

CHAPTER 93

TAXATION

HOUSE BILL 02-1211

BY REPRESENTATIVE(S) Williams T., Coleman, Scott, Vigil, Sanchez, and Weddig;
also SENATOR(S) Tupa, Anderson, Takis, and Taylor.

AN ACT

CONCERNING THE TIMELY ISSUANCE OF A FINAL DETERMINATION BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE FOLLOWING A HEARING ON A DISPUTE BETWEEN A TAXPAYER AND THE STATE INVOLVING A STATE TAX DEFICIENCY.

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

SECTION 1. 39-21-103 (6) and (8), Colorado Revised Statutes, are amended, and the said 39-21-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

39-21-103. Hearings. (4.5) IF THE TAXPAYER AND THE EXECUTIVE DIRECTOR AGREE THAT THE DISPOSITION OF THE TAXPAYER'S REQUESTED CHANGES REQUIRES THE RESOLUTION OF A QUESTION OF LAW ARISING UNDER THE UNITED STATES OR COLORADO CONSTITUTIONS, THE EXECUTIVE DIRECTOR SHALL MEMORIALIZE THE AGREEMENT AND SEND THE TAXPAYER A NOTICE OF THE AGREEMENT BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5. IF A NOTICE IS SENT PURSUANT TO THIS SUBSECTION (4.5), A TAXPAYER MAY ELECT TO WAIVE A HEARING PURSUANT TO THIS SECTION AND APPEAL THE NOTICE OF DEFICIENCY DIRECTLY TO THE DISTRICT COURT PURSUANT TO SECTION 39-21-105 WITHIN THIRTY DAYS AFTER THE MAILING OF THE NOTICE.

(6) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (6), the hearing shall be held before the executive director of the department of revenue. ~~or~~

(b) IN CASES WHERE THE DISPUTED DEFICIENCY IS MORE THAN TWO HUNDRED DOLLARS AND INVOLVES AN INCOME TAX, THE HEARING MAY BE HELD BEFORE SUCH QUALIFIED PERSON WITHIN THE DEPARTMENT SPECIFICALLY AUTHORIZED BY THE EXECUTIVE DIRECTOR TO ACT ON THE EXECUTIVE DIRECTOR'S BEHALF TO HEAR SUCH DISPUTE. In cases where the disputed deficiency is two hundred dollars or less or

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

involves a sales, use, or gift tax, THE HEARING MAY BE HELD before such person within the department as the executive director shall designate.

(c) The ~~said~~ executive director or ~~his~~ THE EXECUTIVE DIRECTOR'S delegate is authorized to administer oaths and take testimony. At the hearing, the taxpayer may assert any facts, make any arguments, and file any briefs and affidavits ~~he~~ THE TAXPAYER believes pertinent to ~~his cause~~ THE CASE.

(8) (a) Based on the evidence presented at the hearing or filed in support of the taxpayer's contentions or after the expiration of thirty days from the mailing of the notice of deficiency, if no request for hearing or brief has been filed by the taxpayer, the executive director of the department of revenue shall make a final determination within ~~a reasonable time~~ THE TIME SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (8) and shall send the taxpayer a notice of final determination accompanied by notice and demand for payment by first-class mail as set forth in section 39-21-105.5.

(b) THE EXECUTIVE DIRECTOR SHALL MAKE A FINAL DETERMINATION WITHIN SIXTY DAYS OF THE HEARING. SUCH DEADLINE MAY BE EXTENDED:

(I) BY UP TO AN ADDITIONAL SIXTY DAYS BY MUTUAL AGREEMENT BETWEEN THE EXECUTIVE DIRECTOR AND THE TAXPAYER; OR

(II) BY THE EXECUTIVE DIRECTOR IN THE EXECUTIVE DIRECTOR'S DISCRETION IF THE FINAL DETERMINATION RAISES ISSUES THAT REQUIRE ADDITIONAL INFORMATION OR TIME TO ANALYZE IN ORDER TO MAKE THE DETERMINATION. THE EXECUTIVE DIRECTOR MAY AUTHORIZE SUCCESSIVE EXTENSIONS OF A DEADLINE TO MAKE A PARTICULAR DETERMINATION; HOWEVER, NO INDIVIDUAL EXTENSION AUTHORIZED PURSUANT TO THIS SUBPARAGRAPH (II) SHALL EXCEED SIXTY DAYS. PRIOR TO AUTHORIZING EACH EXTENSION OF A DEADLINE PURSUANT TO THIS SUBPARAGRAPH (II), THE EXECUTIVE DIRECTOR SHALL MAIL A WRITTEN NOTICE OF THE EXTENSION AND THE SPECIFIC REASONS THEREFOR TO THE TAXPAYER.

(c) The executive director may modify the tax, penalty, and interest questioned at the hearing and may approve a refund; except that no additional tax shall be assessed for less than one dollar. Unless an appeal is taken as provided in section 39-21-105, the tax, together with interest thereon and penalties, if any, shall be paid within thirty days after mailing of the notice and demand for payment by the executive director.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 2002, and shall apply to notices of deficiency mailed on or after said date.

SECTION 3. 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: April 12, 2002