

OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

COLORADO STATE CAPITOL
200 EAST COLFAX AVENUE SUITE 091
DENVER, COLORADO 80203-1716

TEL: 303-866-2045 FAX: 303-866-4157

EMAIL: OLLS.GA@STATE.CO.US

MEMORANDUM¹

TO: Statutory Revision Committee

FROM: Megan McCall, Office of Legislative Legal Services

DATE: March 4, 2022

SUBJECT: Modifications to the sales tax statutes and to references to those statutes that address certain defects and anachronisms.

Summary

Article 26 of title 39, C.R.S., sets forth the sales tax statutes. The Department of Revenue (department) has identified several defects and anachronisms within these statutes and in references to these statutes. The Office of Legislative Legal Services proposes that the Statutory Revision Committee (SRC) introduce legislation to correct these defects and anachronisms.

Analysis

1. Correction of cross references to section 39-25-105 (3), C.R.S.

Sections 29-2-106 (3)(c)(II), 30-20-604.5 (2)(a.5)(II), 32-9-119 (2)(c)(I.5)(B), and 32-13-110 (2)(b)(II), C.R.S., include incorrect cross references to section 39-26-105 (3), C.R.S. H.B. 99-1005 enacted section 39-26-105 (3), C.R.S., establishing sales tax filing and remittance requirements for direct pay permit holders, along with several local sales tax provisions that referenced section 39-26-105 (3), C.R.S. However, H.B. 13-1295 relocated the text of section 39-25-105 (3), C.R.S., to section 39-26-105 (5), C.R.S., without including the conforming amendments needed to change the cross references

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.

in the several local sales tax provisions that reference that statute. These cross references should be corrected.

2. Correction of reference to the wrong definition of "sale" in the statute defining the term "auction sale".

Section 39-26-102 (1.3), C.R.S., defines the term "auction sale" to include only sales of tangible personal property and includes a cross-reference to "any sale defined in subsection (11) of this section ... ". However, the cross referenced definition of "sale" in section 39-26-102 (11), C.R.S., is a supplemental definition that addresses only "the transaction of furnishing rooms or accommodations," which are not sales of tangible personal property that can be auction sales. The cross reference should be changed to a cross-reference to the general definition of "sale" in section 39-26-102 (10), C.R.S., which is the appropriate and intended cross reference.²

3. Repeal of obsolete statutory provision that references "remote sellers".

H.B. 13-1295 defined the terms "remote sale" and "remote seller" and prescribed various requirements related thereto, including the requirement in section 39-26-105 (5)(b), C.R.S., that the department make available an electronic list of remote sellers. H.B. 19-1240 repealed the provisions enacted by H.B. 13-1295, including the definitions of "remote sale" and "remote seller," but did not repeal section 39-26-105 (5)(b), C.R.S. This statute is therefore now outdated and should be repealed.

4. Repeal of obsolete statutory provisions that allowed a sales and use tax exemption for components used in solar thermal systems for state fiscal years 2009-10 through 2016-17 only.

Section 39-26-724 (1)(b), C.R.S., exempted from sales and use taxation "all sales, storage, and use of components used in solar thermal systems for state fiscal years 2009-10 through 2016-17 only." Section 39-26-724 (2)(a.5) and (2)(c), C.R.S., define "components used in solar thermal systems" and "solar thermal system" for purposes of this exemption. Because the exemption provided for in section 39-26-724 (1)(b), C.R.S., is no longer allowed, sections 39-26-724 (1)(b), (2)(a.5), and (2)(c), C.R.S. are obsolete and should be repealed.

² See Addendum A.

Statutory Charge³

The Statutory Revision Committee (SRC) is tasked with discovering "defects and anachronisms in the law" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify antiquated, redundant, or contradictory rules of law." Because the amendments to these various sections in article 26 of title 39, C.R.S., correct defects and anachronisms in the law, the proposed bill fits within the charge of the SRC.

Proposed Bill

The attached proposed bill addresses the defects and anachronisms described above by changing the incorrect cross reference to section 39-26-105 (3), C.R.S., to correctly cross reference section 39-26-105 (5), C.R.S., for sales tax filing and remittance requirements for direct pay permit holders in various local sales tax provisions, correcting a cross reference to the wrong definition of "sale" in section 39-26-102 (1.3) C.R.S., and repealing obsolete provisions in sections 39-26-105 (5)(b) and 39-26-724 (1)(b), (2)(a.5), and (2)(c), C.R.S.

³ 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.

