

CHAPTER 196

TAXATION

HOUSE BILL 17-1203

BY REPRESENTATIVE(S) Lebsack, Becker K., Esgar, Hooton, Pabon, Singer;
also SENATOR(S) Martinez Humenik and Crowder.

AN ACT

CONCERNING THE AUTHORITY OF CERTAIN LOCAL GOVERNMENTS TO LEVY A SPECIAL SALES TAX ON RETAIL MARIJUANA IN CERTAIN CIRCUMSTANCES SUBJECT TO VOTER APPROVAL BY THE ELIGIBLE ELECTORS OF THE LOCAL GOVERNMENT.

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

SECTION 1. In Colorado Revised Statutes, **add** 29-2-115 as follows:

29-2-115. Retail marijuana sales tax - county - municipality - election - legislative declaration - definition. (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE SPECIAL SALES TAX RECOGNIZED IN THIS SECTION PERMITS COUNTIES AND STATUTORY MUNICIPALITIES TO ENACT AN ADDITIONAL TAX SPECIFIC TO THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, SUBJECT TO VOTER APPROVAL. THIS DISTINCT TAXING AUTHORITY IS IN ADDITION TO THE STATUTORY AUTHORITY FOR COUNTIES AND STATUTORY MUNICIPALITIES TO IMPOSE A GENERAL SALES TAX, WHILE HOME RULE MUNICIPALITIES DERIVE ALL SALES TAXING AUTHORITY FROM THE HOME RULE AUTHORITY GRANTED BY THE COLORADO CONSTITUTION.

(b) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT ANY SPECIAL SALES TAX ON RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS PROPOSED BY COUNTIES AND STATUTORY MUNICIPALITIES SHOULD TAKE INTO ACCOUNT THE TOTAL TAX RATE THAT WOULD EXIST IF THE TAX IS ADOPTED BY VOTERS. IT IS THEREFORE ALSO THE INTENT OF THE GENERAL ASSEMBLY IN ENACTING THIS SECTION TO ENSURE THAT THE IMPOSITION OF A COUNTY SPECIAL SALES TAX WITHIN A HOME RULE MUNICIPALITY OR STATUTORY MUNICIPALITY OCCURS ONLY WHEN THE MUNICIPALITY DOES NOT HAVE ITS OWN SPECIAL SALES TAX, AND OTHERWISE ONLY AFTER AN INTERGOVERNMENTAL AGREEMENT WITH A MUNICIPALITY THAT DOES IMPOSE, OR IMPOSES AT ANY TIME, ITS OWN SPECIAL SALES TAX.

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

(2) FOR PURPOSES OF THIS SECTION, "SPECIAL SALES TAX" MEANS A SALES TAX IMPOSED BY A LOCAL GOVERNMENT IN ADDITION TO THE GENERAL SALES TAX IMPOSED PURSUANT TO SECTION 29-2-102 OR SECTION 29-2-103, AS APPLICABLE, AND IN ADDITION TO THE TAXES IMPOSED PURSUANT TO ARTICLES 26 AND 28.8 OF TITLE 39.

(3) (a) EACH COUNTY IN THE STATE IS AUTHORIZED TO LEVY, COLLECT, AND ENFORCE A COUNTY SPECIAL SALES TAX UPON ALL SALES OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, AS THOSE TERMS ARE DEFINED IN SECTION 12-43.4-103, UNDER THE FOLLOWING CIRCUMSTANCES:

(I) A COUNTY MAY LEVY, COLLECT, AND ENFORCE A COUNTY SPECIAL SALES TAX UPON ALL SALES OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS PURSUANT TO THIS SUBSECTION (3) IN THE UNINCORPORATED AREAS OF THE COUNTY;

