Colorado Sales and Use Tax—Changes and Continuities

By Mark Kozik and Bruce M. Nelson*

Mark Kozik and Bruce M. Nelson provide a detailed discussion and guide through the awful maze of Colorado's state sales tax, its changes since Wayfair, and more importantly, the impact of those changes on both the state-administered and 72 home-rule cities in the state.

It is safe to say that the *Wayfair* decision[1] has impacted all 45 states that impose a sales and use tax.[2] However, its impact in Colorado is particularly complex, both substantively and procedurally, because of the number of different taxing jurisdictions that must be considered and, because while the sales and use tax bases in some of the state's local jurisdictions tend to follow the state-level sales and use tax bases, in others they do not. Plus, some 72 local jurisdictions in the state are "home-rule" cities/towns that have their own substantive and procedural rules that are largely independent of the state-level rules. Finally, in addition to providing an economic presence threshold for sales tax collection, legislation enacted in 2019 also provides new sourcing requirements, with different rules applying depending on whether the seller meets a $100,000 Colorado-sales threshold. Welcome to Colorado!

From a jurisdictional perspective, a sale to a Colorado customer must be analyzed at five levels:

1. State;
2. County;
3. State-administered city/town (if any);
4. District (if any); and
5. Home-rule city/town (if any).

The county, city/town, and district levels are commonly referred to as the "local" jurisdictions. These jurisdictions fall into one of two buckets—those whose sales tax bases generally "piggyback" off the state sales tax base and whose sales tax is administered by the Colorado Department of Revenue (commonly referred to

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as the "state-administered" or "statutory" local jurisdictions), and those whose sales tax base and administration are largely independent from the state-level tax base and Department of Revenue (commonly referred to as the "home-rule" jurisdictions).

Taxpayers and tax practitioners often argue over which state, Alabama, Colorado, or Louisiana, has the most complicated sales and use tax compliance.

Although the state-administered local sales tax bases generally follow the state-level sales tax base, there are presently 16 potential exceptions, where the sales tax base for each state-administered county, city, and town may, or may not, depart from the state-level sales tax base. The treatment of each of these 16 potential exceptions in each of the state-administered counties, cities, and towns is lined out in Colorado Department of Revenue Form DR 1002 (DR 1002), cryptically titled "Colorado Sales/Use Tax Rates."

Unlike the state-administered counties, cities, and towns, the sales tax base for special districts is generally identical to that at the state level.

With regard to use tax, the tax base in state-administered counties, cities, and towns is limited to motor vehicles and building materials, and it is not administered by the Department of Revenue. However, the use tax base in the special districts generally follows the state-level use tax base, and it is administered by the Department of Revenue.

Home-rule jurisdictions (all cities/towns, including the City and County of Denver and the City and County of Broomfield), on the other hand, have almost complete autonomy with regard to their own sales and use tax, and each has its own licensing, registration, forms, and, most importantly, a separately defined tax base.[3] The differences can be frustrating, sometimes mind-boggling, to even the most experienced practitioner.

State-Administered Local Jurisdictions—Some Details

The state has 269 "state-administered" local tax jurisdictions that impose a sales tax, a use tax, or both. As noted above, these jurisdictions are also sometimes referred to as "statutory" jurisdictions. They include 173 cities/towns (mostly on the smaller side), 62 of the state's 64 counties, and 34 special districts (such as the Regional Transportation District and the Scientific and Cultural Facilities District). The two "missing" counties are Denver and Broomfield, each of which is a combined city and county (the "City and County of Denver" and the "City and County of Broomfield"). Of the 62 counties noted, 52 impose a sales tax. Ten do not.

DR 1002 provides a listing of all the state-administered local jurisdictions, along with their sales tax rates and information about those 16 instances where the sales tax base in a state-administered county, city, or town can differ from the state-level sales tax base. These items range from manufacturing machinery and machine tools to beetle wood products, and all of them are exempt from the state-level sales tax. However, they are subject to sales tax in each state-administered county, city, and town unless that jurisdiction affirmatively elects to follow the state-level exemption.[4]

DR 1002 also provides information as to whether a particular state-administered county, city, or town imposes use tax on motor vehicles, building materials, or both, and the related use tax rates.

Finally, DR 1002 provides the tax rates for the special districts. However, unlike the state-administered counties, cities, and towns, the sales and use tax bases for the special districts *do* follow the state-level sales and use tax bases. Also, the Department of Revenue administers both the special district sales *and* use taxes.

If someone were interested in going beyond DR 1002 in determining or documenting any of these issues for a state-administered local jurisdiction, they must go to the controlling authority for the local jurisdiction. However, depending on the jurisdiction, that information may or may not be readily available either on a commercial research database or the jurisdiction's website.

As would be expected, there are sometimes questions about which local jurisdiction(s) are involved in a given transaction. For example, it may or may not be clear whether something in Adams County is east or west of Box Elder Creek. If it is on the west side, it is in the Regional Transportation District (1% district-level sales and use tax). If it is on the east side, it is not in the Regional Transportation District.[5]

Sales tax registration with the Department of Revenue includes any relevant state-administered local jurisdictions, and state-administered local sales tax is reported to the appropriate local jurisdiction as part of the state-level sales tax reporting. The sales tax due to state-administered

local jurisdictions is remitted along with the state-level tax to the Department of Revenue, which then passes the tax along to the appropriate local jurisdiction.

The Department of Revenue also audits the appropriate state-administered local jurisdictions as part of their state-level sales tax audits. These jurisdictions do not independently undertake sales tax audits.

As noted above, the state-administered counties, cities, and towns can also impose *use tax* but, unlike with their sales tax base, their *use tax* base is limited to the storage, use, or consumption of motor vehicles and the use or consumption (no provision for storage) of building materials.[6] Also unlike for sales tax, the Department of Revenue does not administer the reporting and payment of *use tax* in these jurisdictions. Rather, the use tax is administered at the local level. For motor vehicles, state and local-level use tax is assessed at the time a vehicle is registered. For building materials, it becomes more confusing. State and special district use tax is generally paid on the contractor's use tax return filed with the Department of Revenue. However, use tax for most of the state-administered counties, cities, and towns that impose a local-level use tax on building materials is generally assessed in the building permit process.[7]

