

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 10-0738.01 Esther van Mourik

HOUSE BILL 10-1192

HOUSE SPONSORSHIP

Pommer,

SENATE SPONSORSHIP

Heath,

House Committees

Finance
Appropriations

Senate Committees

Finance
Appropriations

SENATE
Am ended 3rd Reading
February 10, 2010

101

**CONCERNING THE STATE SALES AND USE TAX OF STANDARDIZED
SOFTWARE, AND MAKING AN APPROPRIATION THEREFOR.**

102

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

SENATE
Am ended 2nd Reading
February 8, 2010

HOUSE
3rd Reading Unam ended
February 1, 2010

The bill repeals a special regulation promulgated by the department of revenue related to the type of software subject to sales or use tax.

The bill specifies that standardized software is included in the definition of tangible personal property and defines standardized

HOUSE
Am ended 2nd Reading
January 29, 2010

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

software.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that House Bill 10-1192, enacted in 2010, is not
4 intended to:

5 (a) Tax separately stated information technology services or
6 separately stated custom software that is a part of what is known in the
7 industry as "modified off-the-shelf software"; and

8 (b) Tax information technology services or custom software where
9 those services or software constitute what is known in the industry as
10 "pure" custom software, including software designed and developed for
11 a developer's own use.

12 (2) The general assembly further finds and declares that House
13 Bill 10-1192, enacted in 2010, is intended to allow developers of
14 standardized software to take advantage of the exemption for machinery
15 and machine tools contained in section 39-26-709, C.R.S.

16 (3) The general assembly further finds and declares that House
17 Bill 10-1192, enacted in 2010, is not intended to alter, other than the
18 designation of standardized software as tangible personal property, the tax
19 treatment of what is known in the industry as "digital goods", "application
20 service providers", "software as a service", or "cloud computing".
21 Nothing contained in said House Bill 10-1192, including the repeal of
22 Special Regulation 7 or the requirement that tax be apportioned in the
23 case of a business purchase of software for its own users operating both
24 within and outside of the state, shall be read as expressing the general
25 assembly's intent regarding the treatment of such methods of transacting

1 business.

2 **SECTION 2. Repeal of special regulation of the department**
3 **of revenue.** (1) Special Regulation 7: Computer Software, which rule
4 was adopted March 28, 2006, concerning the type of software subject to
5 sales or use tax (1 CCR 201-5), is repealed, effective March 1, 2010.

6 (2) The office of legislative legal services shall forward a copy of
7 House Bill 10-1192, enacted in 2010, to the secretary of state for purposes
8 of informing the secretary of state of the general assembly's action
9 repealing Special Regulation 7. The secretary of state shall delete Special
10 Regulation 7 from the code of Colorado regulations and include an
11 appropriate reference of such repeal in the code of Colorado regulations
12 consistent with the provisions of section 24-4-103 (11), Colorado Revised
13 Statutes.

14 **SECTION 3.** 39-26-102 (15), Colorado Revised Statutes, is
15 amended, and the said 39-26-102 is further amended BY THE
16 ADDITION OF A NEW SUBSECTION, to read:

17 **39-26-102. Definitions.** As used in this article, unless the context
18 otherwise requires:

19 (13.5) (a) (I) "STANDARDIZED SOFTWARE" MEANS:
20 (A) COMPUTER SOFTWARE, INCLUDING PREWRITTEN UPGRADES,
21 THAT IS NOT DESIGNED OR DEVELOPED TO THE SPECIFICATIONS OF A
22 SPECIFIC PURCHASER; OR

23 (B) COMPUTER SOFTWARE DESIGNED AND DEVELOPED TO THE
24 SPECIFICATIONS OF A SPECIFIC PURCHASER BUT THEN SOLD TO ANOTHER
25 PURCHASER.

26 (II) (A) "STANDARDIZED SOFTWARE" INCLUDES STANDARDIZED
27 SOFTWARE THAT IS MODIFIED OR ENHANCED EVEN IF SUCH

1 MODIFICATION OR ENHANCEMENT IS DESIGNED AND DEVELOPED TO THE
2 SPECIFICATIONS OF A SPECIFIC PURCHASER, UNLESS SUCH STANDARDIZED
3 SOFTWARE IS A DE MINIMIS COMPONENT OF SUCH SOFTWARE.

