

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 17-0807.01 Esther van Mourik x4215

SENATE BILL 17-112

SENATE SPONSORSHIP

Neville T., Court, Hill, Jahn, Kerr, Tate, Smallwood

HOUSE SPONSORSHIP

Pabon, Covarrubias, Lawrence, Thurlow, Van Winkle, Leonard, Liston

Senate Committees

Finance

House Committees

Local Government

A BILL FOR AN ACT

101 CONCERNING A CLARIFICATION OF THE EFFECT OF STATUTES OF
102 LIMITATIONS ON THE DISPUTE RESOLUTION PROCESS WHEN A
103 TAXPAYER OWES SALES OR USE TAX TO ONE LOCAL
104 GOVERNMENT BUT HAS ERRONEOUSLY PAID THE DISPUTED TAX
105 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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
March 28, 2017

SENATE
3rd Reading Unamended
February 14, 2017

SENATE
Amended 2nd Reading
February 13, 2017

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.

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

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

4 **29-2-106.1. Deficiency notice - dispute resolution.** (5) (a) If the
5 taxpayer asserts that all or part of a sales or use tax which is the subject
6 of the hearing has been paid to or is due to another local government, then
7 such other local government shall be joined as a party to the hearing.
8 NEITHER the taxpayer ~~need not~~ NOR THE ASSESSING LOCAL GOVERNMENT
9 NEEDS TO file a claim for refund WITH SUCH OTHER LOCAL GOVERNMENT
10 in order to pursue the remedy provided by this ~~subsection (5)~~ SUBSECTION
11 (5)(a). If the executive director determines that the disputed tax was paid,
12 but to the wrong local government, then the taxpayer shall be relieved of
13 the tax due up to the amount paid BY THE TAXPAYER TO THE WRONG
14 LOCAL GOVERNMENT together with an abatement of interest thereon and
15 all penalties.

16 (b) NOTWITHSTANDING SECTION 29-2-106 (8), THE PERIODS OPEN
17 OR CLOSED TO ASSESSMENT OR REFUND UNDER THE ORDINANCES OF THE
18 LOCAL GOVERNMENTS, UNDER SECTIONS 39-26-210, 39-21-107 (1),
19 39-26-125, AND **39-26-703**, OR UNDER AN INTERGOVERNMENTAL
20 TRANSFER AGREEMENT MAY NOT BAR ANY OF THE REMEDIES SET FORTH
21 IN SUBSECTIONS (5)(a) AND (6) OF THIS SECTION.

22 (c) (I) **FOR ANY TAXABLE EVENT OCCURRING ON OR AFTER**

1 JANUARY 1, 2018, IF THE TAXPAYER RECEIVES A NOTICE FROM A LOCAL
2 GOVERNMENT THAT THE TAXPAYER MUST PAY SALES OR USE TAX TO THAT
3 LOCAL GOVERNMENT FOR A PARTICULAR TAXABLE EVENT AND THE
4 TAXPAYER FAILS TO COMPLY WITH THE INSTRUCTIONS IN THE NOTICE WITH
5 RESPECT TO THE SAME TYPE OF TAXABLE EVENT THAT OCCURS MORE THAN
6 NINETY DAYS AFTER THE TAXPAYER RECEIVES THE NOTICE, THEN THE
7 TAXPAYER MAY NOT TAKE ADVANTAGE OF THE REMEDY ALLOWED IN
8 SUBSECTION (5)(a) OF THIS SECTION FOR THAT PARTICULAR TYPE OF
9 TAXABLE EVENT IDENTIFIED IN THE NOTICE THAT OCCURS MORE THAN
10 NINETY DAYS AFTER THE TAXPAYER RECEIVED THE NOTICE, UNLESS THE
11 TAXPAYER RECEIVES, OR HAS PREVIOUSLY RECEIVED, A SIMILAR NOTICE
12 DESCRIBED IN SUBSECTION (5)(c)(II) OF THIS SECTION FROM ANOTHER
13 LOCAL GOVERNMENT THAT PROVIDES CONTRARY INSTRUCTIONS.

14 (II) THE NOTICE REQUIRED IN SUBSECTION (5)(c)(I) OF THIS
15 SECTION MUST:

16 (A) BE IN WRITING AND BE SIGNED BY AN APPROPRIATE LOCAL
17 GOVERNMENT OFFICIAL;

18 (B) BE SENT BY CERTIFIED OR REGISTERED MAIL OR BE DELIVERED
19 BY A NATIONALLY RECOGNIZED COURIER SERVICE THAT PROVIDES A
20 RECEIPT UPON DELIVERY;

21 (C) INSTRUCT THE TAXPAYER TO PAY SALES OR USE TAX ON THE
22 PARTICULAR TYPE OF TAXABLE EVENT IDENTIFIED IN THE NOTICE TO THE
23 LOCAL GOVERNMENT; AND

24 (D) INCLUDE NOTICE THAT FAILURE TO COMPLY WITH THE
25 INSTRUCTIONS WILL RESULT IN THE TAXPAYER BEING DENIED THE REMEDY
26 ALLOWED IN SUBSECTION (5)(a) OF THIS SECTION FOR THE PARTICULAR
27 TYPE OF TAXABLE EVENT IDENTIFIED IN THE NOTICE THAT OCCURS MORE

