

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM<sup>1</sup>

TO: Statutory Revision Committee

FROM: Esther van Mourik, Office of Legislative Legal Services

DATE: February 19, 2021

SUBJECT: Modifications to the sales and use tax statutes in order to address certain defects and anachronisms.

### Summary

Article 26 of title 39, C.R.S., sets forth all of the sales and use tax statutes. There are several defects and anachronisms in these statutes identified by the Department of Revenue that need addressing.

### Analysis

There are several miscellaneous defects and anachronisms related to article 26 that were identified by the Department of Revenue and should be resolved, including:

- Section 39-26-720, C.R.S., includes incorrect cross references to the definition of "bingo equipment." The definitions related to bingo were relocated as a result of Senate Bill 17-232. The statutory references were not correctly

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<sup>1</sup> 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.

changed for purposes of the bingo equipment sales and use tax exemption. These cross references should be updated.

- The description of a sales tax exemption in section 29-2-105, C.R.S., contains an outdated reference to "low-emitting motor vehicles." The exemption, however, is no longer conditioned on the motor vehicle being "low-emitting." The phrase "low-emitting" should be eliminated from the description.
- House Bill 20-1023 provided for the conditional repeal of section 39-26-105.3, C.R.S., to be effectively replaced with section 39-26-105.2, C.R.S. Section 39-26-204.5, C.R.S., a use tax statute, makes reference to section 39-26-105.2, C.R.S., but a conforming amendment to that section was not included in House Bill 20-1023. The same conditional repeal should be added to the use tax statute, along with the same hold harmless provision for retailers as is provided in section 39-26-105.2, C.R.S.
- Section 39-26-110, C.R.S., specifies that a retailer doing business in two or more locations in Colorado may file one return that will cover all business locations. This statute was added as part of the "Emergency Retail Sales Tax Act of 1935" and has not been amended since, only moved around. With the advent of home rule taxing jurisdictions that can collect and administer their own sales and use tax, it is no longer possible that retailers doing business in more than one location in Colorado can file only one return to report all sales and use taxes collected because the Department of Revenue no longer administers all sales and use taxes in the state. Section 39-26-110, C.R.S., is outdated and should be repealed.
- The definition of "food" in section 39-26-707, C.R.S., contains an incorrect cross reference to a federal statute. The definition of "food" in federal law is no longer located in 7 U.S.C. sec. 2012 (g). It is better to include a more general cross reference to all of 7 U.S.C. sec. 2012 instead of a specific subsection to allow for later amendments to that section.

## **Statutory Charge<sup>2</sup>**

The Statutory Revision Committee (SRC) is tasked with discovering "defects and anachronisms in the law" and recommending legislation "to effect such changes in the

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<sup>2</sup> 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

law as it deems necessary in order to modify . . . contradictory rules of law." The amendments to these various sections in article 26 of title 39, C.R.S., fit within the SRC's charge because they correct defects and anachronisms in the law.

## **Proposed Bill**

The attached proposed bill addresses the defects described above by updating the cross reference for the definition of "bingo equipment", removing the words "low-emitting" from the description of the sales tax exemption in section 29-2-105, C.R.S., adding the missing conforming amendment to section 39-26-204.5, C.R.S., repealing the provision allowing a retailer doing business in two or more locations to file one return, and updating the reference to the federal definition of "food."

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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.

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## ADDENDUM A

**39-26-720. Bingo equipment.** (1) All sales of equipment, as defined in section 12-9-102 (5), C.R.S., to a bingo-raffle licensee, as defined in section 12-9-102 (1.2), C.R.S., shall be exempt from taxation under part 1 of this article.

(2) The storage, use, or consumption of equipment, as defined in section 12-9-102 (5), C.R.S., by a bingo-raffle licensee, as defined in section 12-9-102 (1.2), C.R.S., shall be exempt from taxation under part 2 of this article.

