

Out-of-State Sales and Use Tax Collection

The Treasury Division proposes two changes and a new section to Chapter 53 of the DRMC to collect sales and use tax from out-of-state retailers

General Background

In response to the U.S. Supreme Court's 2018 decision in *South Dakota V. Wayfair, Inc.*, municipalities had the ability to require out-of-state vendors to collect the jurisdiction's sales and use tax. As one of the most significant sales tax cases in the last 50 years, the City thoughtfully worked with local and statewide governments to determine a consistent course of action. The State of Colorado as well as the City and other surrounding municipalities, determined that the collection of sales tax from out-of-state retailers creates a fair economy for local businesses and negates the advantage of online sales to avoid local sales tax rates.

To appropriately implement out-of-state retailer sales tax collection, the City must create a simplified and consistent process for out-of-state and local vendors alike. The three proposed council action items and the associated IGA with the State enable that clear and consistent process.

As the DOF has been in active conversation with partners on this development since the Supreme Court's ruling, expected sales tax revenues from out-of-state retailers have been incorporated into the 2021 revenue forecast. The amount budgeted in the General Fund for 2021 is \$14,274,433.

SUTS IGA AGREEMENT WITH THE STATE OF COLORADO

No Council Action Needed.

The City is entering into an intergovernmental agreement with the State of Colorado for the use of the Sales & Use Tax System (SUTS).

- This IGA does not meet any of the conditions outlined in the Charter (§ 3.2.6) to require council approval, so the City is in the process of finalizing that agreement.

SUTS has been a work in progress with many stakeholders including home-rule cities and taxpayers to provide a mechanism to simplify filing sales and use taxes for the numerous jurisdictions in Colorado.

- The system contains a GIS informational source that taxpayers, vendors and the city can use to verify tax rates within a jurisdictional boundary to ensure the correct rate and tax go to the correct city.

This Agreement allows our taxpayers to file their sales tax returns and remit the taxes due in one location every period for every jurisdiction they operate in within the State.

- The tax money for Denver and the returns filed through the system would be then reported to Denver for our tax administration.
- Presently, taxpayers may file individual tax returns with every home-rule and the state, which has over 300 jurisdictions combined.
- Additionally, the agreement would allow for Denver to accurately verify the tax rates and jurisdictional boundaries in the public informational source to ensure the correct amounts are collected and remitted to Denver to fund city services.

CML- HOME-RULE MODEL ORDINANCE

Amends the DRMC to add CML model ordinance language that will standardize terms and taxation liability for marketplace facilitators and marketplace sellers.

By amending the DRMC, the Home-Rule Model Ordinance adds standardized terms and liability sections for marketplace facilitators. In order to address the ever-changing retail landscape and create a fair process for sales taxes, we have participated with the Colorado Municipal League and various other home-rule municipalities to form standardized ordinance language to address the responsibilities of marketplace facilitators.

- The need for this new standardized language is critical in order to expect online or out-of-state retailers to collect and remit the Denver sales tax on sales in our jurisdiction.
- Expectations of having sales tax on sales made to Denver residents and businesses creates a fair economy to the local businesses in our city and negates the advantage of ordering online to avoid paying sales tax.
- The State of South Dakota prevailed in the Wayfair vs. South Dakota case in part because their expectations from out of state retailers were simplified and consistent.
- The proposed model ordinance language address terms including marketplace facilitators, multi-channel sellers, and marketplaces and defines what may constitute economic nexus within the City so the retailers understand when their liability starts.

As we learned from the South Dakota V. Wayfair ruling, and in order to expect compliance from out-of-state and online retailers, the City must have the standardized language and a single point of remittance option.

REPEAL OF THE SALES, USE & LODGER'S TAX ACCOUNT BIENNIAL FEE

Amends the DRMC to remove the sections that impose a \$50 biennial fee for maintaining a sales, use and lodger's tax account with the City and County of Denver.

To be fair to all retailers, ease the burden of variable license fees and in line with the simplification efforts, the Colorado Municipal League and SUTS committees urged cities to not impose license fees on entities obtaining sale & use tax accounts as marketplace facilitators, multi-channel sellers and marketplaces.

- This will create unequal treatment of our brick and mortar local businesses. The DOF proposes to stop collecting the license fee beginning on 01/01/2021.
- As this fee is collected every other year, the repeal of this fee would not impact revenue forecasts for 2021.
- Repealing this fee would support the City's efforts to collect sales tax from out-of-state retailers, and these revenues would outweigh revenue from the biennial fee, which is roughly \$600,000 a year.

CHAPTER 53 REORGANIZATION

Municipal code change to reorganize DRMC Chapter 53 (Taxation).

In the current DRMC, there are similar provisions within each tax article. The proposed ordinance would reduce Chapter 53 from 142 single spaced pages to 66 single spaced pages by centralizing duplicative language into the new “Administrative” section.

The proposed ordinance:

- Contains the standard provisions that were formerly in Articles II through VIII; Incorporates housekeeping changes, such as standardized numbering and lettering format; Moves the provisions in the current Article I to a new Article IX; and increases the readability of Articles I – IX.
- This proposed ordinance will also add ballot measure 2A and ballot measure 2B, the two sales tax initiatives, approved by Denver voters on November 3, 2020 with the proper ordinance number scheme.

This code change will result in a few policy/procedure changes for standardization and clarification. Some of these changes are as follows:

- Will standardize the rulemaking process in DRMC 53-3 for all the excise taxes.
- Will require taxpayers to keep books and records for 4 years or if they are under audit, until an audit is completed. Currently, taxpayers are required to keep books and records for a total of 4 years.
- Will increase the amount of time from 60 days to 3 years to file a refund claim. Currently, purchasers have 60 days to file a refund claim, while vendors have 3 years to file a refund claim.
- Will increase the maximum amount for a refund claim from \$150,000 to \$500,000. The \$150,000 limit has been in place for over 25 years.
- Will authorize the suspension or revocation of a sales/use tax license for the non-payment of sales/use taxes.
- Will eliminate an exemption from Sales Tax, Use Tax and Employer Occupational Privilege Tax for taxpayers that operate a large maintenance facility for interstate commerce. This exemption was enacted in early 90’s to lure an aircraft maintenance base and has never been used.
- Will eliminate the need for charitable organizations to apply for a letter of exemption directly with the city. Currently, the law requires 501(c)3 organizations to apply for a letter of exemption and the used to have to go through a gross receipts review. There is no longer a revenue threshold that precludes 501(c)3 organizations from being exempt, and therefore these entities should be able to just use their IRS designation instead of applying directly with the City.
- Will redefine the Long Term stay tax exemption to apply to natural persons. The current exemption applies to “persons” which includes non-natural persons (businesses). This amendment will align the DRMC with recent changes made by the State of Colorado and City of Aurora.