

CHAPTER 231

TAXATION

HOUSE BILL 04-1237

BY REPRESENTATIVE(S) May M., Berry, Brophy, Cadman, Harvey, McFadyen, Rhodes, Rippy, Stengel, Weddig, and Weismann;
also SENATOR(S) Lamborn, Arnold, Chlouber, Evans, and Jones.

AN ACT

CONCERNING THE AUTHORIZATION FOR RETAILERS TO BE HELD HARMLESS FOR COLLECTING THE INCORRECT AMOUNT OF STATE COLLECTED SALES AND USE TAX DUE ON A PURCHASE WHEN RELYING ON A CERTIFIED ELECTRONIC DATABASE OF ADDRESSES TO DETERMINE THE JURISDICTIONS TO WHICH TAX IS OWED.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Colorado retailers who collect the sales and use tax imposed on purchases by various taxing entities and remit the tax to the department of revenue for distribution to the taxing entities are often penalized for collecting the incorrect amount of tax from a purchaser due to inaccurate information regarding the entities that have jurisdiction to impose a tax on the purchase. Therefore, it would be beneficial for the state to authorize retailers to use an electronic database of addresses, certified for accuracy by the state, to determine the jurisdictions to which sales and use tax is owed and to hold retailers harmless for errors in collection when relying on a certified database to determine the jurisdictions.

(b) Colorado retailers that collect sales and use tax and remit the tax to home rule municipalities would benefit if the home rule municipalities would also allow retailers to rely on an electronic database of addresses, certified for accuracy, to determine the jurisdictions to which sales and use tax is owed and to hold retailers harmless for errors in collection when relying on such certified databases. Therefore, the general assembly encourages home rule municipalities to work with retailers, the department of revenue, and any other entities necessary to establish a policy for the certification and use of electronic databases for the purpose of determining the jurisdictions to

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

which sales and use tax is owed.

(2) The general assembly further finds and declares that it can be burdensome for Colorado retailers to obtain a sales and use tax license from every jurisdiction in which the retailer does business. Therefore, the general assembly encourages home rule municipalities to work with retailers, the department of revenue, and any other entities necessary to examine the feasibility of establishing a system allowing one central point of registration for retailers who do business in multiple jurisdictions.

SECTION 2. Part 1 of article 26 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-26-105.3. Remittance of tax - electronic database - vendor held harmless.

(1) ANY VENDOR THAT COLLECTS AND REMITS SALES TAX TO THE DEPARTMENT OF REVENUE AS PROVIDED BY LAW MAY USE AN ELECTRONIC DATABASE OF STATE ADDRESSES THAT IS CERTIFIED BY THE DEPARTMENT PURSUANT TO SUBSECTION (3) OF THIS SECTION TO DETERMINE THE JURISDICTIONS TO WHICH TAX IS OWED.

(2) ANY VENDOR THAT USES THE DATA CONTAINED IN AN ELECTRONIC DATABASE CERTIFIED BY THE DEPARTMENT OF REVENUE PURSUANT TO SUBSECTION (3) OF THIS SECTION TO DETERMINE THE JURISDICTIONS TO WHICH TAX IS OWED SHALL BE HELD HARMLESS FOR ANY TAX, CHARGE, OR FEE LIABILITY TO ANY TAXING JURISDICTION THAT OTHERWISE WOULD BE DUE SOLELY AS A RESULT OF AN ERROR OR OMISSION IN THE DATABASE.

(3) ANY ELECTRONIC DATABASE PROVIDER MAY APPLY TO THE DEPARTMENT OF REVENUE TO BE CERTIFIED FOR USE BY COLORADO VENDORS PURSUANT TO THIS SECTION. SUCH CERTIFICATION SHALL BE VALID FOR THREE YEARS. IN ORDER TO BE CERTIFIED, AN ELECTRONIC DATABASE PROVIDER SHALL HAVE A DATABASE THAT SATISFIES THE FOLLOWING CRITERIA:

(a) THE DATABASE SHALL DESIGNATE EACH ADDRESS IN THE STATE, INCLUDING, TO THE EXTENT PRACTICABLE, ANY MULTIPLE POSTAL ADDRESS APPLICABLE TO ONE LOCATION AND THE TAXING JURISDICTIONS THAT HAVE THE AUTHORITY TO IMPOSE A TAX ON PURCHASES MADE BY PURCHASERS AT EACH ADDRESS IN THE STATE.