(II) A COUNTY MAY LEVY, COLLECT, AND ENFORCE A COUNTY SPECIAL SALES TAX UPON ALL SALES OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS PURSUANT TO THIS SUBSECTION (3) IN THE MUNICIPALITIES WITHIN THE BOUNDARIES OF THE COUNTY, IN WHOLE OR IN PART, THAT DO NOT LEVY A MUNICIPAL SPECIAL SALES TAX ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS. THE COUNTY MAY LEVY A SPECIAL SALES TAX IN A MUNICIPALITY PURSUANT TO THIS SUBSECTION (3)(a)(II) ONLY UNTIL THE MUNICIPALITY OBTAINS VOTER APPROVAL TO LEVY A MUNICIPAL SPECIAL SALES TAX ON RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS. IF THE MUNICIPALITY OBTAINS SUCH VOTER APPROVAL, THE COUNTY SPECIAL SALES TAX AUTHORIZED BY THIS SUBSECTION (3)(a)(II) IS INVALID WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY UNLESS THE COUNTY ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE MUNICIPALITY PURSUANT TO SUBSECTION (3)(a)(III) OF THIS SECTION THAT AUTHORIZES THE COUNTY TO CONTINUE TO LEVY, COLLECT, AND ENFORCE THE SPECIAL SALES TAX ON RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY.

(III) A COUNTY MAY LEVY, COLLECT, AND ENFORCE A COUNTY SPECIAL SALES TAX UPON ALL SALES OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS PURSUANT TO THIS SUBSECTION (3) IN EACH MUNICIPALITY WITHIN THE BOUNDARIES OF THE COUNTY, IN WHOLE OR IN PART, THAT LEVIES A MUNICIPAL SPECIAL SALES TAX ON THE SALES OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, IF THE GOVERNING BODY OF THE COUNTY AND THE GOVERNING BODY OF THE MUNICIPALITY ENTER INTO AN INTERGOVERNMENTAL AGREEMENT PERTAINING TO THE COUNTY'S LEVY, COLLECTION, AND ENFORCEMENT OF A COUNTY SPECIAL SALES TAX UPON ALL SALES OF ALL RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY. AN INTERGOVERNMENTAL AGREEMENT PURSUANT TO THIS SUBSECTION (3)(a)(III) MAY INCLUDE A PROVISION FOR THE APPORTIONMENT OF A SPECIFIED PERCENTAGE OF THE GROSS COUNTY RETAIL MARIJUANA SPECIAL SALES TAX REVENUE COLLECTED BY THE COUNTY TO THE MUNICIPALITY.

(b) NOTWITHSTANDING SECTION 29-2-103 (2), A COUNTY MAY LEVY, COLLECT, AND ENFORCE A SPECIAL SALES TAX PURSUANT TO THIS SUBSECTION (3) IN LESS

THAN THE ENTIRE COUNTY WHEN THE COUNTY SATISFIES ONE OR MORE OF THE CONDITIONS OF THIS SUBSECTION (3).

(c) NO SPECIAL SALES TAX SHALL BE LEVIED PURSUANT TO THIS SUBSECTION (3) UNTIL THE PROPOSAL HAS BEEN REFERRED TO AND APPROVED BY THE ELIGIBLE ELECTORS OF THE COUNTY IN ACCORDANCE WITH THIS ARTICLE 2. ANY PROPOSAL FOR THE LEVY OF A SPECIAL SALES TAX IN ACCORDANCE WITH THIS SUBSECTION (3) MAY BE SUBMITTED TO THE ELIGIBLE ELECTORS OF THE COUNTY ONLY ON THE DATE OF THE STATE GENERAL ELECTION OR ON THE FIRST TUESDAY IN NOVEMBER OF AN ODD-NUMBERED YEAR. ANY ELECTION ON THE PROPOSAL MUST BE CONDUCTED BY THE COUNTY CLERK AND RECORDER IN ACCORDANCE WITH THE "UNIFORM ELECTION CODE OF 1992", ARTICLES 1 TO 13 OF TITLE 1.

(4)(a) EACH MUNICIPALITY IN THE STATE IS AUTHORIZED TO LEVY, COLLECT, AND ENFORCE A MUNICIPAL SPECIAL SALES TAX UPON ALL SALES OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, AS THOSE TERMS ARE DEFINED IN SECTION 12-43.4-103.

(b) NO SPECIAL SALES TAX SHALL BE LEVIED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION UNTIL THE PROPOSAL HAS BEEN REFERRED TO AND APPROVED BY THE ELIGIBLE ELECTORS OF THE MUNICIPALITY IN ACCORDANCE WITH ARTICLE 10 OF TITLE 31. ANY PROPOSAL FOR THE LEVY OF A SPECIAL SALES TAX IN ACCORDANCE WITH SUBSECTION (4)(a) OF THIS SECTION MUST BE SUBMITTED TO THE ELIGIBLE ELECTORS OF THE MUNICIPALITY ON THE DATE OF THE STATE GENERAL ELECTION, ON THE FIRST TUESDAY IN NOVEMBER OF AN ODD-NUMBERED YEAR, OR ON THE DATE OF A MUNICIPAL BIENNIAL ELECTION. ANY ELECTION ON THE PROPOSAL MUST BE CONDUCTED BY THE CLERK OF THE MUNICIPALITY IN ACCORDANCE WITH THE "COLORADO MUNICIPAL ELECTION CODE OF 1965", ARTICLE 10 OF TITLE 31.

