

CHAPTER 171

TAXATION

HOUSE BILL 23-1240

BY REPRESENTATIVE(S) Brown and Amabile, Bacon, Bird, Boesenecker, Dickson, Duran, Hamrick, Joseph, Kipp, Lieder, Lindstedt, Marshall, McCormick, Michaelson Jenet, Snyder, Story, Titone, Vigil, Weissman, Woodrow, English, Froelich, Garcia, Lindsay, McLachlan, Velasco, McCluskie;
 also SENATOR(S) Fenberg, Bridges, Buckner, Coleman, Cutter, Exum, Fields, Ginal, Gonzales, Hansen, Hinrichsen, Jaquez Lewis, Kolker, Marchman, Moreno, Mullica, Priola, Roberts, Winter F., Zenzinger.

AN ACT

CONCERNING A SALES AND USE TAX EXEMPTION FOR CONSTRUCTION AND BUILDING MATERIALS USED FOR REPAIRING AND REBUILDING RESIDENTIAL STRUCTURES DAMAGED OR DESTROYED BY A DECLARED WILDFIRE DISASTER IN 2020, 2021, OR 2022, 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, **add** 39-26-734 as follows:

39-26-734. Rebuilding from declared wildfire disaster - tax preference performance statement - legislative declaration - definitions - repeal. (1) IN ACCORDANCE WITH SECTION 39-21-304 (1), WHICH REQUIRES EACH BILL THAT CREATES A NEW TAX EXPENDITURE TO INCLUDE A TAX PREFERENCE PERFORMANCE STATEMENT AS PART OF A STATUTORY LEGISLATIVE DECLARATION, THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE GENERAL LEGISLATIVE PURPOSE OF THE EXEMPTION ALLOWED BY THIS SECTION IS TO PROVIDE TAX RELIEF FOR CERTAIN INDIVIDUALS;

(b) THE SPECIFIC LEGISLATIVE PURPOSE OF THE EXEMPTION ALLOWED BY THIS SECTION IS TO PROVIDE FINANCIAL RELIEF TO COLORADANS RECOVERING AND REBUILDING FROM DECLARED WILDFIRE DISASTERS; AND

(c) THE GENERAL ASSEMBLY AND THE STATE AUDITOR SHALL MEASURE THE EFFECTIVENESS OF THE EXEMPTION ALLOWED BY THIS SECTION BASED ON THE NUMBER OF WILDFIRE EXEMPTION CERTIFICATES ISSUED PURSUANT TO SUBSECTION

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.

(5) OF THIS SECTION, THE NUMBER AND AMOUNT OF ALL REFUND CLAIMS ALLOWED PURSUANT TO THIS SECTION, AND AN ESTIMATE BY THE STATE AUDITOR OF THE PROPORTION OF HOMEOWNERS AFFECTED BY DECLARED WILDFIRE DISASTERS WHO BENEFITTED FROM THE EXEMPTION IN THE REBUILDING OR REPAIRING OF THEIR HOMES.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "BUILDING PERMIT" MEANS THE DOCUMENT OR DOCUMENTS ISSUED BY A LOCAL GOVERNMENT TO A QUALIFIED HOMEOWNER SHOWING THE ESTIMATED AMOUNT OF USE TAX COLLECTED, IF ANY, IN CONNECTION WITH REBUILDING OR REPAIRING THE QUALIFIED HOMEOWNER'S QUALIFIED RESIDENTIAL STRUCTURE.

(b) "DECLARED WILDFIRE DISASTER" MEANS A WILDFIRE THAT WAS DECLARED A DISASTER EMERGENCY BY THE GOVERNOR PURSUANT TO SECTION 24-33.5-704 (4) ON OR AFTER JANUARY 1, 2020, BUT BEFORE JANUARY 1, 2023.

(c) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

(d) "ESTIMATED CONSTRUCTION AND BUILDING MATERIALS COST" MEANS THE COST AMOUNT USED BY THE LOCAL GOVERNMENT TO COLLECT ESTIMATED USE TAX IN CONNECTION WITH THE ISSUANCE OF A BUILDING PERMIT. IF NO ESTIMATED USE TAX HAS BEEN COLLECTED, "ESTIMATED CONSTRUCTION AND BUILDING MATERIALS COST" MEANS HALF OF THE TOTAL CONTRACT PRICE OR TOTAL COST FOR REBUILDING OR REPAIRING A QUALIFIED RESIDENTIAL STRUCTURE.

(e) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE.

(f) "LOCAL GOVERNMENT" MEANS A COUNTY, CITY AND COUNTY, OR MUNICIPALITY.