ADDENDUM A

39-26-102. Definitions. As used in this article 26, unless the context otherwise requires:

(1.3) "Auction sale" means any sale conducted or transacted at a permanent place of business operated by an auctioneer or a sale conducted and transacted at any location where tangible personal property is sold by an auctioneer when such auctioneer is acting either as agent for the owner of such personal property or is in fact the owner thereof. The auctioneer at any sale defined in subsection (11) of this section, except when acting as an agent for a duly licensed retailer or vendor or when selling only tangible personal property that is exempt under the provisions of section 39-26-716 (4)(a) and (4)(b), is a retailer or vendor as defined in subsection (8) of this section and the sale made by the auctioneer is a retail sale as defined in subsection (9) of this section, and the business conducted by said auctioneer in accomplishing such sale is the transaction of a business as defined by subsection (2) of this section.

(10) "Sale" or "sale and purchase" includes installment and credit sales and the exchange of property as well as the sale thereof for money; every such transaction, conditional or otherwise, for a consideration, constituting a sale; and the sale or furnishing of electrical energy, gas, steam, telephone, or telegraph services taxable under the terms of this article. Neither term includes:

(a) A division of partnership or limited liability company assets among the partners or limited liability company members according to their interests in the partnership or limited liability company;

(b) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;

(c) The transfer of assets of shareholders in the formation or dissolution of professional corporations;

(d) The dissolution and the pro rata distribution of the corporation's assets to its stockholders;

(e) The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

(f) The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent

by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

(g) A transfer of a limited liability company or partnership interest;

(h) The transfer in a reorganization qualifying under section 368 (a)(1) of the "Internal Revenue Code of 1986", as amended;

(i) The formation of a limited liability company or partnership by the transfer of assets to the limited liability company or partnership or transfers to a limited liability company or partnership in exchange for proportionate interests in the limited liability company or partnership;

(j) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

(k) The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor corporation at the time it acquired such assets, except to the extent provided by subsection (12) of this section. For the purposes of this paragraph (k), a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

(11) "Sale" or "sale and purchase", in addition to the items included in subsection (10) of this section, includes the transaction of furnishing rooms or accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee, assignee, lessee, or person acting in a representative capacity or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, under any concession, permit, right of access, license to use, or other agreement, or otherwise.

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

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3.1.22

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LLS NO. 22-0820.01 Megan McCall x4215

COMMITTEE BILL

Statutory Revision Committee

BILL TOPIC: "Mod To Sales Tax Statutes To Address Defects"

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO SALES TAX STATUTES IN ORDER TO**
102 **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. Sections 1, 2, 3, and 4 of the bill correct incorrect cross references to sales tax filing and remittance requirements for direct pay permit holders in local sales tax statutes.

Section 5 corrects an incorrect cross reference in the definition of "auction sale", which is defined to include only the sale of tangible personal property, by replacing a cross reference to a supplemental

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

definition of sale that includes "the transaction of furnishing rooms or accommodations" with a cross reference to the more general definition of "sale".

Sections 6 and 7 repeal obsolete provisions.

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

2 **SECTION 1.** In Colorado Revised Statutes, 29-2-106, **amend**
3 (3)(c)(II) as follows:

4 **29-2-106. Collection - administration - enforcement.**

5 (3) (c) (II) A qualified purchaser that provides a direct payment permit
6 number to a vendor or retailer shall be liable and responsible for the
7 amount of sales tax imposed on any sale made to the qualified purchaser
8 pursuant to this article in the same manner as liability would be imposed
9 on a qualified purchaser for state sales tax pursuant to ~~section 39-26-105~~
10 ~~(3), C.R.S.~~ SECTION 39-26-105 (5).

11 **SECTION 2.** In Colorado Revised Statutes, 30-20-604.5, **amend**
12 (2)(a.5)(II) as follows:

13 **30-20-604.5. District sales tax.** (2) (a.5) (II) A qualified
14 purchaser that provides a direct payment permit number to a vendor or
15 retailer shall be liable and responsible for the amount of sales tax imposed
16 on any sale made to the qualified purchaser pursuant to this section in the
17 same manner as liability would be imposed on a qualified purchaser for
18 state sales tax pursuant to ~~section 39-26-105 (3), C.R.S.~~ SECTION
19 39-26-105 (5).

20 **SECTION 3.** In Colorado Revised Statutes, 32-9-119, **amend**
21 (2)(c)(I.5)(B) as follows:

22 **32-9-119. Additional powers of district.** (2) (c) Sales tax levied
23 pursuant to this subsection (2) shall be collected, administered, and

1 enforced as follows:

2 (I.5) (B) A qualified purchaser that provides a direct payment
3 permit number to a vendor or retailer shall be liable and responsible for
4 the amount of sales tax levied on any sale made to the qualified purchaser
5 pursuant to this subsection (2) in the same manner as liability would be
6 imposed on a qualified purchaser for state sales tax pursuant to ~~section~~
7 ~~39-26-105 (3), C.R.S.~~ SECTION 39-26-105 (5).

