



Sales Tax Standard Definitions Project

by Geoff Wilson, general counsel, and
Rachel Allen, staff attorney

Sales & Use Tax: Background

73% of general purpose tax revenues (avg).

– Most states over 50% from property tax.

Statutory municipalities (mostly towns) are required to have DOR collect tax. State controls base, collection, auditing; shares back revenue.

Sales & Use Tax: Background

69 home rule municipalities “locally collect” tax.

- Municipality controls base, collection, auditing.
- Over 90% of municipal sales tax collection in Colorado is by home rule locally collecting municipalities.

Sales & Use Tax: Background

“Local collection” routinely results in increased revenues, compared to state collection/administration/auditing, even when rates & base remains constant.

- Accordingly, local collection is a major motivation for adopting home rule.

Sales & Use Tax: Background

Nationally, Colorado system unusual.

- In most states, local sales taxes are “state collected, locally shared” by the state (as are statutory jurisdictions in Colorado).

Sales & Use Tax: Background - Political

- Multiple audits,
- multiple points of remittance and licensing,
- difficulty “sourcing” sales to the correct jurisdiction, and
- base variations

have generated constant controversy and political exposure.

– A non-stop political management issue.

Sales & Use Tax: Background -

Political CML's position:

- Stay ahead of the issues.
- Be proactive as to all reasonable steps to simplify system. “Reasonable” = no or minimal revenue loss.
- Develop and maintain open communication with business community; partner with them on simplification projects.

Sales & Use Tax: Background - Political

Lots of collaboration, over the years

- Standard definitions of “food” (1986), “telecom service” (1991)
- Standard definitions package (1992)
- Address locator project (2004)
- Standard exempt purchaser affidavit (2015)
- Current definitions project

Sales & Use Tax: Background - Political

Recent activity at the Capitol:

- 2013 - Complaints by Rep. Conti, others led to HB13-1288, directing DOR to look into uniform base for State & locals.
 - Had to be revenue neutral
 - CML supported
- “1288 Report” concluded uniform base not practical; recommended uniform definitions

Sales & Use Tax: Background - Political

- 2014: Considerable activity on referred constitutional amendment re: uniform definitions and tax guidance. CML supported
- Constitutional amendment proved very complex politically & substantively. Didn't move forward.
- Instead, General Assembly approved SJR14-038 asking CML to reprise '92 Project, with improvements. CML supported.

Sales & Use Tax: Background - Political

2015: “Simplify Colorado Taxes” ran late bill on appeal bonds & deposits.

- Rep. Conti ran constitutional amendment at last minute.
- Both died.
- Tax appeal bill returning in 2016.
- Arizona municipalities get hosed

2016: Major attack on home rule tax system from Simplify Colorado Taxes expected

Sales & Use Tax: Background - Legal

Colorado Supreme Court has held sales tax essential to self-government, and in most respects a matter of “local & municipal concern”. Winslow v. Denver, 960 P.2d 685 (Colo. 1998), and cases cited therein.

- One exception: matters relating to tax appeals. Walgreens v. Charnes, 819 P.2d 1039 (Colo. 1992); MDC Holdings v. Town of Parker, 223 P.3d 710 (Colo. 2010)

The Uniform Definitions Project

What is it?

A major collaborative sales tax simplification initiative by CML and Colorado's home rule municipalities that locally collect their sales tax.

What is the object?

The objective of the project is to have all locally collecting municipalities agree to use the uniform definitions in their sales and use tax codes, and use uniform tax guidance to construe those definitions. A further object is to maintain this uniformity over time.

The Uniform Definitions Project

Why is this important?

As discussed above, the sales tax system on which Colorado's locally collecting home rule municipalities rely is unarguably more complicated than the state collected-locally shared systems that merchants deal with in most other states.

The Uniform Definitions Project

Why is this important?

When a multi-jurisdictional business also confronts definitions (or tax guidance) giving a term that affects their tax liability different meanings in different cities, an additional maddening level of complexity is added to an already challenging system.

The Uniform Definitions Project

Why is this important?

- Because business collects this tax for us, and because our sales tax revenues are directly tied to how well our retail business community is faring, local government elected officials and staff have generally supported the idea that we should simplify our tax system as much as we can, without sacrificing revenue.
- This “revenue neutral” tax simplification is good for business and good for our communities.

The Uniform Definitions Project

Much of the complexity of our system can be credibly defended.

- For example, the General Assembly's habit of diluting the State's tax base by repeatedly giving tax breaks to special interests illustrates why locally collecting jurisdictions jealously guard their right to control their own tax base.
- Similarly, the State's field audit capability is plainly limited, as collection experience of municipalities going to local collection has illustrated.

