

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0481.01 Pierce Lively x2059

HOUSE BILL 22-1118

HOUSE SPONSORSHIP

Daugherty,

SENATE SPONSORSHIP

(None),

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING LIMITATIONS ON PURCHASERS' CLAIMS FOR SALES AND
102 USE TAX REFUNDS.

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 requires the executive director of the department of revenue (executive director) to issue a voucher to the controller in favor of a purchaser who makes a valid and complete claim for a sales and use tax overpayment refund on or after July 1, 2022. The voucher must be for the amount of the refund of the sales or use tax overpayment without interest.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

If a purchaser makes a frivolous claim for a sales and use tax refund, the bill requires the executive director to assess and collect, in addition to other penalties provided by law, a civil penalty equal to 10% of the total refund claimed. If the frivolous claim is prepared, in whole or in part, by a person other than the purchaser, the executive director can impose the penalty on that other person. In certain cases, the executive director may waive this penalty.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-21-108, **amend**
3 (2) as follows:

4 **39-21-108. Refunds.** (2) (a) If the executive director discovers
5 from the examination of a return within the time periods provided for the
6 filing of refunds, or upon claim duly filed by the taxpayer, or upon final
7 judgment of a court that the tax, penalty, or interest paid by any taxpayer
8 is in excess of the amount due or has been illegally or erroneously
9 collected, then the executive director shall issue in favor of the taxpayer
10 ~~his~~ A voucher to the controller for the refund of such illegally collected
11 tax, penalty, or interest, regardless of whether or not such sum was paid
12 under protest, together with interest provided in section 39-21-110. Upon
13 receipt of such voucher properly executed and endorsed, the controller
14 shall issue ~~his~~ A warrant for the payment to the taxpayer out of the reserve
15 provided therefor; but the controller shall keep in his OR HER files a
16 duplicate of said voucher and also a statement which shall set forth the
17 reason why such refund has been ordered.

18 (b) NOTWITHSTANDING SUBSECTION (2)(a) OF THIS SECTION, IF A
19 PURCHASER MAKES A CLAIM FOR REFUND ON OR AFTER JULY 1, 2022, FOR
20 SALES OR USE TAX PAID TO A VENDOR IN EXCESS OF THE AMOUNT DUE
21 PURSUANT TO SECTION 39-26-703 (2), AND THE CLAIM FOR REFUND MEETS
22 THE REQUIREMENTS OF SECTION 39-26-703 (2), THEN THE EXECUTIVE

1 DIRECTOR SHALL ISSUE IN FAVOR OF THE PURCHASER A VOUCHER TO THE
2 CONTROLLER FOR THE REFUND OF THE SALES OR USE TAX OVERPAYMENT
3 WITHOUT INTEREST.

4 **SECTION 2.** In Colorado Revised Statutes, 39-21-110, **add** (5)
5 as follows:

6 **39-21-110. Interest on overpayments.** (5) NOTWITHSTANDING
7 SUBSECTION (1) OF THIS SECTION, FOR A REFUND CLAIM MADE BY A
8 PURCHASER ON OR AFTER JULY 1, 2022, INTEREST IS NOT ALLOWED OR
9 PAID UPON ANY OVERPAYMENT OF SALES OR USE TAX BY THE PURCHASER
10 TO A VENDOR PURSUANT TO ARTICLE 26 OF THIS TITLE 39.

11 **SECTION 3.** In Colorado Revised Statutes, 39-26-703, **amend**
12 (2)(d); and **add** (5) as follows:

13 **39-26-703. Disputes and refunds.** (2) (d) An application for
14 refund under subsection (2)(c) or (2)(c.5) of this section ~~shall~~ MUST be
15 made within the applicable deadline and ~~shall~~ MUST be made on forms
16 prescribed and furnished by the executive director of the department of
17 revenue, which form ~~shall~~ MUST contain, in addition to the foregoing
18 information, A REQUIREMENT TO PROVIDE THE INFORMATION AND
19 DOCUMENTATION DESCRIBED IN SUBSECTION (5)(c) OF THIS SECTION, AND
20 such OTHER pertinent data as the executive director prescribes. Except as
21 set forth in section 29-2-106.1 (5)(b), the deadline for a sales tax refund
22 or a refund of any use tax collected by a vendor is three years after the
23 twentieth day of the month following the date of purchase and the
24 deadline for any other use tax refund is three years after the twentieth day
25 of the month following the initial date of the storage, use, or consumption
26 in the state by the person applying for the refund.