Home-Rule Jurisdictions—Some Details

Aside from navigating the sales and use tax base, collection, reporting, and remittance rules and procedures for the state and pertinent state-administered local jurisdictions, taxpayers must also take into account the state's "home-rule" jurisdictions. So, if the preceding isn't confusing enough, the state has 96 "home-rule" jurisdictions, 72 of which independently administer their own sales and use tax ordinances (generally referred to as "self-collecting" home-rule cities). Included in this group are the two home-rule "city and county" jurisdictions noted above, that is, the City and County of Denver and the City and County of Broomfield (otherwise, counties are state-collected local jurisdictions). The 24 home-rule cities/towns that are not self-collecting are "state-administered," "state-collected," or "statutory" home-rule cities/towns and follow the state-administered local jurisdictions rules discussed above.[8]

Each self-collecting home-rule jurisdiction imposes its own sales and use tax according to its own ordinance, regulations, and other guidance, with separate registration, licensing, forms, filing requirements, payment procedures, and audit/appeal processes. They do so under the authority of the Colorado Constitution Article XX, which authorizes such municipalities to impose, administer, and enforce their own individual sales and use tax statutes.[9]

There is no limit to the differences between the tax base in a one self-collecting home-rule jurisdiction and that in another, or that at the state level. For example, the City and County of Denver, the City of Boulder, the City of Fort Collins, and the state of Colorado all define and tax software differently. The same is true with respect to registration and compliance in these home-rule jurisdictions. Each one must be dealt with independently from all the others, and from the state. Also, each of these jurisdictions handles its own audits and, to a degree, has its own protest/hearing procedures and requirements, subject to some overriding consistency provisions set out in the state statute.[10] Perhaps the best way to think of self-collecting home-rule cities is that from a sales and use tax viewpoint, they are just like other states, only they are all within the state of Colorado.

Given Colorado's state-administered and home-rule jurisdictions, different tax bases, multiple licensing, registration, and filing requirements, physical and economic nexus standards, and sourcing rules, we believe we know the answer.

All told, someone making sales to Colorado customers can face up to 756 *sales tax* combinations.[11]

Nexus/Doing Business

Whether a seller must collect and remit sales tax on a sale to a Colorado customer depends on whether it is "doing business" in Colorado for sales tax purposes. However, the requirement to collect and remit is further limited by whether the seller has "nexus" with Colorado. "Doing business" is defined in the Colorado statutes. "Nexus" is determined under the federal constitution, along with the related judicial interpretations.

Historically, nexus contemplated some level of physical presence in a state that sought to impose a sales tax collection and remittance obligation on a seller. However, several states enacted legislation that imposed an obligation to collect sales tax solely on the basis of the seller making sales to in-state customers in excess of specified dollar limits. One of those states was South Dakota, and its economic presence statute was the one that reached the U.S. Supreme Court in *Wayfair*.

The U.S. Supreme Court decision in *Wayfair* opened the door to states requiring sellers to collect and remit sales tax in the absence of physical presence if they have sufficient economic presence in the state. Nearly all of the states that impose a sales tax have now enacted legislation requiring sellers to collect and remit if they have economic presence similar to that which existed in the *Wayfair* case, that is, sales to in-state customers and/or number of transactions with in-state customers in excess of defined threshold amounts. Colorado enacted such legislation (although ultimately without the number-of-transactions element) effective June 1, 2019. The legislation passed notwithstanding that the sales tax environment in the state bears little resemblance to that approved by the U.S. Supreme Court in *Wayfair*.[12]

Pre-*Wayfair* Periods

Although the pre-*Wayfair* days are over, the pre-*Wayfair* rules will continue to apply for several more years. The statute of limitations for state- and state-administered local jurisdictions is generally three years (absent fraud or failure to file).[13] Each home-rule city determines its own statute of limitations, but most use a similar three-year period.

Audits take time, hearings take time, and litigation takes time (sometimes lots). So, pre-*Wayfair* rules will be the subject of dispute for years to come. And, although the obligation to collect sales tax at the Colorado state level was *generally* based on physical presence, there were nuances at both the state-administered and self-collected home-rule levels that could result in greater exposure for a taxpayer at the local level(s) than at the state level. For example, the combined county and city sales tax rate in Eagle, Colorado is 6%, while the state-level rate is 2.9%. Failing to collect on a sale that is taxable at all three levels would result in twice as much exposure at the local-level as at the state-level.

The pre-*Wayfair* rules will also remain relevant in business acquisitions (whether stock or asset) for several more years. Until the pre-*Wayfair* rules are no longer within the statute of limitations, they will be relevant in determining the Colorado sales tax exposure of the acquisition target.

Pre-*Wayfair* Sales/Use Tax Collection Obligation for the State of Colorado, State-Administered Counties, Cities/Towns, and Special Districts

In General

One positive Colorado factor prior to *Wayfair* was that the obligation to collect and remit Colorado sales tax was based largely on physical presence. The Colorado Department of Revenue did not assert economic presence or click-through nexus.[14] Neither did any home-rule city (at least on an official, public basis).

Out-of-state sellers attempting to collect the correct amount of sales tax and remit it to the correct Colorado jurisdictions had to identify whether they had nexus with, and were doing business in, the following jurisdictions—

1. The state;
2. Which county (all area within the state is also within some county);
3. Which state-administered city or town (if any);
4. Which special district(s) (if any).
5. Which home-rule city or town (if any).

Once the pertinent jurisdictions were identified, the next step was to determine whether the transaction at issue was subject to sales tax at each jurisdictional level, and the correct amount of tax for each jurisdiction where it was taxable.

Finally, assuming the correct tax had been collected at each jurisdictional level, the final task was to get it timely remitted.

State Level[15]

As noted above, Colorado's economic presence legislation[16] took effect on June 1, 2019. Prior to that, the obligation to collect Colorado's state-level sales tax was generally limited by the physical presence standard established in *National Bellas Hess* and *Quill*.[17] However, the specific definition of "doing business in this state" changed over the following periods—

1. January 1, 2010 through February 28, 2010;
2. March 1, 2010 through June 30, 2014;
3. July 1, 2014 through May 31, 2019; and
4. June 1, 2019 and forward.