4 (B) "STANDARDIZED SOFTWARE" SHALL NOT INCLUDE SOFTWARE
5 OR INFORMATION TECHNOLOGY SERVICES THAT MODIFY OR ENHANCE
6 STANDARDIZED SOFTWARE IF THERE IS A REASONABLE, SEPARATELY
7 STATED CHARGE, INVOICE, OR OTHER STATEMENT OF PRICE GIVEN TO THE
8 PURCHASER FOR SUCH SOFTWARE OR INFORMATION TECHNOLOGY
9 SERVICES THAT MODIFY OR ENHANCE THE STANDARDIZED SOFTWARE.

10 (C) PRIOR TO JANUARY 1, 2011, IT SHALL BE SUFFICIENT IF THE
11 REASONABLE, SEPARATELY STATED CHARGE, INVOICE, OR OTHER
12 STATEMENT OF PRICE REFERRED TO IN SUB-SUBPARAGRAPH (B) OF THIS
13 SUBPARAGRAPH (II) IS SEPARATELY IDENTIFIABLE BASED ON THE BOOKS
14 AND RECORDS OF THE VENDOR AND NEED NOT BE SEPARATELY STATED.

15 (III) "STANDARDIZED SOFTWARE" INCLUDES THE COMBINATION OF
16 TWO OR MORE STANDARDIZED SOFTWARE PROGRAMS OR PORTIONS
17 THEREOF.

18 (IV) "STANDARDIZED SOFTWARE" EXCLUDES MAINTENANCE
19 AGREEMENTS FOR THE MAINTENANCE OF STANDARDIZED SOFTWARE.

20 (V) "STANDARDIZED SOFTWARE" SHALL NOT INCLUDE SOFTWARE
21 DEVELOPED FOR A PERSON'S OR AFFILIATE'S OWN USE. HOWEVER, IF SUCH
22 SOFTWARE IS SUBSEQUENTLY SOLD, SUCH SOFTWARE SOLD SHALL BE
23 CONSIDERED STANDARDIZED SOFTWARE.

24 (b) FOR PURPOSES OF THIS SUBSECTION (13.5), "COMPUTER
25 SOFTWARE" OR "SOFTWARE" MEANS A SET OF CODED INSTRUCTIONS
26 DESIGNED TO CAUSE A COMPUTER OR AUTOMATIC DATA PROCESSING
27 HARDWARE TO PERFORM A TASK.

18 **SECTION 4. 39-26-709 (1) (c) (III), Colorado Revised Statutes,**
19 is amended to read:

20 **39-26-709. Machinery and machine tools.** (1) (c) As used in
21 this subsection (1):

27 **SECTION 5.** Part 1 of article 21 of title 39, Colorado Revised

1 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
2 read:

3 **39-21-122. Revenue impact of 2010 tax legislation - tracking**
4 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL
5 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1192,
6 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS
7 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY
8 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE
9 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

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11 **SECTION 6.** Part 1 of article 75 of title 24, Colorado Revised
12 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
13 read:

14 **24-75-113. 2010 bills to increase state revenue - prohibition on**
15 **hiring of new state employees.** NO MONEYS DERIVED FROM THE
16 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE
17 BILL 10-1192, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE
18 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE
19 EMPLOYEES.

20 **SECTION 7. Appropriation.** In addition to any other
21 appropriation, there is hereby appropriated, out of any moneys in the
22 general fund not otherwise appropriated, to the department of revenue, for
23 allocation to the taxation business group, taxation and compliance
24 division, for the fiscal year beginning July 1, 2009, the sum of ninety-four
25 thousand three hundred twenty-two dollars (\$94,322) and 0.9 FTE, or so
26 much thereof as may be necessary, for the implementation of this act.

27 **SECTION 8. Specified effective date - applicability.** This act

1 shall take effect March 1, 2010, and shall apply to sales of standardized
2 software made on or after said date.

3 **SECTION 9. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, and safety.