

CHAPTER 50

TAXATION

HOUSE BILL 96-1313

BY REPRESENTATIVES Mace, Friednash, and Swenson;
also SENATORS Wham and Hernandez.

AN ACT

CONCERNING THE MAILING OF NOTICES BY THE DEPARTMENT OF REVENUE.

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

SECTION 1. 39-21-103 (1) and (8), Colorado Revised Statutes, 1994 Repl. Vol., are amended to read:

39-21-103. Hearings. (1) As soon as practicable after any tax return or the return showing the value of oil and gas is filed pursuant to articles 22 to 29 of this title, article 60 of title 34, or article 3 of title 42, C.R.S., the executive director of the department of revenue shall examine it and shall determine the correct amount of tax. If the tax found due is greater than the amount theretofore assessed or paid, a notice of deficiency shall be mailed to the taxpayer by ~~certified mail~~ FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5.

(8) Based on the evidence presented at ~~such~~ THE hearing or filed in support of the taxpayer's contentions or after the expiration of thirty days from the mailing of the notice of deficiency, if no request for hearing or brief has been filed by the taxpayer, the executive director of the department of revenue shall make a final determination within a reasonable time and shall send the taxpayer a notice of final determination ~~by certified mail~~ accompanied by notice and demand for payment BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5. The executive director may modify the tax, penalty, and interest questioned at the hearing and may approve a refund; except that no additional tax shall be assessed for less than one dollar. Unless an appeal is taken as provided in section 39-21-105, the tax, together with interest thereon and penalties, if any, shall be paid within thirty days after mailing of the notice and demand for payment by the executive director.

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

SECTION 2. 39-21-104, Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-21-104. Rejection of claims. Upon rejection, in whole or in part, of a claim for refund filed by a taxpayer, with respect to any tax set forth in section 39-21-103 (1), the executive director of the department of revenue shall send a notice of rejection to the taxpayer in writing by first-class mail ~~directed to the last address on file with the department as indicated on the last return filed by such taxpayer~~ AS SET FORTH IN SECTION 39-21-105.5; and, within thirty days from the mailing thereof, the taxpayer may request a hearing or file a brief with the executive director, except where the claim is for refund of a deficiency in taxes assessed after hearing or determination on written brief had under the provisions of section 39-21-103. Thereafter, both the taxpayer and the executive director shall proceed as provided in section 39-21-103 with respect to the hearing or determination on written brief. Upon reaching a decision upon ~~such~~ THE claim for refund after hearing had thereon or consideration of the written brief, the executive director shall send to the taxpayer, by first-class mail ~~directed to the last address on file with the department as indicated on the last return filed by such taxpayer~~ AS SET FORTH IN SECTION 39-21-105.5, notice of final determination of claim for refund, stating therein the grounds for allowance or rejection in whole or in part. This section shall not prevent a taxpayer from suing for a refund in the district court within the time provided by law whether or not ~~he~~ THE TAXPAYER requests a hearing or presents a written brief.

SECTION 3. Part 1 of article 21 of title 39, Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

