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## Memorandum

July 9, 2021

**TO:** Sales and Use Tax Simplification Task Force Members

**FROM:** Luisa Altmann, Senior Research Analyst, 303-866-3518

**SUBJECT:** Sales and Use Tax Simplification System History

### Summary

This memorandum provides a summary of the legislative history of the Department of Revenue's (DOR) Sales and Use Tax Simplification (SUTS) system.

### System Links

Links to the SUTS system and geographic information system (GIS) database tax lookup tool can be found here:

<https://colorado.munirevs.com/>

<https://colorado.ttr.services/>

Additional information about the system can be found on the DOR website:

<https://www.colorado.gov/tax/suts-info>

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### History of the Sales and Use Tax Simplification Task Force

There are more than 400 different combinations of Colorado taxing jurisdictions between the state, counties, statutory and home rule municipalities, and certain special districts, making it one of the most complicated sales and use tax systems in the country. Additional information regarding the state's sales and use tax system is provided as Appendix A.

The Sales and Use Tax Simplification Task Force (task force) was created by [House Bill 17-1216](#), and subsequently extended through July 1, 2026, by [House Bill 20-1022](#).<sup>1</sup> The task force is charged with studying ways to simplify the state's complicated sales and use tax system.

The task force consists of 15 members, including state legislators and representatives from a variety of business and local government stakeholder groups. The task force met 13 times from 2017 to 2019. Task force meetings are scheduled to resume in 2021, following a hiatus in task force activity in 2020, due to the COVID-19 pandemic.

## Legislative History of the SUTS System

**SUTS RFI - House Bill 18-1022.** In 2017, the task force recommended, and the General Assembly later passed, [House Bill 18-1022](#). The bill required the DOR to issue a request for information (RFI) regarding the potential to contract for an electronic SUTS system. The bill outlined that the system should provide:

- accurate address location information;
- a single application process for sales tax licenses;
- a uniform sales tax remittance form;
- a single point of remittance for sales and use tax; and
- a taxability or exemption matrix.

The DOR issued the RFI on March 16, 2018, and received responses from four vendors. In June 2018, the DOR established a 14-member team, which included four members of the task force, to review RFI responses.

**SUTS solicitation - Senate Bill 19-006.** In 2018, following the review of RFI responses, the task force recommended, and the General Assembly later passed, [Senate Bill 19-006](#), which:

- required the Governor's Office of Information Technology (OIT) to solicit an electronic SUTS system through the state's procurement process;
- specified that the OIT and the DOR must work with stakeholders to determine the scope of work for the SUTS system before soliciting bids its creation; and
- required the creation of an electronic SUTS system and a GIS database.

Senate Bill 19-006 also outlined that on and after the date the electronic SUTS system is online, the DOR is required to accept returns and payments processed through the SUTS system for state sales and use tax. In addition, SB 19-006 specified that it is the General Assembly's intent that at least three home rule municipalities voluntarily use the SUTS system for accepting returns and processing payments of any local sales and use tax once the electronic SUTS system is online. The voluntary use of the SUTS system by home rule municipalities should increase every year so that no later than three years after the effective date of the bill, all home rule municipalities are voluntarily using the SUTS system.<sup>2</sup>

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<sup>1</sup>Section 39-26-801, *et seq.*, C.R.S.

<sup>2</sup>Section 39-26-802.7 (2)(c), C.R.S. See Appendix B for full text of Section 39-26-802.7, C.R.S.

**SUTS appropriation history.** Senate Bill 19-006 included an appropriation for FY 2019-20 of:

- \$9,183,000 General Fund to the OIT for the initial funding of the electronic SUTS system; and
- \$817,000 General Fund to the OIT for the GIS database to maintain jurisdictional boundaries of sales tax districts and to calculate appropriate sales and use tax rates for individual addresses.

The General Assembly appropriated an additional \$8,750,000 to the OIT for FY 2020-21, for the electronic SUTS system and GIS database.

According to the DOR's update to the Joint Technology Committee on September 14, 2020, the SUTS system and GIS database were completed at almost \$10.6 million under budget, with funding reverting back to the General Fund.

