



COLORADO  
MUNICIPAL  
LEAGUE

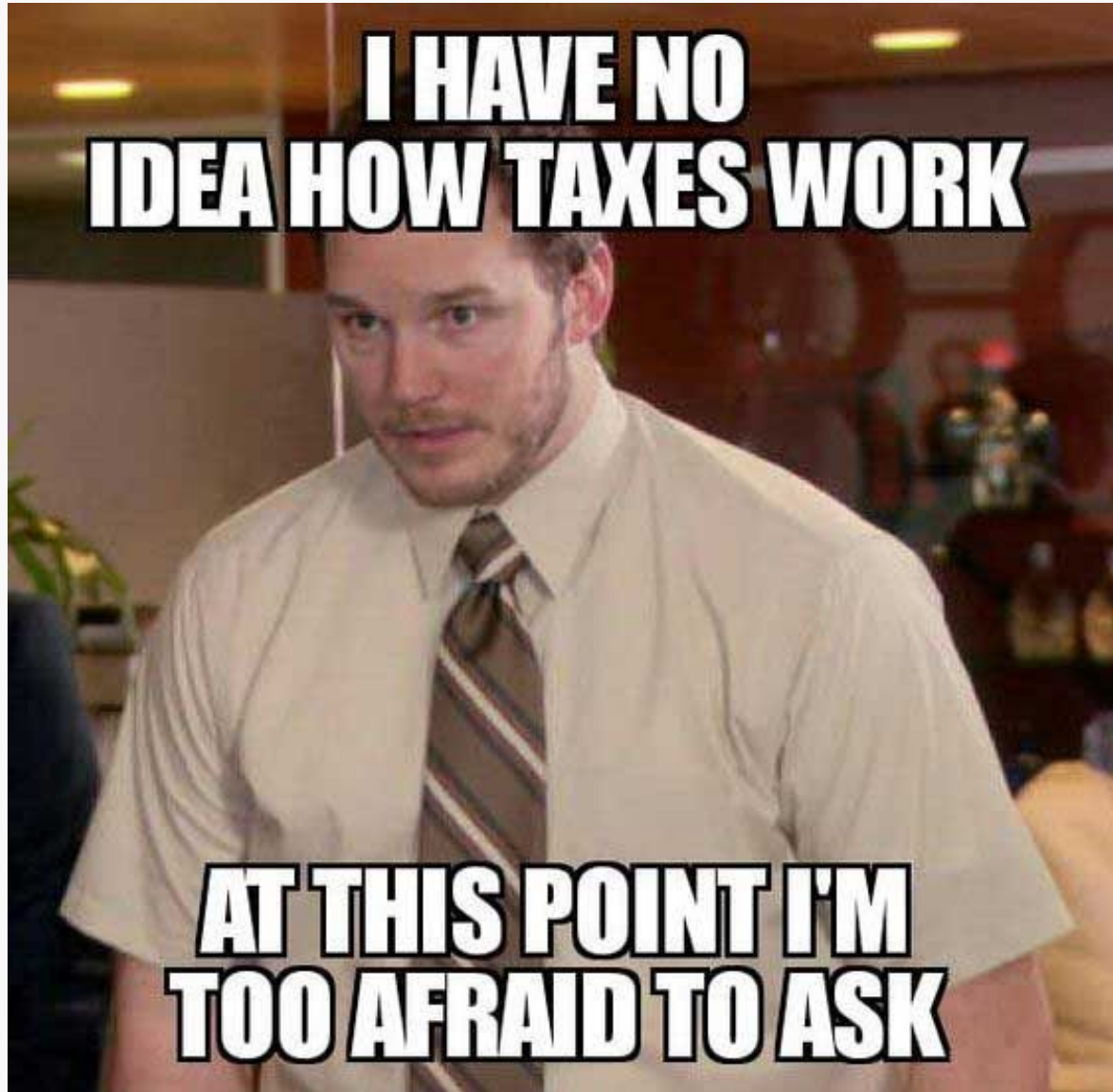
# Sales Tax Simplification in a (pre- and) post- *Wayfair* World

