

## CHAPTER 3

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**TAXATION**

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**HOUSE BILL 20B-1004**

BY REPRESENTATIVE(S) Valdez A. and Van Winkle, Herod, Arndt, Baisley, Benavidez, Bird, Bockenfeld, Buck, Buckner, Buentello, Caraveo, Carver, Catlin, Champion, Coleman, Cutter, Duran, Esgar, Exum, Froelich, Garnett, Geitner, Gonzales-Gutierrez, Holtorf, Hooton, Jackson, Jaquez Lewis, Kennedy, Kipp, Kraft-Tharp, Landgraf, Larson, Liston, Lontine, McCluskie, McKean, McLachlan, Melton, Michaelson Jenet, Mullica, Pelton, Ransom, Roberts, Saine, Sandridge, Singer, Sirota, Snyder, Soper, Sullivan, Tipper, Titone, Valdez D., Weissman, Will, Williams D., Wilson, Woodrow, Young, Becker, Gray; also SENATOR(S) Bridges and Tate, Winter, Cooke, Coram, Crowder, Danielson, Donovan, Fenberg, Fields, Foote, Gardner, Ginal, Gonzales, Hansen, Hill, Hisey, Holbert, Lee, Lundeen, Marble, Moreno, Pettersen, Priola, Rankin, Rodriguez, Scott, Smallwood, Sonnenberg, Story, Todd, Williams A., Woodward, Zenzinger, Garcia.

**AN ACT**

**CONCERNING A TEMPORARY DEDUCTION FROM STATE NET TAXABLE SALES FOR CERTAIN RETAILERS IN THE STATE IN ORDER TO ALLOW SUCH RETAILERS TO RETAIN THE RESULTING SALES TAX COLLECTED AS ASSISTANCE FOR LOST REVENUE AS A RESULT OF THE ECONOMIC DISRUPTIONS DUE TO THE PRESENCE OF CORONAVIRUS DISEASE 2019 (COVID-19) IN COLORADO.**

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

**SECTION 1. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) Due to the coronavirus disease 2019 (COVID-19) pandemic and the ongoing public health emergency that Colorado has been battling since March 2020, many retailers in the state, particularly those that are subject to mandatory capacity restrictions, have suffered severe revenue declines;

(b) Many retailers have been forced to choose between closing their doors and laying off employees;

(c) Not all retailers were able to make such a choice for themselves and were instead forced to close, further straining the state's unemployment insurance program, resulting in significant impacts to the state's budget;

(d) As retailers continue to close due to economic strain, local communities and governments are doing their best to deal with the fallout of lost jobs and revenue;

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

and

(e) By providing relief to certain retailers, local businesses can continue to provide valuable services to their community and continue to employ Coloradans who would otherwise lose their jobs.

(2) The general assembly further finds and declares that the alcoholic beverages drinking places industry, the restaurant and other eating places industry, and the mobile food services industry are severely impacted by the COVID-19 pandemic due to mandatory capacity restrictions and by public health orders that required or recommended potential patrons to stay home. These specific industries are in particular need of relief in order to stabilize the economy throughout the state and to better position Colorado's economy to recover from the COVID-19 pandemic.

**SECTION 2.** In Colorado Revised Statutes, 39-26-105, **amend** (1)(a)(I)(A); and **add** (1.3) as follows:

**39-26-105. Vendor liable for tax - definitions - repeal.** (1) (a) (I) (A) Except as provided in subsections (1)(a)(I)(B), (1.3), and (1.5) of this section, every retailer shall, irrespective of the provisions of section 39-26-106, be liable and responsible for the payment of an amount equivalent to two and ninety one-hundredths percent of all sales made on or after January 1, 2001, by the retailer of commodities or services as specified in section 39-26-104.

(1.3) (a) AS USED IN THIS SUBSECTION (1.3), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "ALCOHOLIC BEVERAGES DRINKING PLACES INDUSTRY" MEANS ESTABLISHMENTS THAT MAY MAKE SANDWICHES OR LIGHT SNACKS AVAILABLE FOR CONSUMPTION, THAT ARE OPEN TO THE PUBLIC, AND ARE KNOWN AS BARS, TAVERNS, SALES ROOMS, VINTNER'S RESTAURANTS, BREW PUBS, DISTILLERY PUBS, NIGHTCLUBS, OR DRINKING PLACES PRIMARILY ENGAGED IN PREPARING AND SERVING ALCOHOLIC BEVERAGES FOR IMMEDIATE, ON-PREMISE CONSUMPTION. "ALCOHOLIC BEVERAGES DRINKING PLACES INDUSTRY" DOES NOT MEAN BREWERIES, DISTILLERIES, WINERIES, AND RETAIL LIQUOR, OR DRUG STORES THAT OFFER TASTINGS.

