

CHAPTER 314

TAXATION

HOUSE BILL 13-1295

BY REPRESENTATIVE(S) Ferrandino, Court, Hullinghorst, Levy, Pabon, Buckner, Fields, Fischer, Foote, Ginal, Kagan, Labuda, Lee, Melton, Moreno, Ryden, Salazar, Schafer, Singer, Williams, Young, Duran, Exum, Hamner, Mitsch Bush, Pettersen, Rosenthal, Tyler;
also SENATOR(S) Heath, Aguilar, Carroll, Giron, Guzman, Hodge, Hudak, Jones, Kefalas, Kerr, Newell, Nicholson, Schwartz, Steadman, Todd, Ulibarri, Morse.

AN ACT

CONCERNING THE IMPLEMENTATION OF THE MINIMUM SIMPLIFICATION REQUIREMENTS OF THE PROPOSED FEDERAL "MARKETPLACE FAIRNESS ACT OF 2013" IN ORDER FOR THE STATE TO BE AUTHORIZED BY THE FEDERAL GOVERNMENT TO REQUIRE REMOTE SELLERS TO COLLECT SALES TAX ON TAXABLE SALES MADE WITHIN THE STATE.

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) It is established in the state's constitution that local taxing jurisdictions governed by a home rule charter generally have the authority to regulate taxation within their jurisdiction; and

(b) It is therefore the general assembly's intent to allow local taxing jurisdictions governed by a home rule charter to opt into this act by passing an ordinance or resolution accepting the state's administration and distribution of its local sales tax on remote sales that is collected and remitted by remote sellers in conformance with the provisions of House Bill 13-1295.

SECTION 2. In Colorado Revised Statutes, 39-26-102, **amend** (5.7), (8), and (9); and **add** (5.6), (7.6), and (7.7) as follows:

39-26-102. Definitions. As used in this article, unless the context otherwise requires:

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

(5.6) "LIVESTOCK PRODUCTION FACILITY" MEANS ANY STRUCTURE USED PREDOMINATELY FOR THE HOUSING, CONTAINING, SHELTERING, OR FEEDING OF LIVESTOCK, INCLUDING, WITHOUT LIMITATION, BARNS, CORRALS, FEEDLOTS, AND SWINE HOUSES.

(5.7) (a) ~~"Livestock production facility" means any structure used predominantly for the housing, containing, sheltering, or feeding of livestock, including, without limitation, barns, corrals, feedlots, and swine houses~~ "LOCAL TAXING JURISDICTION" MEANS A CITY, TOWN, MUNICIPALITY, COUNTY, SPECIAL DISTRICT, OR AUTHORITY AUTHORIZED TO LEVY A SALES TAX PURSUANT TO TITLE 24, 25, 29, 30, 31, 32, 37, 42, OR 43, C.R.S., AND ANY MUNICIPALITY GOVERNED BY A HOME RULE CHARTER THAT PASSES AN ORDINANCE, RESOLUTION, OR CHARTER PROVISION ACCEPTING THE STATE'S ADMINISTRATION AND DISTRIBUTION OF ITS LOCAL SALES TAX ON REMOTE SALES THAT IS COLLECTED AND REMITTED BY REMOTE SELLERS IN CONFORMANCE WITH THE PROVISIONS OF HOUSE BILL 13-1295.

(b) ANY MUNICIPALITY GOVERNED BY A HOME RULE CHARTER THAT PASSES AN ORDINANCE, RESOLUTION, OR CHARTER PROVISION ACCEPTING THE STATE'S ADMINISTRATION AND DISTRIBUTION OF ITS LOCAL SALES TAX ON REMOTE SALES THAT IS COLLECTED AND REMITTED BY REMOTE SELLERS IN CONFORMANCE WITH THE PROVISIONS OF HOUSE BILL 13-1295 MUST PROVIDE A COPY OF SUCH ORDINANCE, RESOLUTION, OR CHARTER PROVISION TO THE DEPARTMENT OF REVENUE NO LATER THAN THIRTY DAYS AFTER ITS ADOPTION.

(7.6) "REMOTE SALE" MEANS A SALE INTO THIS STATE AS SPECIFIED IN SUBSECTION (9) OF THIS SECTION IN WHICH THE RETAILER WOULD NOT LEGALLY BE REQUIRED TO PAY, COLLECT, OR REMIT STATE OR LOCAL SALES TAXES UNLESS PROVIDED BY AN ACT OF CONGRESS.

(7.7) "REMOTE SELLER" MEANS A PERSON WHO MAKES A REMOTE SALE; EXCEPT THAT A REMOTE SELLER DOES NOT INCLUDE A SMALL SELLER AS DEFINED IN AN ACT OF CONGRESS THAT AUTHORIZES STATES TO REQUIRE CERTAIN RETAILERS TO PAY, COLLECT, OR REMIT STATE OR LOCAL SALES TAXES.

(8) "Retailer" or "vendor" means a person doing business in this state, INCLUDING A REMOTE SELLER, known to the trade and public as such, and selling to the user or consumer, and not for resale.

(9) "Retail sale" includes all sales made within the state except wholesale sales. FOR ITEMS DELIVERED BY THE RETAILER, A RETAIL SALE IS MADE AT THE LOCATION WHERE THE ITEM SOLD IS RECEIVED BY THE PURCHASER, BASED ON THE LOCATION INDICATED BY INSTRUCTIONS FOR DELIVERY THAT THE PURCHASER FURNISHES TO THE RETAILER. WHEN NO DELIVERY LOCATION IS SPECIFIED, THE REMOTE SALE IS SOURCED TO THE CUSTOMER'S ADDRESS THAT IS EITHER KNOWN TO THE RETAILER OR, IF NOT KNOWN, OBTAINED BY THE RETAILER DURING THE CONSUMMATION OF THE TRANSACTION, INCLUDING THE ADDRESS OF THE CUSTOMER'S PAYMENT INSTRUMENT IF NO OTHER ADDRESS IS AVAILABLE. IF AN ADDRESS IS UNKNOWN AND A BILLING ADDRESS CANNOT BE OBTAINED, THE REMOTE SALE IS SOURCED TO THE ADDRESS OF THE RETAILER FROM WHICH THE REMOTE SALE WAS MADE.

