HB 19-1240

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number:	LLS 19-0744	**Date:**	March 22, 2019
Prime Sponsors:	Rep. Kraft-Tharp; Van Winkle Sen. Court; Tate	**Bill Status:**	House Business
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Bill Topic: SALES & USE TAX ADMINISTRATION

Summary of Fiscal Impact:

☒ State Revenue
☐ State Expenditure
☐ State Transfer
☒ TABOR Refund
☒ Local Government
☐ Statutory Public Entity

This bill codifies the Department of Revenue's rules that establish economic nexus for out-of-state retailers and in-state destination-based sourcing rules, as well as requiring marketplace facilitators to collect and remit sales taxes on behalf of their vendors. It is expected to reduce General Fund revenue in FY 2018-19, and increase revenue on an ongoing basis starting in FY 2019-20.

Appropriation Summary: No appropriation is required for this bill.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 19-1240

		FY 2018-19	FY 2019-20	FY 2020-21
Revenue	General Fund	(up to $1.3 million)	$38.0 million - $42.4 million	$54.9 million - $65.7 million
Expenditures		-	-	-
Transfers		-	-	-
TABOR Refund	General Fund	(up to $1.3 million)	-	-

Summary of Legislation

This bill codifies the Department of Revenue's rules regarding the requirement that out-of-state retailers collect and remit sales tax, establishes destination-based sourcing rules, and requires marketplace facilitators to collect and remit sales tax on behalf of their third-party vendors.

Economic nexus. This bill establishes economic nexus for sales tax purposes, identified as selling, leasing, or delivery in the state, and sets a de minimus threshold for sales into the state at $100,000. This nexus applies to sales into the state beginning on June 1, 2019, and collections must begin on the first of the next month, 90 days after the $100,000 threshold is met.

Destination sourcing. Regarding in-state sales tax sourcing rules, this bill codifies and expands upon Department of Revenue emergency rules regarding the change from origin-based to destination-based sales tax sourcing for both purchases and leases, and exempts retailers that do not meet the de minimus threshold. The bill specifies the following order to determine where a sale is sourced for sales tax purposes:

- the seller's location, if the purchaser takes possession of goods or services at the physical location of the seller;
- the point of delivery, if the purchaser does not take possession of the goods or services at the seller's location;
- the purchaser's address on file with the seller, if the first two sourcing locations do not apply;
- any address available to the seller, including the address associated with the form of payment received, if the first three sourcing locations do not apply; and
- the seller's location, if the first four sourcing locations do not apply and the seller does not have an address for the purchaser.

The sale, lease, or rental of transportation equipment is sourced the same as a retail sale.

For the lease or rental of tangible personal property or of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, the following sourcing rules apply:

- for a lease or rental with recurring payments, the first payment is sourced the same as a sale, while subsequent payments are sourced to the primary property location; and
- for a lease or rental not requiring recurring payments, the payment is sourced the same as a sale.

The destination sourcing rules above only apply to retailers with physical presence that have $100,000 in gross revenue outside of their physical location's taxing jurisdiction during a calendar year. If a retailer does not meet the threshold, the sale is sourced to the seller's physical location regardless of where the goods are delivered. This de minimus threshold will remain effective until 90 days after the state is notified that a geographic information system (GIS) address location system for sales tax jurisdictions is online and available for use by retailers free of charge.

Marketplace facilitators. This bill defines marketplace facilitators for sales tax purposes and requires them to start collecting and remitting sales tax in Colorado. A marketplace facilitator is defined as an entity that facilitates sales of marketplace sellers to purchasers on its platform and that may retain a fee for this service. This may include providing:

- technology that lists the product for sale, and that links sellers and purchasers;
- a virtual currency to purchase sellers' products;

- payment processing services;
- fulfillment or storage services;
- branding sales in the name of the marketplace facilitator;
- advertising; and
- customer service, including taking orders and facilitating returns/exchanges.

Under this bill, marketplace facilitators are required to collect sales tax on behalf of all of the marketplace sellers on their platform, regardless of the individual seller's amount of sales into the state. It also applies all of the responsibilities of a retailer to marketplace facilitators.

Background

Wayfair decision and DOR rules. In June 2018, the U.S. Supreme Court ruled in the *South Dakota v. Wayfair* case that states may require out-of-state retailers to collect sales tax on purchases made by an in-state consumer, even if the retailer does not maintain a physical presence in the consumer's state. Following this decision, the Colorado Department of Revenue (DOR) adopted emergency rules requiring retailers without physical presence in Colorado to collect state sales tax and the sales taxes levied by state-collected counties and municipalities. The new requirements do not affect self-collected home rule cities.

Under these rules, DOR will now require that all out-of-state retailers collect and remit sales tax when they ship goods into the state. The sales tax will be collected based on the consumer's address. Out-of-state retailers that have less than $100,000 in sales, or fewer than 200 transactions in Colorado during the current or previous calendar years are not required to collect and remit sales tax to the state. These rules went into effect December 1, 2018; however, there is an enforcement grace period through May 31, 2019.

