

CHAPTER 301

GOVERNMENT - STATE

HOUSE BILL 06-1312

BY REPRESENTATIVE(S) Vigil, Cloer, Garcia, Kerr, Schultheis, Stafford, Witwer, and McCluskey;
also SENATOR(S) Sandoval, Brophy, Teck, Veiga, Isgar, Keller, and Shaffer.

AN ACT

CONCERNING WRITTEN RESPONSES ISSUED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE UPON THE REQUEST OF TAXPAYERS, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Part 1 of article 35 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-35-103.5. Private letter rulings - fees - creation of fund - definitions.

(1) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "INFORMATION LETTER" MEANS A NONBINDING STATEMENT ISSUED BY THE DEPARTMENT OF REVENUE TO A TAXPAYER THAT PROVIDES GENERAL INFORMATION REGARDING ANY TAX ADMINISTERED BY THE DEPARTMENT PURSUANT TO TITLE 29 OR 39, C.R.S., THAT IS MADE IN RESPONSE TO A WRITTEN REQUEST FROM A TAXPAYER FOR SUCH INFORMATION.

(b) "PRIVATE LETTER RULING" MEANS A WRITTEN DETERMINATION ISSUED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE, OR THE EXECUTIVE DIRECTOR'S DESIGNEE, TO A TAXPAYER ON THE TAX CONSEQUENCES OF A PROPOSED OR COMPLETED TRANSACTION UNDER ANY TAX ADMINISTERED BY THE DEPARTMENT PURSUANT TO TITLE 29 OR 39, C.R.S., THAT IS MADE IN RESPONSE TO A WRITTEN REQUEST FROM A TAXPAYER FOR SUCH A RULING.

(2) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE, OR THE EXECUTIVE DIRECTOR'S DESIGNEE, SHALL, EXCEPT AS OTHERWISE PROVIDED BY RULE, ISSUE INFORMATION LETTERS AND PRIVATE LETTER RULINGS UPON THE WRITTEN REQUEST OF A TAXPAYER. THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE ESTABLISHING THE PROCESS

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

FOR ISSUING AN INFORMATION LETTER OR A PRIVATE LETTER RULING, INCLUDING BUT NOT LIMITED TO RULES THAT SPECIFY:

(a) THE PROCEDURE, FORM, AND TIME PERIODS FOR SUBMITTING A REQUEST FOR AN INFORMATION LETTER OR A PRIVATE LETTER RULING;

(b) THE TERMS AND CONDITIONS UNDER WHICH A PRIVATE LETTER RULING BINDS THE DEPARTMENT OF REVENUE OR MAY BE REVOKED OR MODIFIED; EXCEPT THAT ANY REVOCATION BY THE DEPARTMENT OF A PRIVATE LETTER RULING SHALL ONLY BE EFFECTIVE PROSPECTIVELY AND SHALL NOT AFFECT ANY TRANSACTION UNDERTAKEN ON OR PRIOR TO THE DATE OF THE REVOCATION;

(c) THE LIMITATIONS ON THE APPLICABILITY OF AN INFORMATION LETTER OR A PRIVATE LETTER RULING TO SPECIFIC PERSONS, TRANSACTIONS, FACTUAL CIRCUMSTANCES, AND TIME PERIODS;

(d) THE CIRCUMSTANCES UNDER WHICH A REQUEST FOR AN INFORMATION LETTER OR A PRIVATE LETTER RULING MAY BE DECLINED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE.

(3) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL ISSUE PRIVATE LETTER RULINGS WITHIN NINETY DAYS OF THE RECEIPT OF A WRITTEN REQUEST BY A TAXPAYER UNLESS THE REQUEST IS DECLINED. IN THE EVENT A REQUEST FOR A PRIVATE LETTER RULING IS DECLINED, THE EXECUTIVE DIRECTOR SHALL NOTIFY THE TAXPAYER IN WRITING OF SUCH DECLINATION NO LATER THAN THIRTY DAYS AFTER THE DATE THE REQUEST WAS SUBMITTED TO THE DEPARTMENT.

(4) THE ISSUANCE, MODIFICATION, OR REVOCATION OF AN INFORMATION LETTER OR A PRIVATE LETTER RULING SHALL NOT CONSTITUTE A TAX POLICY CHANGE FOR PURPOSES OF SECTION 20 (4) (a) OF ARTICLE X OF THE STATE CONSTITUTION.

(5) (a) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL REDACT INFORMATION FROM AN INFORMATION LETTER OR PRIVATE LETTER RULING IN ORDER TO ENSURE THE CONFIDENTIALITY OF THE TAXPAYER OR OTHER PERSONS, TRANSACTIONS, FACTUAL CIRCUMSTANCES, OR TIME PERIODS THAT ARE THE SUBJECT OF THE INFORMATION LETTER OR PRIVATE LETTER RULING AND MAKE PUBLIC THE BALANCE OF THE INFORMATION LETTER OR PRIVATE LETTER RULING.

(b) THE EXECUTIVE DIRECTOR MAY WITHHOLD THE INFORMATION LETTER OR PRIVATE LETTER RULING FROM THE PUBLIC BASED UPON A DETERMINATION THAT INFORMATION IN THE INFORMATION LETTER OR PRIVATE LETTER RULING CANNOT BE REDACTED IN A MANNER THAT MAINTAINS THE CONFIDENTIALITY OF THE TAXPAYER OR OTHER PERSONS, TRANSACTIONS, FACTUAL CIRCUMSTANCES, OR TIME PERIODS THAT ARE THE SUBJECT OF THE INFORMATION LETTER OR PRIVATE LETTER RULING. SUCH A DETERMINATION SHALL BE SUBJECT TO REVIEW BY A COURT OF COMPETENT JURISDICTION.

(6) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL PROMULGATE RULES PURSUANT TO ARTICLE 4 OF THIS TITLE ESTABLISHING REASONABLE FEES FOR THE DIRECT AND INDIRECT COSTS OF THE ADMINISTRATION OF THIS SECTION, WHICH FEES SHALL ACCOMPANY ANY REQUEST FOR A PRIVATE

LETTER RULING MADE PURSUANT TO SUBSECTION (1) OF THIS SECTION. ALL FEES COLLECTED SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE PRIVATE LETTER RULING FUND, WHICH FUND IS HEREBY CREATED. THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE DIRECT AND INDIRECT COSTS OF THE ADMINISTRATION OF THIS SECTION.

(7) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2011. PRIOR TO SUCH REPEAL, THE INFORMATION LETTER AND PRIVATE LETTER RULING FUNCTION OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

SECTION 2. 24-34-104 (42), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (42) The following agencies, functions, or both, shall terminate on July 1, 2011:

(1) THE ISSUANCE OF INFORMATION LETTERS AND PRIVATE LETTER RULINGS BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE IN ACCORDANCE WITH SECTION 24-35-103.5.

SECTION 3. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the private letter ruling fund created in section 24-35-103.5 (6), Colorado Revised Statutes, not otherwise appropriated, to the department of revenue, for allocation to the taxation business group, for the fiscal year beginning July 1, 2006, the sum of seventy-two thousand dollars (\$72,000) and 1.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

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, and safety.

Approved: June 1, 2006