

## COLORADO

### Emergency Sales Tax Regs May Be Problematic

by Jad Chamseddine

The Colorado Department of Revenue has adopted emergency regulations requiring remote vendors to collect and remit sales or use taxes, a move that could prove problematic because of the state's complicated tax structure.

The emergency rules, issued September 11, require out-of-state retailers to obtain a state sales tax license and begin collecting and remitting taxes on December 1.

"The change is a result of the U.S. Supreme Court's decision in *South Dakota v. Wayfair Inc.*, which struck down the requirement that a retailer have a physical presence in a state in order to be required to collect and remit sales tax," according to a September 11 DOR release.

Colorado will follow the same small-seller exception of South Dakota and several other states by exempting retailers with less than \$100,000 in sales or 200 transactions into the state per year from collecting and remitting taxes. The rules would also be applied prospectively.

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"The department will ensure fair, efficient, and transparent implementation of this decision," DOR Executive Director Michael Hartman said. "We will pave the least burdensome road possible for businesses to comply with these regulations."

However, problems could ensue because Colorado is not a member of the Streamlined Sales and Use Tax Agreement and does not have a centralized administration. Dominated by the principle of home rule, the state remains behind in simplifying its tax system, which has over 300 taxing authorities.

The regs' quick implementation has apparently caught municipalities by surprise.

"We know the Department of Revenue was working on emergency rules to bring the state

into a position to implement *Wayfair*,” Colorado Municipal League Deputy Director Kevin Bommer told *Tax Notes*. “We did not know in advance that the state was going to require out-of-state retailers to apply for a state sales tax license by November 30.”

Bryan Archer, finance director of the city of Arvada, said September 12 that he had no prior knowledge of the regulations. “We literally found out about this yesterday through the same press release,” Archer said, adding that his city is now working with the Municipal League to get answers to obvious questions. “How will this be remitted? Does this include localities, special districts, etc.? Does it meet the standards set by the Supreme Court and so on?” he asked.

Hamilton Davison of the American Catalog Mailers Association also questioned the rules’ constitutionality in light of *Wayfair*, saying Colorado has “arguably the most complicated sales tax system in the entire country,” with hundreds of local and home rule jurisdictions that administer their own tax rules.

Joseph Bishop-Henchman of the Tax Foundation agreed, saying that the state isn’t ready for the regs. “Colorado’s big problem is that it allows its 349 county, city, and district local sales tax jurisdictions autonomy in administering, collecting, and auditing,” he said. “Filing is very cumbersome as a result, with the state and local tax base not necessarily adding up on a given transaction.”

The state’s FAQ webpage says that some city, county, and special district taxes will be collected and distributed by the state, but that “home rule cities for which the State does not collect local sales tax should be contacted directly.”

“Requiring retailers to collect local sales taxes separately ignores and rejects the safe harbor outlined by Justice [Anthony M.] Kennedy,” Bishop-Henchman said. “I have no doubt these regulations as written are unconstitutional.”

Davison said the regs could also complicate matters for remote vendors. “The Department of Revenue has simply ignored the enormous burdens that multistate sales tax compliance, and collecting taxes on sales in Colorado, in particular, places on retailers doing business in interstate commerce,” he said.

Bishop-Henchman said the DOR’s move runs counter to the efforts of the Sales and Use Tax Simplification Task Force, which the legislature set up to evaluate Colorado’s sales and use tax system. “This move undermines those efforts, sticking a finger in the eye of people who want sensible and easy tax administration,” he said. Both Bommer and Archer are part of the task force.

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While the speed with which the regulations will be implemented may have been a surprise, Bommer said the step was necessary. “Home rule cities that self-collect needed the state to take this initial step regardless and will continue to work on collection of their sales taxes in a manner that maintains *Wayfair* compliance,” he said.

But Davison, whose group has found itself in the cross hairs of states trying to collect taxes on remote sales, said the regs are deeply troubling and called for congressional intervention to prevent other states from imposing similar requirements.

“The failure of states like Colorado to pursue real simplification of their sales tax systems before trying to leverage the *Wayfair* decision to force onerous compliance obligations on out-of-state businesses is precisely why a federal moratorium on state sales tax on remote sales is required, and why legislation to require simplification of state sales tax systems is so important,” Davison said. ■