39-21-105.5. Notice - first-class mail. ANY NOTICE REQUIRED TO BE GIVEN TO ANY TAXPAYER OR THE AGENT OR PERSONAL REPRESENTATIVE OF THE ESTATE OF ANY TAXPAYER SHALL BE SUFFICIENT IF MAILED, POSTPAID BY FIRST-CLASS MAIL TO THE LAST-KNOWN ADDRESS OF THE TAXPAYER OR THE AGENT OR PERSONAL REPRESENTATIVE OF THE ESTATE OF THE TAXPAYER. THE FIRST-CLASS MAILING OF ANY NOTICE UNDER THE PROVISIONS OF THIS ARTICLE 21 AND ARTICLES 22 TO 29 OF THIS TITLE CREATES A PRESUMPTION THAT SUCH NOTICE WAS RECEIVED BY THE TAXPAYER OR AGENT OR PERSONAL REPRESENTATIVE OF THE ESTATE OF THE TAXPAYER IF THE DEPARTMENT MAINTAINS A RECORD OF THE NOTICE AND MAINTAINS A CERTIFICATION THAT THE NOTICE WAS DEPOSITED IN THE UNITED STATES MAIL BY AN EMPLOYEE OF THE DEPARTMENT. EVIDENCE OF THE RECORD OF THE NOTICE MAILED TO THE LAST-KNOWN ADDRESS OF THE TAXPAYER OR AGENT OR PERSONAL REPRESENTATIVE OF THE ESTATE OF THE TAXPAYER AS SHOWN BY THE RECORDS OF THE DEPARTMENT AND A CERTIFICATION OF MAILING BY FIRST-CLASS MAIL BY A DEPARTMENT EMPLOYEE IS PRIMA FACIE PROOF THAT THE NOTICE WAS RECEIVED BY THE TAXPAYER OR AGENT OR PERSONAL REPRESENTATIVE OF THE ESTATE OF THE TAXPAYER.

SECTION 4. 39-21-108 (1) (a), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-21-108. Refunds. (1) (a) In the case of income tax imposed by article 22 of this title, the taxpayer must file any claim for refund or credit for any year not later than one year after the expiration of the time provided for filing a claim for refund of

federal income tax, including any extensions of ~~such~~ THE period by agreement between the taxpayer and the federal taxing authorities; but nothing in this subsection (1) shall be construed to shorten the period for filing claims provided by section 39-22-601 (6) (f). In the case of the charge on oil and gas production imposed by article 60 of title 34, C.R.S., and the passenger-mile tax imposed by article 3 of title 42, C.R.S., or the severance tax imposed by article 29 of this title, the taxpayer must file any claim for refund or credit for any period not later than three years after the date of payment. Claims for refund of other taxes covered by this article shall be made within the time limits expressly provided for the specific taxes involved. No suit for refund may be commenced before the expiration of six months after the date of filing the claim for refund required under this section unless the executive director of the department of revenue renders a decision thereon within that time, nor after the expiration of two years after the date of mailing, ~~by certified or registered mail~~ BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5, by the executive director to the taxpayer of a notice of disallowance of the part of the claim to which the suit relates. The said two-year period shall be extended for ~~such~~ THE period as may be agreed upon in writing between the taxpayer and the executive director. This subsection (1) shall not apply to sales and use taxes.

SECTION 5. 39-22-303 (5) (c), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-22-303. Apportionment of income - domestic and foreign. (5) (c) If the executive director requires the C corporation to change its present method of reporting, the executive director shall notify the C corporation in writing stating the reason for the required change. ~~Such~~ THE notice shall be made ~~by certified mail~~ BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5 and shall be sufficiently particular to give the C corporation adequate information as to the basis of reasons relied upon for ~~such~~ THE change so that the C corporation may frame an answer and defend should it decide to appeal.

SECTION 6. 39-22-602 (2), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-22-602. Failure to make return - director may make. (2) If the executive director finds that any nonresident whose name and address were furnished by a county assessor pursuant to section 39-5-102 (3) has not made a return as required by this article, ~~he~~ THE EXECUTIVE DIRECTOR shall mail notice ~~by certified mail~~ BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5 to ~~such~~ THE nonresident setting a time within which ~~such~~ THE return shall be made and may thereafter proceed pursuant to subsection (1) of this section, as necessary.