SECTION 3. In Colorado Revised Statutes, 39-26-103, **amend** (1) (c), (2), (4),

and (7) as follows:

39-26-103. Licenses - fee - revocation. (1) (c) For each license issued, a fee of sixteen dollars shall be paid, which fee shall accompany the application together with an additional fifty-dollar deposit; EXCEPT THAT THE ADDITIONAL DEPOSIT MAY NOT BE REQUIRED OF A REMOTE SELLER. A further fee of sixteen dollars shall be paid for each two-year period or fraction thereof for which said license is renewed. Payment of a fee for such a license issued after June 30 shall be prorated in increments of six months. The fifty-dollar deposit shall be allowed as a credit against the Colorado sales tax to be remitted. Except for licenses issued pursuant to paragraph (b) of subsection (9) of this section, all licenses issued pursuant to this section shall be renewed on a biennial basis, effective January 1, 1986.

(2) (a) ~~In case business is transacted~~ IF A RETAILER MAKES RETAIL SALES at two or more separate places ~~by one person~~ OF BUSINESS IN THE STATE, a separate license for each place of business shall be required.

(b) A REMOTE SELLER IS ONLY REQUIRED TO HAVE A SINGLE LICENSE.

(4) The executive director OF THE DEPARTMENT OF REVENUE, after reasonable notice and a full hearing, may revoke the license of any person found by him or her to have violated any provision of this article. Any ~~person engaged in the business of selling at retail in this state~~ RETAILER WHO MAKES RETAIL SALES without securing a license therefor commits a class 3 misdemeanor and shall be punished according to section 18-1.3-501, C.R.S. Any ~~person~~ RETAILER who ~~engages in the business of selling at retail in this state~~ MAKES RETAIL SALES without a license may also be subject to a civil penalty of fifty dollars per day to a maximum penalty of one thousand dollars. Such penalty shall be assessed by the executive director or his or her authorized agent and shall be waived or reduced if such failure to obtain such license is due to reasonable cause and not willful neglect or intent to defraud.

(7) It is the duty of the executive director OF THE DEPARTMENT OF REVENUE, at the time of issuance of any new license ~~for the business of selling at retail under this part 1,~~ FOR A RETAILER WHO MAKES RETAIL SALES, EXCEPT FOR A REMOTE SELLER, to notify the county treasurer of the county where the new licensee is located, of the name and address of the licensee.

SECTION 4. In Colorado Revised Statutes, 39-26-104, **amend** (1) introductory portion; and **add** (2) as follows:

39-26-104. Property and services taxed. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), there is levied and there shall be collected and paid a tax in the amount stated in section 39-26-106 as follows:

(2) UPON THE EFFECTIVE DATE OF AN ACT OF CONGRESS THAT AUTHORIZES STATES TO REQUIRE CERTAIN RETAILERS TO PAY, COLLECT, OR REMIT STATE OR LOCAL SALES TAXES:

(a) (I) WITH RESPECT TO REMOTE SALES THERE IS LEVIED AND THERE SHALL BE COLLECTED AND PAID BY REMOTE SELLERS ON EVERY INCIDENT SUBJECT TO TAX AS SET FORTH IN SUBSECTION (1) OF THIS SECTION, BUT NOT INCLUDING THE INCIDENTS

SET FORTH IN PARAGRAPH (e) OF THIS SUBSECTION (2), A TAX AT THE RATE SPECIFIED IN SECTION 39-26-106. ANY EXEMPTIONS WITH RESPECT TO PART 1 OF THIS ARTICLE AS SET FORTH IN THIS TITLE ARE APPLICABLE.

(II) IN ADDITION TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), EVERY REMOTE SELLER SHALL COLLECT AND REMIT, AS PROVIDED IN SECTION 39-26-122.7, THE SALES TAX AT THE GENERAL SALES TAX RATE LEVIED BY A LOCAL TAXING JURISDICTION; EXCEPT THAT SUCH SALES TAX SHALL ONLY BE COLLECTED ON EVERY INCIDENT SUBJECT TO TAX AS SET FORTH IN SUBSECTION (1) OF THIS SECTION. ANY EXEMPTIONS WITH RESPECT TO PART 1 OF THIS ARTICLE AS SET FORTH IN THIS TITLE ARE APPLICABLE.

(b) NOTWITHSTANDING ANY PROVISION OF LAW, A LOCAL TAXING JURISDICTION MAY NOT COLLECT A SALES OR USE TAX ON REMOTE SALES EXCEPT AS PROVIDED IN THIS SUBSECTION (2).

(c) NOTWITHSTANDING ANY PROVISION OF LAW, WITH RESPECT TO A LOCAL TAXING JURISDICTION, THE EFFECTIVE DATE OF ANY CHANGE IN THE GENERAL SALES TAX RATE OF THE LOCAL TAXING JURISDICTION SHALL BE EITHER JANUARY 1 OR JULY 1 FOLLOWING THE DATE OF THE ELECTION IN WHICH SUCH A SALES TAX PROPOSAL IS APPROVED; AND NOTICE OF THE ADOPTION OF ANY SALES TAX PROPOSAL SHALL BE SUBMITTED BY THE LOCAL TAXING JURISDICTION TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE AT LEAST ONE HUNDRED DAYS PRIOR TO THE EFFECTIVE DATE OF SUCH TAX. IF SUCH A SALES TAX PROPOSAL IS APPROVED AT AN ELECTION HELD LESS THAN ONE HUNDRED FIVE DAYS PRIOR TO THE JANUARY 1 OR JULY 1 FOLLOWING THE DATE OF ELECTION, SUCH SALES TAX PROPOSAL SHALL NOT BE EFFECTIVE UNTIL THE NEXT SUCCEEDING JANUARY 1 OR JULY 1.

(d) FOR THE PURPOSE OF THE ADMINISTRATION BY THE STATE OF THE PROVISIONS OF THIS SUBSECTION (2), EACH LOCAL TAXING JURISDICTION SHALL FILE, PURSUANT TO SECTION 29-2-109, C.R.S., WITH THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE A COPY OF EACH SALES TAX ORDINANCE OR RESOLUTION, OR ANY AMENDMENT THERETO, THAT CHANGES THE GENERAL SALES TAX RATE DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (2), AND A COPY OF ANY ORDINANCE OR RESOLUTION THAT CHANGES THE LOCAL TAXING JURISDICTION'S BOUNDARIES, NO LATER THAN ONE HUNDRED DAYS BEFORE THE EFFECTIVE DATE THEREOF.

(e) NOTWITHSTANDING ANY PROVISIONS OF LAW, THE FOLLOWING INCIDENTS ARE NOT SUBJECT TO THE COLLECTION AND PAYMENT OF SALES TAX BY REMOTE SELLERS AS SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (2):

(I) DIRECT MAIL ADVERTISING MATERIALS AS DEFINED IN SECTION 39-26-102 (2.8);

(II) CANDY AS DEFINED IN SECTION 39-26-707 (1.5) (b) (I);

(III) SOFT DRINKS AS DEFINED IN SECTION 39-26-707 (1.5) (b) (II);

(IV) NONESSENTIAL ARTICLES AS DESCRIBED IN SECTION 39-26-707 (1) (c); AND

(V) NONESSENTIAL CONTAINERS OR BAGS AS DESCRIBED IN SECTION 39-26-707 (1)(d).

SECTION 5. In Colorado Revised Statutes, **repeal and reenact, with amendments,** 39-26-105 as follows:

39-26-105. Vendor liable for tax - repeal. (1) (a) (I) (A) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I) AND IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), EVERY RETAILER SHALL, IRRESPECTIVE OF THE PROVISIONS OF SECTION 39-26-106, BE LIABLE AND RESPONSIBLE FOR THE PAYMENT OF AN AMOUNT EQUIVALENT TO TWO AND NINETY ONE-HUNDREDTHS PERCENT OF ALL SALES MADE ON OR AFTER JANUARY 1, 2001, BY THE RETAILER OF COMMODITIES OR SERVICES AS SPECIFIED IN SECTION 39-26-104.

(B) A RETAILER WHO HAS RECEIVED IN GOOD FAITH FROM A QUALIFIED PURCHASER A DIRECT PAYMENT PERMIT NUMBER ISSUED PURSUANT TO SECTION 39-26-103.5 SHALL NOT BE LIABLE OR RESPONSIBLE FOR THE COLLECTION AND REMITTANCE OF THE TAX IMPOSED BY THIS ARTICLE ON ANY SALE MADE TO THE QUALIFIED PURCHASER THAT IS PAID FOR DIRECTLY FROM SUCH QUALIFIED PURCHASER'S FUNDS AND NOT THE PERSONAL FUNDS OF ANY INDIVIDUAL.

(II) A REMOTE SELLER SHALL BE LIABLE AND RESPONSIBLE FOR THE PAYMENT OF THE AMOUNTS SPECIFIED IN SECTION 39-26-104 (2) (a).

(b) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), EVERY RETAILER SHALL, BEFORE THE TWENTIETH DAY OF EACH MONTH, MAKE A RETURN TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE FOR THE PRECEDING CALENDAR MONTH. THE EXECUTIVE DIRECTOR SHALL DETERMINE WHAT INFORMATION THE RETURNS MUST CONTAIN, HOW THE RETURNS MUST BE MADE, AND THE TYPE OF FORMS THAT MUST BE USED.

(II) EVERY REMOTE SELLER SHALL MAKE A RETURN TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE AS SPECIFIED IN SECTION 39-26-122.7.

(c) (I) (A) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I), EVERY RETAILER SHALL REMIT, ALONG WITH THE RETURN REQUIRED IN PARAGRAPH (b) OF THIS SUBSECTION (1), AN AMOUNT EQUIVALENT TO THE PERCENTAGE ON SALES AS SPECIFIED IN SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (1) TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE, LESS AN AMOUNT AS SET FORTH IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (c) TO COVER THE RETAILER'S EXPENSE IN THE COLLECTION AND REMITTANCE OF SAID TAX.

(B) EVERY REMOTE SELLER SHALL REMIT, ALONG WITH THE RETURN REQUIRED IN PARAGRAPH (b) OF THIS SUBSECTION (1), THE AMOUNTS SPECIFIED IN SECTION 39-26-104 (2) (a), LESS AN AMOUNT AS SET FORTH IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (c) TO COVER THE RETAILER'S EXPENSE IN THE COLLECTION AND REMITTANCE OF SAID TAX.

