

Senate Bill 16-050
Legislation Resulting from the Local Sales Taxes Performance Audit
Recommendation 1(D), Page 31
Concerning a Hold Harmless Provision for Retailers Liable for Any Money
Payable as a Result of an Incorrect Location Code Assigned
by the Department of Revenue

What Would This Bill Do?

This Bill would amend Section 39-26-103, C.R.S. to hold a retailer harmless for any tax, charge, penalty, interest, or fee payable as a result of failing to collect and remit sales taxes for a local jurisdiction, if all of the following conditions are met:

- The retailer obtained a sales tax license from the Department of Revenue (Department) in good faith, providing an address that correctly indicates the location of the business.
- The Department assigned an incorrect location code, which is the code that represents the geographic region that the business is in and the local sales taxes the retailer is required to collect for such region.
- The retailer in good faith collects and remits local sales taxes for the jurisdictions represented by the assigned location code.
- The retailer fails to collect and remit sales taxes for the local jurisdiction where the retailer is actually located due to having been assigned an incorrect location code by the Department.

This Bill, if passed, would release retailers that are misregistered in the Department's tax processing system from liability for uncollected sales taxes for state-collected jurisdictions that were not represented by the location codes originally assigned to them by the Department. The Bill only applies to jurisdictions for which the Department administers local sales taxes and would not impinge on the ability of home-rule municipalities that administer their own sales taxes to assess unpaid taxes from businesses that were misregistered in the Department's system. For this Bill to extend such protection as soon as possible to retailers that will be under review by the Department, as recommended in the audit, it requires a safety clause.

What did the audit find?

The November 2015 performance audit of the Department's administration of local sales taxes found that the Department probably assigned incorrect location codes to 11,070 of the 103,836 retail business sites that the auditors reviewed (11 percent), based on addresses that the businesses provided on sales tax license applications. Of these, about 3,750 business sites were misregistered for jurisdictions for which the Department

administers sales taxes, resulting in an estimated \$3.3 million in over-collections and \$3.8 million in under-collections.

The audit recommended that the Department develop GIS tools to help staff register businesses to the correct local taxing jurisdictions. The audit also recommended that the Department correct registrations for businesses identified in the audit as having incorrect location codes and follow appropriate procedures as defined in statute for any businesses it determines did not collect the proper amount of sales taxes.

Comments: The Department of Revenue reported that it is capable of administering the approach taken in this Bill.