SECTION 7. 39-23-142 (1), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-23-142. Assessment of the tax - payment. (1) For the purpose of making the assessment of tax, the executive director shall determine the estate of every deceased person at its fair market value as of the date of decedent's death, or as of the optional valuation date if section 39-23-162 is applicable, and, for that purpose, the executive director is authorized to issue subpoenas for, and compel the attendance of, witnesses before ~~him~~ THE EXECUTIVE DIRECTOR and to take evidence of ~~such~~ THE witnesses

under oath concerning ~~such~~ THE property and the value thereof. The executive director shall determine the fair market value of all of the estate belonging to the decedent at the time of ~~his~~ death and the description of the same; all debts, claims, fees, and commissions, including the fees and commissions of the personal representative of the decedent; the names, relationships to the decedent, and residences of all persons, corporations, or institutions receiving or claiming any of the estate of the decedent; a description of any property belonging to the estate of ~~said~~ THE decedent alleged to have been transferred by deed, grant, sale, or gift, made in contemplation of death by the ~~said~~ decedent or intended to take effect in possession or enjoyment at or after ~~such~~ death; a description of all estates left by ~~said~~ THE decedent whether an estate in fee, annuities, life estate, or for a term of years; and whether ~~such~~ THE decedent died intestate or left a will; and upon ~~such~~ THE determination the executive director shall compute and assess the tax or fee to which the estate or transferees are liable. If the executive director does not compute and assess the tax within twelve months after the date the statement is filed or within six months after the submission of all information legally required to be submitted to the executive director, whichever is later, ~~he~~ THE EXECUTIVE DIRECTOR shall immediately compute and assess the tax using the tax computation attached to the statement, if any, and, if none, the facts set forth in the statement as filed and the law applicable thereto. This requirement may be extended by the mutual written consent of the executive director and the personal representative or person filing the statement. The statement cannot be reopened and liability cannot be asserted against the person who filed the statement after the receipt has been issued and the tax paid, except in the event of fraud. The assessment of the executive director shall be in the form of the notice of assessment or receipt for inheritance tax provided for in section 39-23-102 (9) or (10.5), and ~~such~~ THE notice or receipt shall be mailed within ten days after its date. If the notice of assessment or receipt for inheritance tax is not mailed within ten days after its date, it shall thereafter be mailed ~~by certified mail~~ BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5, and the date of assessment shall then be the date the notice of assessment or receipt is received by the personal representative or person filing the statement.

SECTION 8. 39-26-114 (7) (c) and (7) (e), Colorado Revised Statutes, 1994 Repl. Vol., are amended to read:

39-26-114. Exemptions - disputes - credits or refunds - repeal. (7) (c) Any unregistered coin-operated vending machine found being used for retail sales at any place in this state without the prescribed identification number affixed thereto may be seized without warrant by the department of revenue, its agents, or employees or by any peace officer when directed or requested by the department of revenue. At the time of seizure, written notice of seizure shall be given to the proprietor or person in charge of the business, or to ~~his~~ THE agents or employees OF THE PROPRIETOR OR PERSON IN CHARGE OF THE BUSINESS, where the vending machine is seized. The department shall also give notice ~~by registered mail~~ BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5 to ~~such~~ THE person whose name and mailing address appear on the machine. The department shall not be required to seize and confiscate any unregistered vending machine or assess a penalty when there is reason to believe that the owner thereof is not intentionally evading the tax imposed by this article.

(e) Upon proof of ownership, the department of revenue shall deliver to the owner thereof any vending machine seized under paragraph (c) of this subsection (7) after

payment of the twenty-five-dollar penalty and seizure costs, if the owner is liable therefor, and upon registration of the machine. At the expiration of sixty days after the date of notice, any unregistered vending machine and the contents therein still in the possession of the department of revenue may be sold at public sale to the highest bidder, but, prior to any such sale, ten days' notice of the sale shall be given ~~by registered mail~~ BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5 to those entitled to notice under paragraph (c) of this subsection (7).

SECTION 9. 39-26-118 (2) (a), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-26-118. Recovery of taxes, penalty, and interest. (2) (a) If a person neglects or refuses to make a return in payment of the tax or to pay any tax as required by this article, the executive director of the department of revenue shall make an estimate, based upon ~~such~~ THE information ~~as~~ THAT may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of fifteen dollars for ~~such~~ THE failure or ten percent thereof plus one-half percent per month from the date when due, not exceeding eighteen percent in the aggregate, and interest on ~~such~~ THE delinquent taxes at the rate imposed under section 39-21-110.5. Promptly thereafter, the executive director shall give to the delinquent taxpayer written notice of ~~such~~ THE estimated taxes, penalty, and interest, which notice shall be sent by first-class mail ~~directed to the last address of such person on file with the department of revenue~~ AS SET FORTH IN SECTION 39-21-105.5.