8 **SECTION 4.** In Colorado Revised Statutes, 32-13-110, **amend**
9 (2)(b)(II) as follows:

10 **32-13-110. Tax imposed - collection - administration of tax -**
11 **use.** (2) (b) (II) A qualified purchaser that provides a direct payment
12 permit number to a vendor or retailer shall be liable and responsible for
13 the amount of sales tax levied on any sale made to the qualified purchaser
14 pursuant to this article in the same manner as liability would be imposed
15 on a qualified purchaser for state sales tax pursuant to ~~section 39-26-105~~
16 ~~(3), C.R.S.~~ SECTION 39-26-105 (5).

17 **SECTION 5.** In Colorado Revised Statutes, 39-26-102, **amend**
18 (1.3) as follows:

19 **39-26-102. Definitions.** As used in this article 26, unless the
20 context otherwise requires:

21 (1.3) "Auction sale" means any sale conducted or transacted at a
22 permanent place of business operated by an auctioneer or a sale
23 conducted and transacted at any location where tangible personal property
24 is sold by an auctioneer when such auctioneer is acting either as agent for
25 the owner of such personal property or is in fact the owner thereof. The
26 auctioneer at any sale defined in ~~subsection (11)~~ SUBSECTION (10) of this
27 section, except when acting as an agent for a duly licensed retailer or

1 vendor or when selling only tangible personal property that is exempt
2 under the provisions of section 39-26-716 (4)(a) and (4)(b), is a retailer
3 or vendor as defined in subsection (8) of this section and the sale made
4 by the auctioneer is a retail sale as defined in subsection (9) of this
5 section, and the business conducted by said auctioneer in accomplishing
6 such sale is the transaction of a business as defined by subsection (2) of
7 this section.

8 **SECTION 6.** In Colorado Revised Statutes, 39-26-105, **repeal**
9 (5)(b) as follows:

10 **39-26-105. Vendor liable for tax - definitions - repeal.**

11 ~~(5) (b) Notwithstanding the provisions of section 39-21-113 (4), the~~
12 ~~department of revenue shall make available to all qualified purchasers an~~
13 ~~electronic list of all remote sellers and their Colorado account numbers~~
14 ~~in order to facilitate the qualified purchaser's appropriate remittance of~~
15 ~~tax pursuant to paragraph (a) of this subsection (5). Such list must remain~~
16 ~~confidential in the hands of the qualified purchaser, and the qualified~~
17 ~~purchaser is subject to the same limitations specified in section 39-21-113~~
18 ~~(4) that apply to the department of revenue, including the requirement that~~
19 ~~such list be used only for the purpose of proper administration of the tax.~~

20 **SECTION 7.** In Colorado Revised Statutes, 39-26-724, **repeal**
21 (1)(b), (2)(a.5), and (2)(c) as follows:

22 **39-26-724. Components used to produce energy from a**
23 **renewable energy source - definitions.** (1) (b) ~~For state fiscal years~~
24 ~~2009-10 through 2016-17, all sales, storage, and use of components used~~
25 ~~in solar thermal systems shall be exempt from taxation under parts 1 and~~
26 ~~2 of this article.~~

27 (2) As used in this section:

1 (a.5) "Components used in solar thermal systems" include, but are
2 not limited to:

3 ~~(I) Solar collectors, including flat-plate collectors, evacuated tube~~
4 ~~collectors, solar air collectors, and concentrating solar thermal collectors;~~

5 ~~(II) Tanks for the storage of gases or liquids that have been heated~~
6 ~~or cooled by solar-generated energy;~~

7 ~~(III) Pumps, impellers, and fans for the circulation of gases or~~
8 ~~liquids that have been heated or cooled by solar-generated energy;~~

9 ~~(IV) Heat exchangers used to transfer solar-generated energy;~~

10 ~~(V) Support structures, racks, and foundations for any components~~
11 ~~listed in subparagraphs (I) to (IV) of this paragraph (a.5); and~~

12 ~~(VI) Any other system components such as piping, valves, gauges,~~
13 ~~fittings, insulation, and controls for any components listed in~~
14 ~~subparagraphs (I) to (IV) of this paragraph (a.5).~~

15 (c) "Solar thermal system" means a system whose primary purpose
16 is to use energy from the sun to produce heat or cold for:

17 ~~(I) Heating or cooling a residential or commercial building;~~

18 ~~(II) Heating or cooling water; or~~

19 ~~(III) Any industrial, commercial, or manufacturing process.~~

20 **SECTION 8. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly; except
23 that, if a referendum petition is filed pursuant to section 1 (3) of article V
24 of the state constitution against this act or an item, section, or part of this
25 act within such period, then the act, item, section, or part will not take
26 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.