January 1, 2010[18] Through February 28, 2010—

"Doing business in this state" meant "selling, leasing, or delivering in this state, or any activity in this state in connection with the selling, leasing, or delivering in this state, of tangible personal property by a retail sale … for use, storage, distribution, or consumption within this state."[19] This included, but was not limited to, the following:

1. Maintaining an "office, distributing house, salesroom or house, warehouse, or other place of business" in Colorado, directly, indirectly, or by a subsidiary.[20]
2. Soliciting business from Colorado residents "and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons … for use, consumption, distribution, and storage for use or consumption in [Colorado]." This solicitation could be undertaken by the taxpayer's "direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever."[21]

March 1, 2010 Through June 30, 2014

House Bill (H.B.) 10-1193, effective March 1, 2010, expanded the definition of "doing business in this state" to also include a presumption that any seller that did not collect Colorado sales tax and that was a "component member" of a "controlled group" that did include a retailer with physical presence in Colorado was "doing business" in Colorado, and required to register and collect sales tax.[22] This presumption could be rebutted by a non-collecting seller upon its showing that, during the calendar in question, the in-state retailer's activities on its behalf did not rise to "constitutionally sufficient solicitation."[23] Finally, a member of a controlled group that owned a controlling interest in a Colorado retailer (regardless of the entity type of the Colorado retailer) was required to register and collect sales tax.[24]

Effective March 1, 2010, the Department of Revenue adopted Emergency Reg. §39-26-102.3 to provide guidance on the new definition of "doing business in this state" used in H.B. 10-1193. This Emergency Regulation provided, among other things, that—

1. A seller *must* obtain a Colorado sales tax license and collect *sales* tax if it both—
   a. Sold, leased, or delivered tangible personal property in Colorado, *and*
   b. Directly or indirectly maintained an "office, salesroom, warehouse, or similar place of business" in Colorado.[25]

   This was "doing business" under CRS §39-26-102(3)(a).
2. A seller *should* obtain a Colorado retailer's use tax license or a Colorado sales tax license if it simply—
   a. Sold, leased, or delivered tangible personal property in Colorado, and
   b. Regularly or systematically made solicitations in Colorado. For this purpose, the solicitation could be by "any means whatsoever, including advertising by catalogues, newspapers, radio, television, email, or Internet."[26] It was not necessary that the solicitation originate in Colorado, so long as the seller purposefully directed it into Colorado.[27] The Regulation expressly stated that this included national and international advertising that included Colorado.[28]

   This was "doing business" under CRS §39-26-102(3)(b).

It is important to note the difference between (1) and (2), above. Under (1), a seller that had a *place of business* in Colorado *was required* to get a Colorado *sales tax* license and collect and remit *sales tax*, but under (2), where the seller was "doing business" in Colorado *but did not have a place of business*, the Department of Revenue stated only that the seller *"should"* get either a Colorado retailer's use tax license or a Colorado sales tax license, and that it *should* collect and remit retailer's use tax.

The Emergency Regulation also provided that—

1. A seller presumed to be doing business in Colorado by virtue of being a component member of a controlled group of corporations that contained a member with physical presence in Colorado was required to register with the Department of Revenue and to collect Colorado sales tax.[29]
2. A seller was treated as doing business in Colorado if it was a member of a controlled group of corporations that had a controlling interest in an in-state retailer regardless of the form of doing business of the in-state retailer.[30]

This Emergency Regulation was made permanent effective July 30, 2010, and remained effective through December 1, 2018, when a new version addressing economic presence was issued.

H.B. 10-1193 also enacted reporting and notification provisions applicable to retailers that did not collect Colorado sales tax ("non-collecting retailers" or "NCR"). These provisions were added to CRS §39-21-112 (as subsection 3.5) targeting remote out-of-state sellers and included the following general requirements—

1. NCRs were required to notify their Colorado purchasers that Colorado sales or use tax was due on

certain purchases from the NCR and that Colorado purchasers were required to file Colorado sales or use tax returns.[31] Unless the NCR could show reasonable cause, it was subject to a penalty of five dollars per failure here.[32]

2. By January 31 of each year, NCRs were required to send each Colorado purchaser a notification of the total amount of purchases made by the purchaser during the preceding calendar year. These notifications were to include, if available, for each purchase, the date, the amount, and the category (including, if known to the NCR, whether the purchase was subject to or exempt from Colorado sales tax). These notifications were also required to state that Colorado purchasers were subject to Colorado sales/use tax reporting and payment requirements.[33] Also, these notifications were required to be sent by first-class mail. They could not be included with any other shipments, they had to include the words "Important Tax Document Enclosed" on the exterior of the mailing, and the mailing had to include the NCR's name.[34] Unless the NCR could show reasonable cause, it was subject to a penalty of 10 dollars for each failure here.[35]
3. By March 1 of each year, NCRs were required to file with the Department of Revenue an annual statement for each Colorado purchaser. This filing was required to show the total amount of purchases made by each Colorado purchaser for the preceding calendar year.[36] Unless the NCR could show reasonable cause, it was subject to a failure-to-report penalty of ten dollars for each omitted Colorado purchaser.[37]

The Department of Revenue issued regulatory guidance on the reporting and notification requirements (Emergency Reg. §39-21-112.3.5) effective March 1, 2010. However, in June 2010, a federal district court action was filed by the Direct Marketing Association. It asserted the reporting and notification requirements were unconstitutional and sought an injunction against their enforcement. Extensive litigation over a six-year period, including twice at the U.S. Supreme Court, resulted in the reporting and notification rules not being enforced until July 1, 2017.[38]

For transactions taking place on and after July 1, 2017, the Department of Revenue issued the following guidance—

1. Emergency Reg. §39-21-112(3.5), effective June 30, 2017. This regulation provides extensive guidance on the substantive and procedural aspects of reporting and notification. It was scheduled to expire October 28, 2017.
2. Emergency Reg. §39-21-112(3.5), effective October 23, 2017. The June 30, 2017 Emergency Regulation was reissued to extend its application while the Department of Revenue continued work on the Permanent Regulation.
3. Permanent Reg. §39-21-112(3.5), effective January 1, 2018. Although the Permanent Regulation generally follows the Emergency Regulation, there are some significant differences. The regulations provide that certain penalties otherwise applicable for failure to comply do not apply in cases where a retailer's Colorado sales do not meet a specified $100,000 threshold.

Although reporting and notification requirements were enacted effective March 1, 2010, and accompanying regulations were issued, these requirements were not enforced until July 1, 2017. As of that date, the Department of Revenue began enforcing them on non-collecting retailers. The practical scope of these rules was largely reduced once the 2019 economic presence legislation took effect on June 1, 2019. However, NCRs were apparently subject to these reporting and notification requirements from July 1, 2017 through May 31, 2019 (the end of the grace period discussed below), and possibly beyond in limited cases, unless they voluntarily collected and remitted the tax. This could remain a significant consideration in audits and business acquisitions until the statute of limitations on these periods expires.