## ADDENDUM B

**29-2-105. Contents of sales tax ordinances and proposals.** (1) The sales tax ordinance or proposal of any incorporated town, city, or county adopted pursuant to this article 2 shall be imposed on the sale of tangible personal property at retail or the furnishing of services, as provided in subsection (1)(d) of this section. Any countywide or incorporated town or city sales tax ordinance or proposal shall include the following provisions:

(a) A provision imposing a tax on the sale of tangible personal property at retail or the furnishing of services, as provided in paragraph (d) of this subsection (1);

(b) A provision that, for the purpose of the sales tax ordinance or proposal enacted in accordance with this article 2, all retail sales are sourced as specified in section 39-26-104 (3);

(c) A provision that the amount subject to tax shall not include the amount of any sales or use tax imposed by article 26 of title 39, C.R.S.;

(d) (I) A provision that the sale of tangible personal property and services taxable pursuant to this article 2 shall be the same as the sale of tangible personal property and services taxable pursuant to section 39-26-104, except as otherwise provided in this subsection (1)(d). The sale of tangible personal property and services taxable pursuant to this article 2 shall be subject to the same sales tax exemptions as those specified in part 7 of article 26 of title 39; except that the sale of the following may be exempted from a town, city, or county sales tax only by the express inclusion of the exemption either at the time of adoption of the initial sales tax ordinance or resolution or by amendment thereto:

(A) The exemption for sales of machinery or machine tools specified in section 39-26-709 (1), C.R.S., other than machinery or machine tools used in the processing of recovered materials by a business listed in the inventory prepared by the department of public health and environment pursuant to section 30-20-122 (1)(a)(V), C.R.S.;

(A.5) The exemption for sales of machinery or machine tools specified in section 39-26-709 (1), C.R.S., used in the processing of recovered materials by a business listed in the inventory prepared by the department of public health and environment pursuant to section 30-20-122 (1)(a)(V), C.R.S.;

(B) The exemption for sales of electricity, coal, wood, gas, fuel oil, or coke specified in section 39-26-715 (1)(a)(II), C.R.S.;

(C) The exemption for sales of food specified in section 39-26-707 (1)(e), C.R.S.;

(D) The exemption for vending machine sales of food specified in section 39-26-714 (2), C.R.S.;

(E) The exemption for sales by a charitable organization specified in section 39-26-718 (1)(b), C.R.S.;

(F) The exemption for sales of farm equipment and farm equipment under lease or contract specified in section 39-26-716 (2)(b) and (2)(c). The express inclusion of the exemption by a town, city, or county before August 2, 2019, does not exempt from the town, city, or county sales tax any visual, electronic identification, or matched pair ear tags and electronic identification readers used to scan ear tags that are used by a farm operator to identify or track food animals, including animals used for food or in the production of food, that were added to the definition of "farm equipment" set forth in section 39-26-716 (1)(d) by House Bill 19-1162, enacted in 2019, and thereby exempted from state sales and use taxes but such a town, city, or county may expressly exempt such items by a subsequent amendment to its sales tax ordinance or resolution.

(G) The exemption for sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-719 (1), C.R.S.;

(H) Repealed.

(I) The exemption for sales of wood from salvaged trees killed or infested in Colorado by mountain pine beetles or spruce beetles as specified in section 39-26-723, C.R.S.;

(J) The exemption for sales of components used in the production of energy, including but not limited to alternating current electricity, from a renewable energy source specified in section 39-26-724, C.R.S.; except that this sub-subparagraph (J) shall not apply to any incorporated town, city, or county that adopted the exemption specified in sub-subparagraph (A) of this subparagraph (I) prior to May 27, 2008;

(K) The exemption for sales that benefit a Colorado school specified in section 39-26-725, C.R.S.;

(L) The exemption for sales by an association or organization of parents and teachers of public school students that is a charitable organization as specified in section 39-26-718 (1)(c), C.R.S.;

(M) The exemption for sales of property for use in space flight specified in section 39-26-728, C.R.S.;

(N) Repealed.

(O) The exemption for retail sales of marijuana upon which the retail marijuana sales tax is imposed pursuant to section 39-28.8-202 as specified in section 39-26-729.

(P) The exemption for manufactured homes set forth in section 39-26-721 (3).

(II) Repealed.

(III) In the absence of an express provision for any exemption specified in subparagraph (I) of this paragraph (d), all sales tax ordinances and resolutions shall be construed as imposing or continuing to impose the town, city, or county sales tax on such items.

(e) A provision that all sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from said county, town, or city sales tax when such sales meet both of the following conditions:

(I) The purchaser is a nonresident of or has his principal place of business outside of the local taxing entity; and

(II) Such personal property is registered or required to be registered outside the limits of the local taxing entity under the laws of this state.

