

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

Date

Committee on Appropriations.

After consideration on the merits, the Committee recommends the following:

HB10-1193 be amended as follows:

1 Strike the Finance Committee Report, dated February 4, 2010, and
2 substitute:

3 "Amend reengrossed bill, page 3, strike lines 3 through 25 and substitute:

4 "(II) COMMENCING MARCH 1, 2010, IF A RETAILER THAT DOES NOT
5 COLLECT COLORADO SALES TAX IS PART OF A CONTROLLED GROUP OF
6 CORPORATIONS, AND THAT CONTROLLED GROUP HAS A COMPONENT
7 MEMBER THAT IS A RETAILER WITH PHYSICAL PRESENCE IN THIS STATE,
8 THE RETAILER THAT DOES NOT COLLECT COLORADO SALES TAX IS
9 PRESUMED TO BE DOING BUSINESS IN THIS STATE. FOR PURPOSES OF THIS
10 SUBPARAGRAPH (II), "CONTROLLED GROUP OF CORPORATIONS" HAS THE
11 SAME MEANING AS SET FORTH IN SECTION 1563 (a) OF THE FEDERAL
12 "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND "COMPONENT
13 MEMBER" HAS THE SAME MEANING AS SET FORTH IN SECTION 1563 (b) OF
14 THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED. THIS
15 PRESUMPTION MAY BE REBUTTED BY PROOF THAT DURING THE CALENDAR
16 YEAR IN QUESTION, THE COMPONENT MEMBER THAT IS A RETAILER WITH
17 PHYSICAL PRESENCE IN THIS STATE DID NOT ENGAGE IN ANY
18 CONSTITUTIONALLY SUFFICIENT SOLICITATION IN THIS STATE ON BEHALF
19 OF THE RETAILER THAT DOES NOT COLLECT COLORADO SALES TAX."

20 Page 4, line 5, strike "OUT-OF-STATE RETAILER" and substitute "RETAILER
21 THAT DOES NOT COLLECT COLORADO SALES TAX".

22 Page 4, line 11, strike "OUT-OF-STATE".

1 Page 4, line 12, strike "OUT-OF-STATE".

2 Page 4, line 14, strike "OUT-OF-STATE".

3 Page 4, line 19, strike "OUT-OF-STATE".

4 Page 4, after line 25 insert:

5 (c) (I) EACH RETAILER THAT DOES NOT COLLECT COLORADO
6 SALES TAX SHALL NOTIFY COLORADO PURCHASERS THAT SALES OR USE
7 TAX IS DUE ON ALL PURCHASES MADE FROM THE RETAILER AND THAT THE
8 COLORADO DEPARTMENT OF REVENUE REQUIRES THE PURCHASER TO FILE
9 A SALES OR USE TAX RETURN.

10 (II) FAILURE TO PROVIDE THE NOTICE REQUIRED IN SUBPARAGRAPH
11 (I) OF THIS PARAGRAPH (c) SHALL SUBJECT THE RETAILER TO A PENALTY
12 OF FIVE DOLLARS FOR EACH SUCH FAILURE, UNLESS THE RETAILER SHOWS
13 REASONABLE CAUSE FOR SUCH FAILURE.

14 (d) (I) (A) EACH RETAILER THAT DOES NOT COLLECT COLORADO
15 SALES TAX SHALL SEND NOTIFICATION TO ALL COLORADO PURCHASERS BY
16 JANUARY 31 OF EACH YEAR SHOWING THE TOTAL AMOUNT PAID BY THE
17 PURCHASER FOR COLORADO PURCHASES MADE FROM THE RETAILER IN THE
18 PREVIOUS CALENDAR YEAR. THE NOTIFICATION SHALL STATE THAT THE
19 COLORADO DEPARTMENT OF REVENUE REQUIRES A SALES OR USE TAX
20 RETURN TO BE FILED AND SALES OR USE TAX PAID ON THE COLORADO
21 PURCHASES MADE BY THE PURCHASER FROM THE RETAILER.

22 (B) THE NOTIFICATION SPECIFIED IN SUB-SUBPARAGRAPH (A) OF
23 THIS SUBPARAGRAPH (I) SHALL BE SENT SEPARATELY TO ALL COLORADO
24 PURCHASERS BY FIRST-CLASS MAIL AND SHALL NOT BE INCLUDED WITH
25 ANY OTHER SHIPMENTS. THE NOTIFICATION SHALL INCLUDE THE WORDS
26 "IMPORTANT TAX DOCUMENT ENCLOSED" ON THE EXTERIOR OF THE
27 MAILING. THE NOTIFICATION SHALL INCLUDE THE NAME OF THE RETAILER.

28 (II) (A) EACH RETAILER THAT DOES NOT COLLECT COLORADO
29 SALES TAX SHALL FILE AN ANNUAL STATEMENT FOR EACH PURCHASER TO
30 THE DEPARTMENT OF REVENUE ON SUCH FORMS AS ARE PROVIDED OR
31 APPROVED BY THE DEPARTMENT SUMMARIZING THE TOTAL COLORADO
32 PURCHASES OF SUCH PURCHASERS DURING THE PRECEDING CALENDAR
33 YEAR OR ANY PORTION THEREOF, AND SUCH ANNUAL STATEMENT SHALL

1 BE FILED ON OR BEFORE MARCH 1 OF EACH YEAR.

2 (B) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE
3 MAY REQUIRE ANY RETAILER THAT DOES NOT COLLECT COLORADO SALES
4 TAX THAT MAKES TOTAL COLORADO SALES OF MORE THAN ONE HUNDRED
5 THOUSAND DOLLARS IN A YEAR TO FILE THE ANNUAL STATEMENT
6 DESCRIBED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) BY
7 MAGNETIC MEDIA OR ANOTHER MACHINE-READABLE FORM FOR THAT
8 YEAR.

9 (III) (A) FAILURE TO SEND THE NOTIFICATION REQUIRED IN
10 SUBPARAGRAPH (I) OF THIS PARAGRAPH (d) SHALL SUBJECT THE RETAILER
11 TO A PENALTY OF TEN DOLLARS FOR EACH SUCH FAILURE, UNLESS THE
12 RETAILER SHOWS REASONABLE CAUSE FOR SUCH FAILURE.

13 (B) FAILURE TO FILE THE ANNUAL STATEMENT REQUIRED IN
14 SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (d)
15 SHALL SUBJECT THE RETAILER TO A PENALTY OF TEN DOLLARS FOR EACH
16 PURCHASER THAT SHOULD HAVE BEEN INCLUDED IN SUCH ANNUAL
17 STATEMENT, UNLESS THE RETAILER SHOWS REASONABLE CAUSE FOR SUCH
18 FAILURE."

19 Page 5, line 17, strike "EMPLOYEES." and substitute "EMPLOYEES, EXCEPT
20 FOR ANY FULL TIME EQUIVALENT STATE EMPLOYEES NECESSARY TO
21 ENFORCE THE PROVISIONS OF SAID HOUSE BILL 10-1193."."

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