July 1, 2014 Through May 31, 2019

H.B. 14-1269 expanded the definition of "doing business in this state" to also include "selling, leasing, or delivering in this state, or any activity in this state in connection with the selling, leasing, or delivering in this state, of tangible personal property *or taxable services* [italics added] by a retail sale … for use, storage, distribution, or consumption within this state."[39] For this period, "doing business in this state" included, but was not limited to, the following:

1. Maintaining an "office, distribution facility, salesroom, warehouse, *storage place* or other *similar* place of business, *including the employment of a resident of this state who works from a home office in this state*" [italics added] directly, indirectly, or by a subsidiary.[40]
2. Soliciting business from Colorado residents and by reason thereof the receipt of "orders from, or selling or leasing tangible personal property to, such persons … for use, consumption, distribution, and storage for use or consumption in [Colorado]." This solicitation could be undertaken by the taxpayer, its "direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogues or other advertising, or by use of any communication

media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever."[41] There was no change here from the existing version.

3. A remote seller doing business in Colorado with respect to a remote sale taxable under CRS §39-26-104(2).[42] This required the enactment of Congressional legislation, which has not happened.
4. A seller ("X") that was not otherwise doing business in Colorado was, effective July 1, 2014, presumed to be doing business in the state if it was a part of a controlled group of corporations that included a component member (other than a common carrier acting as such) that had physical presence in Colorado and the in-state component member—
   a. Sold tangible personal property or taxable services similar to that sold by X and under the same or a similar business name;[43]
   b. Maintained an "office, distribution facility, salesroom, warehouse, storage place, or other similar place of business" in Colorado to facilitate the delivery of tangible personal property or taxable services sold by X to X's Colorado customers;[44]
   c. Used trademarks, service marks, or trade names in Colorado that were the same or substantially similar to those used by X;[45]
   d. Delivered, installed, or assembled tangible personal property in Colorado, or provided maintenance or repair services on tangible personal property in Colorado, and the tangible personal property was sold by X to its Colorado customers;[46] or
   e. Facilitated the delivery of tangible personal property to X's Colorado customers by allowing such customers to pick the property up at Colorado location.[47]

   For purposes of doing business through a component member, the terms "controlled group of corporations" and "component member" had the same meanings as §§1563(a) and (b) of the Internal Revenue Code of 1986, respectively. In addition, both terms also included non-corporate entities that, regardless of their form of organization, bore the same ownership relationship to the remote seller as a corporation that would qualify as a component member of the same controlled group of corporations as the remote seller.[48]

   This presumptive physical presence could be rebutted by proof that, during the calendar year in question, the in-state component member did not undertake any Colorado activities constitutionally sufficient to establish Colorado sales tax nexus on behalf of X.[49]
5. A seller that was not otherwise doing business in Colorado ("X") was presumed to be doing business there if it entered into an agreement or arrangement with a person (other than a common carrier acting as such) that had physical presence in Colorado and the Colorado person—
   a. Sold tangible personal property or taxable services similar to that sold by X under the same or a similar business name;[50]
   b. Maintained an "office, distribution facility, salesroom, warehouse, storage place, or other similar place of business" in Colorado to facilitate the delivery of tangible personal property or taxable services sold by X to its X's Colorado customers;[51]
   c. Delivered, installed, or assembled tangible personal property in Colorado, or provided maintenance or repair services on tangible personal property in Colorado, and the tangible personal property was sold by X to its Colorado customers;[52] or
   d. Facilitated the delivery of tangible personal property to X's Colorado customers by allowing such customers to pick the property up at a Colorado location.[53]

   This presumption could be rebutted in the same manner as the presumption of physical presence by way of a component member, described above.[54] Also, this presumption did not apply to any agreement or arrangements under which a seller without direct physical presence in Colorado ("X"):
   a. Purchased advertisements to be delivered in Colorado by way of any mass-market medium.[55]
   b. Engaged an in-state independent contractor or other representative under which the contractor/representative, "for a cost per action, including but not limited to a commission or other consideration based on completed sales, directly or indirectly refers potential customers through internet promotional methods" to X.[56] In other words, Colorado did not assert click-through sales tax nexus.
   c. Made sales to Colorado customers if the cumulative gross receipts from such sales in the prior calendar year was less than $50,000.[57]

June 1, 2019 and Forward—See discussion below.

State-Administered Local Jurisdiction Levels

The Colorado statutes state that, until June 1, 2019, the sales tax ordinance of a state-administered county, city, or

town must provide that, "all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the local taxing entity or to a common carrier for delivery to a destination outside the limits of the incorporated town, city, or county … .If a retailer has no permanent place of business in such incorporated town, city, or county, or has more than one place of business, the place at which the retail sales are consummated for the purpose of a sales tax imposed by ordinance pursuant to this article shall be determined by the provisions of article 26 of title 39, C.R.S., and by rules and regulations promulgated by the department of revenue."[58]

Consequently, a seller with a Colorado place of business was required to collect Colorado state-level sales tax, but if the sale was properly sourced to a state-administered county, city, or town in which the seller did not have a "place of business" under CRS §29-2-105, the seller was not required to collect sales or use tax for that local jurisdiction. For example, if the seller had a place of business in Colorado county A and state-administered city/town AA, but delivered an otherwise taxable item into Colorado county B and state-administered city/town BB, where it did not have a place of business (and did nothing more than deliver the item in question), the sale would be subject to Colorado state-level sales tax but not Colorado state-administered local county or city/town sales tax. The seller would not be subject to state-administered local-level sales tax in jurisdiction A or AA because it delivered the subject matter to a location outside jurisdictions A and AA. Also, it would not be subject to state-administered local-level sales tax in jurisdiction B or BB because it would not have a "place of business" in either of those jurisdictions (assuming it did no more than make the delivery in jurisdictions B and BB).

In Policy Position 8-88 (May 1988) the Department of Revenue stated that the "presence in the city of a vendor's delivery trucks and personnel does not constitute 'doing business' in a state-administered city." However, in Revenue Bulletin 81-1 (Sept. 1, 1981) the Department of Revenue stated that mobile vendors, where the sales are conducted from a truck and the sale is consummated at the customer's location, must collect tax for that location. In this case, the sale is considered consummated at the customer's location "since it is there that the order is taken, purchase price is paid and title and possession pass."[59]

Whether a specific level of presence in a state-administered local jurisdiction constituted a "place of business" was a question of increasing controversy between sellers and the Department of Revenue, with the Department attempting to expand the scope of local-jurisdiction sales tax nexus by holding, for example, in a Private Letter Ruling, that a "place of business" could include "sustained presence" by an employee. Under this theory, an employee visiting a customer for as little as one day a month could constitute a "sustained presence," and thus a "place of business."[60] Contrary to the statute and regulation, Department of Revenue employees also started assessing local sales tax for state-administered counties, cities, and towns in cases in which the taxpayer's only contact was making deliveries. When challenged, the Department generally dropped these assessments.