(II) EXCEPT AS PROVIDED IN SECTION 39-26-105.3 (8) (b) (III):

(A) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B), THE AMOUNT RETAINED BY A RETAILER TO COVER THE RETAILER'S EXPENSE IN COLLECTING AND REMITTING TAX PURSUANT TO THIS SECTION SHALL BE THREE AND ONE-THIRD PERCENT OF ALL SALES TAX REPORTED.

(B) FOR A TWELVE-MONTH PERIOD COMMENCING UPON THE FIRST DAY OF THE THIRD MONTH FOLLOWING THE EFFECTIVE DATE OF ANY ACT OF CONGRESS AUTHORIZING STATES TO REQUIRE CERTAIN RETAILERS TO PAY, COLLECT, OR REMIT STATE OR LOCAL SALES TAX, THE PERCENTAGE OF ALL SALES TAX REPORTED AS SPECIFIED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) SHALL BE REDUCED BY ONE HUNDRED FIVE ONE-THOUSANDTHS PERCENTAGE POINTS.

(III) IF ANY RETAILER IS DELINQUENT IN REMITTING SAID TAX, OTHER THAN IN UNUSUAL CIRCUMSTANCES SHOWN TO THE SATISFACTION OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE, THE RETAILER SHALL NOT BE ALLOWED TO RETAIN ANY AMOUNTS TO COVER SUCH RETAILER'S EXPENSE IN COLLECTING AND REMITTING SAID TAX, AND AN AMOUNT EQUIVALENT TO THE SAID PERCENTAGE, PLUS THE AMOUNT OF ANY LOCAL VENDOR EXPENSE THAT MAY BE ALLOWED BY THE LOCAL GOVERNMENT TO THE VENDOR, SHALL BE REMITTED TO THE EXECUTIVE DIRECTOR BY ANY SUCH DELINQUENT VENDOR. ANY LOCAL VENDOR EXPENSE REMITTED TO THE EXECUTIVE DIRECTOR SHALL BE DEPOSITED TO THE STATE GENERAL FUND.

(2) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE MAY EXTEND THE TIME FOR MAKING A RETURN AND PAYING THE TAXES DUE UNDER SUCH REASONABLE RULES AS THE EXECUTIVE DIRECTOR MAY PRESCRIBE, BUT NO SUCH EXTENSION SHALL BE FOR A GREATER PERIOD THAN IS PROVIDED FOR IN SECTION 39-26-109.

(3) THE BURDEN OF PROVING THAT ANY RETAILER IS EXEMPT FROM COLLECTING THE TAX ON ANY GOODS SOLD AND PAYING THE SAME TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE, OR FROM MAKING SUCH RETURNS, SHALL BE ON THE RETAILER UNDER SUCH REASONABLE REQUIREMENTS OF PROOF AS THE EXECUTIVE DIRECTOR MAY PRESCRIBE.

(4) EVERY RETAILER CONDUCTING A BUSINESS IN WHICH THE TRANSACTION BETWEEN THE RETAILER AND THE CONSUMER CONSISTS OF THE SUPPLYING OF TANGIBLE PERSONAL PROPERTY AND SERVICES IN CONNECTION WITH THE MAINTENANCE OR SERVICING OF THE SAME SHALL BE REQUIRED TO PAY THE TAXES LEVIED UNDER THIS ARTICLE UPON THE FULL CONTRACT PRICE, UNLESS APPLICATION IS MADE TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE FOR PERMISSION TO USE A PERCENTAGE BASIS OF REPORTING THE TANGIBLE PERSONAL PROPERTY SOLD AND THE SERVICES SUPPLIED UNDER SUCH CONTRACT. THE EXECUTIVE DIRECTOR IS AUTHORIZED TO DETERMINE THE PERCENTAGE BASED UPON THE RATIO OF THE TANGIBLE PERSONAL PROPERTY INCLUDED IN THE CONSIDERATION AS IT BEARS TO THE TOTAL OF THE CONSIDERATION PAID UNDER SAID COMBINATION CONTRACT OR SALE THAT IS SUBJECT TO THE SALES TAX LEVIED UNDER THE PROVISIONS OF THIS PART 1. THIS SECTION SHALL NOT BE CONSTRUED TO INCLUDE ITEMS UPON WHICH THE SALES TAX IS IMPOSED ON THE FULL PURCHASE PRICE AS DESIGNATED IN SECTION 39-26-102 (12).

(5) (a) A QUALIFIED PURCHASER MAY PROVIDE A DIRECT PAYMENT PERMIT NUMBER TO A RETAILER THAT IS LIABLE AND RESPONSIBLE FOR COLLECTING AND REMITTING THE TAX IMPOSED BY THIS ARTICLE ON ANY SALE MADE TO THE QUALIFIED PURCHASER. A QUALIFIED PURCHASER HOLDING A DIRECT PAYMENT PERMIT NUMBER SHALL, BEFORE THE TWENTIETH DAY OF EACH MONTH SUBSEQUENT TO THE MONTH IN WHICH ANY SALE TO THE QUALIFIED PURCHASER WAS MADE FOR WHICH THE QUALIFIED PURCHASER'S DIRECT PAYMENT PERMIT NUMBER WAS USED, MAKE A RETURN AND REMIT DIRECTLY TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE THE AMOUNT OF SUCH TAX OWING ON ALL SUCH SALES TO THE QUALIFIED PURCHASER MADE IN THE PRECEDING MONTH. SUCH RETURNS OF THE QUALIFIED PURCHASER OR DULY AUTHORIZED AGENT SHALL CONTAIN SUCH INFORMATION AND BE MADE IN SUCH MANNER AND UPON SUCH FORMS AS THE EXECUTIVE DIRECTOR SHALL PRESCRIBE.

