

CHAPTER 354

TAXATION

HOUSE BILL 09-1342

BY REPRESENTATIVE(S) Benefield and Kagan, Ferrandino, Fischer, Gagliardi, Green, Hullinghorst, Judd, Kerr A., Labuda, McCann, Merrifield, Middleton, Ryden, Scanlan, Todd, Court;
also SENATOR(S) Boyd and Williams, Bacon, Carroll M., Foster, Heath, Hudak, Morse, Newell, Romer, Schwartz, Shaffer B., Veiga.

AN ACT

**CONCERNING THE ELIMINATION OF THE STATE SALES AND USE TAX EXEMPTION FOR CIGARETTES,
AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

SECTION 1. 39-26-706 (1), Colorado Revised Statutes, is amended to read:

39-26-706. Miscellaneous sales and use tax exemptions - cigarettes - internet access - refractory materials - precious metal bullion and coins. (1) (a) All sales of cigarettes shall be exempt from taxation under the provisions of part 1 of this article; EXCEPT THAT ANY SALES OF CIGARETTES AFTER JUNE 30, 2009, AND BEFORE JULY 1, 2011, SHALL NOT BE EXEMPT FROM SUCH TAXATION.

(b) The storage, use, or consumption of cigarettes shall be exempt from taxation under the provisions of part 2 of this article; EXCEPT THAT THE STORAGE, USE, OR CONSUMPTION OF CIGARETTES AFTER JUNE 30, 2009, AND BEFORE JULY 1, 2011, SHALL NOT BE EXEMPT FROM SUCH TAXATION.

(c) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, FOR ANY LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE THAT LEVIES A SALES OR USE TAX BASED ON THE SALES OR USE TAX LEVIED BY THE STATE PURSUANT TO THIS ARTICLE, THE SALE OR STORAGE, USE, OR CONSUMPTION OF CIGARETTES AFTER JUNE 30, 2009, AND BEFORE JULY 1, 2011, SHALL BE EXEMPT FROM THE SALES OR USE TAX OF SUCH LOCAL GOVERNMENT OR POLITICAL SUBDIVISION.

SECTION 2. 29-1-204.5 (3) (f.1) (I), Colorado Revised Statutes, is amended to read:

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

29-1-204.5. Establishment of multijurisdictional housing authorities.

(3) The general powers of such authority shall include the following powers:

(f.1) (I) Subject to the provisions of subsection (7.5) of this section, to levy, in all of the area within the boundaries of the authority, a sales or use tax, or both, at a rate not to exceed one percent, upon every transaction or other incident with respect to which a sales or use tax is levied by the state, EXCLUDING THE SALE OR USE OF CIGARETTES. The tax imposed pursuant to this paragraph (f.1) is in addition to any other sales or use tax imposed pursuant to law. The executive director of the department of revenue shall collect, administer, and enforce the sales or use tax, to the extent feasible, in the manner provided in section 29-2-106. However, the executive director shall not begin the collection, administration, and enforcement of a sales and use tax until such time as the financial officer of the authority and the executive director have agreed on all necessary matters pursuant to subparagraph (III) of paragraph (e) of subsection (2) of this section. The executive director shall begin the collection, administration, and enforcement of a sales and use tax on a date mutually agreeable to the department of revenue and the authority.

SECTION 3. 29-2-105, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

29-2-105. Contents of sales tax ordinances and proposals.

(9) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, SALES OF CIGARETTES SHALL BE EXEMPT FROM A TOWN, CITY, COUNTY, OR CITY AND COUNTY SALES TAX THAT IS CREATED PURSUANT TO THE AUTHORITY SET FORTH IN THIS ARTICLE.

SECTION 4. The introductory portion to 32-1-1003 (5), Colorado Revised Statutes, is amended to read:

32-1-1003. Health service districts - additional powers. (5) Any health service district that is created pursuant to this article shall have the power, upon approval by the eligible electors of the district, to levy and collect a uniform sales tax throughout the entire geographic area of the district upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S., EXCLUDING THE SALE OF CIGARETTES, subject to the following provisions:

SECTION 5. The introductory portion to 32-1-1003.5 (5), Colorado Revised Statutes, is amended to read:

32-1-1003.5. Health assurance districts - additional powers - legislative declaration - definitions. (5) Any health assurance district that is created pursuant to this article shall have the power, upon approval by the eligible electors of the district, to levy and collect a uniform sales tax throughout the entire geographic area of the district upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S., EXCLUDING THE SALE OF CIGARETTES, subject to the following provisions:

SECTION 6. 32-9-119 (2) (a), Colorado Revised Statutes, is amended BY THE

ADDITION OF A NEW SUBPARAGRAPH to read:

32-9-119. Additional powers of district. (2) (a) To provide revenue to finance the operations of the district, to defray the cost of construction of capital improvements and acquisition of capital equipment, and to pay the interest and principal on securities of the district, the board, for and on behalf of the district after approval by election held pursuant to articles 1 to 13 of title 1, C.R.S., shall have the power to levy uniformly throughout the district a sales tax at the rate of six-tenths of one percent, or at the rate of one percent if approved by the eligible electors of the district in accordance with section 32-9-119.4, upon every transaction or other incident with respect to which a sales tax is now levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that:

(III) THE SALE OF CIGARETTES SHALL BE EXEMPT FROM SUCH SALES TAX.