Geoff Wilson, Murray Dahl Beery & Renaud LLP

Laurel Witt, Colorado Municipal League,  
Associate Counsel



**I HAVE NO  
IDEA HOW TAXES WORK**



**AT THIS POINT I'M  
TOO AFRAID TO ASK**



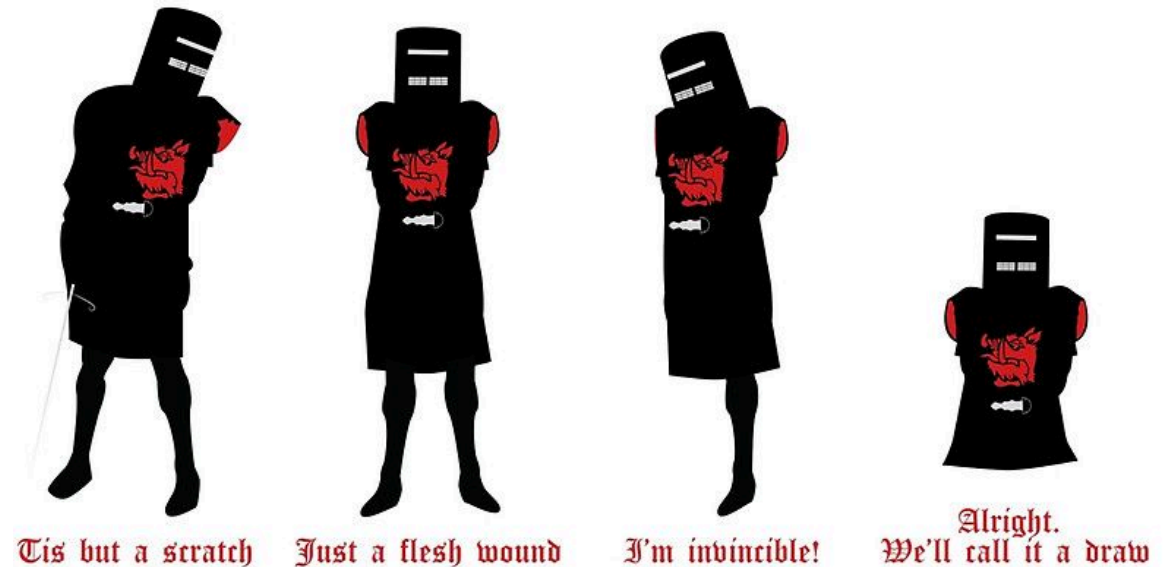


# Tax simplification before *Wayfair* Why should we care?

- Colorado municipalities heavily dependent on the sales tax; 73% of general-purpose tax revenues, on average.
- Close to 90% of municipal sales tax in Colorado collected by home rule municipalities.
- The authority of home rule municipalities over their main revenue stream hangs by a legal thread, is quite vulnerable to political and legal attack, and diminution.
- Colorado's home rule tax system is widely regarded in the tax and business world as the most complex and difficult local tax system in the United States.

# Tax simplification: Part of a comprehensive defensive strategy

- CML has taken the lead in this multi-front strategy, including various simplification efforts.
- The strategy is aimed at avoiding, managing and minimizing potential threats to our tax system
  1. in the General Assembly, and
  2. in the Courts.
- Goal: keep home rule tax issues *out* of the General Assembly and *out* of the courts.
- Essential element: know, listen, and respect thy enemy(s).



Basis of strategy: We have a plan; work with us, rather than launching your own crusade.

# Legal foundation of home rule sales and use tax authority

- In the beginning, there was light . . .
  - And then there was *Berman v. Denver*, 400 P.2d 434 (Colo. 1965) and *Security Life v. Temple*, 492 P.2d 63 (Colo.1972).
    - Citing Colo. Const. Art. XX, Sec. 6, Court held power to levy sales and use taxes “essential to the full exercise of the right of self-government” granted by that section, and a matter of “local and municipal concern.” *Security Life*, 492 P.2d at 64.
      - Modern era: *Winslow v. Denver*, 960 P.2d 685 (Colo. 1998). Unanimous decision reaffirming *Berman* and *Security Life*. Court applied a four-part test from *Denver v. State*, 788 P.2d 764 (Colo.1990) in holding sales tax a matter of local and municipal concern.