(b) NOTWITHSTANDING THE PROVISIONS OF SECTION 39-21-113 (4), THE DEPARTMENT OF REVENUE SHALL MAKE AVAILABLE TO ALL QUALIFIED PURCHASERS AN ELECTRONIC LIST OF ALL REMOTE SELLERS AND THEIR COLORADO ACCOUNT NUMBERS IN ORDER TO FACILITATE THE QUALIFIED PURCHASER'S APPROPRIATE REMITTANCE OF TAX PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5). SUCH LIST MUST REMAIN CONFIDENTIAL IN THE HANDS OF THE QUALIFIED PURCHASER, AND THE QUALIFIED PURCHASER IS SUBJECT TO THE SAME LIMITATIONS SPECIFIED IN SECTION 39-21-113 (4) THAT APPLY TO THE DEPARTMENT OF REVENUE, INCLUDING THE REQUIREMENT THAT SUCH LIST BE USED ONLY FOR THE PURPOSE OF PROPER ADMINISTRATION OF THE TAX.

(c) FROM THE AMOUNT OF THE TAX REQUIRED TO BE REMITTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5), A QUALIFIED PURCHASER SHALL BE ENTITLED TO RETAIN THE AMOUNT SPECIFIED IN SUBPARAGRAPH (II) OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION THAT A RETAILER WOULD OTHERWISE BE ENTITLED TO RETAIN TO COVER THE RETAILER'S EXPENSE IN COLLECTING AND REMITTING THE TAX IMPOSED BY THIS ARTICLE IF THE QUALIFIED PURCHASER HAD NOT PROVIDED A DIRECT PAYMENT PERMIT NUMBER TO THE RETAILER.

SECTION 6. In Colorado Revised Statutes, 39-26-105, **amend** (1) (g) (I) as follows:

39-26-105. Vendor liable for tax - repeal. (1) (g) (I) (A) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I), notwithstanding any other provision of this section, the amount retained by a vendor to cover the vendor's expense in collecting and remitting tax pursuant to this section shall not exceed an amount equal to two and twenty-two one-hundredths percent of all sales tax reported on any return made on or after July 1, 2011, but prior to July 1, 2014.

(B) FOR A TWELVE-MONTH PERIOD COMMENCING UPON THE FIRST DAY OF THE THIRD MONTH FOLLOWING THE EFFECTIVE DATE OF ANY ACT OF CONGRESS AUTHORIZING STATES TO REQUIRE CERTAIN RETAILERS TO PAY, COLLECT, OR REMIT STATE OR LOCAL SALES TAX, THE PERCENTAGE OF ALL SALES TAX REPORTED AS SPECIFIED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I) SHALL BE REDUCED BY ONE HUNDRED FIVE ONE-THOUSANDTHS PERCENTAGE POINTS.

SECTION 7. In Colorado Revised Statutes, 39-26-105.3, **amend** (7); and **add**

(8), (9), and (10) as follows:

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

~~(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.~~ THE DEPARTMENT OF REVENUE SHALL PROVIDE INFORMATION TO REMOTE SELLERS THAT INDICATES THE TAXABILITY OF PRODUCTS AND SERVICES ALONG WITH ANY PRODUCT AND SERVICE EXEMPTIONS FROM SALES TAX IN THE STATE. THE DEPARTMENT OF REVENUE SHALL ALSO PROVIDE TO REMOTE SELLERS A SALES TAX RATE DATABASE AND A DATABASE OF LOCAL TAXING JURISDICTION BOUNDARIES. THE DEPARTMENT OF REVENUE SHALL NOTIFY REMOTE SELLERS AND CERTIFIED SOFTWARE PROVIDERS OF ANY STATE OR LOCAL SALES TAX RATE CHANGE AT LEAST NINETY DAYS BEFORE THE EFFECTIVE DATE OF SUCH A CHANGE. SUBSEQUENT TO ANY SALES TAX RATE CHANGE, THE DEPARTMENT OF REVENUE SHALL UPDATE THE INFORMATION DESCRIBED THIS SUBSECTION (7) ACCORDINGLY.

(8)(a) THE DEPARTMENT OF REVENUE SHALL MAKE AVAILABLE FREE OF CHARGE SOFTWARE TO RETAILERS THAT:

(I) CALCULATES SALES TAXES DUE ON EACH TRANSACTION AT THE TIME THE TRANSACTION IS COMPLETED;

(II) FILES SALES TAX RETURNS; AND

(III) UPDATES TO REFLECT ANY TAX RATE CHANGES FOR THE STATE OR ANY LOCAL TAXING JURISDICTION.

(b) (I) THE DEPARTMENT OF REVENUE MAY CONTRACT WITH ONE OR MORE CERTIFIED SOFTWARE PROVIDERS DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (8), WITHOUT REGARD TO THE REQUIREMENTS IN THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, C.R.S., TO PROVIDE THE SOFTWARE OR PROVIDE ACCESS TO THE SOFTWARE DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (8).

(II) A RETAILER MAY ELECT TO COLLECT AND REMIT SALES TAX ON ITS OWN, WITHOUT USING THE SERVICES OF A CERTIFIED SOFTWARE PROVIDER DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (8), OR MAY ELECT TO USE THE SERVICES OF A CERTIFIED SOFTWARE PROVIDER.

(III) IN PROVIDING SOFTWARE FREE OF CHARGE AS DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE CONTRACT NEGOTIATED BETWEEN THE DEPARTMENT OF REVENUE AND THE CERTIFIED SOFTWARE PROVIDERS DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (8) MUST PROVIDE THAT ALL OR A PORTION OF THE AMOUNT DESCRIBED IN SECTION 39-26-105 (1) (c) (II), MAY NOT BE RETAINED BY THE RETAILER ELECTING TO UTILIZE THE SERVICES OF A CERTIFIED SOFTWARE PROVIDER BUT WILL INSTEAD BE RETAINED BY THE CERTIFIED SOFTWARE PROVIDER AS PAYMENT FOR ITS SERVICES.