With regard to use tax, the Department of Revenue has, until recently, consistently taken the position that a remote seller with physical presence in the state but without a place of business in the state *should* collect the state-level retailer's use tax, but it was not required to collect use tax at the state-administered county, city, or town levels. This followed from the fact that the use tax base in these jurisdictions is limited to motor vehicles and building materials. Use tax on motor vehicles is administered through the vehicle registration process. Use tax on building materials is generally administered through the building permit process. Therefore, in most cases, there simply would be no state-administered local jurisdiction *use tax* due to collect.

The rules applicable to state-administered cities/towns and counties did not apply to special districts. For special districts, taxable presence was generally determined under the same rules as applicable at the state level.[61]

Although the issue of taxable presence in state-administered local jurisdictions largely goes away effective June 1, 2019, when the new economic presence provisions (discussed below) take effect, "place of business" issues will likely continue as part of many audits that include periods before June 1, 2019. They could also continue important in business-acquisition due diligence where the open statute of limitations includes periods prior to June 1, 2019.

Post-*Wayfair* Sales/Use Tax Collection Obligation for the State of Colorado, State-Administered Counties, Cities/Towns, and Special Districts

State Level

On September 11, 2018 the Colorado Department of Revenue issued Emergency Reg. §39-26-105, that it stated was intended to provide guidance in light of the *Wayfair* decision. The regulation was scheduled to take effect December 1, 2018, and it provided that a seller is required to collect Colorado sales tax if it is (1) doing business in Colorado; and (2) has substantial nexus with

Colorado.[62] For this purpose, "doing business" is defined in CRS §39-26-102(3) (discussed above).[63] Also for this purpose, a seller has substantial nexus if--

1. It has a physical presence in the state under CRS §39-26-102(3)(a),[64] CRS §39-26-102(3)(d),[65] or CRS §39-26-102(3)(e),[66] or
2. Effective for sales made on or after December 1, 2018, it has more than $100,000 in sales of tangible personal property or services to Colorado customers during the previous or current calendar year, or it has 200 or more sale transactions for tangible personal property or services delivered into Colorado during the previous or current calendar year.[67]

These Emergency Regulations also provided that in the event a remote seller had substantial nexus with and was doing business in Colorado, but was not required to collect *sales tax*, it was required to collect and remit *retailer's use tax*.[68] This appears to be mainly applicable where a remote seller is doing business in Colorado but does not have a physical place of business in the state. At any rate, it appears to be mainly a question of paperwork filed with the Department of Revenue rather than a substantive difference.

Although these Emergency Regulations were scheduled to take effect December 1, 2018, the Department of Revenue provided a grace period through March 31, 2019. After some technical corrections and rescheduling, the Department reissued the Emergency Regulations to ensure coverage until it issued Permanent Regulations. By way of a December 6, 2018 press release, it also extended the grace period on collection and remittance through May 31, 2019.

Effective April 14, 2019, the Department of Revenue issued Permanent Regulations that followed the Emergency Regulations discussed above, except that they eliminated the 200-transaction element of the economic presence test.[69] They also followed the Emergency Regulations on the retailer use tax, discussed above.[70]

On March 12, 2019, several state legislators sponsored a bill that would largely incorporate into statute much of the Department of Revenue's Emergency Regulation on economic presence. That legislation, H.B. 19-1240, passed and was signed by Governor Polis on May 23, 2019.

In brief, H.B. 19-1240 provides that a remote seller is doing business in Colorado if, during the preceding calendar year, it had more than $100,000 in sales of tangible personal property, commodities, or services in Colorado (as defined in CRS §39-26-104(3)).[71] It would also be doing business in Colorado on the first day of the month beginning after the 90th day after it meets the $100,000 threshold during the current calendar year.[72] This provision is effective June 1, 2019.[73]

Remote sellers whose Colorado-source sales do not meet the prior year or current year $100,000 threshold are not required to collect Colorado state-level sales or use tax.[74] In making this determination, the sourcing rules under CRS §39-26-104(3), discussed below, apply.[75] Note that this exemption will go away when the Department of Revenue implements its proposed geographic information system that will determine for all sellers the taxing jurisdictions in which an address is located.[76] Also note that sellers who otherwise have nexus and are doing business in Colorado are unaffected by the threshold simply by virtue of already having a filing obligation.

Marketplace Facilitators—The economic presence thresholds also apply to marketplace facilitators and persons selling through marketplace facilitators, beginning October 1, 2019.[77]

Colorado statute defines "'Marketplace'" as a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where taxable property, commodities, or services are offered for sale."[78]

"Marketplace seller" means "a person … who has an agreement with a marketplace facilitator and offers for sale tangible personal property, commodities, or services for sale through a marketplace owned, operated, or controlled by a marketplace facilitator."[79] The term includes anyone selling through a marketplace facilitator regardless of whether they are doing business in Colorado or not.[80]

A "marketplace facilitator" is defined as "a person who:

1. Contracts with a marketplace seller to facilitate for consideration…the sale of the marketplace seller's tangible personal property, commodities, or services through the person's marketplace;
2. Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller; and
3. Either directly or indirectly, through agreements or arrangements with third parties, collects the payment from the purchaser and transmits the payment to the marketplace seller."[81]

Simple online advertising or listing of products for sale, alone, does not meet the definition of a "marketplace facilitator."[82]

In applying the $100,000 nexus threshold,

1. A marketplace facilitator includes sales made by marketplace sellers through its marketplace.[83]

2. A marketplace seller does not include sales made through a marketplace facilitator.[84]
3. The economic presence $100,000 threshold test does not apply to sellers that have physical presence in Colorado.[85]

See CRS §39-26-105(1.5) for additional information on marketplace facilitators.

State-Administered Local Jurisdiction Level

Effective June 1, 2019, if a seller meets the $100,000 sales threshold at the state level, it is treated as doing business across the state for purposes of any state-administered local sales taxes. It does not have to meet a separate $100,000 sales threshold for a particular state-administered jurisdiction to be required to collect sales or retailer's use tax on sales sourced to such local jurisdiction.

As already noted, sellers, who otherwise have nexus and are doing business in Colorado, are unaffected by the threshold simply by virtue of already having a filing obligation with the state.

Pre- and Post-*Wayfair* Sales Tax Nexus for Home-Rule Cities

As noted above, most Colorado home-rule cities enforce their own sales and use tax rules separate from the state, and from each other.