(5) IF A COUNTY OR MUNICIPALITY OBTAINED APPROVAL FROM THE ELIGIBLE ELECTORS OF THE COUNTY OR MUNICIPALITY PRIOR TO THE EFFECTIVE DATE OF THIS SECTION TO LEVY, COLLECT, AND ENFORCE A SPECIAL SALES TAX ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, THE SPECIAL SALES TAX IS VALID AND THE COUNTY OR MUNICIPALITY IS AUTHORIZED TO CONTINUE TO LEVY, COLLECT, AND ENFORCE THE SPECIAL SALES TAX; EXCEPT THAT, IN THE CASE OF A COUNTY, THE COUNTY IS AUTHORIZED TO CONTINUE TO LEVY, COLLECT, AND ENFORCE THE SPECIAL SALES TAX SO LONG AS THE COUNTY COMPLIES WITH SUBSECTION (3) OF THIS SECTION. IF A COUNTY LEVIES, COLLECTS, AND ENFORCES A SPECIAL SALES TAX IN A MUNICIPALITY THAT HAS ALREADY OBTAINED VOTER APPROVAL TO LEVY A MUNICIPAL SPECIAL SALES TAX ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, THE COUNTY SPECIAL SALES TAX IS INVALID WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY UNLESS THE COUNTY ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE MUNICIPALITY PURSUANT TO SUBSECTION (3)(a)(III) OF THIS SECTION THAT AUTHORIZES THE COUNTY TO CONTINUE TO LEVY, COLLECT, AND ENFORCE THE SPECIAL SALES TAX ON RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY.

(6) (a) NOTWITHSTANDING THIS ARTICLE 2, ANY RETAIL MARIJUANA SPECIAL SALES TAX IMPOSED BY A COUNTY OR MUNICIPALITY PURSUANT TO THIS SECTION SHALL NOT BE COLLECTED, ADMINISTERED, OR ENFORCED BY THE DEPARTMENT OF

REVENUE, BUT SHALL INSTEAD BE COLLECTED, ADMINISTERED, AND ENFORCED BY THE COUNTY OR MUNICIPALITY IMPOSING THE SPECIAL SALES TAX.

(b) A COUNTY OR MUNICIPALITY IN WHICH A SPECIAL SALES TAX IS IMPOSED PURSUANT TO THIS SECTION MAY AUTHORIZE A RETAIL MARIJUANA STORE TO RETAIN A PERCENTAGE OF THE RETAIL MARIJUANA SPECIAL SALES TAX COLLECTED PURSUANT TO THIS SECTION TO COVER THE EXPENSES OF COLLECTING AND REMITTING THE SPECIAL SALES TAX TO THE COUNTY OR MUNICIPALITY. THE COUNTY OR MUNICIPALITY SHALL DETERMINE THE PERCENTAGE THAT A RETAIL MARIJUANA STORE MAY RETAIN PURSUANT TO THIS SUBSECTION (6)(b).

(7) A COUNTY OR MUNICIPALITY IN WHICH THE ELIGIBLE ELECTORS HAVE APPROVED A SPECIAL SALES TAX PURSUANT TO THIS SECTION MAY CREDIT THE REVENUES COLLECTED FROM THE SPECIAL SALES TAX TO THE GENERAL FUND OF THE COUNTY OR MUNICIPALITY OR TO ANY SPECIAL FUND CREATED IN THE COUNTY OR MUNICIPALITY'S TREASURY. THE GOVERNING BODY OF A COUNTY OR MUNICIPALITY MAY USE THE REVENUES COLLECTED FROM THE SPECIAL SALES TAX IMPOSED PURSUANT TO THIS SECTION FOR ANY PURPOSE AS DETERMINED BY THE GOVERNING BODY OF THE COUNTY OR THE MUNICIPALITY.

SECTION 2. 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: May 4, 2017