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MEMORANDUM

TO: Sales and Use Tax Simplification Task Force

FROM: Alison Killen, Jessica Herrera, and Megan McCall, Office of Legislative Legal Services

DATE: June 20, 2024

SUBJECT: Summary of Sales and Use Tax Legislation Enacted during the 2024 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 2024 legislative session. The summary is organized into the following three sections: (1) Acts recommended by the Sales and Use Tax Simplification Task Force (task force) last year; (2) Acts that create, extend, expand, or repeal sales and use tax exemptions; and (3) Miscellaneous acts. Each act is identified by its bill number and by its full bill title, as enacted, unless otherwise noted.

Summary of Legislation

1. Acts recommended by the task force last year.
 - a. House Bill 24-1041: Concerning the streamlining of processes for filing sales and use tax returns.

The act has two components. First, the act increases the threshold amount of monthly tax collected below which the executive director of the Colorado Department of Revenue (executive director) may permit a taxpayer to make returns and pay taxes at quarterly intervals. Specifically, the act increases the threshold from \$300 to \$600 for returns that must be filed on or after January 1,

2025, and allows the executive director by rule to further increase the threshold amount for returns that must be filed on or after January 1, 2026.

Second, the act prohibits home rule cities, towns, and city and counties that collect their own sales and use taxes and do not use the electronic sales and use tax simplification system administered by the Colorado Department of Revenue (SUTS) from collecting sales and use tax from a retailer that does not have a physical presence in the state unless the retailer elects to collect and remit sales and use tax or enters into a voluntary collection agreement with such a jurisdiction.

Both components of the act were amended. The first component was amended to add the provision for further threshold increases by the executive director by rule for returns filed on or after January 1, 2026. The second component was amended to replace a set of specific thresholds that home rule cities, towns, and city and counties would have been required to adhere to in allowing taxpayers to make returns and pay sales and use taxes with the more general prohibition that self-collecting home rule taxing jurisdictions that do not use SUTS cannot collect such taxes from retailers without physical presence in the state absent a retailer's election or voluntary agreement to pay.

b. House Bill 24-1050: Concerning the simplification of processes related to taxes imposed by local governments.¹

The act has two components. First, the act requires local taxing jurisdictions that impose a sales or use tax on building or construction materials to report certain building permit-related information to the Colorado Department of Revenue (department) and requires local taxing jurisdictions that impose a lodging tax to report certain information concerning the tax to the department. By not later than July 1, 2025, and not later than January 1 and July 1 of each year thereafter, the department is required to publish this reported information in a form and manner of its choosing.

Second, the act requires the task force to study and consider whether there are feasible solutions for a simplified local lodging tax system, including adding remittance and collection of local lodging taxes to SUTS or, alternatively, creating an electronic one-stop portal to facilitate collection and remittance of

¹ The trailer of the bill title, as enacted, has been omitted for brevity.

local lodging taxes. Specifically, in the 2024 interim, the task force must receive testimony at each meeting from industry stakeholders regarding ongoing conversations and feasibility of electronic collection and remittance of local lodging taxes, and the task force may recommend legislation for the subsequent legislative session to implement or create such an electronic portal.

The act was amended to clarify the information local taxing jurisdictions are required to report regarding local lodging taxes and to remove the requirement that the department issue a request for information concerning an electronic system for collection and remittance of local lodging taxes which would have required the department to present information received from the request for information to the task force by not later than September 1, 2024.

- c. Senate Bill 24-023: Concerning the requirement that local taxing jurisdictions hold harmless vendors that rely on erroneous data in certain electronic systems related to sales and use tax that are managed by the department of revenue.**

The act extends the existing "hold harmless" protection for vendors who incur a sales or use tax liability due solely to reliance on erroneous data in the department's geographic information system (GIS) database to include protection for vendors from liability determined in a local taxing jurisdiction audit.

The act was amended to add specific requirements for a vendor to be held harmless under the act, including that the vendor collect, retain, and produce upon request documentation reasonably sufficient to demonstrate proper use of and reliance on the GIS database data and that the vendor did not query the GIS database using an incomplete or erroneous address. The act was also amended to require the department to update the data in the GIS database within 30 days of the receipt of updated or corrected data from a local taxing jurisdiction and to specifically require that GIS database data including local jurisdictional boundaries and tax rates be at least 95% accurate based on a statistically valid sample of addresses or other acceptable method of proving accuracy.

- d. Senate Bill 24-024: Concerning the standardization of local lodging tax, and, in connection therewith, aligning reporting requirements related to**

remittance of a local lodging tax to reporting requirements for remittance of other local taxes.

The act requires local taxing jurisdictions, which are limited to jurisdictions for which the department does not collect, administer, and enforce a local lodging tax, to apply the same reporting requirements or standards to an accommodation's intermediary as to a marketplace facilitator that is obligated to collect and remit a local lodging tax. The act prohibits such local taxing jurisdictions from requiring additional reporting information from an accommodation's intermediary.

The act does not prohibit a local taxing jurisdiction from requesting information maintained by an accommodation's intermediary that is in connection with an audit related to a local lodging tax or from requesting and obtaining additional information or data from a marketplace facilitator or accommodation's intermediary to be provided on a voluntary basis.