**Post-system implementation requirements.** In 2019, the General Assembly passed [House Bill 19-1240](#), which made several changes to the state's sales and use tax laws. Among those changes, the bill codified and expanded upon DOR emergency rules, promulgated following the U.S. Supreme Court's decision in the *South Dakota v. Wayfair* case. Among other changes, the bill adopted the destination-based sales tax sourcing rules used in the multistate Streamlined Sales and Use Tax Agreement. Under the bill, small businesses with less than \$100,000 in annual sales are allowed to use origin-based sales tax sourcing. The bill repealed this small business exception to destination-based sourcing 90 days after the DOR notifies the Revisor of Statutes that the GIS database is online and available for a retailer to use to determine the taxing jurisdiction(s) in which an address resides. The DOR was directed to notify the Revisor of Statutes no later than 15 days after the GIS database is online. On April 1, 2021, the DOR sent a notice to retailers that the system was online and that all retailers would need to comply with destination-based sourcing rules starting July 1, 2021. However, [Senate Bill 21-282](#) removed this contingency and allows small retailers to continue using origin-based sales tax sourcing until February 1, 2022.<sup>3</sup>

[House Bill 20-1023](#), which was also recommended by the task force and passed by the General Assembly, repeals the hold harmless provisions for vendors that use the state's currently available state-certified electronic address databases 90 days after the implementation of the new GIS database. Once the GIS database is implemented, the DOR is required to immediately notify vendors that it is available for use. The bill then establishes a hold harmless provision for vendors that use the state's GIS database to determine sales and use tax rates for addresses and taxing jurisdictions. The hold harmless provision also applies to vendors that use third-party databases, which are verified to use the most current information from the state GIS database. The DOR is responsible for ensuring that 95 percent of the information provided in the GIS database is accurate and up-to-date.<sup>4</sup>

## **History of Joint Technology Committee Involvement With the SUTS System**

On February 8, 2019, Representative Kraft-Tharp, bill sponsor, presented Senate Bill 19-006 to the Joint Technology Committee (JTC) under the committee's authority to review legislation dealing with information technology. At that meeting, the JTC sent a letter to the House Finance Committee outlining the committee's support of the bill.

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<sup>3</sup>Section 39-26-104 (3)(c)(III), C.R.S. See Appendix E for full text of subsection (3)(c).

<sup>4</sup>Section 39-26-105.2, C.R.S. and Section 39-26-105.3 (8), C.R.S. See Appendix C and Appendix D for full text of relevant sections.

Because the Sales and Use Tax Simplification Task Force did not meet during the 2020 interim due to the COVID-19 pandemic, HB 20-1022 directed the JTC to seek regular updates from the OIT and the DOR regarding the SUTS system. The OIT and the DOR provided updates to the JTC on the SUTS system and GIS database on October 25, 2019,<sup>5</sup> February 26, 2020, September 14, 2020,<sup>6</sup> February 18, 2021,<sup>7</sup> and April 22, 2021.<sup>8</sup>

Throughout 2020, the DOR invited members of the task force and JTC to attend virtual demonstrations of the SUTS system, including one held on June 23, 2020.

## Ongoing System Funding

As part of the 2021 Long Bill, the General Assembly appropriated \$2.2 million General Fund and 4.6 FTE to the DOR for FY 2021-22 and ongoing for the support and maintenance of the SUTS system. The original operating budget request that was submitted by the Governor for consideration by the JTC and Joint Budget Committee can be found here:

<https://drive.google.com/file/d/1n3WrjDiM2r4-qbB-ZWuweQxxS2Yr9jCt/view>

## Current System Usage

According to the DOR's most recent update on June 30, 2021, of the 70 home rule municipalities that self-collect sales and use taxes in the state:

- 52 have signed the SUTS system agreement and are on or are onboarding the system;
- 1 has started the process of securing signatures for the SUTS system agreement; and
- 17 are reviewing and evaluating the SUTS system.

Additionally, as of June 30, 2021, there were more than 6,000 businesses registered for the SUTS system, with a total of 334 business remitting sales and use taxes in June.

