JARED POLIS
GOVERNOR

136 STATE CAPITOL
DENVER, COLORADO 80203

TEL 303-866-2471
FAX 303-866-2003

D 2020 261

EXECUTIVE ORDER

Ordering a One-Month Extension for Remitting State Sales Taxes Collected by Qualifying Restaurants and Bars

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701 *et seq.*, I, Jared Polis, Governor of the State of Colorado, hereby issue this Executive Order ordering a one-month extension for remitting state sales taxes collected by qualifying restaurants and bars due to the presence of coronavirus disease 2019 (COVID-19) in Colorado.

I. Background and Purpose

On March 5, 2020, the Colorado Department of Public Health and Environment's (CDPHE) public health laboratory confirmed the first presumptive positive COVID-19 test result in Colorado. Since then, the number of confirmed cases has continued to climb, and we have evidence of community spread throughout the State. I verbally declared a disaster emergency on March 10, 2020, and on March 11, 2020, I issued the corresponding Executive Order D 2020 003, as amended by Executive Orders D 2020 018, D 2020 032, D 2020 058, D 2020 076, D 2020 109, D 2020 125, D 2020 152, D 2020 176, D 2020 205, D 2020 234 and D 2020 258. On March 25, 2020, I requested that the President of the United States declare a Major Disaster for the State of Colorado, pursuant to the Stafford Act. The President approved that request on March 28,
2020.

My administration, along with other State, local, and federal authorities, has taken a wide array of actions to mitigate the effects of the pandemic, prevent further spread, and protect against overwhelming our health care resources.

The economic impacts of COVID-19 are significant, and threaten to undermine the economic stability of many Coloradans and local businesses. The risk of contamination posed by COVID-19 has necessitated closure of multiple businesses. Restaurants and bars have been especially hard hit and have had to make costly investments to stay open. As we enter fall and winter and outdoor dining becomes less feasible, we must take action to shore up ensure that Colorado restaurants and bars can mitigate, respond to, and recover from economic disruption.

This Executive Order orders a one-month extension for remitting state sales taxes collected by qualifying restaurants and bars.

II. Directives

A. I direct the Department of Revenue to identify retailers in the alcoholic beverage drinking places industry, the restaurants and other eating places industry, and the mobile food services industry, as each is more fully described below.

1. The alcoholic beverage drinking places industry is comprised of establishments open to the public known as bars, taverns, brew pubs, distillery pubs, nightclubs, or drinking places primarily engaged in preparing and serving alcoholic beverages for immediate, on-premise consumption. Sandwiches and light snacks may also be available for consumption on the premises of these establishments. Breweries without table food service, distilleries, wineries, and retail liquor or drug stores offering tastings are not within this industry.

2. The restaurants and other eating places industry is comprised of establishments open to the public known as restaurants, cafes, lunch counters, and carryout shops, which are primarily engaged in one of the following:

    i. Providing prepared food services at a fixed, physical premises to patrons who order and are served while seated, and pay after eating;

    ii. Providing prepared food services at a fixed, physical premises to patrons who generally order or select items (e.g., at a counter or in a buffet line) and pay before eating; or

    iii. Preparing and/or serving at a fixed, physical premises specialty snacks (e.g., ice cream, frozen yogurt, or cookies) and/or nonalcoholic beverages (e.g., coffee, juices, or sodas) for consumption on or near the premises.

    The industry does not include establishments selling food from mobile vehicles (see below); establishments presenting live theatrical productions and other entertainment facilities; hotels or bed and breakfast establishments; specialty food stores; vending machines; caterers or other food service contractors; or private cafeterias at workplaces, universities, or hospitals.

3. The mobile food services industry includes retailers primarily engaged in preparing and serving meals, snacks, and nonalcoholic beverages for immediate consumption from motorized vehicles (e.g., food trucks or ice

cream trucks) or nonmotorized carts (e.g., hot dog carts). Restaurants and carryout shops that offer delivery of prepared food are in the "restaurants and other eating places" industry above. Retailers delivering food prepared only by third parties are not within this industry. Retailers shipping meal kits, heat-at-home meals, or other unprepared food to consumers for home consumption are not within this industry.

