

CHAPTER 106

TAXATION

HOUSE BILL 22-1024

BY REPRESENTATIVE(S) Bird and Woog, Duran, Gray, Jodeh, Kipp, McCluskie, Mullica, Van Winkle;
also SENATOR(S) Hansen and Kolker, Moreno.

AN ACT

CONCERNING AN EXPANSION OF THE EXISTING SALES AND USE TAX EXEMPTION FOR CONSTRUCTION AND BUILDING MATERIALS USED FOR THE BUILDING OF PUBLIC WORKS TO REQUIRE THAT HOME RULE CITIES EXEMPT SUCH TAX ON SALES OF SUCH MATERIALS WHEN USED FOR PUBLIC SCHOOL CONSTRUCTION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 39-26-708, **add** (2.5) as follows:

39-26-708. Construction and building materials - legislative declaration - definition. (2.5) (a) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:

(I) THE EXEMPTION UNDER THIS SECTION WAS ENACTED BY THE GENERAL ASSEMBLY TO REDUCE COSTS INVOLVED IN THE CONSTRUCTION OF PUBLIC WORKS;

(II) THE EXEMPTION CODIFIES THE PRINCIPLE THAT CONTRACTORS SHOULD NOT BE PAYING A TAX LEVIED BY GOVERNMENTAL ENTITIES ON BUILDING MATERIALS USED FOR THE BENEFIT OF THOSE SAME GOVERNMENTAL ENTITIES;

(III) UNDER CURRENT LAW, OUT OF THE STATE AND ALL LOCAL GOVERNMENTS ACROSS THE STATE, THE SALES AND USE TAX ON CONSTRUCTION AND BUILDING MATERIALS USED IN THE CONSTRUCTION OF PUBLIC BUILDINGS IS ONLY LEVIED BY HOME RULE CITIES;

(IV) THE STATE'S ABILITY TO HONOR ITS RESPONSIBILITIES UNDER SECTION 2 OF ARTICLE IX OF THE STATE CONSTITUTION TO PROVIDE FOR THE ESTABLISHMENT AND MAINTENANCE OF A THOROUGH AND UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS THROUGHOUT THE STATE IS IMPAIRED WHEN HOME RULE CITIES TAX PUBLIC SCHOOL

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.

CONSTRUCTION MATERIALS BECAUSE THIS TAX INCREASES THE COST OF PROVIDING PUBLIC EDUCATION WITHIN THE BOUNDARIES OF THESE MUNICIPALITIES AS CONTRASTED WITH PUBLIC SCHOOLS LOCATED WITHIN THE BOUNDARIES OF OTHER MUNICIPALITIES THAT DO NOT TAX THESE MATERIALS;

(V) THE STATE'S RESPONSIBILITY TO PROVIDE A THOROUGH AND UNIFORM EDUCATION IS FURTHER IMPAIRED BY THE INCENTIVES CREATED BY THE CURRENT TAX DISPARITIES. SPECIFICALLY, INsofar AS SCHOOL DISTRICTS SERVE THE RESIDENTS OF MULTIPLE MUNICIPALITIES AND NOT ALL OF THE MUNICIPALITIES TAX PUBLIC SCHOOL CONSTRUCTION MATERIALS, SCHOOL DISTRICTS ARE GIVEN INCENTIVES TO BUILD SCHOOLS WITHIN THOSE MUNICIPALITIES WHERE THE SALES AND USE TAX IS NOT LEVIED, RATHER THAN WHERE THE PUBLIC SCHOOLS ARE MOST NEEDED, THEREBY DEPRIVING STUDENTS AND COMMUNITIES OF LOCAL EDUCATION RESOURCES.

