

CHAPTER 307

TAXATION

HOUSE BILL 99-1002

BY REPRESENTATIVES Alexander, Berry, Miller, Young, Allen, Clapp, Coleman, Dean, Decker, Fairbank, Gagliardi, George, Gottlieb, Hefley, Hoppe, Johnson, Kester, King, Larson, Lee, Mace, McElhany, McKay, McPherson, Mitchell, Nunez, Pfiffner, Scott, Sinclair, Spence, Spradley, Stengel, Swenson, Taylor, Tool, Webster, T. Williams, and Witwer; also SENATORS Musgrave, Powers, Arnold, Chlouber, Congrove, Dennis, Dyer, Epps, Evans, Feeley, Hernandez, Hillman, Lamborn, Martinez, Matsunaka, Nichol, Owen, Phillips, Tanner, Tebedo, Teck, Wattenberg, and Weddig.

AN ACT

CONCERNING THE EXEMPTION OF FARM EQUIPMENT FROM STATE SALES AND USE TAX.

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

SECTION 1. 39-26-114, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-26-114. Exemptions - disputes - credits or refunds. (20) (a) (I) ALL SALES AND PURCHASES OF FARM EQUIPMENT SHALL BE EXEMPT FROM TAXATION UNDER THIS PART 1.

(II) (A) ANY FARM EQUIPMENT UNDER LEASE OR CONTRACT SHALL BE EXEMPT FROM TAXATION UNDER THIS PART 1 IF THE FAIR MARKET VALUE OF SUCH EQUIPMENT IS AT LEAST ONE THOUSAND DOLLARS AND THE EQUIPMENT IS RENTED OR LEASED FOR USE PRIMARILY AND DIRECTLY IN ANY FARM OPERATION.

(B) THE LESSOR SHALL OBTAIN A SIGNED AFFIDAVIT FROM THE LESSEE OR RENTER AFFIRMING THAT THE FARM EQUIPMENT WILL BE USED PRIMARILY AND DIRECTLY IN A FARM OPERATION.

(b) FOR PURPOSES OF THIS SUBSECTION (20):

(I) "ATTACHMENTS" MEANS ANY EQUIPMENT OR MACHINERY ADDED TO AN EXEMPT FARM TRACTOR OR IMPLEMENT OF HUSBANDRY THAT AIDS OR ENHANCES THE PERFORMANCE OF SUCH TRACTOR OR IMPLEMENT.

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

(II) "FARMEQUIPMENT" MEANS FARM TRACTORS, AS DEFINED IN SECTION 42-1-102 (33), C.R.S., IMPLEMENTS OF HUSBANDRY, AS DEFINED IN SECTION 42-1-102 (44), C.R.S., AND IRRIGATION EQUIPMENT HAVING A PER UNIT PURCHASE PRICE OF AT LEAST ONE THOUSAND DOLLARS. "FARM EQUIPMENT" ALSO INCLUDES, REGARDLESS OF PURCHASE PRICE, ATTACHMENTS AND BAILING WIRE, BINDERS TWINE, AND SURFACE WRAP USED PRIMARILY AND DIRECTLY IN ANY FARM OPERATION. "FARMEQUIPMENT" DOES NOT INCLUDE:

(A) VEHICLES SUBJECT TO THE REGISTRATION REQUIREMENTS OF SECTION 42-3-103, C.R.S., REGARDLESS OF THE PURPOSE FOR WHICH SUCH VEHICLES ARE USED;

(B) MACHINERY, EQUIPMENT, MATERIALS, AND SUPPLIES USED IN A MANNER THAT IS INCIDENTAL TO A FARM OPERATION;

(C) MAINTENANCE AND JANITORIAL EQUIPMENT AND SUPPLIES; AND

(D) TANGIBLE PERSONAL PROPERTY USED IN ANY ACTIVITY OTHER THAN FARMING, SUCH AS OFFICE EQUIPMENT AND SUPPLIES AND EQUIPMENT AND SUPPLIES USED IN THE SALE OR DISTRIBUTION OF FARM PRODUCTS, RESEARCH, OR TRANSPORTATION.

(III) "FARM OPERATION" MEANS THE PRODUCTION OF ANY OF THE FOLLOWING PRODUCTS FOR PROFIT, INCLUDING BUT NOT LIMITED TO A BUSINESS THAT HIRES OUT TO PRODUCE OR HARVEST SUCH PRODUCTS:

(A) AGRICULTURAL, VITICULTURAL, FRUIT, AND VEGETABLE PRODUCTS;

(B) LIVESTOCK, AS DEFINED IN SECTION 39-26-102 (5.5);

(C) MILK;

(D) HONEY; AND

(E) POULTRY AND EGGS.