(g) "QUALIFIED HOMEOWNER" MEANS A HOMEOWNER THAT IS REBUILDING OR REPAIRING OR HAS EMPLOYED A CONTRACTOR TO REBUILD OR REPAIR A QUALIFIED RESIDENTIAL STRUCTURE THAT THE HOMEOWNER OWNED AT THE TIME OF A DECLARED WILDFIRE DISASTER.

(h) "QUALIFIED RESIDENTIAL STRUCTURE" MEANS A RESIDENTIAL STRUCTURE THAT WAS DAMAGED OR DESTROYED BY A DECLARED WILDFIRE DISASTER.

(i) "WILDFIRE REBUILD EXEMPTION CERTIFICATE" MEANS A WRITTEN CERTIFICATION PROVIDED BY A LOCAL GOVERNMENT TO A QUALIFIED HOMEOWNER THAT CERTIFIES THAT ONE OR MORE BUILDING PERMITS SPECIFICALLY IDENTIFIED THEREIN HAVE BEEN ISSUED TO THE QUALIFIED HOMEOWNER FOR REBUILDING OR REPAIRING A QUALIFIED RESIDENTIAL STRUCTURE.

(3) (a) THE SALE, STORAGE, USE, OR CONSUMPTION OF CONSTRUCTION AND BUILDING MATERIALS USED DIRECTLY IN REBUILDING OR REPAIRING A QUALIFIED HOMEOWNER'S QUALIFIED RESIDENTIAL STRUCTURE IS EXEMPT FROM TAXATION UNDER PARTS 1 AND 2 OF THIS ARTICLE 26 AS SET FORTH IN THIS SECTION.

(b) THE EXEMPTION CREATED IN SUBSECTION (3)(a) OF THIS SECTION SHALL BE ADMINISTERED SOLELY AS A REFUND ALLOWED TO QUALIFIED HOMEOWNERS TO BE APPLIED FOR IN ACCORDANCE WITH THIS SECTION AND SECTION 39-26-703. NO RETAILER MAY EXEMPT ANY SALE PURSUANT TO THIS SECTION.

(c) THE EXEMPTION CREATED IN SUBSECTION (3)(a) OF THIS SECTION APPLIES ONLY TO THE STATE SALES AND USE TAXES LEVIED PURSUANT TO THIS ARTICLE 26. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE EXEMPTION SHALL NOT APPLY TO THE SALES OR USE TAXES LEVIED BY ANY LOCAL GOVERNMENT, INCLUDING ANY CITY, TOWN, COUNTY, SPECIAL PURPOSE DISTRICT, OR LIMITED PURPOSE GOVERNMENTAL ENTITY; EXCEPT THAT THIS SUBSECTION (3)(c) DOES NOT APPLY TO THE REGIONAL TRANSPORTATION DISTRICT ESTABLISHED BY ARTICLE 9 OF TITLE 32 OR THE SCIENTIFIC AND CULTURAL FACILITIES DISTRICT ESTABLISHED BY ARTICLE 13 OF TITLE 32.

(4)(a) A QUALIFIED HOMEOWNER MAY CLAIM A REFUND ALLOWED PURSUANT TO SUBSECTION (3) OF THIS SECTION FOR EACH QUALIFIED RESIDENTIAL STRUCTURE FOR WHICH THE QUALIFIED HOMEOWNER OBTAINS A BUILDING PERMIT AND A WILDFIRE REBUILD EXEMPTION CERTIFICATE ISSUED BY A LOCAL GOVERNMENT IN ACCORDANCE WITH SUBSECTION (5) OF THIS SECTION.

(b) THE AMOUNT OF A REFUND CLAIMED PURSUANT TO THIS SECTION SHALL BE EQUAL TO FOUR PERCENT OF THE ESTIMATED CONSTRUCTION AND BUILDING MATERIALS COST FOR REPAIRING OR REBUILDING THE QUALIFIED RESIDENTIAL STRUCTURE THAT IS THE SUBJECT OF THE BUILDING PERMIT AND WILDFIRE REBUILD EXEMPTION CERTIFICATE.

(c) A QUALIFIED HOMEOWNER MUST SUBMIT A CLAIM FOR REFUND ON THE FORM AND IN THE MANNER PRESCRIBED BY THE EXECUTIVE DIRECTOR. THE CLAIM FOR REFUND MUST INCLUDE THE WILDFIRE REBUILD EXEMPTION CERTIFICATE ISSUED IN ACCORDANCE WITH SUBSECTION (5) OF THIS SECTION AND A TRUE AND CORRECT COPY OF EACH BUILDING PERMIT IDENTIFIED IN THE WILDFIRE REBUILD EXEMPTION CERTIFICATE.