# A cautionary tale: What the Court giveth, the Court can taketh away...

- In 1985, the General Assembly passed a number of laws purporting to apply to home rule municipal tax practices:
  - Generally codified at C.R.S. 29-2-106(8) and (9); 106.1 and 106.2.
  - Laws pushed by a coalition of business groups.
- In *Walgreen Co. v. Charnes*, 819 P.2d 1039 (Colo. 1991), Supreme Court held that a portion of the 1985 law governing municipal sales tax appeals preempted Denver's conflicting appeals process.
  - Business groups that pushed through 1985 legislation appeared as *amicus curiae* in *Walgreen*.
  - *Walgreen* Court applied *Denver v. State* criteria and reached a preemptive result one year before *Winslow*; indeed, *Winslow* Court reaffirmed *Walgreen*.
- In *MDC Holdings v. Town of Parker*, 223 P.3d 710 (Colo. 2010), *Walgreen* again applied in straightforward manner to preempt conflicting local tax appeal procedures; opinion by *Winslow* author Justice Hobbs.

**Our exposure: One bad set of facts in the appellate courts.**





# What does business hate about our tax system? (These never change...)

- Local tax *registration and licensing*.
  - Includes issue of when one has “nexus” based on deliveries into taxing jurisdiction.
- Local *remittance* obligation. Includes timing of remittance issues.
- Local remitting *forms* variation.
- Tax *base variations*.
  - This includes *definitional differences* affecting scope of taxation and exemption provisions.
- “*Sourcing*” of deliveries to the correct taxing jurisdiction.
  - Often taxpayer does not know into which jurisdiction delivery is made, so tax is remitted incorrectly. Worst case: Vendor pays wrong jurisdiction; cannot get refund; has to remit tax a second time, perhaps with penalty and interest.
- *Audit issues*.
  - Complaints include: (1) a plague of too many auditors, (2) disparate records requests, (3) inconsistent audit standards and procedures.



# CML's simplification efforts have consistently focused on these sore points

- Necessary tax complexity is explainable and defensible; unnecessary tax complexity is neither.
- 1985 legislation addressed many of these “old chestnut” issues, but home rule municipalities largely ignored this statute.
  - *But note Walgreen decision*
- Standardization of various critical terms: “food”, “telecommunication services,” and many others.
- Standard definitions project: packages in 1992 and 2016.
  - 1992 package also included inter-city claims and “coordinated audit” provisions.



