



Legislation Text

File #: 20-301, **Version:** 2

Ordinance No.20-47 Amending And Creating New Sections Within Article 7 (Sales And Use Tax) Of Chapter 2 (Business Licensing, Liquor Regulation And Taxation) Of The Code Of The City Of Colorado Springs 2001, As Amended, Pertaining To Sales Tax Marketplace Facilitators And Economic Nexus

Presenter:

Charae McDaniel, Chief Financial Officer

Summary:

The attached Ordinance amends and creates new sections within the Sales Tax Code to require retailers who do not have a physical presence in the City to collect and remit sales tax on online purchases.

A related Ordinance amends the Lodgers, Campgrounds and Automobile Rental Tax (LART) portion of code to provide necessary updates in the terminology used to ensure consistency with the updates in the Sales Tax section.

The Ordinance attached to this item, and the Ordinance attached to the related LART item, do not constitute a tax policy change - they reflect current policy for taxation, collection and remittance.

A separate and related agenda item contains a Resolution to approve the IGA with the State of Colorado Department of Revenue (CDOR) which grants the city access to the SUTS system for the collection and payment of sales and use tax for online purchases.

Background:

The United States Supreme Court ruled on the South Dakota v. Wayfair, Inc. 138 S.Ct. 2080 (2018) (hereinafter "Wayfair") case. South Dakota enacted a statute requiring internet sellers with no physical presence in the state to collect and remit sales tax. This was previously prohibited under Quill Corporation v. North Dakota, which required a retailer to have a physical presence in a taxing jurisdiction. The Supreme Court overturned the prior ruling and held that out-of-state sellers' physical presence in a taxing state is not necessary for the state to require sellers to collect and remit its sales tax. This provided for a new definition of economic nexus, which is the connection established when a person or marketplace facilitator makes retail sales into the City. However, the Wayfair case includes a provision that indicates the seller is to collect and remit sales tax, unless it is unduly burdensome to do so. This provision seems intended to encourage states to simplify their state and local tax collection systems.

The State of Colorado enacted legislation defining economic nexus, effective June 1st, 2019, and created the requirements for marketplace facilitators to begin collecting sales tax, effective October 1st, 2019. The legislation enacted applied only to the State and statutory jurisdictions, not home rule cities, which administer their own tax code.

The various taxing structures used by home rule cities in Colorado are more complicated than in South Dakota, which has given rise to a concern that sellers could bring forward a case that collecting and remitting sales and use tax to Colorado home rule taxing entities is overly burdensome. In response to this, there has been an effort by home rule jurisdictions to work together, along with the State, to simplify the taxing system in order to avoid the perception of an undue burden for retailers or vendors.

The Colorado Municipal League (CML) coordinated a Sales Tax Simplification Committee, which included representatives from many of Colorado's locally collecting municipalities, to streamline appropriate definitions and encourage uniformity between municipalities and the State. The City's Sales Tax Manager, Kristi Jackson, and Senior Auditor, Sharon O'Brien, participated on the committee and were actively involved throughout the process to develop ordinance language, which encompasses the key requirements set forth in the Wayfair decision, which are:

- Use of a single state level tax administration
- Simplification of the tax rate structures
- Uniformity in definitions and ordinances for home rule jurisdictions
- Prohibition on retroactivity of the ordinances
- \$100,000 Threshold: A business must have at least \$100,000 of sales in the State of Colorado before they are required to collect and remit the City of Colorado Springs sales tax.

The attached Ordinance amending and creating new sections within Article 7 (sales and Use Tax) of Chapter 2 (Business Licensing, Liquor Regulations and Taxation) addresses tax administration, establishes economic nexus for retailers or vendors without physical presence in the State, and requires the retailer or vendor to collect and remit sales tax for all sales made within the marketplace.

A related Ordinance attached to a separate agenda item will amend Article 9 (Lodgers, Campgrounds and Automobile Rental Tax) of Chapter 2 Business Licensing, Liquor Regulations and Taxation) and provide necessary updates in the terminology and definitions to ensure consistency with the updated Sales Tax Article.

The Colorado State Legislature passed bill SB19-006 which provided for a Single Point of Remittance System. This gave the CDOR and the State Office of Information Technology the authority to contract with vendors to provide a simplified sales and use tax system that allows a taxpayer to look up and remit sales and use taxes through a single portal.

The CDOR has contracted with MuniRevs, Inc. to provide the single point of remittance software. This software provides taxpayers with a one-stop portal that allows them to file sales and use tax for multiple jurisdictions quickly and efficiently.

The CDOR also contracted with Transaction Tax Resources, Inc. (TTR) to provide an address look up tool, which provides sales and use tax rate information and a taxability matrix for each applicable jurisdiction.

A separate and related Resolution approves an Agreement (IGA) between the City and CDOR, which grants the City access to the SUTS system.

Previous Council Action:

N/A

Financial Implications:

We anticipate a 5% increase in sales tax revenue, which for the General fund, could mean an increase of \$9.3 million based on 2020 Original Budget.

City Council Appointed Board/Commission/Committee Recommendation:

This item was presented to the City Council Budget Committee at the June 23, 2020 meeting.

Stakeholder Process:

The CML Sales Tax Simplification Committee, which is comprised of municipal tax professionals from Colorado Home Rule jurisdictions, worked to develop consistent ordinance language that could be used by home rule cities. Once it was developed, the following groups reviewed the ordinance language and the CML facilitated revisions:

- Business tax experts and attorneys
- Municipal attorneys
- Amazon
- The Colorado Retail Council
- Simplify Colorado (industry stakeholder group)
- Colorado Chamber of Commerce

Alternatives:

N/A

Proposed Motion:

Move to approve An Ordinance Amending And Creating New Sections Within Article 7 (Sales And Use Tax) Of Chapter 2 (Business Licensing, Liquor Regulation And Taxation) Of The Code Of The City Of Colorado Springs 2001, As Amended, Pertaining To Sales Tax Marketplace Facilitators And Economic Nexus

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