

CHAPTER 327

TAXATION

HOUSE BILL 99-1015

BY REPRESENTATIVES Taylor, Alexander, Allen, Chavez, Clapp, Dean, Decker, George, Keller, Kester, Lawrence, Lee, May, McKay, McPherson, Miller, Nunez, Paschall, Piffner, Scott, Sinclair, Spence, Stengel, Tool, and Webster;
also SENATORS Wattenberg, Chlouber, Congrove, Epps, Evans, Hernandez, Hillman, Lamborn, Musgrave, Owen, Perlmutter, Phillips, and Tebedo.

AN ACT

CONCERNING THE EXEMPTION OF FOOD SOLD THROUGH VENDING MACHINES FROM THE 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 - creation of fund - repeal.
(7.5) ON OR AFTER JANUARY 1, 2000, ALL SALES AND PURCHASES OF FOOD, AS DEFINED IN SECTION 39-26-102 (4.5), BY OR THROUGH VENDING MACHINES SHALL BE EXEMPT FROM TAXATION UNDER THIS PART 1.

SECTION 2. 39-26-102 (4.5), Colorado Revised Statutes, is amended to read:

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

(4.5) "Food" means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (g), as amended, for purposes of the federal food stamp program as defined in 7 U.S.C. sec. 2012 (h), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; PACKAGED AND UNPACKAGED cold sandwiches; deli trays; and ~~food or drink~~ HOT OR COLD BEVERAGES SERVED IN UNSEALED CONTAINERS OR CUPS THAT ARE vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.

SECTION 3. 39-26-203 (1), Colorado Revised Statutes, is amended BY THE

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

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:

(jj) ON OR AFTER JANUARY 1, 2000, TO THE STORAGE, USE, OR CONSUMPTION OF FOOD, AS DEFINED IN SECTION 39-26-102 (4.5), PURCHASED BY OR THROUGH VENDING MACHINES.

SECTION 4. 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., THE EXEMPTION FOR VENDING MACHINE SALES OF FOOD SET FORTH IN SECTION 39-26-114 (7.5), 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., VENDING MACHINE SALES OF FOOD AS DESCRIBED IN SECTION 39-26-114 (7.5), 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 FOR THE EXEMPTION OF VENDING MACHINE SALES OF FOOD AS PROVIDED IN SECTION 39-26-114 (7.5), C.R.S., OR FOR THE EXEMPTION OF purchases of machinery or machine tools as provided in section 39-26-114 (11), C.R.S., or FOR THE exemption of sales and purchases of those items in section 39-26-114 (1) (a) (XXI), C.R.S., or FOR THE 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, 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.,

VENDING MACHINE SALES OF FOOD AS DESCRIBED IN SECTION 39-26-114 (7.5), 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. The regional transportation district may, in its discretion, continue to levy a sales tax on VENDING MACHINE SALES OF FOOD AS DESCRIBED IN SECTION 39-26-114 (7.5), C.R.S., AND ON purchases of machinery or machine tools, as provided in section 39-26-114 (11), C.R.S.

SECTION 5. 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 VENDING MACHINE SALES OF FOOD AS DESCRIBED IN SECTION 39-26-114 (7.5), 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 6. 32-9-119 (2) (a), Colorado Revised Statutes, is amended to read:

32-9-119. Additional powers of district. (2) (a) To provide revenue to finance the operations of the district, to defray the cost of construction of capital improvements and acquisition of capital equipment, and to pay the interest and principal on securities of the district, the board, for and on behalf of the district after approval by election held pursuant to articles 1 to 13 of title 1, C.R.S., shall have the power to levy uniformly throughout the district a sales tax at the rate of six-tenths of one percent upon every transaction or other incident with respect to which a sales tax is now levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; EXCEPT THAT SUCH SALES TAX MAY BE LEVIED ON VENDING MACHINE SALES OF FOOD THAT ARE OTHERWISE EXEMPT PURSUANT TO SECTION 39-26-114 (7.5), C.R.S., AND ON PURCHASES OF MACHINERY OR MACHINE TOOLS THAT ARE OTHERWISE EXEMPT PURSUANT TO SECTION 39-26-114 (11), C.R.S.

SECTION 7. 32-13-107 (1) (a), Colorado Revised Statutes, is amended to read:

32-13-107. Sales and use tax imposed - collection - administration of tax - use. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), upon the approval of the registered electors pursuant to the provisions of section 32-13-105, the board shall have the power to levy such uniform sales and use taxes throughout the district created in section 32-13-104 upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except THAT such sales and use tax shall be levied on

VENDING MACHINE SALES OF FOOD THAT ARE OTHERWISE EXEMPT PURSUANT TO SECTION 39-26-114 (7.5), C.R.S., AND ON purchases of machinery or machine tools ~~which~~ THAT are otherwise exempt pursuant to section 39-26-114 (11), C.R.S., to the extent such SALES AND purchases are subject to a sales and use tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., on and after the January 1 following the election in which such sales and use taxes were approved.

SECTION 8. 32-14-114 (1), Colorado Revised Statutes, is amended to read:

32-14-114. Sales tax imposed - collection - administration of tax - discontinuance. (1) Upon the approval of the registered electors pursuant to the provisions of section 32-14-105 and upon the granting of a major league baseball franchise by major league baseball to be located in the district, the board shall have the power to levy such uniform sales tax for a period not to exceed twenty years throughout the district created in section 32-14-104 upon every transaction or other incident with respect to which a sales tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales tax shall be levied on VENDING MACHINE SALES OF FOOD THAT ARE OTHERWISE EXEMPT PURSUANT TO SECTION 39-26-114 (7.5), C.R.S., AND purchases of machinery or machine tools ~~which~~ THAT are otherwise exempt pursuant to section 39-26-114 (11), C.R.S., to the extent that such SALES AND purchases are subject to the sales tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S., on and after the January 1 following the adoption of a resolution by the board.

SECTION 9. 32-15-110 (1), Colorado Revised Statutes, is amended to read:

32-15-110. Sales tax imposed - collection - administration of tax - discontinuance. (1) Upon the approval of the registered electors pursuant to the provisions of section 32-15-107, the board shall have the power to levy such uniform sales tax upon the adoption of a resolution for a period commencing after the termination of the sales tax levied and collected by the Denver metropolitan major league baseball stadium district pursuant to section 32-14-105 and continuing for a period not to extend beyond January 1, 2012, throughout the district created in section 32-15-104 upon every transaction or other incident with respect to which a sales tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales tax shall be levied on VENDING MACHINE SALES OF FOOD THAT ARE OTHERWISE EXEMPT PURSUANT TO SECTION 39-26-114 (7.5), C.R.S., AND purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-114 (11), C.R.S., to the extent that such SALES AND purchases are subject to the sales tax levied by the regional transportation district pursuant to section 29-2-105 (1) (d), C.R.S.

SECTION 10. Effective date. This act shall take effect January 1, 2000.

SECTION 11. 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