(II) "MOBILE FOOD SERVICES INDUSTRY" MEANS RETAILERS PRIMARILY ENGAGED IN PREPARING AND SERVING MEALS, SNACKS, OR NONALCOHOLIC BEVERAGES FOR IMMEDIATE CONSUMPTION FROM MOTORIZED VEHICLES OR NONMOTORIZED CARTS. "MOBILE FOOD SERVICES INDUSTRY" DOES NOT MEAN RETAILERS DELIVERING FOOD PREPARED ONLY BY THIRD PARTIES AND DOES NOT MEAN RETAILERS SHIPPING MEAL KITS, HEAT-AT-HOME MEALS, OR OTHER UNPREPARED FOOD TO CONSUMERS FOR HOME CONSUMPTION.

(III) "QUALIFYING RETAILER" MEANS A RETAILER DOING BUSINESS IN THE STATE THAT TIMELY FILES SALES TAX RETURNS AS REQUIRED UNDER SUBSECTION (1)(b) OF THIS SECTION AND SECTION 39-26-109, AND THAT OPERATES IN THE ALCOHOLIC BEVERAGES DRINKING PLACES INDUSTRY, THE RESTAURANT AND OTHER EATING PLACES INDUSTRY, OR THE MOBILE FOOD SERVICES INDUSTRY.

(IV) "RESTAURANT AND OTHER EATING PLACES INDUSTRY" MEANS ESTABLISHMENTS, NOT INCLUDING ESTABLISHMENTS SELLING FOOD FROM MOBILE VEHICLES, ESTABLISHMENTS PRESENTING LIVE THEATRICAL PRODUCTIONS AND OTHER ENTERTAINMENT FACILITIES, HOTELS OR BED AND BREAKFAST ESTABLISHMENTS, SPECIALTY FOOD STORES, VENDING MACHINES, CATERERS OR OTHER FOOD SERVICE CONTRACTORS, OR PRIVATE CAFETERIAS AT WORKPLACES, UNIVERSITIES, OR HOSPITALS, THAT ARE OPEN TO THE PUBLIC, ARE KNOWN AS RESTAURANTS, CAFES, LUNCH COUNTERS, AND CARRYOUT SHOPS, AND ARE PRIMARILY ENGAGED IN ONE OF THE FOLLOWING:

(A) PROVIDING PREPARED FOOD SERVICES AT A FIXED, PHYSICAL PREMISES TO PATRONS WHO ORDER AND ARE SERVED WHILE SEATED, AND WHO PAY AFTER EATING;

(B) PROVIDING PREPARED FOOD SERVICES AT A FIXED, PHYSICAL PREMISES TO PATRONS WHO GENERALLY ORDER OR SELECT ITEMS AND WHO PAY BEFORE EATING; OR

(C) PREPARING OR SERVING SPECIALTY SNACKS OR NONALCOHOLIC BEVERAGES AT A FIXED, PHYSICAL PREMISES TO PATRONS WHO PAY BEFORE EATING FOR CONSUMPTION ON OR NEAR THE PREMISES.

(V) "SPECIFIED SALES TAX PERIOD" MEANS SALES MADE IN NOVEMBER 2020, DECEMBER 2020, JANUARY 2021, AND FEBRUARY 2021, FOR WHICH MONTHLY RETURNS MUST BE FILED PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION, ON DECEMBER 21, 2020, JANUARY 20, 2021, FEBRUARY 22, 2021, AND MARCH 22, 2021, RESPECTIVELY.

(VI) "STATE NET TAXABLE SALES" MEANS ALL SALES MADE BY THE QUALIFYING RETAILER DURING THE SPECIFIED SALES TAX PERIOD OF TANGIBLE PERSONAL PROPERTY, COMMODITIES, AND SERVICES AS SPECIFIED IN SECTION 39-26-104, LESS ANY DEDUCTIONS AND EXEMPTIONS AUTHORIZED IN THIS ARTICLE 26, WITHOUT REGARD TO THE DEDUCTION AUTHORIZED IN THIS SUBSECTION (1.3).

