

CHAPTER 160

TAXATION

HOUSE BILL 96-1359

BY REPRESENTATIVES Tool, Congrove, McElhany, and McPherson;
also SENATORS Schroeder and L. Powers.

AN ACT

**CONCERNING THE IMPOSITION OF STATE SALES AND USE TAX ON WIRELESS TELECOMMUNICATION
EQUIPMENT.**

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

SECTION 1. Legislative declaration. (1) The general assembly finds, determines, and declares that:

(a) The steadily growing popularity of wireless telecommunication services, together with the significant contributions to the state's sales tax revenue resulting from sales of wireless telecommunication services, demonstrate that there is a public interest in making wireless telecommunication services available to as many of the state's residents as possible;

(b) Interpretations of the existing state sales and use tax statutes threaten to impede the development of the market for wireless telecommunication services by imposing prohibitive tax costs on sales and other dispositions of wireless telecommunication equipment at or below cost and by bringing competitive disadvantage and economic hardship to small businesses selling such equipment;

(c) Therefore, it is the intent of the general assembly in enacting this act to clarify the state's sales and use tax statutes as they apply to wireless telecommunication equipment transferred as an inducement to a consumer to enter into or continue a contract for telecommunication services subject to sales taxes.

SECTION 2. 39-26-102 (7), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

(7) (a) "Purchase price" means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the time and place of the exchange, if:

~~(a)~~ (I) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

~~(b)~~ (II) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

(b) IN THE CASE OF THE SALE OR TRANSFER OF WIRELESS TELECOMMUNICATION EQUIPMENT AS AN INDUCEMENT TO A CONSUMER TO ENTER INTO OR CONTINUE A CONTRACT FOR TELECOMMUNICATION SERVICES THAT ARE TAXABLE PURSUANT TO THIS PART 1, "PURCHASE PRICE" MEANS AND SHALL BE LIMITED TO THE MONETARY AMOUNT PAID BY THE CONSUMER AND SHALL NOT REFLECT ANY SALES COMMISSION OR OTHER COMPENSATION RECEIVED BY THE RETAILER AS A RESULT OF THE CONSUMER ENTERING INTO OR CONTINUING A CONTRACT FOR SUCH TELECOMMUNICATION SERVICES. NOTHING IN THIS PARAGRAPH (b) SHALL BE CONSTRUED TO DEFINE "PURCHASE PRICE" AS IT APPLIES TO THE AMOUNT A RETAILER COLLECTS FROM A CONSUMER WHO DEFAULTS OR TERMINATES A CONTRACT FOR TELECOMMUNICATION SERVICES.

SECTION 3. 39-26-202 (1), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-26-202. Authorization of tax. (1) There is imposed and shall be collected from every person in this state a tax or excise at the rate of three percent of storage or acquisition charges or costs for the privilege of storing, using, or consuming in this state any articles of tangible personal property purchased at retail. Such tax shall be payable to and shall be collected by the executive director of the department of revenue and shall be computed in accordance with schedules or systems approved by said executive director. THE TRANSFER OF WIRELESS TELECOMMUNICATION EQUIPMENT AS AN INDUCEMENT TO ENTER INTO OR CONTINUE A CONTRACT FOR TELECOMMUNICATION SERVICES THAT ARE TAXABLE PURSUANT TO PART 1 OF THIS ARTICLE SHALL NOT BE CONSTRUED TO BE STORAGE, USE, OR CONSUMPTION OF SUCH EQUIPMENT BY THE TRANSFERROR.

SECTION 4. Applicability. The amendments to sections 39-26-102 (7) and 39-26-202 (1), Colorado Revised Statutes, made by this act shall be deemed to have remedied a defect in the prior law and shall not be construed to interfere with any vested right or contract. In view of the foregoing, the amendments to sections 39-26-102 (7) and 39-26-202 (1), Colorado Revised Statutes, shall apply to any legal or administrative proceeding, whether commenced prior to, on, or after the effective date of this act.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 22, 1996