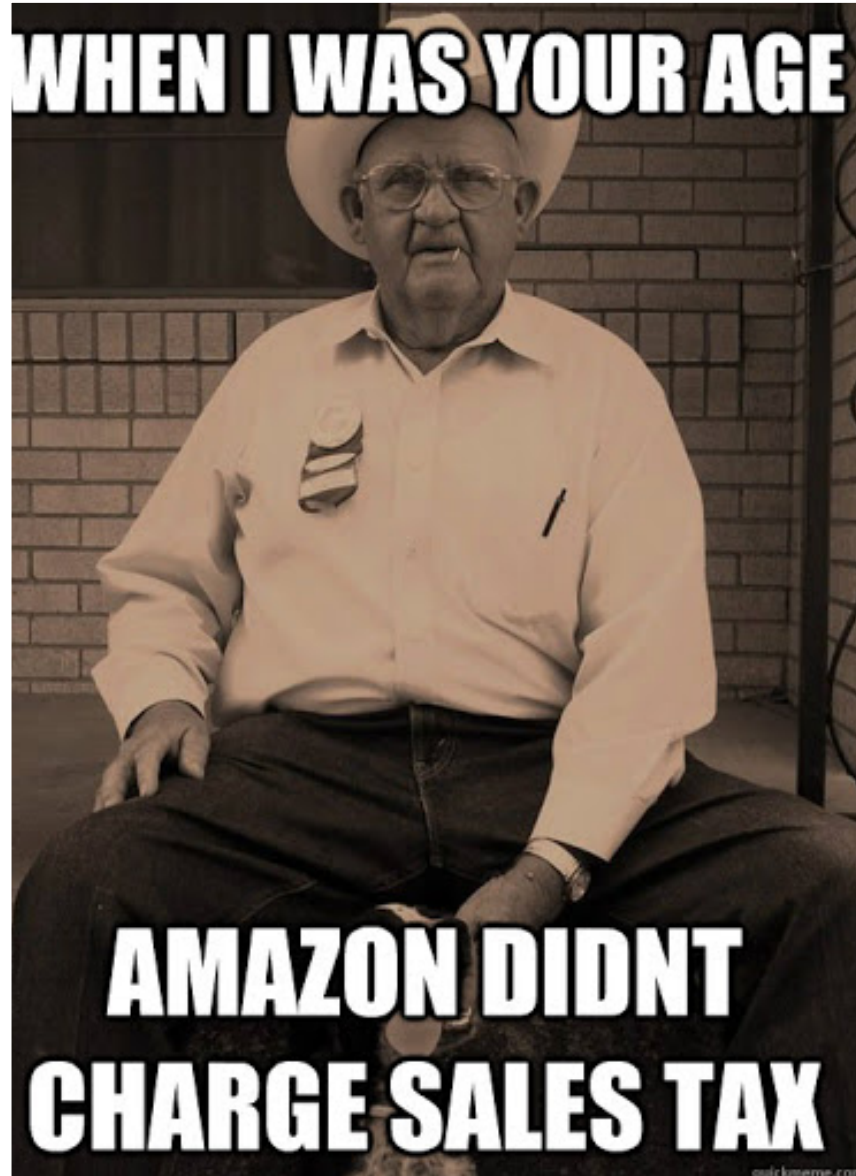


# CML's simplification efforts have consistently focused on these sore points

- Uniform forms project.
- Uniform exemption certificate project.
- Uniform tax sourcing project, with General Assembly and the Department of Revenue (legislation and rulemaking).
- Agreement on contingent payment of contract auditors.
- *The Holy Grail*: a credible single point of remittance... *Wayfair*-just what we need!



**'On second thought, let's not go to Camelot. It is a silly place.'**



**And then  
comes  
*Wayfair* . . .**





# Why does everyone mention *Wayfair* and why should I care?

- The South Dakota Legislature passed a law requiring sellers of “tangible personal property” who do not have a physical presence in South Dakota to remit sales tax.
  - Only applied to sellers with gross revenue from sales in South Dakota of over \$100,000, or 200 or more separate transactions, within one year.
- Prior case law: *National Bellas Hess v. Department of Revenue of Illinois*, 386 U.S. 753 (1967), affirmed years later by *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).
- South Dakota reasoned that under these cases, the state was unable to maintain sales revenue in the face of increasing internet sales.



# *Wayfair* changes the game for remote sales

- In a 5-4 decision, the U.S. Supreme Court overruled *Quill* and *Bellas Hess. South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018).

Why? The Supreme Court said:

1. The physical presence rule of *Quill* is outdated and not a necessary interpretation of the requirement that a state tax must be "applied to an activity with a substantial nexus with the taxing state."
2. The rule in *Quill* creates, rather than resolves, market distortions.
3. The rule in *Quill* imposes "the sort of arbitrary, formalistic distinction that the Court's modern Commerce Clause precedents disavow."





# The Supreme Court points to what South Dakota did right ... in dicta

1. Safe harbor for small sellers
2. Does not apply retroactively
3. South Dakota adopted the Streamlined Sales and Use Tax Agreement, which requires:
  - a single, state level tax administration,
  - uniform definitions of products and services,
  - simplified tax rate structures, and
  - other uniform rules
4. Provides sellers access to sales tax administration software paid for by the state. Sellers who choose to use such software are immune from audit liability.



**WELL...NOW WHAT?**







# Self-Collecting Home Rule Response

- Colorado has a complex taxing system, far more complex than South Dakota
- Largest fear: Losing a case because Colorado's taxing system is overly burdensome on out-of-state ("remote") sellers
- First step: Voluntary compliance

( dramatic pause )



# State Response

- HB 19-1240
  - Established economic nexus without physical presence for the state
  - Required marketplace facilitators to collect on behalf of marketplace sellers on their marketplace
- SB 19-006
  - Directs the Dept. of Revenue to develop a single point of remittance portal for all sales taxes
  - Allows for the participation of self collecting home rules, should they sign on within three years. This is voluntary.