(b)(I) A QUALIFYING RETAILER IN THE ALCOHOLIC BEVERAGES DRINKING PLACES INDUSTRY OR IN THE RESTAURANT AND OTHER EATING PLACES INDUSTRY MAY DEDUCT FROM STATE NET TAXABLE SALES THE LESSER OF STATE NET TAXABLE SALES OR SEVENTY THOUSAND DOLLARS AND RETAIN THE RESULTING SALES TAX COLLECTED FOR EACH MONTH IN THE SPECIFIED SALES TAX PERIOD.

(II) ONE DEDUCTION DESCRIBED IN SUBSECTION (1.3)(b)(I) OF THIS SECTION IS ALLOWED PER MONTH FOR EACH OF UP TO FIVE FIXED PHYSICAL PREMISES THAT ARE PROPERLY LICENSED UNDER SECTION 39-26-103 (2)(a), TO A QUALIFYING RETAILER IN THE ALCOHOLIC BEVERAGES DRINKING PLACES INDUSTRY OR IN THE RESTAURANT AND OTHER EATING PLACES INDUSTRY. NO DEDUCTION IS ALLOWED FOR:

(A) NONPHYSICAL SITES THAT ARE ESTABLISHED FOR PURPOSES OF REPORTING SALES DELIVERED INTO A TAXING AREA; OR

(B) ANY TEMPORARY PLACE OF BUSINESS OR SPECIAL EVENT.

(c) A QUALIFYING RETAILER IN THE MOBILE FOOD SERVICES INDUSTRY MAY DEDUCT FROM STATE NET TAXABLE SALES THE LESSER OF AGGREGATE STATE NET TAXABLE SALES FOR ALL SITES OR SEVENTY THOUSAND DOLLARS PER MOTORIZED VEHICLE OR NONMOTORIZED CART, NOT TO EXCEED FIVE MOTORIZED VEHICLES OR NONMOTORIZED CARTS, AND RETAIN THE RESULTING STATE SALES TAX COLLECTED FOR EACH MONTH IN THE SPECIFIED SALES TAX PERIOD.

(d) IF A QUALIFYING RETAILER IS IN BOTH THE RESTAURANT AND OTHER EATING PLACES INDUSTRY AND THE MOBILE FOOD SERVICES INDUSTRY, THE QUALIFYING RETAILER MAY CLAIM THE DEDUCTION FOR NO MORE THAN FIVE PHYSICAL SITES AND FOR NO MORE THAN FIVE MOTORIZED VEHICLES AND NONMOTORIZED CARTS.

(e) THE QUALIFYING RETAILER MUST CONTINUE TO HOLD STATE SALES TAXES IN EXCESS OF THE AMOUNT RETAINED IN TRUST UNTIL PAID TO THE DEPARTMENT OF REVENUE AS SPECIFIED IN SECTION 39-26-118.

(f) THE DEDUCTION AND SALES TAX RETENTION ALLOWED IN THIS SUBSECTION (1.3) APPLIES TO STATE NET TAXABLE SALES ONLY. QUALIFYING RETAILERS MAY NOT RETAIN PAYMENT OF CITY, COUNTY, OR SPECIAL DISTRICT SALES TAXES COLLECTED BY THE DEPARTMENT OF REVENUE. NOTHING IN THIS SUBSECTION (1.3) PREVENTS ANY LOCAL GOVERNMENT FROM REBATING SALES TAXES COLLECTED BY QUALIFYING RETAILERS PURSUANT TO A LOCAL ORDINANCE.

(g) THIS SUBSECTION (1.3) IS REPEALED, EFFECTIVE DECEMBER 31, 2026.

**SECTION 3.** In Colorado Revised Statutes, **amend** 39-26-112 as follows:

**39-26-112. Excess tax - remittance - repeal.** (1) If any vendor, during any reporting period, collects as a tax an amount in excess of three percent of all taxable sales made prior to January 1, 2001, and two and ninety one-hundredths percent of all taxable sales made on or after January 1, 2001, such vendor shall remit to the executive director of the department of revenue the full net amount of the tax imposed in this part 1 and also such excess. The retention by the retailer or vendor of any excess of tax collections over the said percentage of the total taxable sales of such retailer or vendor, or the intentional failure to remit punctually to the executive director the full amount required to be remitted by the provisions of this part 1 is declared to be unlawful and constitutes a misdemeanor.

(2) (a) THE REQUIREMENTS AND PENALTY IN THIS SECTION DO NOT APPLY TO A QUALIFYING RETAILER RETAINING STATE SALES TAX AS ALLOWED IN SECTION 39-26-105 (1.3).