(d) THE THREE-YEAR APPLICATION DEADLINE IN SECTION 39-26-703 (2)(d) FOR A SALES TAX REFUND OR REFUND OF ANY USE TAX COLLECTED BY A VENDOR DOES NOT APPLY TO A CLAIM FOR REFUND MADE PURSUANT TO THIS SECTION. A CLAIM FOR REFUND MADE PURSUANT TO THIS SECTION MUST BE FILED ON OR BEFORE JUNE 30, 2028.

(5)(a) THE LOCAL GOVERNMENT WITH JURISDICTION TO ISSUE A BUILDING PERMIT IN AN AREA AFFECTED BY A DECLARED WILDFIRE DISASTER MAY ISSUE A WILDFIRE REBUILD EXEMPTION CERTIFICATE TO A QUALIFIED HOMEOWNER. A WILDFIRE REBUILD EXEMPTION CERTIFICATE MUST CLEARLY IDENTIFY THE QUALIFIED HOMEOWNER, THE CONTRACTOR EMPLOYED BY THE HOMEOWNER, IF APPLICABLE, AND EACH BUILDING PERMIT ISSUED BY THE LOCAL GOVERNMENT TO THE QUALIFIED HOMEOWNER FOR REBUILDING OR REPAIRING A QUALIFIED RESIDENTIAL STRUCTURE.

(b) TO OBTAIN A WILDFIRE REBUILD EXEMPTION CERTIFICATE, A HOMEOWNER MUST CERTIFY, IN A FORM PRESCRIBED BY THE EXECUTIVE DIRECTOR, THAT:

(I) THE HOMEOWNER WAS THE OWNER OF EACH QUALIFIED RESIDENTIAL STRUCTURE TO BE REBUILT OR REPAIRED AT THE TIME THE STRUCTURE WAS DAMAGED OR DESTROYED BY THE DECLARED WILDFIRE DISASTER; AND

(II) THE REPLACEMENT COST FOR EACH QUALIFIED RESIDENTIAL STRUCTURE TO BE REBUILT OR REPAIRED EXCEEDS THE HOMEOWNER'S COVERAGE UNDER ANY HOMEOWNER'S INSURANCE POLICY ASSOCIATED WITH THE STRUCTURE.

(c) ON OR BEFORE SEPTEMBER 30, 2023, AND ON OR BEFORE SEPTEMBER 30 OF EACH CALENDAR YEAR THEREAFTER THROUGH SEPTEMBER 30, 2025, A LOCAL GOVERNMENT SHALL PROVIDE THE DEPARTMENT WITH AN ELECTRONIC REPORT OF THE NUMBER OF WILDFIRE REBUILD EXEMPTION CERTIFICATES ISSUED BY THE LOCAL GOVERNMENT FOR THE PRECEDING CALENDAR YEAR.

(6) THE EXECUTIVE DIRECTOR SHALL:

(a) PROVIDE A FORM FOR THE WILDFIRE REBUILD EXEMPTION CERTIFICATE TO THE PROPER OFFICIAL OF THE LOCAL GOVERNMENT WITH JURISDICTION TO ISSUE A BUILDING PERMIT IN AN AREA AFTER DETERMINING THAT THE AREA WAS AFFECTED BY A DECLARED WILDFIRE DISASTER;

(b) MODIFY EXISTING FORMS OR CREATE NEW FORMS AS NECESSARY TO FACILITATE REFUND CLAIMS MADE PURSUANT TO THIS SECTION; AND

(c) ADOPT RULES FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS SECTION.

(7) IN MAKING A REFUND OR ALLOWING A CREDIT PURSUANT TO SECTION 39-26-703, THE DEPARTMENT SHALL PRIORITIZE APPLICATIONS FOR REFUNDS SUBMITTED PURSUANT TO THIS SECTION OVER REFUND APPLICATIONS SUBMITTED PURSUANT TO OTHER PROVISIONS OF LAW.

(8) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2028.

SECTION 2. In Colorado Revised Statutes, 39-26-703, **amend** (2)(d) as follows:

39-26-703. Disputes and refunds - repeal. (2) (d) An application for refund under subsection (2)(c) or (2)(c.5) of this section must be made within the applicable deadline and must be made on forms prescribed and furnished by the executive director of the department of revenue, which form must contain, in addition to the foregoing information, such other pertinent data, information, or documentation as the executive director prescribes by rules promulgated in accordance with article 4 of title 24. Except as set forth in ~~section~~ SECTIONS 29-2-106.1 (5)(b) AND 39-26-734 (4)(d), 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.

SECTION 3. Appropriation. (1) For the 2023-24 state fiscal year, \$72,267 is appropriated to the department of revenue for use by taxation services. This

appropriation is from the general fund. To implement this act, the subdivision may use this appropriation as follows:

(a) \$64,382 for personal services, which amount is based on an assumption that the subdivision will require an additional 0.9 FTE; and

(b) \$7,885 for operating expenses.

SECTION 4. 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: May 12, 2023