

DEPARTMENT OF REVENUE

Taxation Division

SALES AND USE TAX

1 CCR 201-4

Rule 39-26-104–2. Sourcing Retail Sales.

Basis and Purpose. The statutory bases for this rule are sections 39-21-112(1), 39-26-102, 39-26-104, 39-26-105, 39-26-107, and 39-26-122, C.R.S. The purpose of this rule is to clarify the location to which a retail sale is sourced within Colorado.

- (1) For the purpose of section 39-26-104(3)(d)(I), C.R.S., “donee” means the recipient of the tangible personal property, commodity, or service as a bona fide gift from the purchaser.
- (2) A retailer that does not obtain a customer’s address in the ordinary course of its business need not obtain the customer’s address solely for the purpose of sourcing the sale pursuant to section 39-26-104(3)(a), C.R.S.
 - (a) A retailer that does not have a complete street address for the purchaser, but has information sufficient to determine the sale is sourced to Colorado, shall source the sale to the jurisdictions that can be conclusively determined from the information available.
 - (i) If based on the information used by the retailer to source a sale in accordance with section 39-26-104(3), C.R.S., and this rule, a sale would be sourced to two or more mutually exclusive jurisdictions, the sale shall not be sourced to any of the mutually exclusive jurisdictions.
 - (ii) If based on the information used by the retailer to source a sale in accordance with section 39-26-104(3), C.R.S., and this rule, no jurisdiction in Colorado can be conclusively determined, the sale shall not be sourced to Colorado.
- (3) For the purpose of section 39-26-104(3)(a)(V), C.R.S., the address from which the tangible personal property, commodity, or service is shipped is the location from which the tangible personal property, commodity, or service was shipped with the intent to reach a specific customer.

~~(4) For the purpose of section 39-26-104(3)(c), C.R.S.:~~

~~(a) If a retailer maintains more than one business location in Colorado, the sale shall be sourced to the business location at which the purchaser received the tangible personal property, commodity, or service, or if the tangible personal property, commodity, or service is shipped to the purchaser, the business location that took the purchaser’s order.~~

~~(b) If a retailer makes sales or takes orders at special events located in Colorado, the sales shall be sourced to the location of the special event.~~

~~(5) A retailer required to source its sales pursuant to section 39-26-104(3)(c), C.R.S., shall source its leases and rentals, as well as its sales, pursuant to section 39-26-104(3)(c), C.R.S.~~

(64) Leases.

- (a) Section 39-26-104(3), C.R.S., does not apply to any payment made pursuant to a lease or rental agreement executed prior to June 1, 2019. Lease or rental payments described in this paragraph (64)(a) are subject to any state and state-administered local sales taxes applicable to the lease or rental agreement at the time of execution.
 - (i) Any extension or renewal of a lease or rental agreement is considered a new lease or rental agreement and the date the lessor and lessee agree to such extension or renewal shall be considered the date of execution for the purpose of this paragraph (64)(a).
 - (ii) For retailers that complied with the sourcing rules promulgated in Regulation 39-26-102(9) prior to June 1, 2019, the date the retailer complied with such rules shall be substituted for "June 1, 2019" in the application of paragraph (64)(a) of this rule.
- (b) For leases involving periodic payments that are sourced to the primary property location, the Department will consider the reasonableness of a lessor's efforts to maintain accurate information regarding the primary property location when determining whether to waive the interest and penalties assessed against the lessor for unpaid tax owed because of a lessee's failure to provide accurate information to the lessor regarding the primary property location. If a lessee fails to notify the lessor of a change in the primary property location, the lessee may also be liable for the correct tax plus applicable penalties and interest.