B. I direct that any retailer doing business in Colorado and operating an alcoholic drinking places establishment, a restaurants and other eating places establishment, or a mobile food services vehicle or cart as described in Directive A above, at one or more locations in Colorado that are required to file a monthly sales tax return pursuant to C.R.S. §§ 39-26-105 and 39-26-109 may defer, in part, the payment of state sales taxes as follows:

1. A qualifying retailer in the alcoholic drinking places or restaurant and other eating places industry that is required to timely file a sales tax return for sales made in November 2020 by December 20, 2020, may deduct from state net taxable sales the lesser of state net taxable sales or $70,000 and retain the resulting sales tax collected. The deduction is allowed to the retailer for each permanent place of business (i.e., each "physical site") properly licensed as such pursuant to C.R.S. § 39-26-103(2)(a), but no retailer is allowed to claim a deduction for more than five such places of business. No deduction is allowed for "non-physical sites" established for purposes of reporting off-premise sales delivered into a taxing area. No deduction is allowed for any temporary place of business or special event.

2. A qualifying retailer in the mobile food services industry that is required to timely file a sales tax return for sales made in November 2020 on December 20, 2020, may deduct from state net taxable sales the lesser of aggregate state net taxable sales for all sites or $70,000 per motorized vehicle or nonmotorized cart and retain the resulting state sales tax collected. A qualifying retailer may deduct state net taxable sales for all sites at which the mobile food services retailer makes taxable sales, but no retailer is allowed to claim deductions totaling more than $70,000 per vehicle or cart for more than five such vehicles and carts.

3. A qualifying retailer operating both a restaurant and a mobile food service may defer state sales taxes for not more than five permanent restaurant sites in accordance with paragraph (1) of this Directive B, and may also defer state sales taxes for not more than five mobile food service vehicles and carts in accordance with paragraph (2) of this Directive B.

4. As with all sales tax held by retailers, the qualifying retailer must continue to hold the deferred taxes in trust until paid to the Department of Revenue unless otherwise prescribed by subsequent law. The retailer must pay the

remaining state sales tax, if any, and all state-administered local taxes on or before December 20, 2020.

5. "State net taxable sales" means all sales made by the retailer during the specified tax period of tangible personal property, commodities, and services as specified in C.R.S. § 39-26-104 less any deductions and exemptions authorized by article 26 of title 39, C.R.S., without regard to the deduction authorized in this Executive Order.

6. The deferral applies to state net taxable sales only. Retailers may not defer payment of city, county, or special district sales taxes collected by the Department of Revenue. Nothing in this Executive Order shall prevent any local government from rebating sales taxes collected by qualifying retailers pursuant to local ordinance.

7. The deduction applies only to a sales tax return for sales made in November 2020 by December 20, 2020 and may only be retained by a qualifying retailer until the earlier of the sales tax return due April 20, 2021, or the retailer's final sales tax return.

C. I direct the Department of Revenue to publish instructions for properly claiming the deferral described in this Executive Order. For any retailer that properly claims the sales tax deferral in accordance with the Department's instructions, I direct the Department of Revenue to suspend or waive penalties and interest that may accrue pursuant to C.R.S. § 39-26-118(2)(a), provided that the retailer adds the amount so deducted and deferred to the state net taxable sales reported on the earlier of the sales tax return due April 20, 2021, or the retailer's final sales tax return.

D. I direct the Department of Revenue to notify the eligible retailers it identifies that they are eligible for this deferral.

III. Duration

This Executive Order shall expire thirty (30) days from November 25, 2020, unless extended further by Executive Order.

GIVEN under my hand and the Executive Seal of the State of Colorado, this twenty-fifth day of November, 2020.

Jared Polis
Governor