(c) THE DEPARTMENT OF REVENUE SHALL ESTABLISH CERTIFICATION PROCEDURES FOR PERSONS TO BE APPROVED AS CERTIFIED SOFTWARE PROVIDERS, WHICH PROCEDURES SHALL INCLUDE A REQUIREMENT THAT SOFTWARE PROVIDED BY

CERTIFIED SOFTWARE PROVIDERS BE CAPABLE OF CALCULATING AND FILING SALES AND USE TAXES IN ALL STATES QUALIFIED UNDER THE PROPOSED FEDERAL LEGISLATION KNOWN AS THE "MARKETPLACE FAIRNESS ACT OF 2013" THAT, AS OF THE INTRODUCTION OF HOUSE BILL 13-1295, IS BEING CONSIDERED IN CONGRESS.

(9)(a) RETAILERS ARE RELIEVED FROM LIABILITY TO THE STATE OR LOCAL TAXING JURISDICTION FOR THE INCORRECT COLLECTION, REMITTANCE, OR NONCOLLECTION OF SALES TAXES, INCLUDING ANY PENALTIES OR INTEREST, IF THE LIABILITY IS THE RESULT OF AN ERROR OR OMISSION MADE BY A CERTIFIED SOFTWARE PROVIDER DESCRIBED IN PARAGRAPH (c) OF SUBSECTION (8) OF THIS SECTION.

(b) CERTIFIED SOFTWARE PROVIDERS DESCRIBED IN PARAGRAPH (c) OF SUBSECTION (8) OF THIS SECTION ARE RELIEVED FROM LIABILITY TO THE STATE OR ANY LOCAL TAXING JURISDICTION FOR THE INCORRECT COLLECTION, REMITTANCE, OR NONCOLLECTION OF SALES TAXES, INCLUDING ANY PENALTIES OR INTEREST, IF THE LIABILITY IS THE RESULT OF MISLEADING OR INACCURATE INFORMATION PROVIDED BY A RETAILER.

(c) RETAILERS AND CERTIFIED SOFTWARE PROVIDERS DESCRIBED IN PARAGRAPH (c) OF SUBSECTION (8) OF THIS SECTION ARE RELIEVED FROM LIABILITY TO THE STATE OR ANY LOCAL TAXING JURISDICTION FOR INCORRECT COLLECTION, REMITTANCE, OR NONCOLLECTION OF SALES TAXES, INCLUDING ANY PENALTIES OR INTEREST, IF THE LIABILITY IS THE RESULT OF INCORRECT INFORMATION OR SOFTWARE PROVIDED BY THE DEPARTMENT OF REVENUE.

(d) RETAILERS AND CERTIFIED SOFTWARE PROVIDERS DESCRIBED IN PARAGRAPH (c) OF SUBSECTION (8) OF THIS SECTION ARE RELIEVED FROM LIABILITY FOR COLLECTING SALES TAXES AT THE IMMEDIATELY PRECEDING EFFECTIVE STATE AND LOCAL RATES DURING THE NINETY-DAY NOTICE PERIOD DESCRIBED IN SUBSECTION (7) OF THIS SECTION IF THE REQUIRED NOTICE IS NOT PROVIDED.

(10) 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 8. In Colorado Revised Statutes, add 39-26-122.7 as follows:

39-26-122.7. Filing and remittance of remote sales - standard sales tax reporting form for remote sales - delayed distributions. (1) EVERY REMOTE SELLER SHALL, ON OR BEFORE THE TWENTIETH DAY OF EACH MONTH, MAKE AN ELECTRONIC RETURN TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE FOR THE PRECEDING CALENDAR MONTH AND ELECTRONICALLY MAKE SUCH REMITTANCE AS SPECIFIED IN SECTION 39-26-105 (1) (c) (I) (B). A REMOTE SELLER'S RETURNS, OR THE RETURNS OF A REMOTE SELLER'S DULY AUTHORIZED AGENT, MUST CONTAIN SUCH INFORMATION AND BE MADE IN SUCH MANNER AND UPON SUCH FORMS AS SPECIFIED IN THIS SECTION.

(2) (a) THE COLLECTION, ADMINISTRATION, AND ENFORCEMENT OF THE LOCAL TAXING JURISDICTION SALES TAX UNDER SECTION 39-26-104 (2) SHALL BE PERFORMED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE IN THE SAME MANNER AS THE COLLECTION, ADMINISTRATION, AND ENFORCEMENT OF THE

COLORADO STATE SALES TAX.

(b) (I) THE CENTRAL AUDIT BUREAU CREATED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) SHALL BE THE SOLE ENTITY WITHIN THE STATE THAT IS RESPONSIBLE FOR AUDITING REMOTE SELLERS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO LOCAL TAXING AUTHORITY SHALL HAVE THE AUTHORITY TO AUDIT ANY REMOTE SELLER.

(II) THE DEPARTMENT OF REVENUE AND LOCAL TAXING JURISDICTIONS SHALL COORDINATE IN THE DEVELOPMENT OF THE CENTRAL AUDIT BUREAU AND SHALL SHARE IN THE COSTS AND STAFFING OF THE BUREAU. THE FUNDING AND STAFFING OF THE CENTRAL AUDIT BUREAU SHALL BE SUFFICIENT TO AUDIT REMOTE SELLERS.

