
Colorado – Sales tax remote seller provisions enacted, contingent on passage of federal Marketplace Fairness Act

June 7, 2013

In brief

On May 28, 2013, Governor John Hickenlooper signed [H.B. 1295](#), which implements certain minimum simplification requirements of the proposed Marketplace Fairness Act of 2013 in order for Colorado to be authorized to require remote sellers to collect sales tax on taxable sales made within the state. Local home rule cities may opt-in to the state collection of local sales and use tax on remote sales.

In detail

Remote seller provision contingent on enactment of Marketplace Fairness Act

Contingent upon passage of the federal Marketplace Fairness Act (MFA) or similar act, the following remote seller provisions of H.B. 1295 would be applicable July 1, 2014. [Click here](#) for our summary of the Marketplace Fairness Act.

H.B. 1295 implements minimum simplification requirements in order for Colorado to be authorized under the MFA to require remote sellers to collect sales tax on taxable sales made within the state. A remote seller is defined as a person making a sale that would not legally be subject to Colorado tax except for passage

of the MFA (or similar act) by Congress.

H.B. 1295 also provides cascading sales sourcing rules for remote sales as follows: (1) destination location; (2) customer address; (3) billing address; and (4) remote seller's address. Remote sellers would be required to have one license (rather than a separate license for each place of business).

Home-rule cities can opt-in to state collection of local tax on remote sales

Under current law, local home rule cities organized under the Colorado Constitution are authorized to impose their own sales and use taxes. The Colorado Department of Revenue has [no jurisdiction](#)

over sales and use taxes imposed by home rule cities. Taxes collected for such areas must be remitted directly to the home-rule jurisdiction. Home-rule city sales tax collection and remittance requirements will not change as a result of this legislation for retailers who do not qualify as remote sellers.

A home-rule city may opt into the remote sales provisions of H.B. 1295 by passing an ordinance accepting the state's administration and distribution of its local sales tax on remote sellers. Any home-rule city that opts into these remote sales provisions also agrees to the state tax base and exemptions. Additionally, a home-rule city "may not collect a sales or use

tax on remote sales except as provided" by H.B. 1295. Finally, H.B. 1295 states that a central audit bureau developed by the Colorado Department of Revenue and the local taxing jurisdictions will be the only entity within the state with the authority to audit remote sellers.

The takeaway

Colorado is preparing for the potential enactment of the federal Marketplace Fairness Act. Should the Act become law, Colorado may start requiring

remote sellers to collect sales and use taxes starting July 1, 2014.

If home-rule cities want to take advantage of the remote seller provisions of the federal MFA, they will have to affirmatively accept the state's tax base, exemptions, administration of local sales and use tax reporting and collection of remote sales. Note that this opt-in is for remote sales only; home-rule cities opting-in will retain the power to collect local sales and use taxes on other, non-remote, local sales.

Regardless of whether a home-rule city opts into the remote seller provisions, the home-rule city is precluded from auditing remote sellers as a result of H.B. 1295.

While H. B. 1295 provides simplifications applicable to remote sellers, it effectively adds another layer of complexity to Colorado sales and use tax law by creating different requirements for tax collection depending on whether the retailer is doing business in the state.

Let's talk

If you have any questions regarding H.B. 1295, please contact:

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