



COLORADO
Department of Revenue

Taxation Division

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Colorado Department of Revenue
Statement of Emergency Justification and Adoption

Emergency Amendment to Rules 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 rules 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 rules if the Executive Director finds that the immediate adoption of the rules 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 rules would be contrary to the public interest.

I find that the immediate adoption of amendments to these rules 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. Further, confusion among retailers may adversely impact Colorado consumers. 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 rules 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 rules shall be effective on or after December 1, 2018 and shall apply prospectively. These emergency rules shall be in force and effect for a period of one hundred and twenty days from the date of this Statement, unless sooner terminated or replaced by permanent rules adopted in accordance with section 24-4-103, C.R.S.

Adopted this 11th day of September, 2018.



Michael S. Hartman
Executive Director
Colorado Department of Revenue