(3) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL AT NO CHARGE ADMINISTER, COLLECT, AND DISTRIBUTE ANY SALES TAX IMPOSED BY ANY LOCAL TAXING JURISDICTION ON A REMOTE SALE AUTHORIZED BY SECTION 39-26-104(2). THE EXECUTIVE DIRECTOR SHALL MAKE MONTHLY DISTRIBUTIONS OF SALES TAX COLLECTIONS TO THE APPROPRIATE OFFICIAL IN EACH LOCAL TAXING JURISDICTION.

(4) (a) NOTWITHSTANDING THE PROVISIONS OF SECTION 39-21-113, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL REPORT MONTHLY TO EACH LOCAL TAXING JURISDICTION FOR WHICH THE DEPARTMENT OF REVENUE COLLECTS A SALES TAX, INFORMATION IDENTIFYING REMOTE SELLERS MAKING SALES WITHIN THE LOCAL TAXING JURISDICTION 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 REMOTE SELLER'S ACCOUNT INCLUDING THE AMOUNT OF SUCH LOCAL TAXING JURISDICTION'S SALES TAX COLLECTED AND PAID BY EACH SUCH REMOTE SELLER. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE MAY, IN HIS OR HER DISCRETION, PROVIDE ADDITIONAL INFORMATION TO A LOCAL TAXING JURISDICTION CONCERNING COLLECTION AND ADMINISTRATION OF SUCH LOCAL TAXING JURISDICTION'S SALES TAX IF SUCH A MEMORANDUM HAS BEEN EXECUTED.

(b) EXCEPT IN ACCORDANCE WITH JUDICIAL ORDER OR AS OTHERWISE PROVIDED BY LAW, NO OFFICIAL OR EMPLOYEE OF A LOCAL TAXING JURISDICTION RECEIVING SALES TAX INFORMATION FROM THE DEPARTMENT OF REVENUE PURSUANT TO THIS SUBSECTION (4) SHALL DIVULGE OR MAKE KNOWN TO ANY PERSON NOT AN OFFICIAL OR EMPLOYEE OF SUCH LOCAL TAXING JURISDICTION ANY INFORMATION THAT IDENTIFIES OR PERMITS THE IDENTIFICATION OF THE AMOUNT OF SALES TAXES COLLECTED OR PAID BY ANY INDIVIDUAL REMOTE SELLER. THE OFFICIALS OR EMPLOYEES OF ANY LOCAL TAXING JURISDICTION CHARGED WITH THE CUSTODY OF SUCH SALES TAX INFORMATION SHALL NOT BE REQUIRED TO PRODUCE ANY SUCH INFORMATION IN ANY ACTION OR PROCEEDING IN ANY COURT EXCEPT IN AN ACTION OR PROCEEDING UNDER THE PROVISIONS OF THIS ARTICLE TO WHICH THE LOCAL TAXING JURISDICTION HAVING CUSTODY OF THE INFORMATION IS A PARTY, IN WHICH EVENT THE COURT MAY REQUIRE THE PRODUCTION OF, AND MAY ADMIT IN EVIDENCE, SO MUCH OF SAID SALES TAX INFORMATION AS IS PERTINENT TO THE ACTION OR PROCEEDING. ANY OFFICIAL OR EMPLOYEE OF THE LOCAL TAXING JURISDICTION WHO WILLFULLY VIOLATES ANY OF THE PROVISIONS OF THIS

SUBSECTION (4) IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS AND SHALL BE DISMISSED FROM OFFICE.

(5) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL PRESCRIBE A STANDARD ELECTRONIC SALES TAX REPORTING FORM FOR REMOTE SALES. SUCH FORM SHALL BE SEPARATE FROM THE STATE FORM AND SHALL BE THE ONLY SALES TAX REPORTING FORM REQUIRED TO BE USED BY ANY REMOTE SELLER. SUCH FORM SHALL ALLOW A REMOTE SELLER TO REPORT ALL SALES AND USE TAXES COLLECTED FOR A LOCAL GOVERNMENT ON SUCH FORM.

(6) IF ANY SALES TAX TO BE DISTRIBUTED PURSUANT TO THIS SECTION IS NOT DISTRIBUTED WITHIN SIXTY DAYS AFTER THE PROCESSING DATE, INTEREST SHALL BE ADDED TO THE UNDISTRIBUTED AMOUNT FROM THE SIXTIETH DAY AFTER THE PROCESSING DATE UNTIL THE DATE SUCH SALES TAX IS DISTRIBUTED. THE RATE OF SAID INTEREST SHALL BE EQUAL TO THE AVERAGE RATE, ROUNDED TO ONE ONE-THOUSANDTH OF A PERCENT, BEING EARNED BY THE INVESTMENT OF MONEYS IN THE STATE TREASURY FOR THE SAME PERIOD.

SECTION 9. In Colorado Revised Statutes, 24-46-303, **amend** (12) as follows:

24-46-303. Definitions. As used in this part 3, unless the context otherwise requires:

(12) "State sales tax increment revenue" means the portion of the revenue derived from state sales taxes, NOT INCLUDING ANY SALES TAXES FOR REMOTE SALES AS SPECIFIED IN SECTION 39-26-104 (2), C.R.S., collected within a designated regional tourism zone in excess of the amount of base year revenue.

SECTION 10. In Colorado Revised Statutes, 29-2-106, **amend** (2) as follows:

29-2-106. Collection - administration - enforcement. (2) The effective date of any countywide sales tax or city or town sales tax adopted under the provisions of this article shall be either January 1 or July 1 following the date of the election in which such county sales tax proposal is approved; and notice of the adoption of any county sales tax proposal shall be submitted by the county clerk and recorder or by the clerk of the city council or board of trustees of a city or town to the executive director of the department of revenue at least forty-five days prior to the effective date of such tax. If such a sales tax proposal is approved at an election held less than forty-five days prior to the January 1 or July 1 following the date of election, such tax shall not be effective until the next succeeding January 1 or July 1 AS SET FORTH IN SECTION 39-26-104 (2) (c), C.R.S.