(b) THE INFORMATION CONTAINED IN THE ELECTRONIC DATABASE SHALL BE UPDATED AS NECESSARY AND MAINTAINED IN AN ACCURATE CONDITION. IN ORDER TO KEEP THE DATABASE ACCURATE, THE DATABASE PROVIDER SHALL PROVIDE A CONVENIENT METHOD FOR TAXING JURISDICTIONS THAT MAY BE AFFECTED BY THE USE OF THE DATABASE TO INFORM THE PROVIDER OF APPARENT ERRORS IN THE DATABASE. THE PROVIDER SHALL HAVE A PROCESS IN PLACE TO PROMPTLY CORRECT ANY ERRORS BROUGHT TO THE PROVIDER'S ATTENTION.

(c) THE DATABASE SHALL BE AT LEAST NINETY-FIVE PERCENT ACCURATE BASED ON A STATISTICALLY VALID SAMPLE OF ADDRESSES FROM THE DATABASE TESTED FOR ACCURACY BY THE DEPARTMENT OF REVENUE.

(d) THE DATABASE SHALL SATISFY ANY ADDITIONAL CRITERIA THAT THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE ESTABLISHES PURSUANT TO SUBSECTION (7) OF THIS SECTION.

(4) THE DEPARTMENT OF REVENUE SHALL HAVE THE AUTHORITY TO DESIGNATE AN ENTITY TO EXAMINE ELECTRONIC DATABASES AND REPORT TO THE DEPARTMENT AS TO THE ACCURACY AND SUITABILITY OF THE DATABASES FOR USE BY VENDORS. THE ENTITY MAY IMPOSE A FEE ON EACH ELECTRONIC DATABASE PROVIDER APPLYING FOR CERTIFICATION IN AN AMOUNT NECESSARY TO COVER THE REASONABLE AND DOCUMENTED COSTS OF EXAMINING THE DATABASE.

(5) THE DEPARTMENT OF REVENUE SHALL HAVE THE AUTHORITY TO WAIVE THE CERTIFICATION PROCESS SPECIFIED IN SUBSECTION (4) OF THIS SECTION AND CERTIFY AN ELECTRONIC DATABASE AS SUITABLE FOR USE BY VENDORS IF THE DATABASE HAS BEEN PREVIOUSLY CERTIFIED BY A PUBLIC OR PRIVATE ENTITY AND THE CERTIFICATION CRITERIA OF THE CERTIFYING ENTITY ARE THE SAME OR MORE STRINGENT THAN THE CRITERIA SPECIFIED IN SUBSECTION (3) OF THIS SECTION. THE DEPARTMENT SHALL HAVE THE DISCRETION TO ACCEPT OR REJECT A PREVIOUSLY CERTIFIED DATABASE, AND UNDER NO CIRCUMSTANCE SHALL THE DEPARTMENT BE REQUIRED TO WAIVE THE CERTIFICATION PROCESS PURSUANT TO THIS SUBSECTION (5).

(6) THE DEPARTMENT OF REVENUE SHALL HAVE THE RIGHT TO DENY OR REVOKE THE CERTIFICATION OF ANY ELECTRONIC DATABASE FOR JUST CAUSE.

(7) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL PROMULGATE RULES FOR THE ADMINISTRATION OF THIS SECTION. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

SECTION 3. Part 2 of article 26 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-26-204.5. Remittance of tax - electronic database - retailer held harmless. THE PROVISIONS OF SECTION 39-26-105.3 ALLOWING VENDORS TO BE HELD HARMLESS FOR COLLECTING THE INCORRECT AMOUNT OF TAX DUE ON A PURCHASE WHEN RELYING ON A CERTIFIED DATABASE TO DETERMINE THE JURISDICTIONS TO WHICH TAX IS OWED SHALL APPLY TO ANY RETAILER DOING BUSINESS IN THIS STATE AND MAKING SALES OF TANGIBLE PERSONAL PROPERTY FOR STORAGE, USE, OR CONSUMPTION IN THE STATE THAT COLLECTS AND REMITS USE TAX TO THE DEPARTMENT OF REVENUE AS PROVIDED BY LAW.

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, and safety.

Approved: May 17, 2004