(f) Repealed.

(1.5) (a) All sales tax ordinances or resolutions adopted by a county, town, or city prior to, on, or after August 1, 2002, that impose a sales tax pursuant to section 39-26-104 (1)(c), C.R.S., on a mobile telecommunications service shall impose such tax in accordance with the provisions of the act, and, pursuant to section 117 (b) of the act, mobile telecommunications service taxable by the county, town, or city on or after August 1, 2002, may be subject to any sales tax or other charge imposed by said entity on the service only if the customer's place of primary use is within the geographical boundaries of the entity.

(b) As used in this subsection (1.5), unless the context otherwise requires:

(I) "Act" means the federal "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended.

(II) "Customer" means customer as defined in section 124 (2) of the act.

(III) "Mobile telecommunications service" means mobile telecommunications service as defined in section 124 (7) of the act.

(IV) "Place of primary use" means the place of primary use as defined in section 124 (8) of the act.

(2) No sales tax of any statutory or home rule city, town, city and county, or county shall apply to the sale of construction and building materials, as the term is used in section 29-2-109, if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to such local government evidencing that a local use tax has been paid or is required to be paid.

(3) No sales tax of any statutory or home rule county shall apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule county equal to or in excess of that sought to be imposed by the subsequent statutory or home rule

county. A credit shall be granted against the sales tax imposed by the subsequent statutory or home rule county with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule county. The amount of the credit shall not exceed the sales tax imposed by the subsequent statutory or home rule county.

(4) No sales tax of any statutory or home rule city and county, city, or town shall apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city and county, city, or town equal to or in excess of that sought to be imposed by the subsequent statutory or home rule city and county, city, or town. A credit shall be granted against the sales tax imposed by the subsequent statutory or home rule city and county, city, or town with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule city and county, city, or town. The amount of the credit shall not exceed the sales tax imposed by the subsequent statutory or home rule city and county, city, or town.

(5) The following provision shall apply in defining the applicability of its higher rate to the sales tax ordinance or resolution of any statutory or home rule city, town, city and county, or county which provides a higher rate of taxation on prepared food or food for immediate consumption than its general rate of taxation: Prepared food or food for immediate consumption shall exclude any food for domestic home consumption.

(6) No sales or use tax of any statutory or home rule city, town, city and county, or county shall apply to the sale of food purchased with food stamps. For the purposes of this subsection (6), "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.

(7) No sales or use tax of any statutory or home rule city, town, city and county, or county shall apply to the sale of food purchased with funds provided by the special supplemental food program for women, infants, and children, 42 U.S.C. sec. 1786. For the purposes of this subsection (7), "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.

(8) Any statutory or home rule city, town, city and county, or county which provides an exemption for the sale of food shall define "food" as defined in section 39-26-102 (4.5), C.R.S.

(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.

(10) (a) Notwithstanding any provision of this section to the contrary, and except as provided in paragraph (b) of this subsection (10), a town, city, or county may exempt from its sales tax sales to a telecommunications provider of equipment used directly in the provision of telephone service, cable television service, broadband communications service, or mobile telecommunications service.

(b) A town, city, or county may not adopt a sales tax exemption pursuant to the authority set forth in paragraph (a) of this subsection (10) unless the exemption applies in a uniform and nondiscriminatory manner to the telecommunications providers of telephone service, cable television service, broadband communications service, and mobile telecommunications service.

## ADDENDUM C

**39-26-204.5. Remittance of tax - electronic database - retailer held harmless.** The provisions of section 39-26-105.3 allowing vendors to be held harmless for collecting the incorrect amount of tax due on a purchase when relying on a certified database to determine the jurisdictions to which tax is owed shall apply to any retailer doing business in this state and making sales of tangible personal property for storage, use, or consumption in the state that collects and remits use tax to the department of revenue as provided by law.

## ADDENDUM D

**39-26-110. Retailer - multiple locations.** A retailer doing business in two or more places or locations, taxable under this part 1, may file each return covering all such business activities engaged within this state.

## ADDENDUM E

### **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.

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

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LLS NO. 21-0727.01 Esther van Mourik x4215

COMMITTEE BILL

Statutory Revision Committee

**BILL TOPIC:** "Sales Tax Statute Modifications To Address Defects"

**A BILL FOR AN ACT**

101 **CONCERNING MODIFICATIONS TO THE SALES AND USE TAX STATUTES IN**  
102 **ORDER TO ADDRESS CERTAIN DEFECTS AND ANACHRONISMS.**

**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. Section 1** of the bill changes the cross references to certain definitions related to bingo that were relocated as a result of Senate Bill 17-232. The statutory references were not correctly changed for purposes of the bingo equipment sales and use tax exemption. This section addresses that defect.

**Section 2** removes the words "low-emitting" from the description

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

of a sales tax exemption because the exemption is no longer conditioned on the motor vehicle being "low-emitting".

**Section 3** corrects a missed conforming amendment. House Bill 20-1023 provided for the conditional repeal of section 39-26-105.3, C.R.S., to be effectively replaced with section 39-26-105.2, C.R.S. Section 39-26-204.5, C.R.S., a use tax statute, makes reference to section 39-26-105.2, C.R.S., but a conforming amendment to that section was not included in House Bill 20-1023. Section 3 adds the same conditional repeal to the use tax statute and provides the same hold harmless for retailers as is provided in section 39-26-105.2, C.R.S.

**Section 4** addresses an anachronism in the sales tax statutes by repealing section 39-26-110, C.R.S. That statute specifies that a retailer doing business in 2 or more locations in Colorado may file one return that will cover all business locations. This statute was added as part of the "Emergency Retail Sales Tax Act of 1935" and has not been amended since, only moved around. With the advent of home rule taxing jurisdictions that can collect and administer their own sales and use tax, it is no longer possible that retailers doing business in more than one location in Colorado can file only one return to report all sales and use taxes collected because the department of revenue no longer administers all sales and use taxes in the state.

**Section 5** addresses a defect in the sales tax statute by updating the statutory reference for the definition of "food" for purposes of a sales tax exemption for certain types of food. The definition of food is no longer located in 7 U.S.C. sec. 2012 (g). It is better to include a more general cross reference to all of 7 U.S.C. sec. 2012 instead of the specific subsection (g), which is now incorrect. A more general reference allows for later amendments to that section.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 39-26-720 as  
3 follows:

4 **39-26-720. Bingo equipment.** (1) All sales of equipment, as  
5 defined in ~~section 12-9-102 (5), C.R.S.~~ SECTION 24-21-602 (16), to a  
6 bingo-raffle licensee, as defined in ~~section 12-9-102 (1.2), C.R.S., shall~~  
7 ~~be~~ SECTION 24-21-602 (3), ARE exempt from taxation under part 1 of this  
8 ~~article~~ ARTICLE 26.

9 (2) The storage, use, or consumption of equipment, as defined in

1 ~~section 12-9-102 (5), C.R.S.~~ SECTION 24-21-602 (16), by a bingo-affle  
2 licensee, as defined in ~~section 12-9-102 (1.2), C.R.S., shall be~~ SECTION  
3 24-21-602 (3), IS exempt from taxation under part 2 of this ~~article~~  
4 ARTICLE 26.

5 **SECTION 2.** In Colorado Revised Statutes, 29-2-105, **amend**  
6 (1)(d)(I)(G) as follows:

7 **29-2-105. Contents of sales tax ordinances and proposals.**

8 (1) The sales tax ordinance or proposal of any incorporated town, city,  
9 or county adopted pursuant to this article 2 shall be imposed on the sale  
10 of tangible personal property at retail or the furnishing of services, as  
11 provided in subsection (1)(d) of this section. Any countywide or  
12 incorporated town or city sales tax ordinance or proposal shall include the  
13 following provisions:

14 (d) (I) A provision that the sale of tangible personal property and  
15 services taxable pursuant to this article 2 shall be the same as the sale of  
16 tangible personal property and services taxable pursuant to section  
17 39-26-104, except as otherwise provided in this subsection (1)(d). The  
18 sale of tangible personal property and services taxable pursuant to this  
19 article 2 shall be subject to the same sales tax exemptions as those  
20 specified in part 7 of article 26 of title 39; except that the sale of the  
21 following may be exempted from a town, city, or county sales tax only by  
22 the express inclusion of the exemption either at the time of adoption of  
23 the initial sales tax ordinance or resolution or by amendment thereto:

24 (G) The exemption for sales of ~~low-emitting~~ motor vehicles,  
25 power sources, or parts used for converting such power sources as  
26 specified in section 39-26-719 (1); ~~C.R.S.;~~

27 **SECTION 3.** In Colorado Revised Statutes, **amend** 39-26-204.5

1 as follows:

2 **39-26-204.5. Remittance of tax - electronic database - retailer**

3 **held harmless - repeal.** (1) (a) The provisions of section 39-26-105.3

4 allowing vendors to be held harmless for collecting the incorrect amount

5 of tax due on a purchase when relying on a certified database to

6 determine the jurisdictions to which tax is owed shall apply to any retailer

7 doing business in this state and making sales of tangible personal property

8 for storage, use, or consumption in the state that collects and remits use

9 tax to the department of revenue as provided by law.

10 (b) THIS SUBSECTION (1) IS REPEALED, EFFECTIVE NINETY DAYS

11 AFTER THE DATE THAT THE REVISOR OF STATUTES IS NOTIFIED BY THE

12 DEPARTMENT OF REVENUE THAT A GEOGRAPHIC INFORMATION SYSTEM

13 THAT MEETS THE DEFINED SCOPE OF WORK SET FORTH IN THE REQUEST FOR

14 SOLICITATION, PROVIDED BY THE STATE, IS ONLINE, TESTED, AND VERIFIED

15 BY THE DEPARTMENT OF REVENUE TO BE OPERATIONAL, SUPPORTED, AND

16 AVAILABLE FOR A RETAILER TO USE TO DETERMINE THE TAXING

17 JURISDICTION IN WHICH AN ADDRESS RESIDES. THE DEPARTMENT OF

18 REVENUE SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING, BY EMAIL

19 TO REVISOROFSTATUTES.GA@STATE.CO.US, NO LATER THAN FIFTEEN DAYS

20 AFTER SUCH A SYSTEM IS ONLINE, TESTED, AND VERIFIED BY THE

21 DEPARTMENT OF REVENUE TO BE OPERATIONAL, SUPPORTED, AND

22 AVAILABLE FOR USE.

23 (2) THE PROVISIONS OF SECTION 39-26-105.2 ALLOWING VENDORS

24 TO BE HELD HARMLESS FOR COLLECTING THE INCORRECT AMOUNT OF TAX

25 DUE ON A PURCHASE WHEN USING THE DATA CONTAINED IN THE GIS

26 DATABASE, OR USING DATA FROM A THIRD-PARTY DATABASE THAT IS

27 VERIFIED TO USE THE MOST RECENT INFORMATION PROVIDED BY THE GIS

1 DATABASE, TO DETERMINE THE JURISDICTIONS TO WHICH TAX IS OWED  
2 APPLIES TO ANY RETAILER DOING BUSINESS IN THIS STATE AND MAKING  
3 SALES OF TANGIBLE PERSONAL PROPERTY FOR STORAGE, USE, OR  
4 CONSUMPTION IN THE STATE THAT COLLECTS AND REMITS USE TAX TO THE  
5 DEPARTMENT OF REVENUE AS PROVIDED BY LAW.

6 **SECTION 4.** In Colorado Revised Statutes, **repeal** 39-26-110 as  
7 follows:

8 **39-26-110. Retailer - multiple locations.** ~~A retailer doing~~  
9 ~~business in two or more places or locations, taxable under this part 1, may~~  
10 ~~file each return covering all such business activities engaged within this~~  
11 ~~state.~~

12 **SECTION 5.** In Colorado Revised Statutes, 39-26-707, **amend**  
13 (1) introductory portion and (1)(a) as follows:

14 **39-26-707. Food, meals, beverages, and packaging -**  
15 **definitions.** (1) The following shall be exempt from taxation under the  
16 provisions of part 1 of this ~~article~~ ARTICLE 26:

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

21 **SECTION 6. Act subject to petition - effective date.** This act  
22 takes effect at 12:01 a.m. on the day following the expiration of the  
23 ninety-day period after final adjournment of the general assembly; except  
24 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
25 of the state constitution against this act or an item, section, or part of this  
26 act within such period, then the act, item, section, or part will not take  
27 effect unless approved by the people at the general election to be held in

- 1 November 2022 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.