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MEMORANDUM¹

TO: Statutory Revision Committee

FROM: Esther van Mourik, Office of Legislative Legal Services

DATE: February 19, 2021

SUBJECT: Inclusion of use tax exemptions for certain existing sales tax exemptions.

Summary

Several statutory sections in part 7 of article 26 of title 39, C.R.S., provide sales tax exemptions for certain items but do not provide corresponding use tax exemptions for those items. As a result, the items could become subject to a use tax when a tax-exempt sale occurs. Most statutory sales tax exemptions have corresponding use tax exemptions to prevent this. The Department of Revenue identified these particular sales tax exemptions without corresponding use tax exemptions.

Analysis

The sales tax exemptions for the following items do not include corresponding use tax exemptions:

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

- Food purchased with the Supplemental Nutrition Assistance Program (SNAP) or the supplemental food program for women, infants, and children (WIC) in section 39-26-707 (1)(a) and (1)(b), C.R.S.;
- Certain aircraft in section 39-26-711.5 (1), C.R.S.;
- Certain drugs, medical equipment, and other items in section 39-26-717 (2), C.R.S.;
- Certain sales made by either charitable organizations, parent teacher organizations, and parent teacher associations in section 39-26-718 (1)(b) and (1)(c), C.R.S.;
- Certain sales that benefit Colorado schools in section 39-26-725, C.R.S.; and
- Retail marijuana in section 39-26-729, C.R.S.²

The imposition of a use tax on an item that is exempted from sales tax is generally incompatible with the fundamental principles of the use tax and two Colorado Supreme Court decisions.³

In *Matthews v. Dept. of Rev.*,⁴ the Colorado Supreme Court contemplated whether it is constitutionally permissible for the state to deny a trade-in allowance in computing the use tax on a motor vehicle purchased out of state when such a credit is allowed when the vehicle is purchased in Colorado. The Court held:

In both Connecticut and West Virginia, the state legislatures provided a trade-in exemption in sales tax schemes identical to Colorado's. Like Colorado, both states failed to provide a trade-in exemption in the use tax. The Connecticut and West Virginia courts held that the schemes constituted violations of the Commerce Clause.... We agree with the Connecticut and West Virginia courts.⁵

² Attached as Addenda A through F.

³ There are exceptions to this principle, such as when the sales tax exemption is designed to effectuate taxation in another jurisdiction, for example, with local taxation of motor vehicles in Colorado.

⁴ *Matthews v. Dept. of Rev.*, 562 P.2d 415 (1977)

⁵ *Id.* at 419 (internal citations omitted).

In *Int'l Bus. Machs. Corp. v. Charnes*,⁶ the Colorado Supreme Court determined that a use tax on the "full finished use cost" of an item, instead of the materials cost as would be assessed under sales tax, contravened the "supplementary nature and equalizing function of the use tax."⁷ Indeed, the Court stated that "the burden on the taxpayer should be no greater than necessary to compensate for the sales tax originally avoided on the purchases."⁸ These holdings indicate that where a sales tax exemption is allowed to a taxpayer, a corresponding use tax exemption should also be allowed.

The suggested statutory revisions for each section in the proposed bill would add the missing use tax exemption in order to clarify that an item that is subject to a sales tax exemption is exempt from both sales and use tax. The changes make those statutory sections compatible with the fundamental principles of the use tax and Colorado Supreme Court decisions on the subject.

Statutory Charge⁹

The Statutory Revision Committee (SRC) is tasked with discovering "defects and anachronisms in the law" and recommending legislation "to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law." The addition of use tax exemptions to these specific sales tax exemptions fits within the SRC's charge because the revisions would address these contradictory and defective sections in the law.

⁶ *Int'l Bus. Machs. Corp. v. Charnes*, 601 P.2d 622 (1979)

⁷ *Id.* at 624.

⁸ *Id.*

⁹ The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

Proposed Bill

The attached proposed bill adds use tax exemptions where missing from the sales tax exemptions.

ADDENDUM A

39-26-707. Food, meals, beverages, and packaging - definitions. (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) All sales of food purchased with food stamps. For the purposes of this paragraph (a), "food" shall have the same meaning as provided in 7 U.S.C. sec. 2012 (g), as such section exists on October 1, 1987, or is thereafter amended.

(b) All sales of food purchased with funds provided by the special supplemental food program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786. For the purposes of this paragraph (b), "food" shall have the same meaning as provided in 42 U.S.C. sec. 1786, as such section exists on October 1, 1987, or is thereafter amended.

(c) Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on or after March 1, 2010, any such article that is nonessential to the consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state sales taxation;

(d) Any sale of any container or bag to a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on and after March 1, 2010, any such container or bag that is nonessential to the consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state sales taxation;

(e) Commencing January 1, 1980, all sales of food; and

(f) (I) (A) On and after July 1, 2016, all sales of food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community;

(B) On and after July 1, 2016, all sales to a retirement community of food, food products, snacks, beverages, and meals for purposes of a sale described in sub-subparagraph (A) of this subparagraph (I);

(C) On and after July 1, 2016, all sales of any container, bag, or article used by or furnished to a consumer for the purpose of packaging, bagging, or use with food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community; and

(D) On and after July 1, 2016, all sales to a retirement community of any container, bag, or article used by or furnished to a consumer for purposes of a sale described in sub-subparagraph (A) of this subparagraph (I).

(II) For purposes of this paragraph (f), "food" includes prepared salads, salad bars, and packaged and unpackaged cold sandwiches.

(1.5) (a) Notwithstanding the provisions of paragraph (e) of subsection (1) of this section, on and after May 1, 2010, sales of candy and soft drinks shall be subject to state sales taxation.

(b) For the purposes of this subsection (1.5):

(I) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

(II) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) Effective January 1, 1980, the storage, use, or consumption of food or meals that are provided to employees of the places described in section 39-26-104 (1)(e), if such are provided to such employees at no charge or at a reduced charge;

(b) The storage, use, or consumption of any article by a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if the article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on and after March 1, 2010, any such article stored, used, or consumed that is nonessential to the end consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state use taxation;

(c) The storage, use, or consumption of any container or bag by a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if the container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on and after March 1, 2010, any such container or bag stored, used, or consumed that is nonessential to the end consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state use taxation;

(d) (I) Effective January 1, 1980, the storage, use, or consumption of food as defined in section 39-26-102 (4.5); except that, on and after May 1, 2010, the storage, use, or consumption of candy and soft drinks shall be subject to state use taxation.

(II) For the purposes of this paragraph (d):

(A) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

(B) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

(e) (I) (A) On and after July 1, 2016, the storage, use, or consumption of food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community;

(B) On and after July 1, 2016, the storage, use, or consumption by a retirement community of food, food products, snacks, beverages, and meals for purposes of a sale described in sub-subparagraph (A) of subparagraph (I) of paragraph (f) of subsection (1) of this section;

(C) On and after July 1, 2016, the storage, use, or consumption of any container, bag, or article used by or furnished to a consumer for the purpose of packaging, bagging, or use with food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community; and

(D) On and after July 1, 2016, the storage, use, or consumption by a retirement community of any container, bag, or article used by or furnished to a consumer for purposes of a sale described in sub-subparagraph (A) of subparagraph (I) of paragraph (f) of subsection (1) of this section.

(II) For purposes of this paragraph (e), "food" includes prepared salads, salad bars, and packaged and unpackaged cold sandwiches

(2.5) For purposes of this section, "retirement community" means:

(a) An assisted living residence as defined in section 25-27-102 (1.3), C.R.S.;

(b) An independent living facility designed and operated specifically to serve as the primary residence for persons aged fifty-five or older that provides meals and other services to residents as part of a comprehensive fee, including a facility that qualifies as housing for older persons as defined in section 24-34-502 (7)(b) and a life care institution subject to article 49 of title 11; or

(c) A nursing care facility licensed under the authority of section 25-1.5-103 (1)(a)(I)(A), C.R.S., that provides services to persons who, due to physical condition, mental condition, or disability, require continuous or regular inpatient nursing care.

(3) The department of revenue may promulgate rules, in accordance with article 4 of title 24, C.R.S., to provide a means by which a person who sells candy or soft drinks at retail may, if necessary, reasonably estimate the amount of sales taxes due on such candy and soft drinks. For any return made prior to August 1, 2010, a person who sells candy or soft drinks at retail shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the elimination of the exemption from state sales tax for sales of candy and soft drinks, as defined in paragraph (b) of subsection (1.5) of this section, by House Bill 10-1191, enacted in 2010.

(4) For any return made prior to June 1, 2010, a person who sells or stores, uses, or consumes items described in paragraphs (c) and (d) of subsection (1) and paragraphs (b) and (c) of subsection (2) of this section that are nonessential to the end consumer or user shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the elimination of the exemption for such nonessential items from state sales and use tax by House Bill 10-1194, enacted in 2010.

ADDENDUM B

39-26-711.5. Aircraft - use outside state. (1) The sale of a new or used aircraft shall be exempt from taxation under the provisions of part 1 of this article if:

- (a) The aircraft is sold to a person who is not a resident of the state;
- (b) The aircraft will be removed from the state within the longer of the following periods:
 - (I) One hundred twenty days after the date of the sale; or
 - (II) Thirty days after the completion of maintenance, interior refurbishment, paint, or engine work associated with the sale of the aircraft; and
- (c) The aircraft will not be in the state more than seventy-three days in any of the three calendar years following the calendar year in which the aircraft is removed from the state pursuant to paragraph (b) of this subsection (1).

(2) A purchaser of an aircraft who claims the exemption allowed by this section shall, at the time of purchase, provide to the seller an affidavit that the purchaser is not a resident of the state and that the purchaser agrees to pay the tax imposed by part 1 of this article if the purchaser fails to comply with the requirements of paragraphs (b) and (c) of subsection (1) of this section.

(3) An aircraft that is hangared or parked overnight shall be considered to be in the state for purposes of this section.

ADDENDUM C

39-26-717. Drugs and medical and therapeutic devices - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) (I) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription order, that:

- (A) Can withstand repeated use;
- (B) Is primarily and customarily used to serve a medical purpose;
- (C) Is generally not useful to a person in the absence of illness or injury; and
- (D) Is not worn in or on the body.

(II) "Durable medical equipment" includes hospital beds, intravenous poles and pumps, trapeze bars, toileting aids, bath and shower aids, standing aids, adaptive car seats, communication devices, and any related accessories for such items.

(b) (I) "Mobility enhancing equipment" means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription order, that:

- (A) Is primarily and customarily used to provide or increase the ability to move from one place to another;
- (B) Is appropriate for use in a home, in a person's community, or in a motor vehicle;
- (C) Is not generally used by persons with normal mobility; and
- (D) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(II) "Mobility enhancing equipment" includes wheelchairs and wheelchair components or accessories, walking aids such as crutches, canes, or walkers, grab bars, trapeze bars, lift chairs, patient lifts, motorized carts, scooters, controls that are installed on motor vehicles, and any related accessories for such items.

(c) "Practitioner" has the same meaning as set forth in section 12-280-103 (40).

(d) "Prescription" has the same meaning as set forth in section 12-280-103 (41).

(e) For purposes of subsections (1)(a)(I), (1)(b)(I), (2)(g), (2)(h), and (2)(i) of this section, "prescription order" means any order for a prescription that:

- (I) (A) Is in writing, dated, and signed by a practitioner; or
- (B) Is given orally by a practitioner and immediately reduced to writing by the pharmacist or pharmacy intern, or by a representative of a business licensed to sell items described in subsection (2)(g), (2)(h), (2)(i), or (2)(j) of this section

so long as such prescription order is also followed by an electronic submission of the prescription order to the business; and

(II) Specifying the name and address of the person for whom an item described in subsection (2)(g), (2)(h), (2)(i), or (2)(j) of this section is prescribed and directions, if any, to be included with such item.

(2) The following are exempt from taxation under part 1 of this article 26:

(a) All sales of prescription drugs dispensed in accordance with a prescription by a practitioner or furnished by a practitioner as part of professional services provided to a patient or client;

(b) All sales of insulin in all its forms dispensed pursuant to the direction of a practitioner;

(c) All sales of glucose useable for treatment of insulin reactions;

(d) All sales of urine- and blood-testing kits and materials;

(e) All sales of insulin measuring and injecting devices, including hypodermic syringes and needles;

(f) All sales of prosthetic devices;

(g) All sales of oxygen delivery equipment and disposable medical supplies related to oxygen delivery dispensed pursuant to a prescription order;

(h) All sales of medical, feeding, and disposable supplies, including any related accessories, for incontinence, infusion, enteral nutrition, ostomy, urology, diabetic care, and wound care dispensed pursuant to a prescription order;

(i) All sales of equipment and related accessories for sleep therapy, inhalation therapy, and electrotherapy dispensed pursuant to a prescription order;

(j) All sales of durable medical equipment and mobility enhancing equipment;

(k) All sales of nonprescription drugs or materials when furnished by a practitioner as part of professional services provided to a patient; and

(l) All sales of corrective eyeglasses, contact lenses, or hearing aids.

ADDENDUM D

39-26-718. Charitable organizations - association or organization of parents and teachers of public school students. (1) The following shall be exempt from taxation under the provisions of part 1 of this article 26:

(a) All sales made to charitable organizations, in the conduct of their regular charitable functions and activities;

(b) (I) All sales by a charitable organization of tangible personal property, commodities, or services otherwise subject to tax under this article 26 if:

(A) The net proceeds from sales by the charitable organizations of tangible personal property, commodities, or services otherwise subject to tax under this article 26 do not exceed forty-five thousand dollars during the preceding calendar year; and

(B) The funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service.

(II) The exemption in this subsection (1)(b) shall not apply to sales made by a charitable organization on and after the date that the net proceeds from sales by the charitable organization of tangible personal property, commodities, or services otherwise subject to tax under this article 26 exceeds forty-five thousand dollars during the current calendar year.

(c) On or after September 1, 2008, a sale by an association or organization of parents and teachers of public school students that is a charitable organization, if the association or organization uses the funds raised through the sale for the benefit of a public school or an organized public school activity or to pay the reasonable expenses of the association or organization.

ADDENDUM E

39-26-725. Sales related to a school - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Parent" means a parent of a student as defined in paragraph (d) of this subsection (1).

(b) "Sale that benefits a Colorado school" means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to the person or entity described in subsection (2) of this section, are donated to a school or a school-approved student organization.

(c) "School" means a public or nonpublic school for students in kindergarten through twelfth grade or any portion thereof.

(d) "Student" means any person enrolled in a school as defined in paragraph (c) of this subsection (1).

(2) On or after September 1, 2008, a sale that benefits a Colorado school shall be exempt from taxation under the provisions of part 1 of this article, if the sale is made by any of the following:

(a) A school;

(b) An association or organization of parents and school teachers;

(c) A booster club or other club, group, or organization whose primary purpose is to support a school activity; or

(d) A school class or student club, group, or organization.

(3) Nothing in this section shall be construed as creating an exemption, or otherwise affecting an existing exemption, for a sale to a person or entity described in subsection (2) of this section.

ADDENDUM F

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 a general uniform sales tax as authorized by section 32-1-1106 (1), health assurance district that levies a general uniform sales tax as authorized by section 32-19-112 (1), or health service district that levies a general uniform sales tax as authorized by section 32-19-112 (1) may levy its general uniform 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 any 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 a general uniform 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.

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

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2.8.21

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LLS NO. 21-0718.01 Esther van Mourik x4215

COMMITTEE BILL

Statutory Revision Committee

BILL TOPIC: "Add Use Tax Exemption To Some Sales Tax Exemption"

A BILL FOR AN ACT

101 **CONCERNING THE INCLUSION OF USE TAX EXEMPTIONS FOR CERTAIN**
102 **EXISTING SALES TAX EXEMPTIONS IN ORDER TO MAKE THE**
103 **EXEMPTIONS COMPATIBLE WITH FUNDAMENTAL PRINCIPLES OF**
104 **SALES AND USE TAX.**

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/>.)

Statutory Revision Committee. All of the current law sections presented in the bill provide sales tax exemptions for specific items. None of the sales tax exemptions in the bill authorize corresponding use tax

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

exemptions. As a result, an item could conceivably become subject to use tax the instant the tax-exempt sale occurs. Most statutory sales tax exemptions have corresponding use tax exemptions to prevent this. Consequently, the bill addresses defects in statute by clarifying that an item that is subject to a sales tax exemption is actually exempt from both sales and use tax and makes those statutory sections compatible with the fundamental principles of use tax and Colorado supreme court decisions on the subject.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-26-707, **amend**
3 (2) introductory portion; and **add** (2)(f) and (2)(g) as follows:

4 **39-26-707. Food, meals, beverages, and packaging -**
5 **definitions.** (2) The following shall be exempt from taxation under the
6 provisions of part 2 of this ~~article~~ ARTICLE 26:

7 (f) THE STORAGE, USE, OR CONSUMPTION OF ALL FOOD PURCHASED
8 WITH FOOD STAMPS. FOR PURPOSES OF THIS SUBSECTION (2)(f), "FOOD"
9 HAS THE SAME MEANING AS PROVIDED IN 7 U.S.C. SEC. 2012, AS SUCH
10 SECTION EXISTS ON OCTOBER 1, 1987, OR IS THEREAFTER AMENDED.

11 (g) THE STORAGE, USE, OR CONSUMPTION OF ALL FOOD PURCHASED
12 WITH FUNDS PROVIDED BY THE SPECIAL SUPPLEMENTAL FOOD PROGRAM
13 FOR WOMEN, INFANTS, AND CHILDREN, AS PROVIDED FOR IN 42 U.S.C. SEC.
14 1786. FOR THE PURPOSES OF THIS SUBSECTION (2)(g), "FOOD" HAS THE
15 SAME MEANING AS PROVIDED IN 42 U.S.C. SEC. 1786, AS SUCH SECTION
16 EXISTS ON OCTOBER 1, 1987, OR IS THEREAFTER AMENDED.

17 **SECTION 2.** In Colorado Revised Statutes, 39-26-711.5, **amend**
18 (1) introductory portion as follows:

19 **39-26-711.5. Aircraft - use outside state.** (1) The sale, STORAGE,
20 USE, AND CONSUMPTION of a new or used aircraft shall be exempt from
21 taxation under the provisions of part 1 AND PART 2 of this ~~article~~ ARTICLE

1 26 if:

2 **SECTION 3.** In Colorado Revised Statutes, 39-26-717, **add** (3)
3 as follows:

4 **39-26-717. Drugs and medical and therapeutic devices -**
5 **definitions.** (3) THE STORAGE, USE, OR CONSUMPTION OF ANY ITEM THAT
6 IS EXEMPT FROM SALES TAX BY OPERATION OF SUBSECTION (2) OF THIS
7 SECTION IS EXEMPT FROM TAXATION UNDER THE PROVISIONS OF PART 2 OF
8 THIS ARTICLE 26.

9 **SECTION 4.** In Colorado Revised Statutes, 39-26-718, **add** (2)
10 as follows:

11 **39-26-718. Charitable organizations - association or**
12 **organization of parents and teachers of public school students.**
13 (2) THE STORAGE, USE, OR CONSUMPTION OF ANY ITEM THAT IS EXEMPT
14 FROM SALES TAX BY OPERATION OF SUBSECTION (1)(b) OR (1)(c) OF THIS
15 SECTION IS EXEMPT FROM TAXATION UNDER THE PROVISIONS OF PART 2 OF
16 THIS ARTICLE 26.

17 **SECTION 5.** In Colorado Revised Statutes, 39-26-725, **add** (4)
18 as follows:

19 **39-26-725. Sales related to a school - definitions.** (4) THE
20 STORAGE, USE, OR CONSUMPTION OF ANY ITEM THAT IS EXEMPT FROM
21 SALES TAX BY OPERATION OF SUBSECTION (2) OF THIS SECTION IS EXEMPT
22 FROM TAXATION UNDER THE PROVISIONS OF PART 2 OF THIS ARTICLE 26.

23 **SECTION 6.** In Colorado Revised Statutes, 39-26-729, **add** (3)
24 as follows:

25 **39-26-729. Retail sales of marijuana.** (3) THE STORAGE, USE, OR
26 CONSUMPTION OF ANY RETAIL MARIJUANA THAT IS EXEMPT FROM SALES
27 TAX BY OPERATION OF SUBSECTION (1) OF THIS SECTION IS EXEMPT FROM

1 TAXATION UNDER THE PROVISIONS OF PART 2 OF THIS ARTICLE 26.

2 **SECTION 7. Act subject to petition - effective date.** This act
3 takes effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly; except
5 that, if a referendum petition is filed pursuant to section 1 (3) of article V
6 of the state constitution against this act or an item, section, or part of this
7 act within such period, then the act, item, section, or part will not take
8 effect unless approved by the people at the general election to be held in
9 November 2022 and, in such case, will take effect on the date of the
10 official declaration of the vote thereon by the governor.