SECTION 10. 39-26-204 (5) (a), Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended to read:

39-26-204. Periodic return - collection. (5) (a) If a person neglects or refuses to make a return in payment of the tax or to pay any tax as required by this article, the executive director of the department of revenue shall make an estimate, based upon ~~such~~ THE information ~~as~~ THAT may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent thereof and interest on ~~such~~ THE delinquent taxes at the rate imposed under section 39-21-110.5, plus one-half of one percent per month from the date when due. Promptly thereafter, the executive director shall give to the delinquent taxpayer written notice of ~~such~~ THE estimated taxes, penalty, and interest, which notice shall be sent by first-class mail ~~directed to the last address of such person on file with the department of revenue~~ AS SET FORTH IN SECTION 39-21-105.5.

SECTION 11. 39-27-204 (3), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-27-204. Licenses - deposits - exception. (3) The executive director may revoke the special fuel distributors license issued to any person who refuses or neglects to comply with any provision of this part 2 or any rule ~~or regulation~~ promulgated pursuant thereto. Before revoking the license, the executive director shall send notice ~~by registered or certified mail~~ BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5 to the licensee, at ~~his~~ THE LICENSEE'S last address of record, ordering ~~him~~ THE LICENSEE to appear in the office of the executive director on a date not less than ten days after the mailing of the notice and to show cause why ~~his~~ THE license should not be revoked.

SECTION 12. 39-29-110 (1) (d) (I), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-29-110. Local government severance tax fund - creation - administration - energy impact assistance advisory committee created. (1) (d) (I) Ninety days prior to the end of each fiscal year, the executive director of the department of revenue shall send every producer who is subject to the severance tax and whose payment is subject to the distribution formula provided in this subsection (1) a form on which ~~such~~ THE producer shall submit a report to the department of revenue indicating the following: The name and address of the producer, the name of the mine, related facility, or operation, the names of the municipalities or counties in which its employees maintain their actual residences as given by the employees, giving the number of employees for each such municipality or unincorporated area of each such county, and the total number of employees of the mine or related facility or crude oil, natural gas, or oil and gas operation. ~~Said~~ THE producer may use and submit any other report form in lieu of the state form sent by the executive director of the department of revenue ~~which~~ THAT contains the same information as prescribed in ~~said~~ THE state form. The report shall be due April 30 of each year. The executive director of the department of revenue shall submit a copy of the report required by this paragraph (d) to the executive director of the department of local affairs. In the case of failure of any producer to submit the report on or before the date required by this paragraph (d) to the department of revenue, a written notice shall be sent to the producer by the department of revenue ~~by certified mail~~ BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5 stating that the producer has failed to submit a copy of the report required by this paragraph (d) and informing the producer of the penalty provision contained in this paragraph (d). If the producer fails within forty-five days after receipt of ~~said certified letter~~ THE WRITTEN NOTICE to submit the required report, there shall be levied and collected a penalty for ~~such~~ THE failure in the amount of fifty dollars for each day, or portion thereof, during which ~~such~~ THE failure continues. Any moneys and interest collected under this paragraph (d) shall be added to the fifteen percent of gross receipts from the local government severance tax fund and distributed to counties or municipalities in the manner prescribed by paragraph (c) of this subsection (1). Moneys distributed from the local government severance tax fund pursuant to paragraph (c) of this subsection (1) shall be distributed no later than August 31 of each year. Any producer not liable for severance tax under this section shall not be required to submit a report under this subsection (1).

SECTION 13. Effective date - applicability. This act shall take effect July 1, 1996, and shall apply to notices mailed on or after said date.

SECTION 14. 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: April 8, 1996