27 (5) (a) (I) IF A PURCHASER MAKES A FRIVOLOUS CLAIM FOR

1 REFUND OF TAX PAID PURSUANT TO THIS ARTICLE 26 TO A VENDOR ON OR
2 AFTER JULY 1, 2022, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
3 REVENUE SHALL ASSESS AND COLLECT, IN ADDITION TO OTHER PENALTIES
4 PROVIDED BY LAW, A CIVIL PENALTY EQUAL TO TEN PERCENT OF THE
5 TOTAL REFUND CLAIMED. THE CIVIL PENALTY IMPOSED BY THIS
6 SUBSECTION (5) APPLIES ONLY TO CLAIMS TOTALING FIVE THOUSAND
7 DOLLARS OR MORE; EXCEPT THAT THE EXECUTIVE DIRECTOR MAY TREAT
8 MULTIPLE CLAIMS FOR REFUND AS A SINGLE CLAIM IF THE CLAIMS FOR
9 REFUND ARE FILED OR PREPARED BY THE SAME PERSON IN THE SAME
10 TWELVE-MONTH PERIOD.

11 (II) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE
12 SHALL ASSESS AND COLLECT, IN THE SAME MANNER AS A SALES OR USE
13 TAX DEFICIENCY, THE CIVIL PENALTY IMPOSED BY THIS SUBSECTION (5)
14 FROM THE PURCHASER UNLESS THE CLAIM FOR REFUND IS PREPARED, IN
15 WHOLE OR IN PART, BY A PERSON OTHER THAN THE PURCHASER, IN WHICH
16 CASE THE PENALTY IS IMPOSED ON THAT PERSON.

17 (b) A CLAIM FOR REFUND IS FRIVOLOUS IF:

18 (I) IT IS INCOMPLETE;

19 (II) IT INCLUDES A PURCHASE FOR WHICH AN EARLIER CLAIM FOR
20 REFUND HAS ALREADY BEEN FILED; OR

21 (III) IT, OR ANY PART OF IT, LACKS A REASONABLE BASIS IN LAW
22 OR IN FACT.

23 (c) A CLAIM FOR REFUND IS INCOMPLETE IF IT IS MISSING:

24 (I) PROOF OF PAYMENT OF THE CLAIMED TAX TO A LICENSED
25 VENDOR;

26 (II) A DETAILED LIST OF ALL PURCHASES FOR WHICH A REFUND IS
27 SOUGHT AND THE GROUNDS UPON WHICH THE PERSON RELIES FOR THE

1 PURPOSE OF PROVING THAT THE TAX IS NOT DUE AS REQUIRED UNDER
2 SUBSECTION (4) OF THIS SECTION;

3 (III) THE NAME AND ADDRESS OF THE PERSON WHO MAINTAINS
4 RECORDS OF THE PURCHASES FOR WHICH A REFUND IS SOUGHT;

5 (IV) THE NAME AND ADDRESS OF ANY PERSON OTHER THAN THE
6 PURCHASER WHO PREPARED ALL OR PART OF THE CLAIM FOR REFUND ON
7 BEHALF OF THE PURCHASER; OR

8 (V) ANY OTHER INFORMATION THAT THE EXECUTIVE DIRECTOR OF
9 THE DEPARTMENT OF REVENUE MAY REQUIRE BY RULE.

10 (d) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE
11 MAY WAIVE THE CIVIL PENALTY IMPOSED BY THIS SUBSECTION (5) IF THE
12 PERSON AGAINST WHOM THE PENALTY IS ASSESSED:

13 (I) ESTABLISHES THAT THE OMISSION OF THE INFORMATION OR
14 DOCUMENTATION REQUIRED UNDER SUBSECTION (5)(c) OF THIS SECTION
15 WAS NOT INTENTIONAL AND WAS EITHER MINIMAL OR IMMATERIAL, AND
16 IF THE PERSON PROMPTLY CORRECTS THE OMISSION;

17 (II) ESTABLISHES THAT A DUPLICATE CLAIM WAS NOT
18 INTENTIONAL AND WAS EITHER MINIMAL OR IMMATERIAL; OR

19 (III) DEMONSTRATES OTHER GOOD CAUSE FOR WAIVER OF THE
20 CIVIL PENALTY.

21 **SECTION 4. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, or safety.