



COLORADO
Department of Revenue

Taxation Division

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Colorado Department of Revenue
Statement of Emergency Justification and Adoption

Emergency Amendment to Regulations 39-26-102(1.3), 39-26-102.3, 39-26-102(9), 39-26-103.5, 39-26-104(1)(b)(I), 39-26-105, 39-26-105(1)(A), 39-26-204(2), and 39-26-704(2)

Pursuant to sections 24-4-103(6), 39-21-112, 39-26-102, 39-26-103.5, 39-26-104, 39-26-105, 39-26-204, and 39-26-704, C.R.S., I, Michael S. Hartman, Executive Director of the Department of Revenue, hereby adopt emergency amendments to tax Regulations 39-26-102(1.3), 39-26-102.3, 39-26-102(9), 39-26-103.5, 39-26-104(1)(b)(I), 39-26-105, 39-26-105(1)(A), 39-26-204(2), and 39-26-704(2).

Section 24-4-103(6), C.R.S., authorizes the Executive Director to adopt temporary or emergency regulations if the Executive Director finds that the immediate adoption of the regulations are imperatively necessary to comply with a state or federal law or for the preservation of public health, safety, or welfare, and that compliance with the requirements of section 24-4-103, C.R.S. regarding promulgation of permanent regulations would be contrary to the public interest.

I find that the immediate adoption of amendments to these regulations is imperatively necessary to provide guidance to retailers and consumers in light of the recent decision in *South Dakota v. Wayfair, Inc.*, 585 U.S. ____ (2018). In *Wayfair*, the United States Supreme Court overruled *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), and *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 386 U.S. 753 (1967), and held that physical presence is not required for a state to impose sales and use tax collection requirements on an out-of-state retailer.

Retailers who do not have a physical presence in Colorado may now be subject to state and local sales and use tax licensing and collection requirements under Colorado law. Without immediate guidance, these retailers could face substantial tax liabilities that they must pay from their own accounts but which Colorado law would have allowed them to collect from their customers had they known of the tax collection obligation at the time of the relevant transactions. Confusion among retailers may also adversely impact Colorado consumers.

Additionally, even though the Department has extended a grace period through May 31, 2019 based on feedback it received during the rulemaking process, these regulations are needed so retailers can understand what modifications they may need to make to their existing systems and processes to comply with these regulations after the grace period expires. Finally, allowing the existing emergency regulations to lapse at this juncture would only serve to create unnecessary confusion among the relevant stakeholder groups that are working to find innovative solutions to some of the issues that have arisen following the *Wayfair* decision. Thus, I find that compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest under these circumstances.

Statutory Authority

The statutory authorities for these amendments are cited above.

Purpose

To provide explicit guidance regarding the application of Colorado's sales and use taxes in light of *South Dakota v. Wayfair, Inc.*, 585 U.S. ____ (2018).

Adoption

For the reasons set forth above, I hereby adopt emergency Regulations 39-26-102(1.3), 39-26-102.3, 39-26-102(9), 39-26-103.5, 39-26-104(1)(b)(I), 39-26-105, 39-26-105(1)(A), 39-26-204(2), and 39-26-704(2), which are attached to this Statement. These emergency regulations shall be effective for a period of one hundred and twenty days from the date of this notice, unless sooner terminated or replaced by permanent regulations adopted in accordance with section 24-4-103, C.R.S. Nothing in this Statement of Emergency Justification and Adoption modifies the Department's previously announced grace period through May 31, 2019.

Adopted this 18th day of December, 2018.



Michael S. Hartman
Executive Director
Colorado Department of Revenue