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<sup>5</sup>[http://coga.prod.acquia-sites.com/sites/default/files/html-attachments/j\\_ttc\\_2019a\\_10252019\\_101456\\_am\\_committee\\_summary/191025%20AttachC.pdf](http://coga.prod.acquia-sites.com/sites/default/files/html-attachments/j_ttc_2019a_10252019_101456_am_committee_summary/191025%20AttachC.pdf).

<sup>6</sup>[http://leg.colorado.gov/sites/default/files/images/dor\\_suts\\_presentation.pdf](http://leg.colorado.gov/sites/default/files/images/dor_suts_presentation.pdf).

<sup>7</sup>[http://leg.colorado.gov/sites/default/files/images/dors\\_joint\\_technology\\_presentation\\_february\\_18\\_2021.pdf](http://leg.colorado.gov/sites/default/files/images/dors_joint_technology_presentation_february_18_2021.pdf).

<sup>8</sup>[http://leg.colorado.gov/sites/default/files/images/suts\\_jtc\\_presentation\\_april\\_2021.pdf](http://leg.colorado.gov/sites/default/files/images/suts_jtc_presentation_april_2021.pdf).

## Appendix A – Overview of Colorado’s Sales and Use Tax System

**State tax.** Colorado is one of 45 states to assess a state sales tax.<sup>9</sup> Among states with a sales tax, Colorado’s state sales tax is assessed at the lowest rate, 2.9 percent. The tax base includes all sales of tangible personal property except those that are specifically exempted, and exempts all sales of services except those that are specifically subject to the tax.<sup>10</sup> The state use tax is assessed when sales tax was due but was not collected. In these cases, the purchaser is required to remit use tax directly to the state. The state sales and use tax is administered by the DOR.

**County taxes.** With voter approval, counties are authorized to assess a sales tax, use tax, or both.<sup>11</sup> County sales taxes are imposed on the same collection of goods and services as the state sales tax, except that certain state sales tax exemptions are not by default extended to counties.<sup>12</sup> In these cases, boards of county commissioners may adopt an ordinance or resolution to extend the exemption(s). Notable state sales tax exemptions that are not necessarily available at the county level include the exemptions for: machinery; electricity, gas, and heating oil; food for home consumption; sales by charities; and retail marijuana. Sales taxes assessed by 50 counties are administered by the DOR, which collects tax revenue and remits the tax to the appropriate county. The provisions governing county taxes do not apply to the consolidated city-county governments of Denver and Broomfield, each of which has a home rule charter. Twelve counties do not assess a sales tax.

**Municipal taxes.** Provisions for municipal taxes vary greatly according to whether the municipality has adopted a home rule charter pursuant to Article XX of the Colorado Constitution. Municipalities that have not adopted a home rule charter are authorized in statute to assess sales or use taxes in a manner similar to the county taxes described above. Municipalities that have adopted a home rule charter have broad jurisdiction over their own sales taxes and generally are not bound by statutory sales tax requirements.

*Statutory municipalities.* With voter approval, municipalities that have not adopted a home rule charter (statutory municipalities) are authorized to assess a sales tax, use tax, or both.<sup>13</sup> Sales taxes assessed by these municipalities are imposed on the same collection of goods and services as the state sales tax, except that certain state sales tax exemptions are not by default extended to municipalities.<sup>14</sup> In these cases, the city or town council may adopt an ordinance or resolution to extend the exemption(s). Municipal sales taxes are administered by the DOR, which collects tax revenue and remits the tax to the appropriate municipality.

*Home rule municipalities.* Article XX, Section 6, of the Colorado Constitution empowers any municipality with a population of 2,000 people or more to adopt a home rule charter with voter approval. Home rule municipalities have broad latitude to govern themselves in matters of local concern.<sup>15</sup> With voter approval, home rule municipalities may assess sales or use taxes on a locally determined collection of goods and services. Because municipal taxes need not be assessed on the same tax base as the state, home rule municipalities may variously tax transactions that are exempted at the state level or exempt transactions that are taxed at the state level. Additionally, home rule

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<sup>9</sup>Alaska, Delaware, Montana, New Hampshire, and Oregon do not assess statewide sales taxes.