SECTION 2. 39-26-203 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

39-26-203. Exemptions. (1) This part 2 is declared to be supplementary to the "Emergency Retail Sales Tax Law of 1935", part 1 of this article, and shall not apply:

(hh) TO THE STORAGE, USE, OR CONSUMPTION OF FARM EQUIPMENT. FOR PURPOSES OF THIS PARAGRAPH (hh):

(I) "ATTACHMENTS" MEANS ANY EQUIPMENT OR MACHINERY ADDED TO AN EXEMPT FARM TRACTOR OR IMPLEMENT OF HUSBANDRY THAT AIDS OR ENHANCES THE PERFORMANCE OF SUCH TRACTOR OR IMPLEMENT.

(II) "FARMEQUIPMENT" MEANS FARM TRACTORS, AS DEFINED IN SECTION 42-1-102 (33), C.R.S., IMPLEMENTS OF HUSBANDRY, AS DEFINED IN SECTION 42-1-102 (44), C.R.S., AND IRRIGATION EQUIPMENT HAVING A PER UNIT PURCHASE PRICE OF AT LEAST

ONE THOUSAND DOLLARS. "FARM EQUIPMENT" ALSO INCLUDES, REGARDLESS OF PURCHASE PRICE, ATTACHMENTS AND BAILING WIRE, BINDERS TWINE, AND SURFACE WRAP USED PRIMARILY AND DIRECTLY IN ANY FARM OPERATION. "FARMEQUIPMENT" DOES NOT INCLUDE:

(A) VEHICLES SUBJECT TO THE REGISTRATION REQUIREMENTS OF SECTION 42-3-103, C.R.S., REGARDLESS OF THE PURPOSE FOR WHICH SUCH VEHICLES ARE USED;

(B) MACHINERY, EQUIPMENT, MATERIALS, AND SUPPLIES USED IN A MANNER THAT IS INCIDENTAL TO A FARM OPERATION;

(C) MAINTENANCE AND JANITORIAL EQUIPMENT AND SUPPLIES; AND

(D) TANGIBLE PERSONAL PROPERTY USED IN ANY ACTIVITY OTHER THAN AGRICULTURE, SUCH AS OFFICE EQUIPMENT AND SUPPLIES AND EQUIPMENT AND SUPPLIES USED IN THE SALE OR DISTRIBUTION OF FARM PRODUCTS, RESEARCH, OR TRANSPORTATION.

(III) "FARM OPERATION" MEANS THE PRODUCTION OF ANY OF THE FOLLOWING PRODUCTS FOR PROFIT, INCLUDING BUT NOT LIMITED TO A BUSINESS THAT HIRES OUT TO PRODUCE OR HARVEST SUCH PRODUCTS:

(A) AGRICULTURAL, VITICULTURAL, FRUIT, AND VEGETABLE PRODUCTS;

(B) LIVESTOCK, AS DEFINED IN SECTION 39-26-102 (5.5);

(C) MILK;

(D) HONEY; AND

(E) POULTRY AND EGGS.

(ii) (I) TO ANY FARM EQUIPMENT UNDER LEASE OR CONTRACT IF THE FAIR MARKET VALUE OF SUCH EQUIPMENT IS AT LEAST ONE THOUSAND DOLLARS AND THE EQUIPMENT IS RENTED OR LEASED FOR STORAGE, USE, OR CONSUMPTION PRIMARILY AND DIRECTLY IN ANY FARM OPERATION.

(II) THE LESSOR SHALL OBTAIN A SIGNED AFFIDAVIT FROM THE LESSEE OR RENTER AFFIRMING THAT THE FARM EQUIPMENT WILL BE STORED, USED, OR CONSUMED PRIMARILY AND DIRECTLY IN A FARM OPERATION.

SECTION 3. 29-2-105 (1) (d), Colorado Revised Statutes, is amended to read:

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 shall be imposed on the sale of tangible personal property at retail or the furnishing of services, as provided in paragraph (d) of this subsection (1). Any countywide or incorporated town or city sales tax ordinance or proposal shall include the following provisions:

(d) A provision that the tangible personal property and services taxable pursuant to this article shall be the same as the tangible personal property and services taxable pursuant to section 39-26-104, C.R.S., and subject to the same exemptions as those specified in section 39-26-114, C.R.S., except the exemption allowed by section 39-26-114 (11), C.R.S., for purchases of machinery or machine tools, the exemption of sales and purchases of those items in section 39-26-114 (1) (a) (XXI), C.R.S., the exemption for sales of food specified in section 39-26-114 (1) (a) (XX), C.R.S., ~~and~~ the exemption for occasional sales by a charitable organization set forth in section 39-26-114 (18), C.R.S., ~~AND THE EXEMPTION FOR SALES AND PURCHASES OF FARM EQUIPMENT AND FARMEQUIPMENT UNDER LEASE OR CONTRACT SPECIFIED IN SECTION 39-26-114 (20), C.R.S.~~ Sales of food, as defined in section 39-26-102 (4.5), C.R.S., exempted from the state sales tax pursuant to section 39-26-114 (1) (a) (XX), C.R.S., sales and purchases of those items exempted from the state sales tax pursuant to section 39-26-114 (1) (a) (XXI), C.R.S., purchases of machinery or machine tools as provided in section 39-26-114 (11), C.R.S., ~~or~~ occasional sales by a charitable organization as provided in section 39-26-114 (18), C.R.S., ~~OR SALES AND PURCHASES OF FARM EQUIPMENT OR FARM EQUIPMENT UNDER LEASE OR CONTRACT EXEMPTED FROM THE STATE SALES TAX PURSUANT TO SECTION 39-26-114 (20), C.R.S.,~~ may be exempted from said town, city, or county sales tax only by the express inclusion of such exemption either at the time of adoption of the initial sales tax ordinance or resolution or by amendment thereto. Any such amendment shall be adopted in the same manner as the initial ordinance or resolution. In the absence of express provision for the exemption for sales of food, as defined in section 39-26-102 (4.5), C.R.S., or purchases of machinery or machine tools as provided in section 39-26-114 (11), C.R.S., or exemption of sales and purchases of those items in section 39-26-114 (1) (a) (XXI), C.R.S., or exemption of occasional sales by a charitable organization as provided in section 39-26-114 (18), C.R.S., ~~OR EXEMPTION OF SALES AND PURCHASES OF FARM EQUIPMENT OR FARM EQUIPMENT UNDER LEASE OR CONTRACT AS PROVIDED IN SECTION 39-26-114 (20), C.R.S.,~~ all sales tax ordinances or resolutions, whether adopted prior to, on, or subsequent to July 1, 1979, which provide in substance that the tangible personal property and services taxed shall be the same as the tangible personal property and services taxable pursuant to section 39-26-104, C.R.S., or any predecessor statute, and subject to the same exemptions as those specified in section 39-26-114, C.R.S., or any predecessor statute, shall be construed as imposing or continuing to impose the town, city, or county sales tax on food, as defined in section 39-26-102 (4.5), C.R.S., purchases of machinery and machine tools as described in section 39-26-114 (11), C.R.S., sales or purchases of those items described in section 39-26-114 (1) (a) (XXI), C.R.S., ~~and~~ occasional sales by a charitable organization as described in section 39-26-114 (18), C.R.S., ~~AND SALES AND PURCHASES OF FARM EQUIPMENT AND FARMEQUIPMENT UNDER LEASE OR CONTRACT AS DESCRIBED IN SECTION 39-26-114 (20), C.R.S.~~ The regional transportation district may, in its discretion, continue to levy a sales tax on purchases of machinery or machine tools, as provided in section 39-26-114 (11), C.R.S.

SECTION 4. 29-2-106 (4) (a), Colorado Revised Statutes, is amended to read:

29-2-106. Collection - administration - enforcement. (4) (a) The executive director of the department of revenue shall, at no charge, administer, collect, and distribute the sales tax of any home rule municipality, upon request of the governing body of such municipality, if the provisions of the sales tax ordinance of said municipality, other than those provisions relating to local procedures followed in

adopting the ordinance and whether or not the ordinance applies the sales tax to the sale of food, as defined in section 39-26-102 (4.5), C.R.S., or purchases of machinery or machine tools as provided in section 39-26-114 (11), C.R.S., or sales or purchases of electricity, coal, wood, gas, fuel oil, or coke as provided in section 39-26-114 (1) (a) (XXI), C.R.S., OR SALES OR PURCHASES OF FARM EQUIPMENT OR FARM EQUIPMENT UNDER LEASE OR CONTRACT AS PROVIDED IN SECTION 39-26-114 (20), C.R.S., correspond to the requirements of this article for sales taxes imposed by counties, towns, and cities and if no use tax is to be collected by the department except as provided in section 39-26-208, C.R.S. At the time of making such request, said governing body shall certify to the executive director of the department of revenue a true copy of said sales tax ordinance.

SECTION 5. Applicability. This act shall apply to leases and contracts entered into and sales and purchases of farm equipment that occur on or after July 1, 1999.

SECTION 6. 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: June 3, 1999