Prior to *Wayfair*, many home-rule cities asserted sales tax nexus if a seller met any of the following tests:

1. Directly, indirectly, or by a subsidiary maintained a building, store, office, salesroom, warehouse or other place of business within the taxing jurisdiction;
2. Sent one or more employees, agents or commissioned salespersons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;
3. Maintained one or more employees, agents, or commissioned salespersons on duty at a location within the taxing jurisdiction;
4. Owned, leased, rented, or otherwise exercised control over real or personal property within the taxing jurisdiction; or
5. Made more than one delivery into the taxing jurisdiction within a twelve-month period by any means other than a common carrier.[86]

All five of these tests involve some level of physical presence, either directly, or indirectly through employees, agents, or property. The fifth test is seemingly inconsistent with the Colorado Supreme Court's decision in the *Associated Dry Goods* case, where the Court held that delivery alone did not trigger a use-tax collection obligation in the home-rule city of Arvada.[87]

Most home-rule cities asserted that *Associated Dry Goods* was superseded by the *Quill* decision, in which the U.S. Supreme Court held that the Due Process clause did not require physical presence for substantial nexus. Many home-rule cities took the position that, at least for in-state retailers for which the Commerce Clause was inapplicable, economic presence through advertising alone was sufficient to trigger a filing obligation. Thus, the home-rule cities believed they were being generous in limiting their doing business standard to more than one delivery a year in a taxpayer's own vehicle.

As of December 1, 2019, there has been no official or publicly announced change by the home-rule cities in their approach to nexus and doing business. There have been discussions among the home-rule cities about trying to develop a uniform *Wayfair*-like standard, but it isn't clear that uniformity is possible among home-rule cities, given that their populations vary from over 700,000 (Denver) to under 10,000 (Avon). Even if uniformity were possible, it is not clear that it would meet constitutional muster. It is important to remember that the U.S. Supreme Court in *Wayfair* looked favorably upon the fact that South Dakota had a single economic threshold and, as a member of the Streamline Sales Tax initiative, it provided elements of simplification that simply do not exist in Colorado at either the state or local level.

Simplification Within Sight?

As of early 2020, the Department of Revenue is in the process of developing software that will enable sellers to remit the appropriate state-level and state-administered local level sales tax based on a street address. Department personnel have informally indicated that the Department is targeting testing for this software later in 2020.

Although the hope is that the home-rule cities will join in on this software, the Department of Revenue cannot require them to do so, and the home-rule cities do not have a great history of cooperating with the Department or with each other.

Sourcing Sales for the State and State-Collected Jurisdictions

Emergency Regulation §39-26-102(9) (issued along with the initial economic presence Emergency Regulations originally scheduled to take effect December 1, 2018 and subject to the Department of Revenue's grace period through May 31, 2019) provided new sourcing rules for sales/use tax purposes.

H.B. 19-1240, which provides the economic presence rules, also amended CRS §39-26-104 to incorporate these sourcing rules effective June 1, 2019. These rules were based almost word for word on the model sourcing language discussed and adopted by the Streamlined Sales Tax Project Sourcing Issue Paper.[88] Specifically, "for purposes of determining where a sale of tangible personal property, commodities, or services is made," the following rules apply effective June 1, 2019[89]:

> First, "if tangible personal property, commodities, or services are received by the purchaser at a business location of the seller, the sale is sourced to that business location."[90]
>
> Second, "if tangible personal property, commodities, or services are not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser occurs, including the location indicated by instructions for delivery to the purchaser, if that location is known to the seller."[91]
>
> Third, if neither of the first two rules apply, then "the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business, when use of this address does not constitute bad faith."[92]
>
> Fourth, if none of the first three rules apply, then "the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including, if no other address is available, the address of a purchaser's payment instrument, when use of this address does not constitute bad faith."[93]
>
> Fifth, if none of the first four rules can be applied, then "the sale is sourced to the location indicated by the address from which the tangible personal property, commodity, or service was shipped."[94]
>
> These provisions became effective June 1, 2019.[95]

For leases of tangible personal property that are not covered by special rules and that have recurring payments, the first payment is generally sourced according to the preceding rules. The second and subsequent payments are generally sourced to the property's primary location for each period covered by the payment as provided by the lessee and available to the lessor in the ordinary course of business. The primary location is not altered by "intermittent" use of the property at other locations.[96] If the lease or rental does not require periodic payments, the payment is sourced under the rules applicable to sales, described above.[97]

Special rules apply for the lease or rental of motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as "transportation equipment."[98] Other special rules apply to leases of "transportation equipment" (which includes items such as certain locomotives, railcars, trucks, truck-tractors, trailers, semi-trailers, passenger buses, aircraft, and containers).[99]

While the legislation attempts to put both in-state and out-of-state sellers on an equal and level playing field, it fails, if ever so slightly for the very smallest of retailers. If a seller does not meet the $100,000 economic presence threshold, it sources its sales to its business location regardless of where the purchaser receives the property or service (unless such sale would be sourced to a location outside Colorado under CRS §39-26-104(3)(a) (discussed above), in which case the sale is simply exempt from state- and state-administered local sales tax).[100] Thus, an in-state retailer with less than $100,000 in sales would collect state and state-administered sales tax for its business location in Colorado on a sale to a Colorado customer, while an equally small out-of-state remote seller would not have to collect any state or state-administered tax at all on that same sale. For example, an Iowa seller making a Colorado sale would not have to collect any Colorado state or state-administered taxes because it is below the threshold (assuming it did not otherwise have nexus, such as through physical presence) and would not have to collect any Iowa sales tax assuming the sale is an out-of-state sale for Iowa sales tax purposes.

This inequality may be only temporary. Once the state has implemented an online geographic information system

that will determine the taxing jurisdiction and applicable rate, all sales will be sourced according to the new rules.[101] In that event, the old "place of business" sourcing for sales into state-administered local jurisdictions will be completely gone.

Can a retailer avoid following the new sourcing rules by simply requiring that all sales be FOB shipping point and that all risk of loss, etc., transfers to the buyer at the retailer's store or dock? In short, that the sale is consummated in all circumstances at the store or dock? It seems not. The new sourcing rules provide that "receipt" or "receive" for the buyer "means taking possession of tangible personal property or commodities … but does not include possession by a shipping company on behalf of the purchaser."[102] It appears that the taxable situs of the sale is where the buyer takes possession of the goods regardless of the language of the sales contract.

As for the home-rule jurisdictions, their sourcing rules for sales tax are unaffected by H.B. 19-1240. While uniformity between the state and the home-rule cities on taxable presence may be an insurmountable obstacle, there may be some hope that the cities will adopt the state's sourcing rules for sales tax. That hope rests on the fact there may be an economic incentive for the home-rule cities to adopt the new rules. Currently, for example, it is unlikely that a customer in Fort Collins, Colorado remits city use tax on an online purchase from a Denver seller. The transaction is not subject to tax in Denver because it is a sale shipped outside the city. And while the customer owes Fort Collins use tax on the sale, it is unlikely that Fort Collins will ever see that tax. If Denver and Fort Collins both adopted the state's destination sourcing rules, that uncollected use tax would be captured as a Fort Collins sales tax collected and remitted by the seller. Whether that is enough incentive for the home-rule cities to do so remains to be seen.