<sup>10</sup>Section 39-26-104, C.R.S.

<sup>11</sup>Section 29-2-103, C.R.S.

<sup>12</sup>Section 29-2-105 (1)(d), C.R.S.

<sup>13</sup>Section 29-2-102, C.R.S.

<sup>14</sup>Section 29-2-105 (1)(d), C.R.S.

<sup>15</sup>*City and County of Denver v. Qwest Corp.*, 18 P.3d 748 (Colo. 2001).

municipalities may tax specific goods or services at a different rate from others. For example, the City and County of Denver, a home rule government, assesses a tax of 4.81 percent on most taxable transactions, but assesses a tax of 4.00 percent on sales of food for immediate consumption, e.g., at restaurants.

Home rule municipalities may choose whether to collect and administer their sales taxes locally. Municipalities that choose to collect their own sales taxes may develop their own systems for licensure, remittance, and auditing. There are 96 home rule municipalities that assess a sales tax. According to the DOR, 70 home rule municipalities collect and administer their own sales taxes. The DOR collects and administers sales taxes for home rule municipalities that choose not to administer taxes at the local level.

**Special districts.** With voter approval, certain special districts and other limited purpose governmental entities are permitted to assess sales taxes up to certain tax rate limits. Special districts authorized to assess sales taxes include:

- the Regional Transportation District (RTD) in the Denver metropolitan area;
- the Scientific and Cultural Facilities District (SCFD) in the Denver metropolitan area;
- local improvement districts in Boulder, Broomfield, Douglas, Jefferson, and Mesa Counties;
- mass transportation systems in Eagle, Pitkin, and Summit Counties;
- regional transportation authorities in Eagle, El Paso, Garfield, Gunnison, Logan, Pitkin, and San Miguel Counties;
- a multi-jurisdictional housing authority in Summit County;
- a public safety improvement district in Montrose and Mesa Counties;
- metropolitan districts throughout the state;
- a health services district in parts of Douglas, Montezuma, Park, Otero, and Teller Counties; and
- local marketing districts in Alamosa, Eagle, Gunnison, Larimer, Moffat, and Routt Counties.

Statutory requirements for each special district sales tax are included in the portion of state law that authorizes creation of the particular type of special district. In general, all special district sales taxes are collected and administered at the state level. The tax base for special districts is generally consistent with the state tax base, and changes to the state base (i.e., via the creation or repeal of a sales tax exemption) are extended by default to special districts.

**TABOR.** Article X, Section 20, of the Colorado Constitution was added via ballot initiative in 1992. This section, known as the Taxpayer's Bill of Rights or TABOR, prohibits the state government and all local governments from enacting or increasing taxes without voter approval. TABOR complicates simplification efforts because proposals to narrow the tax base, e.g., in local jurisdictions that have not enacted sales tax exemptions found at the state level, require voter approval to enact corresponding tax rate increases in order to offset revenue loss. Thus, jurisdictions that currently assess sales taxes on a broader collection of goods and services than those taxed by the state must either maintain their dissimilar tax base, narrow the base while increasing tax rates with voter approval, or narrow the base without voter approval and experience a decrease in revenue.

## **Appendix B – Full Text of Section 39-26-802.7, C.R.S.**

(1) As used in this section, unless the context otherwise requires:

(a) "Department" means the department of revenue.

(b) "Local taxing jurisdiction" means a city, town, municipality, county, special district, or authority authorized to levy a sales or use tax pursuant to title 24, 25, 29, 30, 31, 32, 37, 42, or 43, and any county, city and county, or municipality governed by a home rule charter.

(c) "Office of information technology" or "office" means the office of information technology created in section 24-37.5-103.

(d) "Sales and use tax simplification task force" or "task force" means the sales and use tax simplification task force created in section 39-26-802.

(2)

(a) The office of information technology, on behalf of the department, within existing resources, shall conduct a sourcing method in accordance with the applicable provisions of the "Procurement Code", articles 101 to 112 of title 24, and any applicable rules, for the development of an electronic sales and use tax simplification system. The office and the department shall involve stakeholders to develop the scope of work.

