A BILL FOR AN ACT

Concerning a clarification of the effect of statutes of

Limitations on the dispute resolution process when a taxpayer owes sales or use tax to one local government but has erroneously paid the disputed tax to another local government.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill seeks to clarify the general assembly's intent when it enacted a dispute resolution process in 1985 to address a situation when
a taxpayer paid a sales and use tax to one local government when it should have instead paid that disputed amount to a different local government. A recent court case applied the statute of limitations to this dispute resolution process, resulting in the taxpayer having to pay the disputed amount twice to 2 different local governments. The bill specifies that any statutes of limitations, either local, state, or in intergovernmental transfer agreements, do not apply to the remedies set forth in law.

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

SECTION 1. In Colorado Revised Statutes, 29-2-106.1, amend (5) as follows:

29-2-106.1. Deficiency notice - dispute resolution - legislative declaration. (5)(a) If the taxpayer asserts that all or part of a sales or use tax which is the subject of the hearing has been paid to or is due to another local government, then such other local government shall be joined as a party to the hearing. Neither the taxpayer need not nor the assessing local government needs to file a claim for refund with such other local government in order to pursue the remedy provided by this subsection (5). If the executive director determines that the disputed tax was paid, but to the wrong local government, then the taxpayer shall be relieved of the tax due up to the amount paid by the taxpayer to the wrong local government together with an abatement of interest thereon and all penalties.

(b) Notwithstanding section 29-2-106 (8), the periods open or closed to assessment or refund under the ordinances of the local governments, under sections 39-26-210, 39-21-107 (1), 39-26-125, and 39-26-703 (2)(d), or under an intergovernmental transfer agreement may not bar any of the remedies set forth in subsections (5)(a) and (6) of this section.

(c) (I) The general assembly hereby finds and declares
THAT:

(A) In 1985, the General Assembly enacted House Bill 85-1007 to provide a remedy for a taxpayer that was assessed sales or use tax by a local government and that had paid all or part of the assessed sales or use tax to another local government. The taxpayer could join the affected local governments in a hearing before the Executive Director of the Department of Revenue and, if the Executive Director determined that the disputed tax was paid, but to the wrong local government, the taxpayer was relieved of the tax due up to the amount paid by the taxpayer to the wrong local government, together with an abatement of interest thereon and all penalties.

(B) In enacting that remedy for the taxpayer, the General Assembly intended that the relief provided was available without the need to file a refund claim, by the taxpayer or by the assessing local government, with the local government to which the tax was wrongly paid, and that the relief provided was available regardless of the expiration of any period of limitations otherwise applicable to assessments or refunds of sales and use taxes by the local governments;

(C) As enacted, House Bill 85-1007 applied to all local governments, whether home rule or statutory, because the General Assembly declared, as set forth in subsection (1) of this section, that the enforcement of sales and use taxes can affect persons and entities across the jurisdictional boundaries of taxing jurisdictions and that dispute resolution is a matter of
STATEWIDE CONCERN;

(D) ON APRIL 24, 2014, THE COURT OF APPEALS ISSUED A DECISION IN QWEST CORP. v. CITY OF NORTHGLENN, 351 P.3d 505 (COLO. APP. 2014), THAT PRECLUDED A TAXPAYER FROM OBTAINING THE RELIEF PROVIDED BY THE 1985 LEGISLATION BY APPLICATION OF THE STATUTES OF LIMITATIONS ON REFUND CLAIMS. THAT DECISION IS INCONSISTENT WITH THE GENERAL ASSEMBLY'S ORIGINAL INTENT TO PROVIDE RELIEF TO TAXPAYERS WITHOUT REGARD TO ANY STATUTES OF LIMITATIONS, AND PRECLUDES TAXPAYERS IN MANY CASES FROM OBTAINING THE RELIEF THE GENERAL ASSEMBLY INTENDED TO PROVIDE IN HOUSE BILL 85-1007.