# Sales and Use Tax Portal (SUTS)

- SUTS opened in a soft launch on May 6<sup>th</sup> and is open for all businesses to join.  
<https://colorado.munirevs.com/>
  - Role of MuniRevs
  - Role of TTR
- DOR website still instructs businesses to pay through Revenue Online. The regular launch has yet to be determined.
- This portal will be used for statutory municipalities, state-collected home rule municipalities, and self-collecting home rule municipalities that voluntarily join.





**COLORADO**  
Department of Revenue

### Welcome to the Colorado Sales and Use Tax System (SUTS)

Register or Login

Getting Started

Bulk Filers

Participating Jurisdictions

FAQ



Colorado  
Tax Lookup

New Users

Register



Existing Users

Log In

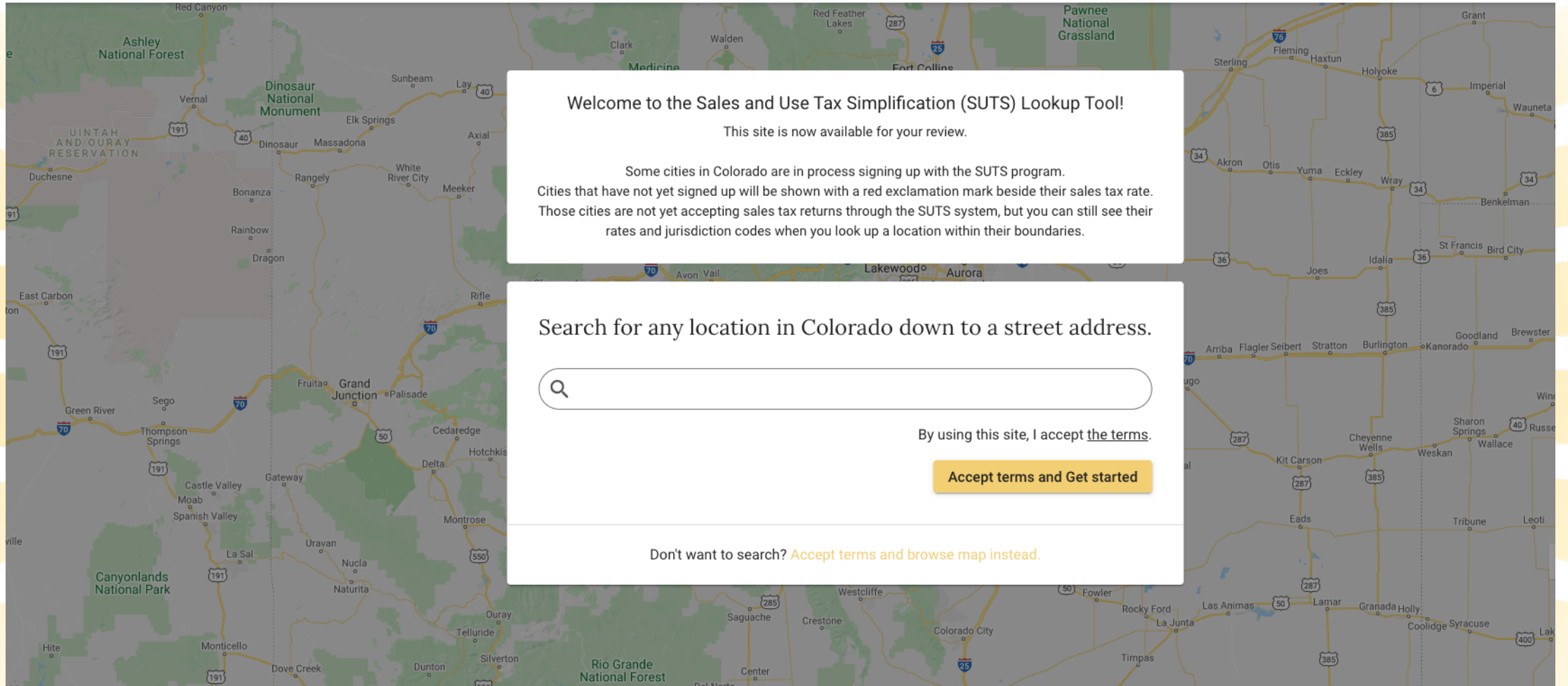


## How To Register For SUTS

0:00 / 1:13







## Welcome to the Sales and Use Tax Simplification (SUTS) Lookup Tool!

This site is now available for your review.

