# An Act

HOUSE BILL 10-1192

BY REPRESENTATIVE(S) Pommer, Hullinghorst, Judd, Labuda, Merrifield, Frangas;
also SENATOR(S) Heath.

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

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

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

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

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

(2) The general assembly further finds and declares that House Bill

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10-1192, enacted in 2010, is intended to allow developers of standardized software to take advantage of the exemption for machinery and machine tools contained in section 39-26-709, C.R.S.

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

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which rule was adopted March 28, 2006, concerning the type of software subject to sales or use tax (1 CCR 201-5), is repealed, effective March 1, 2010.

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

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

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

(13.5) (a) (I) "STANDARDIZED SOFTWARE" MEANS:

(A) COMPUTER SOFTWARE, INCLUDING PREWRITTEN UPGRADES, THAT IS NOT DESIGNED OR DEVELOPED TO THE SPECIFICATIONS OF A SPECIFIC PURCHASER; OR

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

(II) (A) "STANDARDIZED SOFTWARE" INCLUDES STANDARDIZED SOFTWARE THAT IS MODIFIED OR ENHANCED EVEN IF SUCH MODIFICATION OR ENHANCEMENT IS DESIGNED AND DEVELOPED TO THE SPECIFICATIONS OF A SPECIFIC PURCHASER, UNLESS SUCH STANDARDIZED SOFTWARE IS A DE MINIMIS COMPONENT OF SUCH SOFTWARE.

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

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

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

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

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

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

(15) (a) "Tangible personal property" means corporeal personal

property. The term shall not be construed to include newspapers, as legally defined by section 24-70-102, C.R.S., preprinted newspaper supplements ~~which~~ THAT become attached to or inserted in and distributed with such newspapers, or direct mail advertising materials ~~which~~ THAT are distributed in Colorado by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising.

(b) (I) "TANGIBLE PERSONAL PROPERTY" INCLUDES STANDARDIZED SOFTWARE WITHOUT REGARD TO HOW SUCH STANDARDIZED SOFTWARE IS ACQUIRED BY THE PURCHASER OR DOWNLOADED TO THE PURCHASER'S COMPUTER.

(II) THE DEPARTMENT OF REVENUE MAY PROMULGATE RULES FOR APPORTIONING TAX IN THOSE INSTANCES IN WHICH STANDARDIZED SOFTWARE IS TRANSFERRED FOR USE IN MORE THAN ONE STATE. SUCH RULES SHALL BE BASED ONLY ON THOSE EMPLOYEES OR USERS BASED PERMANENTLY IN THE STATE.

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

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

(III) "Manufacturing" means the operation of producing a new product, article, substance, or commodity, OR PRODUCING STANDARDIZED SOFTWARE AS DEFINED IN SECTION 39-26-102 (13.5) (a), different from and having a distinctive name, character, or use from raw or prepared materials.

**SECTION 5.** Part 1 of article 21 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

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

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

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

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

**SECTION 8. Specified effective date - applicability.** This act shall take effect March 1, 2010, and shall apply to sales of standardized software made on or after said date.

**SECTION 9. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Terrance D. Carroll                                              Brandon C. Shaffer
SPEAKER OF THE HOUSE                               PRESIDENT OF
OF REPRESENTATIVES                                   THE SENATE

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Marilyn Eddins                                                  Karen Goldman
CHIEF CLERK OF THE HOUSE                        SECRETARY OF
OF REPRESENTATIVES                                   THE SENATE

APPROVED_____

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Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO