

**First Extraordinary Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 20B-0055.01 Esther van Mourik x4215

HOUSE BILL 20B-1004

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A BILL FOR AN ACT

101 **CONCERNING A TEMPORARY DEDUCTION FROM STATE NET TAXABLE**
102 **SALES FOR CERTAIN RETAILERS IN THE STATE IN ORDER TO**
103 **ALLOW SUCH RETAILERS TO RETAIN THE RESULTING SALES TAX**
104 **COLLECTED AS ASSISTANCE FOR LOST REVENUE AS A RESULT OF**
105 **THE ECONOMIC DISRUPTIONS DUE TO THE PRESENCE OF**
106 **CORONAVIRUS DISEASE 2019 (COVID-19) IN COLORADO.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill allows a temporary deduction from state net taxable sales

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
December 1, 2020

HOUSE
2nd Reading Unamended
November 30, 2020

for qualifying retailers in the alcoholic beverages drinking places industry, the restaurant and other eating places industry, and the mobile food services industry in the state in order to allow such qualified retailers to retain the resulting sales tax collected as assistance for lost revenue as a result of the economic disruptions due to the presence of coronavirus disease 2019 (COVID-19) in Colorado.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-26-105, **amend**
3 (1)(a)(I)(A); and **add** (1.3) as follows:

4 **39-26-105. Vendor liable for tax - definitions - repeal.**
5 (1) (a) (I) (A) Except as provided in subsections (1)(a)(I)(B), **(1.3)**, and
6 (1.5) of this section, every retailer shall, irrespective of the provisions of
7 section 39-26-106, be liable and responsible for the payment of an
8 amount equivalent to two and ninety one-hundredths percent of all sales
9 made on or after January 1, 2001, by the retailer of commodities or
10 services as specified in section 39-26-104.

11 (1.3) (a) AS USED IN THIS SUBSECTION (1.3), UNLESS THE CONTEXT
12 OTHERWISE REQUIRES:

13 (I) "ALCOHOLIC BEVERAGES DRINKING PLACES INDUSTRY" MEANS
14 ESTABLISHMENTS THAT MAY MAKE SANDWICHES OR LIGHT SNACKS
15 AVAILABLE FOR CONSUMPTION, THAT ARE OPEN TO THE PUBLIC, AND ARE
16 KNOWN AS BARS, TAVERNS, SALES ROOMS, VINTNER'S RESTAURANTS,
17 BREW PUBS, DISTILLERY PUBS, NIGHTCLUBS, OR DRINKING PLACES
18 PRIMARILY ENGAGED IN PREPARING AND SERVING ALCOHOLIC BEVERAGES
19 FOR IMMEDIATE, ON-PREMISE CONSUMPTION. "ALCOHOLIC BEVERAGES
20 DRINKING PLACES INDUSTRY" DOES NOT MEAN BREWERIES, DISTILLERIES,
21 WINERIES, AND RETAIL LIQUOR, OR DRUG STORES THAT OFFER TASTINGS.

22 (II) "MOBILE FOOD SERVICES INDUSTRY" MEANS RETAILERS

1 PRIMARILY ENGAGED IN PREPARING AND SERVING MEALS, SNACKS, OR
2 NONALCOHOLIC BEVERAGES FOR IMMEDIATE CONSUMPTION FROM
3 MOTORIZED VEHICLES OR NONMOTORIZED CARTS. "MOBILE FOOD
4 SERVICES INDUSTRY" DOES NOT MEAN RETAILERS DELIVERING FOOD
5 PREPARED ONLY BY THIRD PARTIES AND DOES NOT MEAN RETAILERS
6 SHIPPING MEAL KITS, HEAT-AT-HOME MEALS, OR OTHER UNPREPARED
7 FOOD TO CONSUMERS FOR HOME CONSUMPTION.

8 (III) "QUALIFYING RETAILER" MEANS A RETAILER DOING BUSINESS
9 IN THE STATE THAT TIMELY FILES SALES TAX RETURNS AS REQUIRED
10 UNDER SUBSECTION (1)(b) OF THIS SECTION AND SECTION 39-26-109, AND
11 THAT OPERATES IN THE ALCOHOLIC BEVERAGES DRINKING PLACES
12 INDUSTRY, THE RESTAURANT AND OTHER EATING PLACES INDUSTRY, OR
13 THE MOBILE FOOD SERVICES INDUSTRY.

