

CHAPTER 318

TAXATION

HOUSE BILL 99-1381

BY REPRESENTATIVES Young, Hagedorn, Hoppe, Kester, Miller, Webster, Alexander, Fairbank, Gagliardi, George, Hefley, Johnson, Larson, McKay, McPherson, Mitchell, Nunez, Scott, Spence, Spradley, Stengel, Taylor, and T. Williams; also SENATORS Wattenberg, Dennis, Hillman, Musgrave, Nichol, Chlouber, Congrove, Hernandez, Lamborn, Martinez, Powers, and Teck.

AN ACT

CONCERNING THE EXEMPTION OF COMPOUNDS USED IN THE PRODUCTION OF AGRICULTURAL PRODUCTS FROM THE STATE SALES AND USE TAX.

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

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

(a) The state sales and use tax imposed on pesticides registered by the commissioner of agriculture for use in the production of agricultural and livestock products is causing the state of Colorado and its citizens to lose revenues by putting Colorado pesticide dealers at a competitive disadvantage relative to out-of-state pesticide dealers;

(b) Purchases of such pesticides within the state by persons involved in the commercial production of agricultural and livestock products through farming, ranching, animal husbandry, and horticulture should be classified similarly to purchases of tangible personal property categorized as ingredients or component parts that are utilized in the production, processing, and manufacturing of articles, substances, or commodities by food processors, manufacturers, and similar entities that are exempt from the state sales and use tax; and

(c) Pursuant to section 35-3.5-101, Colorado Revised Statutes, it is the declared policy of the state of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products, and the elimination of the state sales and use tax imposed on pesticides used in the production of agricultural and livestock products is necessary

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

to advance such policy.

SECTION 2. 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. (23) ALL SALES AND PURCHASES OF PESTICIDES THAT ARE REGISTERED BY THE COMMISSIONER OF AGRICULTURE FOR USE IN THE PRODUCTION OF AGRICULTURAL AND LIVESTOCK PRODUCTS PURSUANT TO THE PROVISIONS OF THE "PESTICIDE ACT", ARTICLE 9 OF TITLE 35, C.R.S., AND OFFERED FOR SALE BY DEALERS LICENSED TO SELL SUCH PESTICIDES PURSUANT TO SECTION 35-9-115, C.R.S., SHALL BE EXEMPT FROM TAXATION UNDER THIS PART 1.

SECTION 3. 39-26-203 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH 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:

(mm) TO THE STORAGE, USE, OR CONSUMPTION OF PESTICIDES THAT ARE REGISTERED BY THE COMMISSIONER OF AGRICULTURE FOR USE IN THE PRODUCTION OF AGRICULTURAL AND LIVESTOCK PRODUCTS PURSUANT TO THE PROVISIONS OF THE "PESTICIDE ACT", ARTICLE 9 OF TITLE 35, C.R.S., AND OFFERED FOR SALE BY DEALERS LICENSED TO SELL SUCH PESTICIDES PURSUANT TO SECTION 35-9-115, C.R.S.

SECTION 4. 35-9-118, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

35-9-118. Powers and duties of the commissioner. (4.5) NO LATER THAN JANUARY 1, 2003, THE COMMISSIONER SHALL ADVISE THE SENATE AND HOUSE AGRICULTURE COMMITTEES OF THE GENERAL ASSEMBLY REGARDING THE EFFECTIVENESS OF THE EXEMPTION OF CERTAIN PESTICIDES FROM THE STATE SALES AND USE TAX PURSUANT TO SECTIONS 39-26-114 (23) AND 39-26-203 (1) (mm), C.R.S., IN INCREASING SALES OF SUCH PESTICIDES BY COLORADO PESTICIDE DEALERS AND REDUCING PURCHASES BY COLORADO PURCHASERS OF SUCH PESTICIDES FROM SOURCES OUTSIDE OF COLORADO. NO LATER THAN JANUARY 1, 2000, THE COMMISSIONER SHALL MAKE RECOMMENDATIONS TO SAID COMMITTEES REGARDING THE ELIMINATION OF THE STATE SALES AND USE TAX ON COMMERCIAL FERTILIZERS, SOIL CONDITIONERS, PLANT AMENDMENTS, AGRICULTURAL LIMING MATERIALS, AND OTHER COMPOUNDS USED IN THE PRODUCTION OF AGRICULTURAL AND LIVESTOCK PRODUCTS.

SECTION 5. 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 EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH (d). THE TANGIBLE PERSONAL PROPERTY AND SERVICES TAXABLE PURSUANT TO THIS ARTICLE ARE 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. 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., 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., 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, EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH (d), 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. ANY INCORPORATED TOWN, CITY, OR COUNTY THAT ADOPTS OR HAS ADOPTED A SALES TAX ORDINANCE OR RESOLUTION PURSUANT TO THIS ARTICLE SHALL LEVY A SALES TAX ON PESTICIDES THAT ARE REGISTERED BY THE COMMISSIONER OF AGRICULTURE FOR USE IN THE PRODUCTION OF AGRICULTURAL AND LIVESTOCK PRODUCTS PURSUANT TO THE PROVISIONS OF THE "PESTICIDE ACT", ARTICLE 9 OF TITLE 35, C.R.S., AND OFFERED FOR SALE BY DEALERS LICENSED TO SELL SUCH PESTICIDES PURSUANT TO SECTION 35-9-115, C.R.S., NOTWITHSTANDING THE REMOVAL OF SUCH PESTICIDES FROM THE STATE SALES TAX BASE PURSUANT TO HOUSE BILL 99-1381, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, UNLESS EXEMPTED BY LOCAL ORDINANCE OR RESOLUTION. 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 6. 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 TO PESTICIDES THAT ARE REGISTERED BY THE COMMISSIONER OF AGRICULTURE FOR USE IN THE PRODUCTION OF AGRICULTURAL AND LIVESTOCK PRODUCTS PURSUANT TO THE PROVISIONS OF THE "PESTICIDE ACT", ARTICLE 9 OF TITLE 35, C.R.S., AND OFFERED FOR SALE BY DEALERS LICENSED TO SELL SUCH PESTICIDES PURSUANT TO SECTION 35-9-115, C.R.S., AS PROVIDED IN SECTION 29-2-105 (1) (d), 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 7. Effective date. This act shall take effect July 1, 1999.

SECTION 8. 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