SECTION 11. In Colorado Revised Statutes, 30-20-604.5, **amend** (1) as follows:

30-20-604.5. District sales tax. (1) The board of any county or of any city that has been authorized to become a city and county pursuant to an amendment to the state constitution that has been approved by the registered electors of the state of Colorado and that subsequently becomes a city and county for the purpose of funding all or a portion of the cost of any improvements constructed or transportation services provided pursuant to section 30-20-603 (1) (a), (1) (a.5), and

(1) (c), may levy a sales tax throughout the district upon every transaction or other incident with respect to which a sales tax is authorized pursuant to section 29-2-105, C.R.S.; except that such tax may be levied only upon those transactions specified in section 39-26-104 (1) (a), (1) (b), (1) (e), and (1) (f), C.R.S., AND MAY NOT INCLUDE ANY SALES TAXES FOR REMOTE SALES AS SPECIFIED IN SECTION 39-26-104 (2), C.R.S. The board may, in its discretion, levy or continue to levy a sales tax on the sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-719 (1), C.R.S.

SECTION 12. In Colorado Revised Statutes, 31-25-107, **amend** (9) (a) (I) as follows:

31-25-107. Approval of urban renewal plans by local governing body.

(9) (a) Notwithstanding any law to the contrary, any urban renewal plan, as originally approved or as later modified pursuant to this part 1, may contain a provision that taxes, if any, levied after the effective date of the approval of such urban renewal plan upon taxable property in an urban renewal area each year or that municipal sales taxes collected within said area, or both such taxes, by or for the benefit of any public body shall be divided for a period not to exceed twenty-five years after the effective date of adoption of such a provision, as follows:

(I) That portion of the taxes which are produced by the levy at the rate fixed each year by or for each such public body upon the valuation for assessment of taxable property in the urban renewal area last certified prior to the effective date of approval of the urban renewal plan or, as to an area later added to the urban renewal area, the effective date of the modification of the plan, or that portion of municipal sales taxes, NOT INCLUDING ANY SALES TAXES FOR REMOTE SALES AS SPECIFIED IN SECTION 39-26-104 (2), C.R.S., collected within the boundaries of said urban renewal area in the twelve-month period ending on the last day of the month prior to the effective date of approval of said plan, or both such portions, shall be paid into the funds of each such public body as are all other taxes collected by or for said public body.

SECTION 13. In Colorado Revised Statutes, 31-25-807, **amend** (3) (a) introductory portion as follows:

31-25-807. Powers - duties. (3) (a) Notwithstanding any law to the contrary and subject to the provisions of subparagraph (IV) of this paragraph (a), any such plan of development as originally adopted by the board or as later modified pursuant to this part 8 may, after approval by the governing body of the municipality, contain a provision that taxes, if any, levied after the effective date of the approval of such plan of development by said governing body upon taxable property within the boundaries of the plan of development area each year or that municipal sales taxes, NOT INCLUDING ANY SALES TAXES FOR REMOTE SALES AS SPECIFIED IN SECTION 39-26-104 (2), C.R.S., collected within said area, or both such taxes, by or for the benefit of any public body shall be divided for a period not to exceed thirty years or such longer period as provided for in subparagraph (IV) of this paragraph (a) after the effective date of approval by said governing body of such a provision, as follows:

SECTION 14. Appropriation. (1) In addition to any other appropriation, there

is hereby appropriated, out of any moneys in the general fund, not otherwise appropriated, to the department of revenue, for the fiscal year beginning July 1, 2013, the sum of \$2,502,786, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) \$362,786 for allocation to the information technology division for the purchase of computer center services; and

(b) \$2,140,000 for allocation to the taxation business group, administration, for CITA annual maintenance and support.

(2) In addition to any other appropriation, there is hereby appropriated to the governor - lieutenant governor - state planning and budgeting, for the fiscal year beginning July 1, 2013, the sum of \$362,786, or so much thereof as may be necessary, for allocation to the office of information technology, for the provision of computer center services for the department of revenue related to the implementation of this act. Said sum is from reappropriated funds received from the department of revenue out of the appropriation made in paragraph (a) of subsection (1) of this section.

SECTION 15. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 16. Effective date. (1) Except as otherwise provided in this section, section 6 of this act takes effect upon passage and the remainder of this act takes effect July 1, 2014.

(2) Section 7 of this act takes effect only if the proposed federal legislation known as the "Marketplace Fairness Act of 2013" that, as of the introduction of House Bill 13-1295, is being considered in congress is enacted and takes effect either upon the effective date of this act or the effective date of the "Marketplace Fairness Act of 2013", whichever is later. The department of revenue shall send the revisor of statutes written notice that this requirement has been met within thirty days of enactment of the "Marketplace Fairness Act of 2013" by congress.

(3) Section 10 of this act takes effect only if congress enacts an act that authorizes states to require certain retailers to pay, collect, or remit state or local sales taxes and takes effect either upon the effective date of this act or the effective date of such act of congress, whichever is later. The department of revenue shall send the revisor of statutes written notice that this requirement has been met within thirty days of enactment of such an act by congress.

(4) Section 14 of this act takes effect on a date between July 1, 2013, but before July 1, 2014, only if congress enacts an act that authorizes states to require certain retailers to pay, collect, or remit state or local sales taxes during that period. The department of revenue shall send the revisor of statutes written notice that this requirement has been met within thirty days of enactment of such an act by congress.

SECTION 17. 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 28, 2013