14 (IV) "RESTAURANT AND OTHER EATING PLACES INDUSTRY" MEANS
15 ESTABLISHMENTS, NOT INCLUDING ESTABLISHMENTS SELLING FOOD FROM
16 MOBILE VEHICLES, ESTABLISHMENTS PRESENTING LIVE THEATRICAL
17 PRODUCTIONS AND OTHER ENTERTAINMENT FACILITIES, HOTELS OR BED
18 AND BREAKFAST ESTABLISHMENTS, SPECIALTY FOOD STORES, VENDING
19 MACHINES, CATERERS OR OTHER FOOD SERVICE CONTRACTORS, OR
20 PRIVATE CAFETERIAS AT WORKPLACES, UNIVERSITIES, OR HOSPITALS, THAT
21 ARE OPEN TO THE PUBLIC, ARE KNOWN AS RESTAURANTS, CAFES, LUNCH
22 COUNTERS, AND CARRYOUT SHOPS, AND ARE PRIMARILY ENGAGED IN ONE
23 OF THE FOLLOWING:

24 (A) PROVIDING PREPARED FOOD SERVICES AT A FIXED, PHYSICAL
25 PREMISES TO PATRONS WHO ORDER AND ARE SERVED WHILE SEATED, AND
26 WHO PAY AFTER EATING;

27 (B) PROVIDING PREPARED FOOD SERVICES AT A FIXED, PHYSICAL

1 PREMISES TO PATRONS WHO GENERALLY ORDER OR SELECT ITEMS AND
2 WHO PAY BEFORE EATING; OR

3 (C) PREPARING OR SERVING SPECIALTY SNACKS OR NONALCOHOLIC
4 BEVERAGES AT A FIXED, PHYSICAL PREMISES TO PATRONS WHO PAY
5 BEFORE EATING FOR CONSUMPTION ON OR NEAR THE PREMISES.

6 (V) "SPECIFIED SALES TAX PERIOD" MEANS SALES MADE IN
7 NOVEMBER 2020, DECEMBER 2020, JANUARY 2021, AND FEBRUARY 2021,
8 FOR WHICH MONTHLY RETURNS MUST BE FILED PURSUANT TO SUBSECTION
9 (1)(b) OF THIS SECTION, ON DECEMBER 21, 2020, JANUARY 20, 2021,
10 FEBRUARY 22, 2021, AND MARCH 22, 2021, RESPECTIVELY.

11 (VI) "STATE NET TAXABLE SALES" MEANS ALL SALES MADE BY THE
12 QUALIFYING RETAILER DURING THE SPECIFIED SALES TAX PERIOD OF
13 TANGIBLE PERSONAL PROPERTY, COMMODITIES, AND SERVICES AS
14 SPECIFIED IN SECTION 39-26-104, LESS ANY DEDUCTIONS AND EXEMPTIONS
15 AUTHORIZED IN THIS ARTICLE 26, WITHOUT REGARD TO THE DEDUCTION
16 AUTHORIZED IN THIS SUBSECTION (1.3).

17 (b) (I) A QUALIFYING RETAILER IN THE ALCOHOLIC BEVERAGES
18 DRINKING PLACES INDUSTRY OR IN THE RESTAURANT AND OTHER EATING
19 PLACES INDUSTRY MAY DEDUCT FROM STATE NET TAXABLE SALES THE
20 LESSER OF STATE NET TAXABLE SALES OR SEVENTY THOUSAND DOLLARS
21 AND RETAIN THE RESULTING SALES TAX COLLECTED FOR EACH MONTH IN
22 THE SPECIFIED SALES TAX PERIOD.

23 (II) ONE DEDUCTION DESCRIBED IN SUBSECTION (1.3)(b)(I) OF THIS
24 SECTION IS ALLOWED PER MONTH FOR EACH OF UP TO FIVE FIXED PHYSICAL
25 PREMISES THAT ARE PROPERLY LICENSED UNDER SECTION 39-26-103
26 (2)(a), TO A QUALIFYING RETAILER IN THE ALCOHOLIC BEVERAGES
27 DRINKING PLACES INDUSTRY OR IN THE RESTAURANT AND OTHER EATING

1 PLACES INDUSTRY. NO DEDUCTION IS ALLOWED FOR:

2 (A) NONPHYSICAL SITES THAT ARE ESTABLISHED FOR PURPOSES OF
3 REPORTING SALES DELIVERED INTO A TAXING AREA; OR

4 (B) ANY TEMPORARY PLACE OF BUSINESS OR SPECIAL EVENT.

5 (c) A QUALIFYING RETAILER IN THE MOBILE FOOD SERVICES
6 INDUSTRY MAY DEDUCT FROM STATE NET TAXABLE SALES THE LESSER OF
7 AGGREGATE STATE NET TAXABLE SALES FOR ALL SITES OR SEVENTY
8 THOUSAND DOLLARS PER MOTORIZED VEHICLE OR NONMOTORIZED CART,
9 NOT TO EXCEED FIVE MOTORIZED VEHICLES OR NONMOTORIZED CARTS,
10 AND RETAIN THE RESULTING STATE SALES TAX COLLECTED FOR EACH
11 MONTH IN THE SPECIFIED SALES TAX PERIOD.

12 (d) IF A QUALIFYING RETAILER IS IN BOTH THE RESTAURANT AND
13 OTHER EATING PLACES INDUSTRY AND THE MOBILE FOOD SERVICES
14 INDUSTRY, THE QUALIFYING RETAILER MAY CLAIM THE DEDUCTION FOR NO
15 MORE THAN FIVE PHYSICAL SITES AND FOR NO MORE THAN FIVE
16 MOTORIZED VEHICLES AND NONMOTORIZED CARTS.

17 (e) THE QUALIFYING RETAILER MUST CONTINUE TO HOLD STATE
18 SALES TAXES IN EXCESS OF THE AMOUNT RETAINED IN TRUST UNTIL PAID
19 TO THE DEPARTMENT OF REVENUE AS SPECIFIED IN SECTION 39-26-118.

20 (f) THE DEDUCTION AND SALES TAX RETENTION ALLOWED IN THIS
21 SUBSECTION (1.3) APPLIES TO STATE NET TAXABLE SALES ONLY.
22 QUALIFYING RETAILERS MAY NOT RETAIN PAYMENT OF CITY, COUNTY, OR
23 SPECIAL DISTRICT SALES TAXES COLLECTED BY THE DEPARTMENT OF
24 REVENUE. NOTHING IN THIS SUBSECTION (1.3) PREVENTS ANY LOCAL
25 GOVERNMENT FROM REBATING SALES TAXES COLLECTED BY QUALIFYING
26 RETAILERS PURSUANT TO A LOCAL ORDINANCE.

27 (g) THIS SUBSECTION (1.3) IS REPEALED, EFFECTIVE DECEMBER 31,

1 2026.

2 **SECTION 2.** In Colorado Revised Statutes, **amend** 39-26-112 as
3 follows:

4 **39-26-112. Excess tax - remittance - repeal.** (1) If any vendor,
5 during any reporting period, collects as a tax an amount in excess of three
6 percent of all taxable sales made prior to January 1, 2001, and two and
7 ninety one-hundredths percent of all taxable sales made on or after
8 January 1, 2001, such vendor shall remit to the executive director of the
9 department of revenue the full net amount of the tax imposed in this part
10 1 and also such excess. The retention by the retailer or vendor of any
11 excess of tax collections over the said percentage of the total taxable sales
12 of such retailer or vendor, or the intentional failure to remit punctually to
13 the executive director the full amount required to be remitted by the
14 provisions of this part 1 is declared to be unlawful and constitutes a
15 misdemeanor.

16 (2) (a) THE REQUIREMENTS AND PENALTY IN THIS SECTION DO NOT
17 APPLY TO A QUALIFYING RETAILER RETAINING STATE SALES TAX AS
18 ALLOWED IN SECTION 39-26-105 (1.3).

19 (b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE DECEMBER 31,
20 2026.

21 **SECTION 3.** In Colorado Revised Statutes, 39-26-118, **amend**
22 (1) as follows:

23 **39-26-118. Recovery of taxes, penalty, and interest - repeal.**

24 (1) (a) All sums of money paid by the purchaser to the retailer as taxes
25 imposed by this ~~article~~ ARTICLE 26 shall be and remain public money, the
26 property of the state of Colorado, in the hands of such retailer, and ~~he~~ THE
27 RETAILER shall hold the same in trust for the sole use and benefit of the

1 state of Colorado until paid to the executive director of the department of
2 revenue, and, for failure to so pay to the executive director, ~~such~~ THE
3 retailer shall be punished as provided by law.