Summary

Taxpayers and tax practitioners often argue over which state, Alabama, Colorado, or Louisiana, has the most complicated sales and use tax compliance. Given Colorado's state-administered and home-rule jurisdictions, different tax bases, multiple licensing, registration, and filing requirements, physical and economic nexus standards, and sourcing rules, we believe we know the answer.

ENDNOTES

* This article does not necessarily represent the opinions of the authors' employers, should not be considered the rendering of tax or legal advice, and is not intended to provide specific guidance or advice for any issue in any particular jurisdiction.

1 *South Dakota v. Wayfair, Inc.*, 585 US _____ (2018), 138 SCt 2080.

2 In brief, in *Wayfair* the U.S. Supreme Court held that physical presence was not a prerequisite to a state requiring a remote seller to collect sales/use tax on sales to customers in that state. In that case, South Dakota required remote sellers to collect sales tax if they met a threshold that was based on $100,000 in annual sales or 200 separate sales transactions of any amount. Forty-five states impose sales and use tax. The only states that do not are Alaska, Delaware, Montana, Oregon, and New Hampshire. However, numerous Alaska cities and towns do impose sales tax, some of which have formed the Alaska Remote Seller Sales Tax Commission to enact an economic presence standard for requiring remote sellers to collect and remit.

3 There is some state-wide uniformity imposed on the home-rule cities by state statute. For example, these cities are subject to certain uniform rules regarding the time for protesting assessments and refund denials, and also regarding the protest/appeal process. See CRS §29-2-106.1.

4 The current list shown in DR 1002 includes food for home consumption; certain machinery and machine tools; gas and electricity for residential use; occasional sales by charitable organizations (as defined); farm equipment (as defined); pesticides (generally before July 1, 2012); food sold in vending machines; low-emitting vehicles that are over 10,000 pounds; renewable energy components (as defined); beetle wood products; certain school-related items; biogas production systems components (detailed definitions); property used in space flight; certain machinery and machine tools used for processing recovered materials (*see* Public Health and Environment list); marijuana and marijuana-related products; and manufactured homes.

5 According to a state audit, the Department of Revenue failed to properly register businesses within the correct taxing location 11% of the time. Taxpayers and software companies often fare no better. See Colorado Office of the State Auditor, Department of Revenue Local Sales Taxes Performance Audit (November 2015).

6 See CRS §29-2-109. It is thought that one reason for the growth in the number of home-rule jurisdictions is the limitation on use tax for state-collected cities.

7 This is also true for most of the home-rule cities—for example, when a general contractor pulls a building permit in the home-rule city of Fort Collins, the local city and county tax is paid at that point as a use tax. While most cities collect use tax when the building permit is issued, there are a few exceptions, primarily the cities of Denver and Colorado Springs. Most of the cities require a reconciliation of a contract's actual costs to the building permit estimate prompting either a refund, or more commonly, additional tax due. Material differences may prompt home-rule cities to perform a field audit. Statutory cities resolve the differences through office reviews.

8 The 24 home-rule cities for which the state collects include Alamosa, Basalt, Burlington, Cedaredge, Dillon, Fort Morgan, Fountain, Fruita, Georgetown, Hayden, Holyoke, Johnstown, Kiowa, Manitou Springs, Minturn, Monte Vista, Morrison, Mountain View, New Castle, Ouray, Parachute, Rico, Silt, and Ward. A list of all Colorado cities and towns by type is available at the Colorado of Local Affairs website: *https://dola.colorado.gov/lgis/municipalities.jsf*.

9 See *Berman v. Denver*, 400 P2d 434 (1965). Each city's statutory and regulatory authority can be found online at the respective city's website.

10 See CRS §29-2-106.1, discussed below.

11 See the Colorado Department of Revenue report at *https://leg.colorado.gov/sites/default/files/images/committees/2017/170711sales_and_use_tax_simplification_task_force_presentation_colorado_department_of_revenue.pdf*.

12 House Bill (H.B.) 19-1240.

[13] CRS §§39-26-125 and 39-26-210.

[14] See CRS §39-26-102(3)(e)(III)(B), as in effect July 1, 2014, regarding the absence of click-through nexus.

[15] The law governing state sales and use tax in Colorado is found in Title 39, Article 26, sections 101 through 129 for sales tax and sections 201 through 212 for use tax. Sales and use tax exemptions are found in sections 701 through 729. Select procedural provisions for both taxes are found in Title 39, Article 21.

[16] H.B. 19-1240.

[17] See *National Bellas Hess, Inc. v. Department of Revenue of the State of Illinois*, 386 US 753, 87 SCt 1389 (1967) and *Quill Corp. v. North Dakota*, 504 US 298, 112 SCt 1904 (1992).

[18] For periods prior to January 1, 2010, see CRS §39-26-102, as in effect for the pertinent period.

[19] CRS §39-26-102(3), as in effect December 31, 2009.

[20] CRS §39-26-102(3)(a), as in effect December 31, 2009.

[21] CRS §39-26-102(3)(b), as in effect December 31, 2009.

[22] CRS §39-26-102(3)(b)(II), as in effect March 1, 2010. A "component member" of a "controlled group of corporations" as defined in both Internal Revenue Code Secs. 1563(a) and (b).

[23] CRS §39-26-102(3)(b)(II), as in effect March 1, 2010.

[24] Colorado Reg. §39-26-102.3(3)(d), as in effect March 1, 2010.

[25] Colorado Reg. §39-26-102.3(1), as effective March 1, 2010.

[26] Colorado Reg. §§39-26-102.3(1) and (2), as effective March 1, 2010.

[27] Colorado Reg. §39-26-102.3(2), effective March 1, 2010.

[28] Colorado Reg. §39-26-102.3(2), effective March 1, 2010.

[29] Colorado Reg. §39-26-102.3(3)(a), effective March 1, 2010.

[30] Colorado Reg. §39-26-102.3(3)(d), effective March 1, 2010.

[31] CRS §39-21-112(3.5)(c)(I).

[32] CRS §§39-21-112(3.5)(c)(I) and (II).

[33] CRS §39-21-112(3.5)(d)(I)(A).

[34] CRS §§39-21-112(3.5)(d)(I)(B).

