

CHAPTER 144

TAXATION

SENATE BILL 17-112

BY SENATOR(S) Neville T., Court, Hill, Jahn, Kerr, Tate, Smallwood, Baumgardner, Cooke, Holbert, Kefalas, Lundberg, Marble, Martinez Humenik, Merrifield, Moreno, Priola, Scott, Todd, Grantham;
 also REPRESENTATIVE(S) Pabon, Covarrubias, Lawrence, Thurlow, Van Winkle, Leonard, Liston, Arndt, Becker K., Exum, Gray, Hooton, Kraft-Tharp, Lee, Neville P., Ransom.

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.

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. (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)~~ **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, 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) FOR ANY TAXABLE EVENT OCCURRING ON OR AFTER JANUARY 1, 2018, IF**

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

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

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

(D) INCLUDE NOTICE THAT FAILURE TO COMPLY WITH THE INSTRUCTIONS WILL RESULT IN THE TAXPAYER BEING DENIED THE REMEDY ALLOWED IN SUBSECTION (5)(a) OF THIS SECTION FOR THE PARTICULAR TYPE OF TAXABLE EVENT IDENTIFIED IN THE NOTICE THAT OCCURS MORE THAN NINETY DAYS AFTER THE TAXPAYER RECEIVED THE NOTICE.

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~~ 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) 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)~~ SUBSECTION (2)(c) OR (2)(c.5) 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.

(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.

Approved: April 18, 2017