



November 30, 2018

TO: Taxpayer Services Division, Colorado Department of Revenue
RE: Proposed Sales Tax Regulations

Thank you for the opportunity to comment on proposed changes to regulations pertaining to nexus and sourcing for out of state retailers. I am writing to you on behalf of Colorado Nonprofit Association and our 1,400 nonprofit member organizations throughout our state. Colorado Nonprofit Association's mission is to lead, serve, and strengthen Colorado's nonprofit community to improve the quality of life throughout our state. We are writing to recommend clarifications and changes to the proposed regulations to reduce potential costs of compliance and prevent undue burdens for nonprofit organizations.

Background

For nonprofits based in Colorado and out of state, the regulations make two major changes to how state-collected sales taxes are remitted to the state of Colorado. First, in response to the U.S. Supreme Court's decision in the case of the *South Dakota vs. Wayfair*, the Department of Revenue has proposed changes to regulations on remittance of sales taxes (39-26-105) and use tax (39-26-204) that define when out of state sellers must collect Colorado sales tax because they are doing business with the state and are considered to have "substantial nexus." For retailers that sell tangible personal property or services, substantial nexus is determined by having more than \$100,000 in gross revenue from sales or 200 or more separate transactions. Out of state sellers that are doing business with the state and have substantial nexus would be required to obtain a Colorado sales tax license.

Second, the Department has proposed changes [39-26-102(9)] resulting in destination sourcing of goods purchased by Coloradans. Our understanding is that sales taxes would be determined based on the applicable state-collected sales tax jurisdictions where the purchaser takes possession of the goods. Currently, if a seller in county A ships a good to a purchaser in county B, then our understanding is that the seller must collect sales taxes for jurisdictions that overlap between counties A and B. When purchases are made at physical locations then the purchaser would continue to pay all sales taxes that apply in the physical location of the seller and to the good purchased.

Recommended Changes and Clarifications

First, we ask that Colorado's exemption for sales to charitable organizations apply to sales by out-of-state retailers with substantial nexus to Colorado. Under the proposed rule, it appears that Colorado-based charities would be required to pay state-collected sales taxes for purchases from out-of-state retailers with substantial nexus to Colorado. However, charities would not be required to pay sales taxes to Colorado-based retailers provided those charities have obtained a certificate of sales tax exemption. Nor would those charities be required to pay state-collected sales taxes for purchases from out-of-state retailers who sell to Colorado residents but do not have substantial nexus to Colorado. The state of Colorado ought to treat all sales consistently and fairly when a Colorado-



based charity has obtained a certificate of sales tax exemption from the Colorado Department of Revenue.

Second, we ask that the Department delay implementation of the regulation until July 1, 2019 to enable Colorado's nonprofits to comply with the new destination sourcing rule. It's unlikely that nonprofits have processes in place already to determine and calculate the sales taxes that apply to the location of the purchaser. More time is needed to update these processes for the changes made by the proposed rule. We expect that making these changes will require considerable time and expenses from nonprofits that would otherwise be spent on mission-related services.

Processes that may require updates include, but are not limited to:

- charging these taxes at the point of sale whether physical or nonphysical (e.g. updating websites, paperwork or equipment);
- updating accounting systems for sales revenue;
- complying with the Department's reporting requirements;
- communicating to clients about how sales taxes are determined by location, and more.

Third, we ask that the regulations treat charitable donations in a manner consistent with existing rules for sales by Colorado's charitable organizations under 39-26-718(7), which exempts donations from the requirement of charities to collect sales taxes. Just as Colorado's charities are not required to collect sales taxes on donations, donations should also be excluded from calculation of both gross revenues from sales and the number of transactions for the purposes of determining whether an out of state charity has substantial nexus with Colorado.

Quite often, charities make sales of goods and services with an opportunity for the purchaser to also donate. Such sales include ticket prices to fundraising events, auctions of donated items, sales of branded items, and more. Under 39-26-718(7)(c), "a portion of the purchase price for a sale made by a charitable organization may be a donation if the amount paid exceeds the fair market value of the good purchased." To make these proposed regulations consistent with the existing regulations for sales by charitable organizations, only the fair market value of the good should be considered when determining whether a sale has occurred and whether it is included in calculation of gross revenue or the number of transactions when out of state sellers ascertain substantial nexus.

We recognize that this proposed rule may not be intended to tax donations, but this intent is not entirely clear from reading these amendments. If donations are not exempted from this rule, we are concerned this rule could have a chilling effect on donations to out of state charities or their Colorado-based chapters in the case of a group exemption. If an out of state charity is unaware of this regulation, or presumes that donations are exempt, it may still be required to comply due to a few major donations or many donations from Colorado. If it ends up being fined or audited by the Department, this could discourage such a charity from accepting donations from Colorado and lead other charities to be cautious in seeking donations from Coloradans. Colorado-based charities would also benefit from clearer guidance on the difference between a donation and a sale for purposes of determining sales taxes.



Fourth, related to excluding donations from taxation, we ask for clarification of the meaning of “separate transactions.” Charities often encourage donors to make recurring donations. If a donor schedules automatic payments to a charity on a monthly or quarterly basis, would each payment be treated as a separate transaction or part of a single recurring transaction? If, for example, a Colorado resident purchases a series of tickets from an out of state charity that brings several touring performances to the state, would that purchase be treated as one transaction or a series of transactions? In reading over these proposed rules, we are not clear on how sales or purchases are treated if they have an element of recurrence.

Fifth, we ask the Department to implement this rule in a manner that minimizes potential costs of compliance. In addition to costs to Colorado charities for collecting sales taxes based on destination sourcing, out of state charities would be required to collect sufficient information from purchasers to track sales to Colorado residents on a regular, ongoing basis. If an out of state charity meets the threshold for substantial nexus unexpectedly and has not collected Colorado sales taxes before, it could be liable to the state of Colorado for taxes it did not know it would be required to collect. In the past, Colorado law has required that some out of state retailers provide an itemized list of purchases annually to Colorado residents, so they can pay use taxes. In reading the rule, we are not sure what out of state charities would be required to do if they have substantial nexus with Colorado but failed to collect sales taxes. We ask that the department provide clear guidance and seek to minimize costs of compliance because these costs reduce revenues available for charities to carry out their missions.

Finally, where possible, we ask that the Department seek to reduce the burden of requiring charities and other retailers to comply with Colorado’s many taxing jurisdictions. Although the Department does make sales tax calculators available to charities, they may still have to comply with reporting requirements from home rule jurisdictions. Colorado-based charities would need to be familiar with rates and reporting requirements outside of their physical locations. Out of state charities will be required to understand the multiple overlapping tax jurisdictions that may apply to a purchase by a Colorado resident.

We recognize that the Department has limited control over tax laws made throughout the state, but the Department should consider how to best facilitate calculation of sales taxes and compliance with reporting requirements when a sale is taxed by multiple jurisdictions. Compliance ought to be as simple as possible considering Colorado’s complicated sales tax system.

Thank you for considering these requests on behalf of Colorado’s charities and the many out of state charities that would be required to comply with these proposed rules.

Sincerely,

A handwritten signature in blue ink that reads "Mark Turner".

Mark Turner, Senior Director of Public Policy