[35] CRS §39-21-112(3.5)(d)(III)(A).

[36] CRS §39-21-112(3.5)(d)(II)(A).

[37] CRS §39-21-112(3.5)(d)(III)(B).

[38] It was in this litigation that Justice Kennedy issued his challenge to the states to "find an appropriate case for this Court to reexamine *Quill* and *Bellas Hess*." See *Direct Marketing Association v. Brohl*, 135 SCt 1124, 1135 (U.S. 2015). Thus, for those unhappy at the outcome of *Wayfair*, you can blame Colorado.

[39] CRS §39-26-102(3), as in effect July 1, 2014.

[40] CRS §39-26-102(3)(a), as in effect July 1, 2014.

[41] CRS §39-26-102(3)(b), as in effect July 1, 2014.

[42] CRS §39-26-102(3)(c), as in effect July 1, 2014.

[43] CRS §39-26-102(3)(d)(I)(A), as in effect July 1, 2014.

[44] CRS §39-26-102(3)(d)(I)(B), as in effect July 1, 2014.

[45] CRS §39-26-102(3)(d)(I)(C), as in effect July 1, 2014.

[46] CRS §39-26-102(3)(d)(I)(D), as in effect July 1, 2014.

[47] CRS §39-26-102(3)(d)(I)(E), as in effect July 1, 2014.

[48] CRS §39-26-102(3)(d)(II), as in effect July 1, 2014.

[49] CRS §39-26-102(3)(d)(III), as in effect July 1, 2014.

[50] CRS §39-26-102(3)(e)(I)(A), as in effect July 1, 2014.

[51] CRS §39-26-102(3)(e)(I)(B), as in effect July 1, 2014.

[52] CRS §39-26-102(3)(e)(I)(C), as in effect July 1, 2014.

[53] CRS §39-26-102(3)(e)(I)(D), as in effect July 1, 2014.

[54] CRS §39-26-102(3)(e)(II), as in effect July 1, 2014.

[55] CRS §39-26-102(3)(e)(III)(A), as in effect July 1, 2014.

[56] CRS §39-26-102(3)(e)(III)(B), as in effect July 1, 2014.

[57] CRS §39-26-102(3)(e)(III)(C), as in effect July 1, 2014.

[58] CRS §29-2-105(1)(b), in effect until June 1, 2019.

[59] On February 28, 2018 the Colorado Department of Revenue rescinded all their prior Revenue Bulletins and Policy Positions stating that they did "not represent an official articulation of any position held by the Department nor does the Department consider them binding with respect to any tax matter." Revenue Bulletin 18-01 (February 28, 2018). This came as a surprise to many tax practitioners since the Bulletin publication itself provided that "Revenue Bulletins are intended to reflect the current policy of the Department. As official policy positions of the Department, they are considered binding in nature, and therefore may be changed by the Department only on a prospective basis by superseding Bulletins, changes in the statutes, or court cases."

[60] Colo. LTR-11-006 (December 20, 2011).

[61] For example, regarding the Regional Transportation District, see CRS §32-9-119(2).

[62] Emergency Reg. §39-26-105(4)(a).

[63] Emergency Reg. §39-26-105(4)(a).

[64] Maintaining an "office, distribution facility, salesroom, warehouse, storage place or other similar place of business, including the employment of a resident of this state who works from a home office in this state" directly, indirectly, or by a subsidiary.

[65] Nexus by virtue of being part of a controlled group of corporations that includes a component member (other than a common carrier acting as such) that has physical presence in Colorado and the in-state component member undertakes certain defined activities on behalf of the remote member. See discussion above.

[66] Nexus by virtue of entering into an agreement or arrangement with a person (other than a common carrier acting as such) that has physical presence in the state under which the latter undertakes certain defined activities on behalf of the remote member. See discussion above.

[67] Emergency Reg. §§39-26-105(4)(a)(I) and (II) and 39-26-105(4)(b). In its 2020 session, the Colorado legislature is considering a bill that would, if passed, increase the economic threshold to $200,000. See Senate Bill 20-099.

[68] Emergency Reg. §39-26-204(2)(1).

[69] Colorado Reg. §39-26-105(4), effective April 14, 2019.

[70] Colorado Reg. §39-26-204(2).

[71] CRS §39-26-102(3)(c)(I)(A).

[72] CRS §39-26-102(3)(c)(I)(B).

[73] H.B. 19-1240, Section 17.

[74] CRS §39-26-204(2)(b)(I). Note that legislation introduced in the 2020 legislative session would, if passed, increase the threshold amount to $200,000.

[75] CRS §39-26-204(2)(a).

[76] CRS §39-26-204(2)(b)(II). Note that legislation introduced in the 2020 legislative session would, if passed, make this rule permanent.

[77] H.B. 19-1240.

[78] CRS §39-26-102(5.8).

[79] CRS §39-26-102(6).

[80] CRS §39-26-102(6).

[81] CRS §39-26-102(5.9)(a).

[82] CRS §39-26-102(5.9)(b).

[83] CRS §39-26-102(3)(c)(II)(A).

[84] CRS §39-26-102(3)(c)(II)(B).

[85] CRS §39-26-102(3)(c)(III).

[86] City of Fort Collins, Rules and Regulations: "Engaged in Business."

[87] *Associated Dry Goods Corporation v. City of Arvada*, 593 P2d 1375 (Colo. 1979). But see also *American Furniture Warehouse Co. v. Denver*, Dist. Ct. No. 96CV5349 (December 18, 1998).

[88] See *https://www.streamlinedsalestax.org/docs/default-source/issue-papers/sourcing.pdf?sfvrsn=ece9b090_4*.

[89] H.B. 19-1240, Section 17.

[90] CRS §39-26-104(3)(a)(I).

[91] CRS §39-26-104(3)(a)(II).

[92] CRS §39-26-104(3)(a)(III).

[93] CRS §39-26-104(3)(a)(IV).

[94] CRS §39-26-104(3)(a)(V).

[95] H.B. 19-1240, Section 17.

[96] CRS §39-26-104(3)(b)(I)(A).

[97] CRS §39-26-104(3)(b)(I)(B).

[98] See CRS §39-26-104(3)(b)(II).

[99] CRS §§39-26-104(3)(b)(III) and -104(d)(3)(III).

[100] CRS §39-26-104(3)(c).

[101] CRS §39-26-104(3)(c)(III)(A) and (B). Note that legislation introduced during the 2020 legislative session would, if passed, make the "small seller" rule permanent. See S.B. 20-099.

[102] CRS §39-26-104(3)(d)(II) and Regulation §39-26-102.9(3).