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.

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*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). (a). 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:


(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 17-112, 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 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) and (2.5)(a) as follows:

39-26-703. Disputes and refunds. (2) (d) An application for refund under paragraph (c) or (c.5) of this subsection (2) 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.

(2.5) (a) EXCEPT AS SET FORTH IN SECTION 29-2-106.1 (5)(b), within three years after the due date of the return showing the overpayment or one year after the date of overpayment, whichever is later, a vendor shall file any claim for refund with the executive director of the department of revenue. The executive director shall promptly examine such claim and shall make a refund or allow a credit to any vendor who establishes that such vendor overpaid the tax due pursuant to this article.

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.