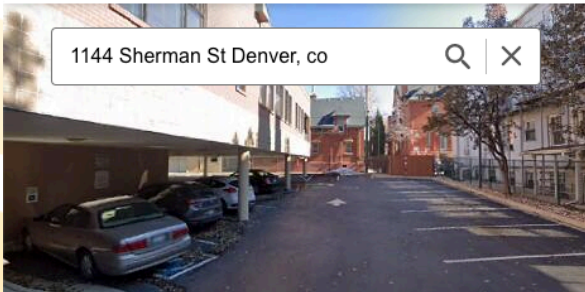
Some cities in Colorado are in process signing up with the SUTS program. Cities that have not yet signed up will be shown with a red exclamation mark beside their sales tax rate. Those cities are not yet accepting sales tax returns through the SUTS system, but you can still see their rates and jurisdiction codes when you look up a location within their boundaries.

Search for any location in Colorado down to a street address.

By using this site, I accept [the terms](#).

[Accept terms and Get started](#)

Don't want to search? [Accept terms and browse map instead.](#)



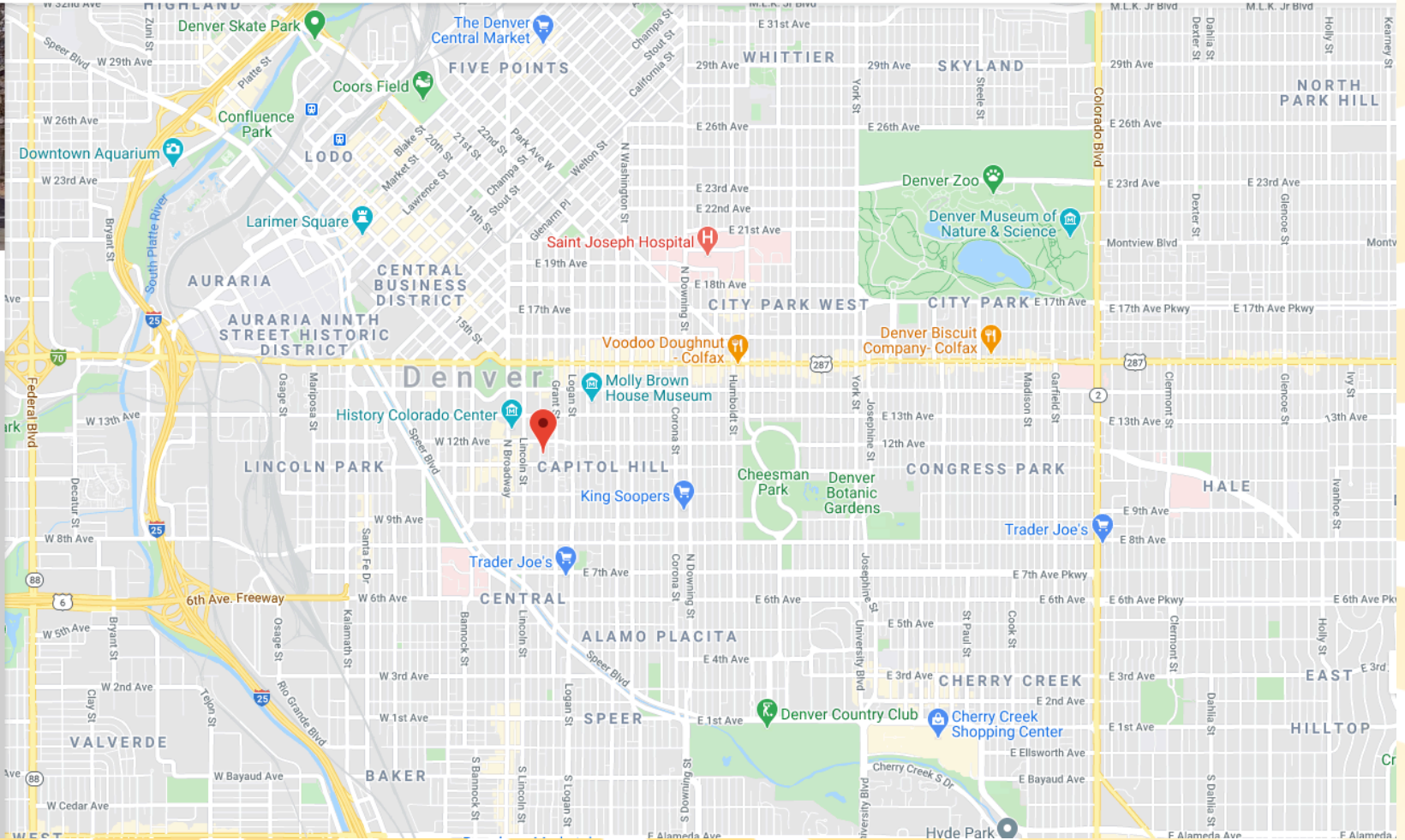
**General Merchandise (Tangible...)**  
 See details or change product/service

