

## CHAPTER 3

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**TAXATION**


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**SENATE BILL 18-088**

BY SENATOR(S) Gardner, Aguilar, Coram, Court, Crowder, Donovan, Fenberg, Fields, Garcia, Grantham, Guzman, Jahn, Jones, Kagan, Kefalas, Kerr, Martinez Humenik, Merrifield, Priola, Todd, Williams A., Zenzinger, Moreno;  
 also REPRESENTATIVE(S) Becker K., Arndt, Bridges, Buckner, Coleman, Duran, Esgar, Exum, Foote, Garnett, Gray, Hamner, Hansen, Herod, Hooton, Kennedy, Lawrence, Lee, Lontine, Melton, Michaelson Jenet, Pabon, Pettersen, Rankin, Roberts, Rosenthal, Salazar, Singer, Thurlow, Weissman, Young, Benavidez, Ginal, Kraft-Tharp, McLachlan.

**AN ACT**

**CONCERNING CLARIFICATION THAT RETAIL MARIJUANA SALES ARE SUBJECT TO SALES TAXES  
 LEVIED BY CERTAIN LIMITED PURPOSE GOVERNMENTAL ENTITIES.**

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

**SECTION 1. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) In enacting Senate Bill 17-267 in 2017, the general assembly exempted retail marijuana sales from the general state sales tax and increased the rate of the retail marijuana sales tax so that, without reducing total state sales tax revenue attributable to retail marijuana sales, only one state sales tax would be levied on such sales;

(b) In exempting retail marijuana sales from the general state sales tax, the general assembly inadvertently exempted such sales from regional transportation district, scientific and cultural facilities district, and health services district sales taxes and made it unclear whether certain other limited purpose governmental entities that were levying sales taxes on such sales before July 1, 2017, could continue to levy sales taxes on such sales;

(c) The inadvertent and unintended exemption of retail marijuana sales from certain special district and other governmental entity sales taxes:

(I) Is inconsistent with prior voter approval to levy broad general sales taxes obtained by the affected special districts and other governmental entities; and

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*Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(II) Adversely impacts the ability of the affected special districts and other governmental entities to provide the services, programs, and facilities that they were organized to provide.

(2) The general assembly further finds and declares that:

(a) Subject only to constitutional limitations, the general assembly has plenary power to enact legislation, including the power to enact retroactive, but not retrospective, curative and remedial legislation for the purpose of curing and remedying past errors and omissions in previously enacted legislation;

(b) It is necessary to enact this act as retroactive, but not retrospective, curative and remedial legislation to correct an oversight in Senate Bill 17-267 and ensure that the original intent of the general assembly in enacting Senate Bill 17-267 that the affected special districts and other governmental entities be able to continue to levy sales taxes on retail marijuana sales on and after July 1, 2017, is realized; and

(c) While the retroactive, but not retrospective, curative, and remedial operation of this act establishes that the existing tax policy of the state authorizing the affected special districts and other governmental entities to levy sales tax on retail marijuana sales never changed, notwithstanding the inadvertent and unintended effect that the enactment of Senate Bill 17-267 had on the collection of such taxes, it would be unfair and burdensome to sellers and purchasers of retail marijuana and administratively impractical or impossible to recover sales tax that was authorized to be levied on but was not actually collected on retail marijuana sales occurring on and after July 1, 2017, but before the effective date of this act.

(3) The general assembly further finds and declares that it is necessary, appropriate, in the best interest of the state, and consistent with existing state tax policy and prior voter approval to levy broad general sales taxes obtained by the affected special districts and other governmental entities to clarify that retail marijuana sales remain subject to sales taxes levied by the affected special districts and other governmental entities so long as the continued levying and collection of the taxes on such sales complies with the requirements of the Colorado constitution and applicable decisions of the Colorado supreme court and Colorado court of appeals.

**SECTION 2.** In Colorado Revised Statutes, **amend** 39-26-729 as follows:

**39-26-729. Retail sales of marijuana.** (1) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION, on and after July 1, 2017, all retail sales of marijuana upon which the retail marijuana sales tax is imposed pursuant to section 39-28.8-202 are exempt from taxation under part 1 of this article 26 BY THE STATE OR BY ANY SPECIAL DISTRICT OR OTHER LIMITED PURPOSE GOVERNMENTAL ENTITY THAT WAS NOT LEVYING SALES TAX ON RETAIL SALES OF MARIJUANA UNDER PART 1 OF THIS ARTICLE 26 BEFORE JULY 1, 2017. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, ANY SPECIAL DISTRICT OR OTHER LIMITED PURPOSE GOVERNMENTAL ENTITY THAT WAS LEVYING SALES TAX ON RETAIL SALES OF MARIJUANA UNDER PART 1 OF THIS ARTICLE 26 BEFORE JULY 1, 2017, RETAINS ITS AUTHORITY TO CONTINUE LEVYING SALES TAX UPON RETAIL SALES OF MARIJUANA UNDER THIS ARTICLE 26.

(b) ANY METROPOLITAN DISTRICT THAT LEVIES SALES TAX AS AUTHORIZED BY SECTION 32-1-1106 (1), HEALTH ASSURANCE DISTRICT THAT LEVIES SALES TAX AS AUTHORIZED BY SECTION 32-19-112 (1), OR HEALTH SERVICE DISTRICT THAT LEVIES SALES TAX AS AUTHORIZED BY SECTION 32-19-112 (1) MAY LEVY SALES TAX ON RETAIL SALES OF MARIJUANA UPON WHICH THE RETAIL MARIJUANA SALES TAX IS IMPOSED PURSUANT TO SECTION 39-28.8-202 REGARDLESS OF WHETHER OR NOT THE DISTRICT WAS LEVYING SALES TAX ON SUCH SALES BEFORE JULY 1, 2017.

(2) THE GOVERNING BODY OF ANY SPECIAL DISTRICT OR LIMITED PURPOSE GOVERNMENTAL ENTITY THAT WAS LEVYING SALES TAX UPON RETAIL MARIJUANA SALES BEFORE JULY 1, 2017, AND THE GOVERNING BODY OF ANY METROPOLITAN DISTRICT, HEALTH ASSURANCE DISTRICT, OR HEALTH SERVICE DISTRICT THAT IS AUTHORIZED BY SUBSECTION (1)(b) OF THIS SECTION TO LEVY SALES TAX ON RETAIL MARIJUANA SALES SHALL DETERMINE WHETHER THE LEVYING OF SUCH SALES TAX COMPLIES WITH THE COLORADO CONSTITUTION AND APPLICABLE DECISIONS OF THE COLORADO SUPREME COURT AND COLORADO COURT OF APPEALS AND, IF THE GOVERNING BODY OF ANY SUCH SPECIAL DISTRICT OR LIMITED PURPOSE GOVERNMENTAL ENTITY DETERMINES THAT ADDITIONAL VOTER APPROVAL IS REQUIRED TO LEVY SALES TAX UPON RETAIL SALES OF MARIJUANA, THE SPECIAL DISTRICT OR LIMITED PURPOSE GOVERNMENTAL ENTITY SHALL NOT RESUME LEVYING SALES TAX UPON SUCH SALES UNTIL VOTER APPROVAL IS OBTAINED.

**SECTION 3. Applicability.** The provisions of this act that authorize the continued levying of sales tax on retail sales of marijuana apply retroactively, but not retrospectively, curatively, and remedially to retail marijuana sales occurring on and after July 1, 2017, but, notwithstanding that authorization, authorized sales taxes that were not actually collected on retail sales of marijuana occurring on and after July 1, 2017, but before the effective date of this act shall not be collected.

**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: February 22, 2018