4 (b) (I) THIS SUBSECTION (1) DOES NOT APPLY TO A QUALIFYING
5 RETAILER RETAINING STATE SALES TAX AS ALLOWED IN SECTION
6 39-26-105 (1.3).

7 (II) THIS SUBSECTION (1)(b) IS REPEALED, EFFECTIVE DECEMBER
8 31, 2026.

9 **SECTION 4.** In Colorado Revised Statutes, 39-21-113, **add** (27)
10 as follows:

11 **39-21-113. Reports and returns - rule.** (27) NOTWITHSTANDING
12 THE CONFIDENTIALITY REQUIREMENTS IN THIS SECTION, THE EXECUTIVE
13 DIRECTOR SHALL SHARE WITH THE DEPARTMENT OF PUBLIC HEALTH AND
14 ENVIRONMENT PERTINENT INFORMATION NECESSARY TO DETERMINE THE
15 AMOUNT OF STATE SALES TAX RETAINED BY A QUALIFYING RETAILER AS
16 ALLOWED IN SECTION 39-26-105 (1.3). ANY INFORMATION PROVIDED TO
17 THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO
18 THIS SUBSECTION (27) REMAINS CONFIDENTIAL, AND ALL AGENTS, CLERKS,
19 AND EMPLOYEES OF THE DEPARTMENT OF PUBLIC HEALTH AND
20 ENVIRONMENT ARE SUBJECT TO THE LIMITATIONS SET FORTH IN
21 SUBSECTION (4) OF THIS SECTION AND THE PENALTIES IN SUBSECTION (6)
22 OF THIS SECTION.

23 **SECTION 5.** In Colorado Revised Statutes, **amend** 39-21-116.5
24 as follows:

25 **39-21-116.5. Penalties - repeal.** (1) In addition to the personal
26 liability provided in section 39-21-116, all officers of a corporation and
27 all members of a partnership or a limited liability company required to

1 collect, account for, and pay over any tax administered by this ~~article~~
2 ARTICLE 21 who willfully fail to collect, account for, or pay over such tax
3 or who willfully attempt in any manner to evade or defeat any such tax,
4 or the payment thereof, are subject to, in addition to other penalties
5 provided by law, a penalty equal to one hundred fifty percent of the total
6 amount of the tax not collected, accounted for, paid over, or otherwise
7 evaded. An officer of a corporation or a member of a partnership or a
8 limited liability company shall be deemed to be subject to this section if
9 the corporation, partnership, or limited liability company is subject to
10 filing returns or paying taxes administered by this ~~article~~ ARTICLE 21 and
11 if such officers of corporations or members of partnerships or limited
12 liability companies voluntarily or at the direction of their superiors
13 assume the duties or responsibilities of complying with the provisions of
14 any tax administered by this ~~article~~ ARTICLE 21 on behalf of the
15 corporation, partnership, or limited liability company.

16 (2) (a) THIS SECTION DOES NOT APPLY TO THE TEMPORARY SALES
17 TAX DEDUCTION AND RETENTION ALLOWED IN SECTION 39-26-105 (1.3).

18 (b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE DECEMBER 31,
19 2026.

20 **SECTION 6.** In Colorado Revised Statutes, 39-21-118, **amend**
21 (2) as follows:

22 **39-21-118. Criminal penalties - repeal.** (2) (a) Any person
23 required, or any person who purports to be required, under any title
24 administered by the department to collect, account for, or pay over any
25 tax, who willfully fails to collect or truthfully account for or pay over
26 such tax, including, but not limited to, willfully making a materially false
27 statement in connection with an application for a refund of any tax for the

1 purpose of falsely obtaining a refund of such tax, in addition to other
2 penalties provided by law, is guilty of a class 5 felony and, upon
3 conviction thereof, shall be punished as provided in section 18-1.3-401,
4 ~~C.R.S.~~, or shall be punished by a fine of not more than one hundred
5 thousand dollars, or five hundred thousand dollars in the case of a
6 corporation, or by both such fine and imprisonment, together with the
7 costs of prosecution.

8 (b) (I) SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY TO
9 THE TEMPORARY SALES TAX DEDUCTION AND RETENTION ALLOWED IN
10 SECTION 39-26-105 (1.3).

11 (II) THIS SUBSECTION (2)(b) IS REPEALED, EFFECTIVE DECEMBER
12 31, 2026.

13 **SECTION 7. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, or safety.