**Tax Rate** **8.31%**

-   
Current
-   
Overview
-   
Question
-   
Export

**Tax Rate Details**

Colorado	Sales Tax	2.90%
Denver, City and County	Sales Tax	4.31%
Scientific and Cultural Facilities District (CD)	Sales Tax	0.10%
Regional Transportation District (RTD)	Sales Tax	1.00%





# Working with the Dept. of Revenue

- Several concerns arose with the Dept. of Revenue that we were able to work through.
  - Original IGAs versus the final
  - Variations on sales tax base
  - Variations on definitions
  - COVID challenges
- Limitations of the SUTS
  - Taxes other than sales or use taxes (i.e., lodging, excise)



# Municipalities that have signed onto the SUTS portal\*

Avon  
Black Hawk  
Brighton  
Canon City  
Carbondale  
Colorado Springs  
Cortez  
Craig  
Dacono  
Durango  
Englewood  
Evans  
Federal Heights  
Fort Collins  
Glendale  
Glenwood Springs  
Golden

Gunnison  
Lone Tree  
Longmont  
Loveland  
Montrose  
Mountain Village  
Mt. Crested Butte  
Pueblo  
Ridgway  
Rifle  
Silverthorne  
Snowmass Village  
Vail  
Windsor  
Winter Park





**Self-collecting home rules pivot from voluntary compliance**



# Model Ordinance

## Key Players

- Financial department staff from all the self-collecting home rules
- Attorneys from self-collecting home rules
- Business community including Amazon and Walmart
- Department of Revenue

## Key Components

- Change in definition of engaged in business
- Addition of economic nexus
- Addition of marketplace facilitators and marketplace sales requirements (note: can capture third party lodging services such as Airbnb)
- Similar to SB 19-1240



# Municipalities that have adopted the model ordinance\*

- Avon (effective October 1, 2020)
- Arvada (effective October 15, 2020)
- Black Hawk (effective October 1, 2020)
- Carbondale (effective October 1, 2020)
- Colorado Springs (effective September 1, 2020)
- Federal Heights (effective September 28, 2020)
- Fort Collins (effective November 1, 2020)
- Glenwood Springs (effective July 1, 2020)
- Golden (effective September 1, 2020)
- Gunnison (effective September 1, 2020)
- Longmont (effective September 7, 2020)
- Lone Tree (enforcement begins November 1, 2020)
- Mountain Village (effective September 1, 2020)
- Mt. Crested Butte (effective October 1, 2020)
- Silverthorne (effective July 1, 2020)
- Pueblo (effective August 1, 2020)
- Sheridan (effective September 30, 2020)
- Snowmass Village (effective September 1, 2020)
- Vail (effective October 1, 2020)
- Winter Park (effective September 1, 2020)

\* As of 10/19/2020



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# More Information?

**CML Landing Page:**

**<https://www.cml.org/modelordinance>**

**SUTS Portal:**

**<https://colorado.munirevs.com/>**

**TTR Sales Tax Lookup:**

**<https://colorado.ttr.services/>**







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# Questions?

## Contact information

Geoff Wilson:  
[gwilson@mdbrlaw.com](mailto:gwilson@mdbrlaw.com), 303-493-6688

Laurel Witt:  
[lwitt@cml.org](mailto:lwitt@cml.org), 303-831-6411