(VI) EXTENDING THE EXEMPTION TO INCLUDE HOME RULE CITIES WOULD ELIMINATE THESE BARRIERS AND DISPARITIES AND ASSIST THE STATE IN HONORING ITS RESPONSIBILITIES UNDER SECTION 2 OF ARTICLE IX OF THE STATE CONSTITUTION;

(VII) THE CURRENT TAXING SYSTEM ALSO CREATES NEGATIVE EXTRATERRITORIAL IMPACTS BECAUSE TAXPAYERS THAT RESIDE IN SCHOOL DISTRICTS THAT SERVE BOTH TAXING AND NONTAXING MUNICIPALITIES MUST SUBSIDIZE THE COST OF THE SALES AND USE TAX LEVIED WHEN PUBLIC SCHOOLS ARE BUILT IN MUNICIPALITIES THAT TAX PUBLIC SCHOOL CONSTRUCTION MATERIALS, EVEN WHEN SUCH RESIDENTS DO NOT RESIDE IN THE TAXING MUNICIPALITY AND THEIR CHILDREN DO NOT ATTEND PUBLIC SCHOOLS IN THE TAXING MUNICIPALITY;

(VIII) EXTENDING THE EXEMPTION TO INCLUDE THE SALES AND USE TAX LEVIED BY HOME RULE CITIES ON PUBLIC SCHOOL CONSTRUCTION MATERIALS WOULD REDUCE THE OVERALL COSTS OF CONSTRUCTING SUCH FACILITIES FOR THE MANY JURISDICTIONS ACROSS THE STATE THAT ARE HOME RULE CITIES; AND

(IX) EXTENDING THE EXEMPTION TO INCLUDE HOME RULE CITIES WOULD ALSO PROMOTE A UNIFORM AND CONSISTENT TREATMENT OF THE SALE OF BUILDING AND CONSTRUCTION MATERIALS STATEWIDE, THEREBY FACILITATING A MORE CONSISTENT AND UNIFORM TAX STRUCTURE, WOULD LIMIT THE NEGATIVE EXTRATERRITORIAL EFFECTS OF THIS DISPARATE TAX TREATMENT, AND ENHANCE TAXPAYER EQUITY IN ALL SCHOOL DISTRICTS STATEWIDE. ACCORDINGLY, THE MATTERS ADDRESSED IN SUBSECTION (2.5)(b) OF THIS SECTION ARE MATTERS OF STATEWIDE CONCERN.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN ADDITION TO THE EXEMPTION FROM TAXATION CREATED BY SUBSECTIONS (1) AND (2) OF THIS SECTION, THERE SHALL ALSO BE EXEMPT FROM TAXATION UNDER PART 1 OF THIS ARTICLE 26 ANY TAX LEVIED BY A HOME RULE CITY ON ALL SALES OF CONSTRUCTION AND BUILDING MATERIALS TO CONTRACTORS AND SUBCONTRACTORS FOR USE IN THE BUILDING, ERECTION, ALTERATION, OR REPAIR OF A PUBLIC SCHOOL.

(c) AS USED IN SUBSECTION (2.5)(b) OF THIS SECTION, "PUBLIC SCHOOL" MEANS A SCHOOL THAT SERVES ANY OF GRADES KINDERGARTEN THROUGH TWELVE AND THAT DERIVES ITS SUPPORT, IN WHOLE OR IN PART, FROM REVENUE RAISED BY A GENERAL STATE OR SCHOOL DISTRICT TAX. "PUBLIC SCHOOL" INCLUDES A CHARTER

SCHOOL AUTHORIZED BY A SCHOOL DISTRICT PURSUANT TO PART 1 OF ARTICLE 30.5 OF TITLE 22, BY THE STATE CHARTER SCHOOL INSTITUTE PURSUANT TO PART 5 OF ARTICLE 30.5 OF TITLE 22, OR BY THE COLORADO SCHOOL FOR THE DEAF AND THE BLIND PURSUANT TO SECTION 22-80-102 (4).

SECTION 2. Appropriation. For the 2022-23 state fiscal year, \$3,375 is appropriated to the department of revenue for use by the taxation business group. This appropriation is from the general fund. To implement this act, the department may use this appropriation for operating expenses related to taxation services.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to sales of construction and building materials made on or after the applicable effective date of this act.

Approved: April 18, 2022