(b) On and after the date the electronic sales and use tax simplification system is online, and notwithstanding any law to the contrary, the department shall accept any returns and payments processed through the system for state sales and use tax and for any sales and use taxes that are collected by the department on behalf of any local taxing jurisdiction.

(c)

(I) On and after the date the electronic sales and use tax simplification system is online, it is the general assembly's intent that at least three local governments governed by a home rule charter voluntarily use the system for accepting returns and processing payments of any local sales and use tax.

(II) It is the general assembly's intent that the voluntary use of the system increase every year so that no later than three years after April 12, 2019, all local governments governed by a home rule charter are voluntarily using the system.

(3) For the 2020-21 state fiscal year, the general assembly shall appropriate eight million seven hundred fifty thousand dollars to the office of the governor for use by the office of information technology for the initial funding and ongoing maintenance of the electronic sales and use tax simplification system. Any contract entered into for the system must provide that initial funding payments to the vendor are made on a quarterly basis.

(4) In the interim between the 2019 and 2020 legislative sessions, the office and the department shall regularly provide the sales and use tax simplification task force with any such detailed information regarding the sourcing method progress as is allowed under the procurement code.

## **Appendix C – Full Text of Section 39-26-105.2, C.R.S.**

- (1) As used in this section, "GIS database" means the geographic information system database that the department of revenue owns and maintains, that meets the defined scope of work set forth in the request for solicitation, and is provided to vendors to determine the jurisdictions to which tax is owed and to calculate appropriate sales and use tax rates for individual addresses.
- (2) The department of revenue shall immediately notify vendors when the GIS database is online, tested, and verified by the department of revenue to be operational, supported, and available for use. Notification to vendors may be provided in any way that the department deems appropriate and must be accomplished within existing resources.
- (3) Any vendor that collects and remits sales tax to the department of revenue as provided by law may use the GIS database. Any vendor that directly uses the data contained in the GIS database, or uses data from a third-party database that is verified to use the most recent information provided by the GIS database, to determine the jurisdictions to which tax is owed is 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 GIS database data.
- (4) The department of revenue shall ensure that the GIS database data is at least ninety-five percent accurate based on a statistically valid sample of addresses from the database, or based on another acceptable method of proving accuracy.
- (5) The executive director of the department of revenue shall promulgate rules for the administration of this section. Such rules must be promulgated in accordance with article 4 of title 24.



## **Appendix D – full text of Section 39-26-105.3**

(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.

(8) This section is repealed, effective ninety days after the date that the revisor of statutes is notified by the department of revenue that a geographic information system that meets the defined scope of work set forth in the request for solicitation, provided by the state, is online, tested, and verified by the department of revenue to be operational, supported, and available for a retailer to use to determine the taxing jurisdiction in which an address resides. The department of revenue shall notify the revisor of statutes in writing, by email to [revisorofstatutes@state.co.us](mailto:revisorofstatutes@state.co.us), no later than fifteen days after such a system is online, tested, and verified by the department of revenue to be operational, supported, and available for use.

## **Appendix E – Full Text of Section 39-26-104 (3)(c), C.R.S.**

**(I)** A retailer shall source its sales to the business location of the retailer regardless of where the purchaser receives the tangible personal property or service in a calendar year:

**(A)** If in the previous calendar year the retailer has made retail sales of tangible personal property, commodities, or services in the state totaling one hundred thousand dollars or less; or

**(B)** Until the first day of the month after the ninetieth day after the person has made retail sales of tangible personal property, commodities, or services in the state in the current calendar year that total more than one hundred thousand dollars, after which the sourcing rules set forth in subsections (3)(a) and (3)(b) of this section apply to all sales made by such retailers on and after such date.

**(II)** Sales of tangible personal property, commodities, or services that are sourced to the business location of the retailer under this subsection (3)(c) and that would otherwise be sourced to an out-of-state location under subsection (3)(a) of this section are exempt from taxation under the provisions of this part 1.

**(III)** Repealed

**(IV)** This subsection (3)(c) is repealed, effective February 1, 2022.