(II) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT BY ENACTING SENATE BILL 17-___, ENACTED IN 2017, AND AMENDING THIS SUBSECTION (5), IT INTENDS TO CLARIFY THAT THE RELIEF PROVIDED TO TAXPAYERS IN 1985 HAS ALWAYS BEEN AVAILABLE, IS CURRENTLY AVAILABLE, AND WILL CONTINUE TO BE AVAILABLE, REGARDLESS OF THE EXPIRATION OF ANY PERIOD OF LIMITATIONS OTHERWISE APPLICABLE TO ASSESSMENTS OR REFUNDS OF SALES AND USE TAXES BY THE LOCAL GOVERNMENTS.

SECTION 2. In Colorado Revised Statutes, amend 39-26-210 as follows:

39-26-210. Limitations. The taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this part 2 shall not be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable, EXCEPT AS SET FORTH IN SECTION 29-2-106.1 (5)(b); nor shall any lien continue after such period, except for
taxes assessed before the expiration of such period, notice of lien with
respect to which has been filed prior to the expiration of such period, in
which cases such lien shall continue only for one year after the filing of
notice thereof. In the case of a false or fraudulent return with intent to
evade tax, the tax, together with interest and penalties thereon, may be
assessed, or proceedings for the collection of such taxes may be begun at
any time. Before the expiration of such period of limitation, the taxpayer
and the executive director of the department of revenue may agree in
writing to an extension thereof, and the period so agreed on may be
extended by subsequent agreements in writing.

SECTION 3. In Colorado Revised Statutes, 39-21-107, amend
(1) as follows:

39-21-107. Limitations. (1) Except as provided in this section,
in section 29-2-106.1 (5)(b), and unless such time is extended by waiver,
the amount of any tax or of any charge on oil and gas production imposed
pursuant to articles 24 to 29 of this title 39 or article 3 of title 42,
C.R.S., and the penalty and interest applicable thereto, shall be assessed
within three years after the return was filed, whether or not such return
was filed on or after the date prescribed, and no assessment shall be made
or credit taken and no notice of lien shall be filed, nor distraint warrant
issued, nor suit for collection instituted, nor any other action to collect the
same commenced after the expiration of such period; except that a written
proposed adjustment of the tax liability by the department issued prior to
the expiration of such period shall extend the limitation of this subsection
(1) for one year after a final determination or assessment is made. No lien
shall continue after the three-year period provided for in this subsection
(1), except for taxes assessed before the expiration of such period, notice
of lien with respect to which has been filed prior to the expiration of such period, and except for taxes on which written notice of any proposed adjustment of the tax liability has been sent to the taxpayer during such three-year period, in which case the lien shall continue for one year only after the expiration of such period or after the issuance of a final determination or assessment based on the proposed adjustment issued prior to the expiration of the three-year period. This subsection (1) shall not apply to income tax or to any tax imposed under article 23.5 of this title TITLE 39.

SECTION 4. In Colorado Revised Statutes, amend 39-26-125 as follows:

39-26-125. Limitations. The taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this part 1 shall not be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable, EXCEPT AS SET FORTH IN SECTION 29-2-106.1 (5)(b); nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which cases such lien shall continue only for one year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes, may be begun, at any time. Before the expiration of such period of limitation, the taxpayer and the executive director of the department of revenue may agree in writing to an extension thereof, and the period so agreed on may
be extended by subsequent agreements in writing.

SECTION 5. In Colorado Revised Statutes, 39-26-703, amend (2)(d) as follows:

39-26-703. Disputes and refunds. (2) (d) An application for refund under paragraph (c) or (c.5) of this subsection (2) of this section shall be made within the applicable deadline and shall be made on forms prescribed and furnished by the executive director of the department of revenue, which form shall contain, in addition to the foregoing information, such pertinent data as the executive director prescribes. EXCEPT AS SET FORTH IN SECTION 29-2-106.1 (5)(b), the deadline for a sales tax refund or a refund of any use tax collected by a vendor is three years after the twentieth day of the month following the date of purchase and the deadline for any other use tax refund is three years after the twentieth day of the month following the initial date of the storage, use, or consumption in the state by the person applying for the refund.

SECTION 6. Applicability. This act applies to all assessments of sales or use tax within home rule cities, home rule counties, and home rule cities and counties, as well as within statutory cities and towns, counties, and other taxing districts, issued before, on, or after the effective date of this act that have not otherwise become final by all appeals having been exhausted or times for filing an appeal having lapsed without an appeal being made as of the effective date of this act.

SECTION 7. 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.