

CITY COUNCIL COMMUNICATION



MEETING DATE: August 11, 2020

ITEM NUMBER: 9.B

SECOND READING: August 25, 2020

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TYPE OF ITEM: Consent

PRESENTED BY:

Jim Golden, Chief Financial Officer, Jim.Golden@longmontcolorado.gov

SUBJECT/AGENDA TITLE:

A Bill For An Ordinance Amending Titles 4.04, 4.05 And 6.08 Of The Longmont Municipal Code On Sales And Use Tax, Lodgers Tax And Retail Business Licenses And Creating A New Code Section 4.04.105 For The Purpose Of Enacting The Colorado Municipal League's Model Ordinance On Economic Nexus And Marketplace Facilitators For Self-Collecting Home Rule Municipalities As Part Of A Statewide Sales Tax Simplification Effort

EXECUTIVE SUMMARY:

This proposed ordinance with changes to the Sales & Use Tax Code, combined with an IGA to be considered with the Colorado Department of Revenue, will lead to simplification of the sales and use tax collection and remittance process including standardized definitions; an online portal for businesses to file and remit returns and payments; and a GIS location database for out of state businesses. These changes should lead to the City receiving sales tax from more out-of-state vendors.

COUNCIL OPTIONS:

1. Approve Ordinance
2. Do not approve Ordinance

RECOMMENDED OPTIONS:

1. Approve Ordinance

FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION:

The City received over \$2 million of sales tax on internet sales activity in 2019 and, through five months, this source is up over 33% in 2020. It is impossible to estimate the revenue impact but to this point that activity has all been based on voluntary compliance or businesses with a physical nexus. These changes should result in increased internet sales activity collections.

BACKGROUND AND ISSUE ANALYSIS:

The administration of sales tax in the state of Colorado has always been a challenge to businesses. One of the main reasons for this is that there are 72 home rule cities in Colorado

that self-collect their local sales tax and many of them have their own local sales tax base. For a business operating throughout many of these cities, they are required to have multiple licenses, be aware of multiple tax bases, multiple tax rates, and file returns with the state and each of the home rule cities that are self-collected (versus being collected by the state). In recent years Colorado home rule cities have been working with the State of Colorado on tax simplification efforts. The efforts have been coordinated between the Colorado Department of Revenue (CDOR) and the Colorado Municipal League (CML). Key accomplishments or benchmarks have included:

- In 2017 the Colorado legislature passed HB17-1216 to create a Sales & Use Tax Simplification Task Force (“Task Force”) charged “to study the necessary components of a simplified sales and use tax system for both the state and local governments, including home rule municipalities and counties.” Any solutions identified were supposed to be revenue-neutral and not require constitutional amendments or voter approval.
- The Task Force undertook a standardized definition project in 2016. The definitions were to add clarity about current tax practices without a fiscal impact. The City of Longmont adopted the updated definitions in April of 2017.
- In June of 2018 the US Supreme Court issued a decision in the case of South Dakota v. Wayfair, Inc. overturning prior rulings and holding that out-of-state sellers’ physical presence in the taxing state is not necessary for the state to require a seller to collect and remit its sales tax. South Dakota had shown that it did not place an undue burden on interstate commerce in violation of the Constitution’s Commerce Clause, by doing the following: enacting a threshold amount below which a business need not remit, using a single state level tax administration, creating uniform definitions of products and services, simplifying the tax rate structures, and other uniform rules.
- In September 2018, the State of Colorado Department of Revenue adopted emergency rules to provide guidance to retailers and consumers in light of Wayfair. The CDOR enacted the Emergency Sales Tax "sourcing rule" which essentially addressed where a sale occurs and treats both in-state retailers and out-of-state retailers the same by requiring “businesses that sell to Colorado customers to consistently collect and remit state and local jurisdiction sales taxes applicable at the point of delivery for the taxable good”. If the tangible personal property is acquired at the business’ location, then the sales tax is calculated based on the business address. If the tangible personal property is delivered to the consumer at a location other than the business address, then the sales tax is calculated based on the delivery address regardless of whether the purchase was made from a retailer who is located within or outside of Colorado.
- Because the State of Colorado has one of the most complex sales tax systems of any state, there was a need to create an easier way for businesses to file and remit sales taxes to all the individual taxing jurisdictions without losing any of the rights each

jurisdiction holds. The Task Force went through a competitive selection process to secure/create:

- 1) A central online portal that could be used for businesses with a physical presence outside the city or state that could create one account and file/remittance sales taxes for all the different jurisdictions inside Colorado in one place at one time using one payment. The portal will make the process to file and remit taxes in Colorado much easier and less of a burden to comply with the Commerce Clause requirements and Wayfair.
- 2) A GIS location database that lists taxing jurisdiction rates by a specific address, thereby allowing businesses to use that information when charging tax to a delivery location.

The CDOR entered into contracts with MUNIRevs as the vendor for the online Portal and TTR as the vendor to provide the GIS location database. CDOR offers the SUTS interface to all home rule jurisdictions with the signing of an agreement with both vendors and the CDOR.

- The Task Force working with CML has now finalized a model ordinance for self-collecting home rule cities that will be adopting the state single point of remittance portal created by the CDOR. The ordinance includes an updated definition of Economic Nexus and Marketplace Facilitators. The CML model ordinance on Economic Nexus and Marketplace Facilitators was developed by municipal tax professionals as part of a sales tax simplification effort. It has long been recognized, by governments and businesses alike, that various home rule municipalities giving the same term different meanings is a source of complexity in our tax system for businesses that operate in multiple municipalities. Use of “standardized” definitions, such as those put into the model ordinance, can help minimize this complexity and provide clarity to those remitting taxes to local governments in Colorado. Adoption of the model ordinance will facilitate Longmont’s use of the state’s single point of remittance portal and, in turn, should expedite further collections of sales tax on internet sales activity.

Action Steps

In order to move forward with these changes the staff is proposing this ordinance as well as an IGA with the CDOR that will be on the August 25th agenda for consideration. Adopting the CML model ordinance for home rule municipalities will give Longmont the authority to collect taxes from businesses that are only tied to the jurisdiction with economic nexus and from marketplace facilitators who collect taxes on behalf of marketplace sellers. The IGA will adopt the CDOR single point of remittance portal.

If there are questions on this matter please contact Chief Financial Officer Jim Golden at 303 651-8629 or at jim.golden@longmontcolorado.gov.

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ATTACHMENTS:

Ordinance
