



State Affairs

RSVP - Conference Call: New CO Tax Laws and Other State Nexus Issues Affecting Direct Marketers (3/29)

On March 29, DMA will host a members-only conference call to answer questions surrounding a new tax bill in Colorado that imposes "tax due" notice requirements on remote sellers who sell to Colorado residents. Speakers will include DMA's tax counsel and privacy counsel, who will review the law and discuss possible next steps.

The members-only call is scheduled for at 12:00 noon EDT on Monday, March 29. Attendance is free, but registration is required. Please email [click here to register](#). Dial-in information will be sent to registrants on March 26.

On a related note, nearly a quarter of the states have either introduced or are considering legislation that would redefine "nexus" for the purposes of doing business in a state so as to capture passive link or affiliate program relationships, the goal being to force the collection and remittance of sales and use tax by remote sellers. We will have an opportunity to discuss these bills too.

As previously reported in *Direct from Washington...*

Interim regulations implementing the two newly enacted Colorado tax bills ([HB 1189](#) and [HB 1193](#)) have been released. The interim regulations can be found on the Colorado Department of Revenue's [website](#) or downloaded directly via this [link](#).

These regulations have been updated since they were released last Friday and now reflect changes in areas where DMA raised concerns. Specifically the term "invoice" is better defined and the lengthy prescribed tax due notice has been replaced with a list of information that is required in the notice instead. Members are advised to review these regulations as they will guide compliance with the new laws.

In summary and with regard to HB 1193, which imposes notice requirements on out of state sellers selling into Colorado, the regulations do the following:

- define "retailer who does not collect Colorado sales tax";
- define "Colorado purchaser";
- provide guidance on how to provide the tax due notice for each purchase;
- list the required elements of the tax due notice for each purchase;
- mandate placement and formatting of a required headline for the tax due notice;
- define a de minimis exception;
- affirm the \$5/violation penalty associated with failure to provide the tax due notice; and
- implements a penalty waiver until May 1, 2010 for the tax due notice in order to allow businesses to implement the new law.

These two bills were part of a package of eleven tax bills proposed by Colorado Governor Bill Ritter (D) to remove sales tax exemptions on a variety of products and services and to raise money needed to close the gap. The bills moved quickly through the legislature, passed on virtual party line votes in committees and on the floors of both chambers and were signed by the governor on February 25.

HB 1189 removes an existing sales tax exemption for businesses “engaged solely and exclusively in the business of providing cooperative direct mail advertising.” Colorado law defines “cooperative direct mail advertising” as: advertising for one or more businesses which is in the form of discount coupons, advertising leaflets, or other printed advertising which are delivered by mail in a single package or bundle to potential customers of such businesses participating in such advertising. The full text of HB 1189 can be found [here](#).

HB 1193 is targeted at out of state sellers who do not collect and remit Colorado sales and use tax and requires these businesses to:

- notify Colorado customers that they are required to report the tax owed on their purchases;
- send, by January 31 of the following year, a notice to all of their Colorado customers of the total amount of their purchases in the previous year (this notice must be sent via first-class mail and be labeled “Important Tax Document Enclosed”); and
- file an annual statement with the Colorado Department of Revenue summarizing the total amount of purchases made by Colorado residents in the previous year.

The full text of HB 1193 can be found [here](#).

Both of the new laws went into effect on March 1, 2010. DMA members who fall under the definition of “cooperative direct mail advertising” should note this potential change in their status regarding the collection of sales and use tax in the state under HB 1189.