The Uniform Definitions Project

In contrast, it is next to impossible to explain how it is essential that each city be able to give terms like “software” and “prescription drugs” their own peculiar meaning.

The Uniform Definitions Project

Why is this important?

- As an obvious, hard-to-defend complexity in our system, we have a responsibility to address this issue.
 - Additionally, in SJR14-038, the General Assembly asked us to...
 - If we fail to address this obvious issue, those with an axe to grind about our system in general could address this issue through a constitutional amendment, a course fraught with major risks for municipalities.

The Uniform Definitions Project

Why is this important?

In short, it's the right thing to do, and if we don't do it, we may well have it done for us (or *to* us, if you will).

What is the process for developing Uniform Definitions & Guidance?

- 23 member Steering Committee and subcommittees address some definitions
- 8 meetings (at least 5 hours each) since December 2014
- State, local ('92 package) and SSTP definitions compared
- Full Committee adoption
- Legal Committee review
- Business community review

What standards are being applied to the Uniform Definitions?

- Local businesses perceive no change in tax treatment
- No significant loss or gain in local government revenue
- No TABOR election required
 - Any revenue increase within Mesa County *de minimis* threshold

What happens once the Package is complete?

Home rule municipalities will be urged to adopt the definitions that fit their base.

- Your municipality may not need to adopt every definition.
- May require conforming amendments in exemption or base sections.

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Does use of uniform definitions pave the way for further tax simplification?

Absolutely. We hear a lot of complaints from multi-jurisdictional merchants about the requirement that they must remit to and obtain tax licenses from a variety of jurisdictions.

Existing software allows a merchant to determine taxing jurisdictions in which a given sale or delivery address is located.

Tax rates are being added to this software.

The Uniform Definitions Project

Does use of uniform definitions pave the way for further tax simplification?

- Once uniform definitions are used, tax base information can be associated with a given address.
- This will greatly aid electronic filing for multiple jurisdictions through a single site, traditionally the “Holy Grail” of tax simplification here in Colorado.
- Many jurisdictions are already using electronic filing, so the transition to a single remitting site may not be as difficult as once assumed.
- Also on the horizon is tax licensing for multiple jurisdictions through a single site.

The Uniform Definitions Project

What does the business community think of this project?

They enthusiastically support it. CML has worked for many years on a variety of tax simplification projects, usually in cooperation with the Colorado Association of Commerce and Industry (CACI), the Colorado Retail Council and the Denver Metro Chamber of Commerce, as well as particular business sectors, such as the grocery, telecommunications and oil and gas industries.

The Uniform Definitions Project

What does the business community think of this project?

The business community has been a consistent advocate for clarity and consistency in tax practices. Uniform definitions are right in line with that longstanding policy. Naturally, particular businesses will fret over the consequences of construction of this or that definition on their operation, but consistency is the broader business interest.

The Uniform Definitions Project

What about this Simplify Colorado Taxes group?

While we have worked with most of the business community associations over the past 20 years and more on tax simplification, there have always been those angry about the system who have declined to participate in these efforts, claiming they are too incremental, too slow or don't address what they are upset about.

The Uniform Definitions Project

What about this Simplify Colorado Taxes group?

These businesses make up the core of Simplify Colorado. It remains to be seen if they are pragmatic.

Additional questions?

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TAX SIMPLIFICATION PROJECT UNDERWAY

By Rachel Allen, CML staff attorney, and Geoff Wilson, CML general counsel

CML STAFF AND A GROUP OF MUNICIPAL sales tax professionals are in the midst of a major effort to develop uniform definitions for use in the sales and use tax codes of home rule municipalities that collect their own sales tax locally. Uniform definitions will simplify the municipal tax system, while protecting the important prerogative of a home rule municipality to decide what to tax or exempt within its jurisdiction.

The present effort is an outgrowth of discussions concerning tax simplification between CML and the business community, principally representatives of the Colorado Association of Commerce and Industry (CACI) and the Colorado Retail Council. During the 2014 session, the General Assembly passed SJR 14-038, supported by CML and the business community, which urged CML to develop uniform definitions, reprising a similar project conducted by CML and its home rule members in 1992.

The uniform definitions project is being conducted through the CML Sales Tax Committee, which includes a representative of each Colorado home rule municipality that locally collects its sales tax. A “steering committee,” staffed by CML Staff Attorney

Rachel Allen and composed of 19 members of the full committee, is doing the really heavy lifting. The focus of the project, and thus of the subcommittee, is to develop uniform definitions that neither increase nor decrease tax revenues, so they may be adopted without the need for a TABOR election. The 1992 uniform definitions, adopted by all home rule, locally collecting municipalities in that year, are the starting point for the subcommittee’s work.

