH LOCAL TAXING JURISDICTIONS, INCLUDING BUT NOT LIMITED TO LARGE, MEDIUM, AND SMALL HOME RULE AND NONHOME RULE MUNICIPALITIES AND LARGE, MEDIUM, AND SMALL COUNTIES. THE DEPARTMENT SHALL ALSO CONSULT WITH RETAILERS TO ADDRESS ANY REASONABLE CONCERNS THEY MAY HAVE.

(b) THE DEPARTMENT SHALL ACCOMPLISH THE TASKS SET FORTH IN SUBSECTION (3)(a) OF THIS SECTION EXPEDITIOUSLY SO THAT NO LATER THAN JULY 1, 2023, AND SOONER IF FEASIBLE, A RETAILER THAT HAS A STATE STANDARD RETAIL LICENSE AND EITHER DOES NOT HAVE PHYSICAL PRESENCE WITHIN A LOCAL TAXING JURISDICTION OR HAS ONLY INCIDENTAL PHYSICAL PRESENCE WITHIN A LOCAL TAXING JURISDICTION CAN MAKE RETAIL SALES WITHIN THE LOCAL TAXING JURISDICTION WITHOUT HAVING TO APPLY SEPARATELY TO THE LOCAL TAXING JURISDICTION FOR A GENERAL BUSINESS LICENSE.

(4) (a) ON AND AFTER JULY 1, 2022, A LOCAL TAXING JURISDICTION SHALL NOT CHARGE A FEE FOR A GENERAL BUSINESS LICENSE TO A RETAILER THAT HAS A STATE STANDARD RETAIL LICENSE, MAKES RETAIL SALES WITHIN THE LOCAL TAXING JURISDICTION, AND EITHER DOES NOT HAVE PHYSICAL PRESENCE IN THE LOCAL TAXING JURISDICTION OR HAS ONLY INCIDENTAL PHYSICAL PRESENCE WITHIN THE LOCAL TAXING JURISDICTION.

(b) ON AND AFTER JULY 1, 2023, A LOCAL TAXING JURISDICTION SHALL NOT REQUIRE A RETAILER THAT HAS A STATE STANDARD RETAIL LICENSE, MAKES RETAIL SALES WITHIN THE LOCAL TAXING JURISDICTION, AND EITHER DOES NOT HAVE PHYSICAL PRESENCE IN THE LOCAL TAXING JURISDICTION TO OR HAS ONLY INCIDENTAL PHYSICAL PRESENCE WITHIN THE LOCAL TAXING JURISDICTION TO APPLY SEPARATELY TO THE LOCAL TAXING JURISDICTION FOR A GENERAL BUSINESS LICENSE. IF THE LOCAL TAXING JURISDICTION REQUIRES A GENERAL BUSINESS LICENSE, IT SHALL AUTOMATICALLY ISSUE A GENERAL BUSINESS LICENSE AT NO CHARGE TO SUCH A RETAILER USING THE INFORMATION PROVIDED BY THE DEPARTMENT PURSUANT TO SUBSECTION (3) OF THIS SECTION; EXCEPT THAT A LOCAL TAXING JURISDICTION IS NOT REQUIRED TO ISSUE A GENERAL BUSINESS LICENSE TO A RETAILER IF THE LOCAL TAXING JURISDICTION HAS PREVIOUSLY REVOKED A GENERAL BUSINESS LICENSE HELD BY THE RETAILER FOR A VIOLATION OF ITS LOCAL CODE. IN ADDITION, NOTHING IN THIS SUBSECTION (4)(b) PROHIBITS A LOCAL TAXING JURISDICTION FROM SUSPENDING OR REVOKING A GENERAL BUSINESS LICENSE FOR A VIOLATION OF ITS LOCAL CODE.

SECTION 2. In Colorado Revised Statutes, 29-2-106, **amend** (4)(c)(I) and (6) as follows:

29-2-106. Collection - administration - enforcement.
 (4) (c) (I) Notwithstanding the provisions of section 39-21-113, ~~C.R.S.~~, the

executive director of the department of revenue shall report monthly to each municipality and county for which the department of revenue collects a sales tax information identifying licensed vendors within the municipality or county, INCLUDING THE LICENSING INFORMATION REQUIRED BY SECTION 39-26-802.9 (3), and, where the chief administrative officer or his designee has executed a memorandum of understanding with the department of revenue providing for control of confidential data, the status of each vendor's account including the amount of such municipality's or county's sales tax collected and paid by each such vendor. The executive director of the department may, in his discretion, provide additional information to a municipality or county concerning collection and administration of such municipality's or county's sales tax if such a memorandum has been executed.

(6) The executive director of the department of revenue may, in ~~his~~ THE EXECUTIVE DIRECTOR'S discretion, exchange information with the proper official of any home rule city ~~which~~ THAT imposes a sales and use tax relative to gross sales reported, changes in gross sales resulting from audits, and other information concerning licensed vendors MAKING RETAIL SALES within the jurisdiction of the home rule city, INCLUDING THE LICENSING INFORMATION REQUIRED BY SECTION 39-26-802.9 (3).

SECTION 3. Appropriation. For the 2022-23 state fiscal year, \$2,100 is appropriated to the department of revenue for use by the taxation services division. This appropriation is from the general fund. To implement this act, the department may use this appropriation for personal services.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: April 21, 2022