SECTION 7. 32-13-105 (5) (a), Colorado Revised Statutes, is amended to read:

32-13-105. Authorizing elections. (5) (a) For purposes of complying with the provisions of section 20 (4) of article X of the state constitution and upon proper submittal of a valid initiative petition to or upon the adoption of a resolution by the board of the district created in section 32-13-104, the district may submit to the registered electors within the geographical boundaries of the district, at a general election or an election held on the first Tuesday in November of an odd-numbered year, the question of whether the district shall be authorized to continue the levy and collection of the aggregate one-tenth of one percent sales and use tax as specified in paragraph (a) of subsection (4) of this section, as modified pursuant to subparagraphs (I), (II), and (III) of this paragraph (a), for a period of twelve years from the date upon which the authority of the district to levy and collect the sales and use taxes is scheduled to expire, as follows:

(I) A uniform sales and use tax throughout said geographical area at a rate of six hundred fifty-five ten-thousandths of one percent for total annual revenues collected by the district up to and including thirty-eight million dollars and at a rate of sixty-four one-thousandths of one percent after total annual revenues collected by the district exceed thirty-eight million dollars, upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales and use tax SHALL NOT BE LEVIED ON THE SALE OR USE OF CIGARETTES AND shall be levied on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent such purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be distributed to the Denver museum of nature and science, the Denver zoological gardens, the Denver art museum, the Denver botanical gardens, and the Denver center for the performing arts pursuant to the provisions of section 32-13-107 (3) (a);

(II) A uniform sales and use tax throughout said geographical area at a rate of twenty-one one-thousandths of one percent for total annual revenues collected by the district up to and including thirty-eight million dollars and at a rate of twenty-two one-thousandths of one percent after total annual revenues collected by the district exceed thirty-eight million dollars, upon every transaction or other

incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales and use tax SHALL NOT BE LEVIED ON THE SALE OR USE OF CIGARETTES AND shall be levied on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent such purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be distributed to scientific and cultural facilities pursuant to the provisions of section 32-13-107 (3) (b);

(III) A uniform sales and use tax throughout said geographical area at a rate of one hundred thirty-five ten-thousandths of one percent for total annual revenues collected by the district up to and including thirty-eight million dollars and at a rate of fourteen one-thousandths of one percent after total annual revenues collected by the district exceed thirty-eight million dollars, upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales and use tax SHALL NOT BE LEVIED ON THE SALE OR USE OF CIGARETTES AND shall be levied on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-709 (1), C.R.S., to the extent such purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., to be distributed to scientific and cultural facilities pursuant to the provisions of section 32-13-107 (3) (c).

SECTION 8. The introductory portion to 32-13-107 (1) (a), Colorado Revised Statutes, is amended to read:

32-13-107. Sales and use tax imposed - collection - administration of tax - use. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), upon the approval of the registered electors pursuant to the provisions of section 32-13-105, the board shall have the power to levy such uniform sales and use taxes throughout the district created in section 32-13-104 upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales and use tax SHALL NOT BE LEVIED THE ON SALE OR USE OF CIGARETTES AND shall be levied on:

SECTION 9. The introductory portion to 32-14-114 (1), Colorado Revised Statutes, is amended to read:

32-14-114. Sales tax imposed - collection - administration of tax - discontinuance. (1) Upon the approval of the registered electors pursuant to the provisions of section 32-14-105 and upon the granting of a major league baseball franchise by major league baseball to be located in the district, the board shall have the power to levy such uniform sales tax for a period not to exceed twenty years throughout the district created in section 32-14-104 upon every transaction or other incident with respect to which a sales tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales tax SHALL NOT BE LEVIED ON THE SALE OF CIGARETTES AND shall be levied on:

SECTION 10. The introductory portion to 32-15-110 (1), Colorado Revised Statutes, is amended to read:

32-15-110. Sales tax imposed - collection - administration of tax - discontinuance. (1) Upon the approval of the registered electors pursuant to the provisions of section 32-15-107, the board shall have the power to levy such uniform sales tax upon the adoption of a resolution for a period commencing after the termination of the sales tax levied and collected by the Denver metropolitan major league baseball stadium district pursuant to section 32-14-105 and continuing for a period not to extend beyond January 1, 2012, throughout the district created in section 32-15-104 upon every transaction or other incident with respect to which a sales tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales tax SHALL NOT BE LEVIED ON THE SALE OF CIGARETTES AND shall be levied on:

SECTION 11. 32-17-112, Colorado Revised Statutes, is amended to read:

32-17-112. Financial powers. Notwithstanding the provisions of section 32-1-1101 (1) (a), a mental health care service district created pursuant to this article shall not be authorized to levy and collect ad valorem taxes. Such district shall have all other financial powers described in section 32-1-1101. The district shall also have the power, upon voter approval, to levy and collect a uniform sales tax throughout the entire geographical area of the district at a rate not to exceed one-fourth of one percent upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S.; EXCEPT THAT SUCH SALES TAX SHALL NOT BE LEVIED ON THE SALE OF CIGARETTES. Any sales tax authorized pursuant to this section shall be levied and collected as provided in section 32-17-113.

SECTION 12. 32-17-113 (1) (c) (I) and (1) (c) (II) (B), Colorado Revised Statutes, are amended, and the said 32-17-113 (1) (c) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

32-17-113. Sales tax imposed - collection - administration of tax. (1) (c) The sales tax imposed pursuant to paragraph (a) of this subsection (1) shall not be levied on:

(I) The sale of tangible personal property delivered by a retailer or a retailer's agent or to a common carrier for delivery to a destination outside the district; ~~and~~

(II) The sale of tangible personal property on which a specific ownership tax has been paid or is payable when such sale meets the following conditions:

(B) The personal property is registered or required to be registered outside the geographical boundaries of the district under the laws of this state; AND

(III) THE SALE OF CIGARETTES.

SECTION 13. 32-18-107 (1), Colorado Revised Statutes, is amended to read:

32-18-107. Sales tax - collection - administration. (1) Upon the approval of the eligible electors in the district at an election held in accordance with section 20 of article X of the state constitution and part 8 of article 1 of this title, the district shall have the power to levy a uniform sales tax throughout the entire geographical

area of the district upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S.; EXCEPT THAT SUCH SALES TAX SHALL NOT BE LEVIED ON THE SALE OF CIGARETTES. A sales tax levied by a district shall take effect on either January 1 or July 1 of the year specified in the ballot issue submitted to the eligible electors of the district.

SECTION 14. 32-19-111, Colorado Revised Statutes, is amended to read:

32-19-111. Financial powers. Any district created pursuant to this article shall have all of the financial powers described in section 32-1-1101; except that the levy and collection of ad valorem taxes shall be subject to the provisions of section 32-19-115. The district shall also have the power, upon voter approval, to levy and collect a uniform sales tax throughout the entire geographical area of the district upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S.; EXCEPT THAT SUCH SALES TAX SHALL NOT BE LEVIED ON THE SALE OF CIGARETTES. Any sales tax authorized pursuant to this section shall be levied and collected as provided in section 32-19-112.

SECTION 15. 32-19-112 (1) (a), Colorado Revised Statutes, is amended to read:

32-19-112. Sales tax imposed - collection - administration of tax.
(1) (a) Upon the approval of the eligible electors in the district at an election held in accordance with section 20 of article X of the state constitution and part 8 of article 1 of this title, the district shall have the power to levy a uniform sales tax throughout the entire geographical area of the district upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S.; EXCEPT THAT SUCH SALES TAX SHALL NOT BE LEVIED ON THE SALE OF CIGARETTES.

SECTION 16. 43-4-605 (1) (j) (II), Colorado Revised Statutes, is amended to read:

43-4-605. Powers of the authority - inclusion or exclusion of property - determination of regional transportation system alignment - fund created.
(1) (j) (II) A sales or use tax, or both, levied pursuant to subparagraph (I) of this paragraph (j) shall not be levied on the sale of tangible personal property:

(A) Delivered by a retailer or a retailer's agent or to a common carrier for delivery to a destination outside the authority; ~~or~~

(B) Upon which specific ownership tax has been paid or is payable if the purchaser resides outside the boundaries of the authority or the purchaser's principal place of business is outside the boundaries of the authority and if the personal property is registered or required to be registered outside the boundaries of the authority; OR

(C) WHERE SUCH TANGIBLE PERSONAL PROPERTY IS A CIGARETTE.

SECTION 17. Appropriation. (1) In addition to any other appropriation, there

is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of revenue, for allocation to the taxation business group, for the fiscal year beginning July 1, 2008, the sum of one hundred seventy-seven thousand eight hundred fifteen dollars (\$177,815) and 0.1 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of revenue, for allocation to the taxation business group, for the fiscal year beginning July 1, 2009, the sum of twelve thousand eight hundred forty dollars (\$12,840) and 0.3 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 18. Effective date - applicability. This act shall take effect July 1, 2009, and shall apply to cigarettes sold or used on or after said date.

SECTION 19. 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, 2009