The tax simplification benefits of uniform definitions have long been recognized, particularly for businesses that operate in and remit tax to multiple home rule municipalities. Imagine a medical supplies business that sells items in a number of cities and towns in the state. Numerous municipalities exempt from taxation “prescription drugs,” so sales in those municipalities do not require the collection of sales tax on behalf of those jurisdictions. That is not a problem if all the cities and towns define “prescription drugs” the same way, but imagine the confusion if each municipality had its own definition! Not surprisingly, when municipalities give the same terms different meanings, it drives multijurisdictional vendors to distraction.

This definitions project seeks to improve on CML’s 1992 effort, which did not establish a mechanism to maintain the uniformity of

definitions over time, modify definitions as necessary, and create new definitions when needed. Furthermore, in the wake of passage of the TABOR amendment, tax guidance — which construes what the ordinance language means — has assumed an important role as modification to actual ordinance language has become less frequent. The subcommittee will address creation of a single source of tax guidance relating to the definitions, as well as structure to maintain uniformity of the definitions statewide.

As always, projects like this work on a consensus basis. CML and the committee cannot force any of our member municipalities to adopt or use these definitions once developed. The goal, however, is to develop a package and a process that is understood as a win-win for everybody — businesses, municipalities, and our citizens, the taxpayers.

This package ultimately will require legislative action by home rule city councils, so one focus of the project is keeping elected officials and city management updated as we move forward. Accordingly, look for future progress reports in this space. Questions about the project are welcome anytime by the project leader, CML Staff Attorney Rachel Allen, at rallen@cml.org, or CML General Counsel Geoff Wilson at gwilson@cml.org.

PROGRAM LOOKS AT SUSTAINABILITY AND INFRASTRUCTURE

CIVIL INFRASTRUCTURE IN THE UNITED States is in distress. Trillions of dollars of investment is needed over the next decade to address deterioration, strained capacity, and underperformance. Climate change has added an even more urgent dimension within which resilience and adaptive capacity are the new mantras.

Conventional approaches resulted in isolated infrastructure components built with a zealous adherence to lowest front-end capital cost as the preeminent decision factor. Owners and

designers increasingly recognize that this must be replaced by a new holistic approach that stresses integrated infrastructure systems that address social, environmental, and economic impacts and value overall community quality of life.

Experience and analysis demonstrate how developing sustainably can create value, enhance performance, mitigate risk, and warrant investment. The Envision™ rating system and related business case analytic tools are helping inform defensible design decisions,

evaluate relative sustainability, and recognize success to assist in closing the infrastructure gap in a way that is both financially and environmentally prudent and far-sighted.

On **May 7**, 4–6 p.m., the American Society of Civil Engineers Colorado Section will look at these issues in the program “Sustainability: A Good Investment and the Right and Sensible Thing to Do.” For more information or to attend, contact Will Koger, P.E., at 720-214-5884 or wkoger@forsgren.com. RSVP by **May 4**.

CML RELEASES HISTORIC PRESERVATION

EARLY IN MAY, IN HONOR OF NATIONAL Historic Preservation Month, the Colorado Municipal League will release its newest publication, *Historic Preservation: Basics for Municipal Officials*. The book is the result of a collaboration with History Colorado and the University of Colorado Center of Preservation Research, along with contributors from across the state.

The publication explores the reasons why municipalities would engage in preservation activities, from keeping the past alive to the economic benefits. It also reviews the foundations of preservation, from identifying historic resources to the national, state, and local designation of properties. Another section

looks at preservation policy, including the state’s legal framework as well as the creation of local policy and ordinances. Finally, the book discusses practical considerations — the feasibility of a project, financial incentives, and partnerships in preservation. Spotlights of how cities and towns across the state are implementing preservation also are provided. Appendices include a variety of sample materials: survey results, a walking tour, ordinances, design guidelines, and a preservation plan.

A copy of the publication has been sent to CML member managers, and to clerks where there is no manager. Additional copies are available for purchase at www.cml.org.

WASTE TIRE CONFERENCE

IN 2013 AND 2014, AN AGGRESSIVE market development program was put into action to broaden and upgrade waste tire product markets. “Colorado’s 2015 Waste Tire Conference: Markets, Materials, and More” is intended to provide the latest and best information on regional markets, market development and trends, technologies, and beneficial end uses for waste tires. The event, presented by the Colorado Department of Public Health and Environment, takes place **June 24–25**, in Greenwood Village. More information, including registration, can be found at www.colorado.gov/pacific/cdphe/waste-tire-conference.