The act does not prohibit a home rule city, town, or city and county, for purposes unrelated to the administration of local taxes, from passing an ordinance regulating a marketplace facilitator or an accommodation's intermediary, including an ordinance governing the issuance of information or data by a marketplace facilitator or accommodation's intermediary to the home rule city, town, or city and county.

e. Senate Bill 24-025: Concerning local government sales and use taxes administered by the department of revenue, and, in connection therewith, revising, modernizing, and harmonizing various state statutes relating to the state-administration of local sales and use tax into one uniform statute.

The act revises, modernizes, and harmonizes the separate statutes that govern the state administration of local sales or use tax by creating new parts 2 and 3 in article 2 of title 29, C.R.S. In general, the act makes clear that the department collects, administers, and enforces a local government sales or use tax in the same manner as it collects, administers, and enforces the state sales tax.

Specifically, the act:

- Requires a statutory local government, special district, or home rule jurisdiction that has requested that the department collect its local sales or use tax (requesting home rule jurisdiction) that imposes a new sales or use tax, makes a change to its existing sales or use tax, or changes its geographical boundaries by ordinance, resolution, or election to provide

the department written notice within specified deadlines and establishes the applicability dates for such events;

- Requires each statutory local government, special district, and requesting home rule jurisdiction to designate one or more liaisons to coordinate with the department regarding the collection of its sales or use tax;
- Establishes a dispute resolution process when a local sales or use tax that is administered, collected, and enforced by the department is paid erroneously to the state or to the wrong statutory local government, special district, or home rule jurisdiction;
- Makes clear that a vendor who uses the department's GIS database to determine the jurisdictions to which statutory local government, special district, or requesting home rule jurisdiction tax is owed is held harmless for any tax, charge, or fee liability that would otherwise be due solely as a result of an error or omission in the GIS database data;
- Clarifies that a statutory local government, special district, or requesting home rule jurisdiction may allow a retailer that collects and remits its sales or use tax to retain a percentage of the amount remitted to cover the vendors' expenses in collecting and remitting the statutory local government, special district, or requesting home rule jurisdiction's sales or use tax, but specifies that the statutory local government, special district, or requesting home rule jurisdiction may not impose a limit on the amount retained;
- Modifies the relief available under the provisions for local dispute resolution for sales or use taxes asserted by the local government to reflect the availability of the department's GIS database for accurately sourcing sales; and
- Makes conforming amendments for the collection, administration, enforcement, and distribution of statutory local government, special district, and requesting home rule jurisdiction sales or use taxes.

2. Acts that create, extend, expand, or repeal sales and use tax exemptions.

a. House Bill 24-1036: Concerning the adjustment of certain tax expenditures.

The act repeals the following exemptions:

- The exemption from sales and use tax for the sale, storage, use, or consumption of low-emitting motor vehicles, power sources, or parts used for converting to such power;
- The partial state sales and use tax exemption for the purchase, lease, storage or use of certain commercial vehicles used in interstate commerce;
- The exemption allowed to qualified biotechnology taxpayers for state sales and use tax paid on the sale, storage, use, or consumption of

tangible personal property used in the state directly and predominately in research and development of certain biotechnology applications; and

- The exemption allowed for broadband providers for state sales and use tax paid for tangible personal property that is installed in a target area for the provision of broadband service.

The act also modifies certain exemptions as follows:

- Expands the existing sales and use tax exemption for the sale, storage, use, or consumption of a manufactured home or a tiny home to include a modular home and any closed panel system utilized in the construction of a factory-built residential structure; and
- Clarifies that the purpose of the state sales and use tax exemption for the sale, storage, and use of components used in the production of alternating current electricity from a renewable energy source is to create additional incentives for developing renewable energy projects not already created by other state or federal law.

3. Miscellaneous acts.

- a. Senate Bill 24-194: Concerning special districts that provide emergency services, and in connection therewith, authorizing a district to impose an impact fee on certain new construction and to levy a sales tax to generate additional revenue for district services.**

The act gives fire protection districts and ambulance districts additional revenue raising powers, specifically the power to impose impact fees and the power to levy a sales tax. Both types of districts are authorized to levy a sales tax only within the district's jurisdiction, at a rate determined by the district's board, upon every transaction or other incident with respect to which a sales tax is levied by the state. The tax must be approved by a majority of the eligible electors within the district voting at a regular special district election or at a special election that complies with section 20 of article X of the Colorado Constitution (TABOR) and related statutory requirements. Such a sales tax must be collected, administered, and enforced by the executive director in the same manner as the state sales tax, in accordance with the provisions of Senate Bill 24-025, discussed above.

- b. Senate Bill 24-228: Concerning mechanisms to refund excess state revenues, and, in connection therewith, making an appropriation.**

The act requires that, for state fiscal years 2024-25 through 2033-34, the state sales and use tax rate be temporarily reduced by 0.13% from the amount of its then-current rate, which right now is 2.9%, if the estimated amount of state revenues in excess of the limitation on state fiscal year spending imposed by the Taxpayer Bill of Rights (TABOR) that are required by TABOR to be refunded for the state fiscal year is greater than \$1,500,000,000 and exceeds the projected total amount of refunds issued as reimbursement to counties for the homestead exemptions and through the temporary income tax rate reduction, which reduction is also established in the act.