(b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE DECEMBER 31, 2026.

**SECTION 4.** In Colorado Revised Statutes, 39-26-118, **amend** (1) as follows:

**39-26-118. Recovery of taxes, penalty, and interest - repeal.** (1) (a) All sums of money paid by the purchaser to the retailer as taxes imposed by this ~~article~~ ARTICLE 26 shall be and remain public money, the property of the state of Colorado, in the hands of such retailer, and ~~he~~ THE RETAILER shall hold the same in trust for the sole use and benefit of the state of Colorado until paid to the executive director

of the department of revenue, and, for failure to so pay to the executive director, ~~such~~ THE retailer shall be punished as provided by law.

(b) (I) THIS SUBSECTION (1) DOES NOT APPLY TO A QUALIFYING RETAILER RETAINING STATE SALES TAX AS ALLOWED IN SECTION 39-26-105 (1.3).

(II) THIS SUBSECTION (1)(b) IS REPEALED, EFFECTIVE DECEMBER 31, 2026.

**SECTION 5.** In Colorado Revised Statutes, 39-21-113, **add** (27) as follows:

**39-21-113. Reports and returns - rule.** (27) NOTWITHSTANDING THE CONFIDENTIALITY REQUIREMENTS IN THIS SECTION, THE EXECUTIVE DIRECTOR SHALL SHARE WITH THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PERTINENT INFORMATION NECESSARY TO DETERMINE THE AMOUNT OF STATE SALES TAX RETAINED BY A QUALIFYING RETAILER AS ALLOWED IN SECTION 39-26-105 (1.3). ANY INFORMATION PROVIDED TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO THIS SUBSECTION (27) REMAINS CONFIDENTIAL, AND ALL AGENTS, CLERKS, AND EMPLOYEES OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT ARE SUBJECT TO THE LIMITATIONS SET FORTH IN SUBSECTION (4) OF THIS SECTION AND THE PENALTIES IN SUBSECTION (6) OF THIS SECTION.

**SECTION 6.** In Colorado Revised Statutes, **amend** 39-21-116.5 as follows:

**39-21-116.5. Penalties - repeal.** (1) In addition to the personal liability provided in section 39-21-116, all officers of a corporation and all members of a partnership or a limited liability company required to collect, account for, and pay over any tax administered by this ~~article~~ ARTICLE 21 who willfully fail to collect, account for, or pay over such tax or who willfully attempt in any manner to evade or defeat any such tax, or the payment thereof, are subject to, in addition to other penalties provided by law, a penalty equal to one hundred fifty percent of the total amount of the tax not collected, accounted for, paid over, or otherwise evaded. An officer of a corporation or a member of a partnership or a limited liability company shall be deemed to be subject to this section if the corporation, partnership, or limited liability company is subject to filing returns or paying taxes administered by this ~~article~~ ARTICLE 21 and if such officers of corporations or members of partnerships or limited liability companies voluntarily or at the direction of their superiors assume the duties or responsibilities of complying with the provisions of any tax administered by this ~~article~~ ARTICLE 21 on behalf of the corporation, partnership, or limited liability company.

(2)(a) THIS SECTION DOES NOT APPLY TO THE TEMPORARY SALES TAX DEDUCTION AND RETENTION ALLOWED IN SECTION 39-26-105 (1.3).

(b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE DECEMBER 31, 2026.

**SECTION 7.** In Colorado Revised Statutes, 39-21-118, **amend** (2) as follows:

**39-21-118. Criminal penalties - repeal.** (2) (a) Any person required, or any person who purports to be required, under any title administered by the department to collect, account for, or pay over any tax, who willfully fails to collect or truthfully account for or pay over such tax, including, but not limited to, willfully making a

materially false statement in connection with an application for a refund of any tax for the purpose of falsely obtaining a refund of such tax, in addition to other penalties provided by law, is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, ~~C.R.S.~~, or shall be punished by a fine of not more than one hundred thousand dollars, or five hundred thousand dollars in the case of a corporation, or by both such fine and imprisonment, together with the costs of prosecution.

(b) (I) SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY TO THE TEMPORARY SALES TAX DEDUCTION AND RETENTION ALLOWED IN SECTION 39-26-105 (1.3).

(II) THIS SUBSECTION (2)(b) IS REPEALED, EFFECTIVE DECEMBER 31, 2026.

**SECTION 8. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: December 7, 2020