Destination sourcing for in-state retailers. DOR modified how sales taxes are collected when a consumer purchases an item from a retailer that is not located in the same taxing jurisdiction in state. This applies only to goods that are shipped from the retailer to the consumer. Previously, collections were based on the source of the item, or the retailer's address, known as origin-based sales tax collection. Under the new rule and this bill, collections are based on the destination, or the consumer's address for delivery, known as destination-based sales tax collection. If a consumer purchases an item at the retailer's place of business, nothing changes, and the sales tax is collected based on the retailer's location.

Marketplace facilitators. Unlike this bill, marketplace facilitators are not included in DOR's rules fo out-of-state retailers. Prior to the Wayfair decision, marketplaces like Amazon only collected taxes when they had a physical presence in a state and only on the sale of their own products, not on those of third party sellers. Examples of marketplace facilitators include Amazon Marketplace, Ebay, and Etsy, among many others. Many sellers on marketplace sites would not meet the $100,000 de minimus threshold set forth in this bill.

House Bill 13-1295. This bill removes statutory language added to state law under House Bill 13-1295. The provisions of HB 13-1295 never went into effect because they were contingent upon passage of the federal Marketplace Fairness Act or similar legislation being signed into law, which never occurred. This bill removes statutory language that is no longer relevant since federal legislation was not enacted.

Assumptions

This fiscal note uses DOR's rules requiring out-of-state retailers to collect and remit sales taxes in the state as the baseline for current law. It is also assumes that the majority of marketplace facilitators will meet the de minimus threshold of $100,000 in sales in Colorado during the first month in which the bill takes effect. Relative to current law, this bill will delay collections for three months due to the timing of when the first remittance is due (90 days after the threshold is met).

No comprehensive data on marketplace facilitator sales is available. There may be marketplace sellers that are currently collecting and remitting sales taxes in the state; however, this information cannot be known due to taxpayer confidentiality requirements. Therefore, it is assumed that 10 percent of marketplace sales are currently taxed.

State Revenue

This bill is expected to decrease General Fund revenue by up to $1.3 million in FY 2018-19, and increase General Fund revenue by between $38.0 million and $42.4 million in FY 2019-20, and by between $54.9 million and $65.7 million in FY 2020-21, with ongoing revenue increases in future years. Sales tax revenue affected by the bill is subject to TABOR.

Marketplace facilitator revenue. This bill requires marketplace facilitators to collect and remit sales tax on behalf of their third-party sellers, which is not required under current law or DOR rules. Additional sales tax revenue of between $48.6 million and $56.7 million in FY 2019-20 is estimated to be collected based on available information on the sales attributable to marketplace facilitators. Due to the 90-day window between when out-of-state retailers meet the de minimus threshold and when they have to start collecting, revenue during FY 2019-20 may be reduced to between $43.2 million and $50.4 million. The expected increase in revenue will depend on the number of marketplaces that voluntarily comply and the amount of sales they make into the state.

Out-of-state retailer revenue. Sales tax revenue from out-of-state retailers is not included in this fiscal note, since it is considered current law under DOR's rules that went into effect on December 1, 2018. In the Legislative Council Staff's March 2019 forecast, revenue attributable to the DOR rule changes is estimated at up to $14 million in FY 2018-19, and at between $47 million and $72 million in FY 2019-20, and between $54 million and $80 million in FY 2020-21. This bill changes the date from which the de minimus threshold is counted to June 1, 2019, and additionally provides a 90-day period to start collecting and remitting sales taxes from the month after the threshold is met. This is expected to cause a reduction in revenue relative to current law during June in FY 2018-19 by up to $1.3 million and during the first three months of FY 2019-20 by between $5.2 million and $8.0 million, as it delays the initial compliance date compared to the current DOR rules. This expected reduction will depend on the number of out-of-state retailers that voluntarily comply and the amount of sales they make into the state.

Table 2
State Revenue Impacts Under HB 19-1240

	FY 2018-19	FY 2019-20	FY 2020-21
Marketplace facilitator revenue	-	\$43.2 million - \$50.4 million	\$54.9 million - \$65.7 million
Out-of-state retailer revenue	(up to \$1.3 million)	(\$5.2 million - \$8.0 million)	-
Total Revenue	(up to \$1.3 million)	\$38.0 million - \$42.4 million	\$54.9 million - \$65.7 million

TABOR Refund

The bill is expected to decrease state General Fund obligations for TABOR refunds by up to $1.3 million in the current FY 2018-19. Under current law and the March 2019 Legislative Council Staff forecast, the bill will correspondingly reduce the amount refunded to taxpayers via reimbursements to local governments for property tax exemptions in FY 2019-20. The state is not expected to collect a TABOR surplus in FY 2019-20 or FY 2020-21.

Local Government

As this bill requires marketplace facilitators to collect and remit sales tax into the state, state-collected local governments will see additional sales tax revenue from higher collections. The distributions of that revenue will depend on sales made into each local jurisdiction.

Effective Date

The bill takes effect July 1, 2019.

State and Local Government Contacts

Information Technology	Counties	Law	Municipalities
Regional Transportation District	Revenue	Special Districts	Personnel