1 ~~THAN NINETY DAYS AFTER THE TAXPAYER RECEIVED THE NOTICE.~~ ■ ■

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

4 **39-26-210. Limitations.** The taxes for any period, together with
5 the interest thereon and penalties with respect thereto, imposed by this
6 part 2 shall not be assessed, nor shall any notice of lien be filed, or
7 distraint warrant issued, or suit for collection be instituted, nor any other
8 action to collect the same be commenced, more than three years after the
9 date on which the tax was or is payable, EXCEPT AS SET FORTH IN SECTION
10 29-2-106.1 (5)(b); nor shall any lien continue after such period, except for
11 taxes assessed before the expiration of such period, notice of lien with
12 respect to which has been filed prior to the expiration of such period, in
13 which cases such lien shall continue only for one year after the filing of
14 notice thereof. In the case of a false or fraudulent return with intent to
15 evade tax, the tax, together with interest and penalties thereon, may be
16 assessed, or proceedings for the collection of such taxes may be begun at
17 any time. Before the expiration of such period of limitation, the taxpayer
18 and the executive director of the department of revenue may agree in
19 writing to an extension thereof, and the period so agreed on may be
20 extended by subsequent agreements in writing.

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

23 **39-21-107. Limitations.** (1) Except as provided in this section,
24 IN SECTION 29-2-106.1 (5)(b), and unless such time is extended by waiver,
25 the amount of any tax or of any charge on oil and gas production imposed
26 pursuant to articles 24 to 29 of this ~~title~~ TITLE 39 or article 3 of title 42,
27 ~~C.R.S.~~, and the penalty and interest applicable thereto, shall be assessed

1 within three years after the return was filed, whether or not such return
2 was filed on or after the date prescribed, and no assessment shall be made
3 or credit taken and no notice of lien shall be filed, nor distraint warrant
4 issued, nor suit for collection instituted, nor any other action to collect the
5 same commenced after the expiration of such period; except that a written
6 proposed adjustment of the tax liability by the department issued prior to
7 the expiration of such period shall extend the limitation of this subsection
8 (1) for one year after a final determination or assessment is made. No lien
9 shall continue after the three-year period provided for in this subsection
10 (1), except for taxes assessed before the expiration of such period, notice
11 of lien with respect to which has been filed prior to the expiration of such
12 period, and except for taxes on which written notice of any proposed
13 adjustment of the tax liability has been sent to the taxpayer during such
14 three-year period, in which case the lien shall continue for one year only
15 after the expiration of such period or after the issuance of a final
16 determination or assessment based on the proposed adjustment issued
17 prior to the expiration of the three-year period. This subsection (1) shall
18 not apply to income tax or to any tax imposed under article 23.5 of this
19 ~~title~~ TITLE 39.

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

22 **39-26-125. Limitations.** The taxes for any period, together with
23 the interest thereon and penalties with respect thereto, imposed by this
24 part 1 shall not be assessed, nor shall any notice of lien be filed, or
25 distraint warrant issued, or suit for collection be instituted, nor any other
26 action to collect the same be commenced, more than three years after the
27 date on which the tax was or is payable, EXCEPT AS SET FORTH IN SECTION

1 29-2-106.1 (5)(b); nor shall any lien continue after such period, except for
2 taxes assessed before the expiration of such period, notice of lien with
3 respect to which has been filed prior to the expiration of such period, in
4 which cases such lien shall continue only for one year after the filing of
5 notice thereof. In the case of a false or fraudulent return with intent to
6 evade tax, the tax, together with interest and penalties thereon, may be
7 assessed, or proceedings for the collection of such taxes, may be begun,
8 at any time. Before the expiration of such period of limitation, the
9 taxpayer and the executive director of the department of revenue may
10 agree in writing to an extension thereof, and the period so agreed on may
11 be extended by subsequent agreements in writing.

12 **SECTION 5.** In Colorado Revised Statutes, 39-26-703, **amend**
13 (2)(d) and (2.5)(a) as follows:

14 **39-26-703. Disputes and refunds.** (2) (d) An application for
15 refund under ~~paragraph (c) or (c.5) of this subsection (2)~~ SUBSECTION
16 (2)(c) OR (2)(c.5) OF THIS SECTION shall be made within the applicable
17 deadline and shall be made on forms prescribed and furnished by the
18 executive director of the department of revenue, which form shall
19 contain, in addition to the foregoing information, such pertinent data as
20 the executive director prescribes. EXCEPT AS SET FORTH IN SECTION
21 29-2-106.1 (5)(b), the deadline for a sales tax refund or a refund of any
22 use tax collected by a vendor is three years after the twentieth day of the
23 month following the date of purchase and the deadline for any other use
24 tax refund is three years after the twentieth day of the month following
25 the initial date of the storage, use, or consumption in the state by the
26 person applying for the refund.

27 (2.5) (a) EXCEPT AS SET FORTH IN SECTION 29-2-106.1 (5)(b),

1 within three years after the due date of the return showing the
2 overpayment or one year after the date of overpayment, whichever is
3 later, a vendor shall file any claim for refund with the executive director
4 of the department of revenue. The executive director shall promptly
5 examine such claim and shall make a refund or allow a credit to any
6 vendor who establishes that such vendor overpaid the tax due pursuant to
7 this article.

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

15 **SECTION 7. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.