

CHAPTER 150

TAXATION

HOUSE BILL 00-1162

BY REPRESENTATIVES Alexander, Berry, Coleman, Gagliardi, Gordon, Hoppe, Johnson, Kester, King, Larson, McKay, Miller, Nunez, Smith, Spence, Taylor, Vigil, Webster, T. Williams, Young, and Zimmerman;
also SENATORS Musgrave, Anderson, Arnold, Chlouber, Congrove, Dennis, Dyer, Epps, Evans, Hernandez, Hillman, Lamborn, Martinez, Nichol, Owen, Powers, Teck, and Wattenberg.

AN ACT

CONCERNING THE EXEMPTION OF ITEMS USED IN AGRICULTURAL OPERATIONS FROM THE STATE SALES AND USE TAX.

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

SECTION 1. 42-1-102 (44), Colorado Revised Statutes, is amended to read:

42-1-102. Definitions. As used in articles 1 to 4 of this title, unless the context otherwise requires:

(44) ON AND AFTER JULY 1, 2000, "Implement of husbandry" means every vehicle ~~which~~ THAT is designed, ADAPTED, OR USED for agricultural purposes. It also includes equipment used solely for the application of liquid, gaseous, and dry fertilizers. Transportation of fertilizer, in or on the equipment used for its application, shall be deemed a part of application if it is incidental to such application. It also includes hay balers, hay stacking equipment, combines, tillage and harvesting equipment, AGRICULTURAL COMMODITY HANDLING EQUIPMENT, and other heavy movable farm equipment primarily used on farms OR IN A LIVESTOCK PRODUCTION FACILITY and not on the highways. Trailers specially designed to move such equipment on highways shall, for the purposes of part 5 of article 4 of this title, be considered as component parts of such implements of husbandry.

SECTION 2. 39-26-102 (1), Colorado Revised Statutes, is amended, and the said 39-26-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

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

requires:

(1) ~~"Auction sale" means any sale conducted or transacted at a permanent place of business operated by an auctioneer or a sale conducted and transacted at any location where tangible personal property is sold by an auctioneer when such auctioneer is acting either as agent for the owner of such personal property or is in fact the owner thereof. The auctioneer at any sale defined in subsection (11) of this section, except when acting as an agent for a duly licensed retailer or vendor or when selling only tangible personal property which is exempt under the provisions of section 39-26-114 (5) and (6), is a retailer or vendor as defined in subsection (8) of this section and the sale made by him is a retail sale as defined in subsection (9) of this section, and the business conducted by said auctioneer in accomplishing such sale is the transaction of a business as defined by subsection (2) of this section.~~ "AGRICULTURAL COMMODITY" MEANS ANY AGRICULTURAL COMMODITY AS DEFINED IN SECTION 35-28-104 (1), C.R.S.; EXCEPT THAT, FOR PURPOSES OF ARTICLE 26 OF THIS TITLE, "AGRICULTURAL COMMODITY" SHALL ALSO INCLUDE SUGAR BEETS, TIMBER AND TIMBER PRODUCTS, OATS, MALTING BARLEY, BARLEY, HOPS, RICE, MILO, AND ANY OTHER FEED GRAIN.

(1.3) "AUCTION SALE" MEANS ANY SALE CONDUCTED OR TRANSACTED AT A PERMANENT PLACE OF BUSINESS OPERATED BY AN AUCTIONEER OR A SALE CONDUCTED AND TRANSACTED AT ANY LOCATION WHERE TANGIBLE PERSONAL PROPERTY IS SOLD BY AN AUCTIONEER WHEN SUCH AUCTIONEER IS ACTING EITHER AS AGENT FOR THE OWNER OF SUCH PERSONAL PROPERTY OR IS IN FACT THE OWNER THEREOF. THE AUCTIONEER AT ANY SALE DEFINED IN SUBSECTION (11) OF THIS SECTION, EXCEPT WHEN ACTING AS AN AGENT FOR A DULY LICENSED RETAILER OR VENDOR OR WHEN SELLING ONLY TANGIBLE PERSONAL PROPERTY WHICH IS EXEMPT UNDER THE PROVISIONS OF SECTION 39-26-114(5) AND (6), IS A RETAILER OR VENDOR AS DEFINED IN SUBSECTION (8) OF THIS SECTION AND THE SALE MADE BY THE AUCTIONEER IS A RETAIL SALE AS DEFINED IN SUBSECTION (9) OF THIS SECTION, AND THE BUSINESS CONDUCTED BY SAID AUCTIONEER IN ACCOMPLISHING SUCH SALE IS THE TRANSACTION OF A BUSINESS AS DEFINED BY SUBSECTION (2) OF THIS SECTION.

(5.7) "LIVESTOCK PRODUCTION FACILITY" MEANS ANY STRUCTURE USED PREDOMINATELY FOR THE HOUSING, CONTAINING, SHELTERING, OR FEEDING OF LIVESTOCK, INCLUDING, WITHOUT LIMITATION, BARNs, CORRALS, FEEDLOTS, AND SWINE HOUSES.

SECTION 3. 39-26-114 (20) (a) (II) (B) and (20) (b) (II), Colorado Revised Statutes, are amended to read:

39-26-114. Exemptions - disputes - credits or refunds - definitions - creation of fund - repeal. (20) (a) (II) (B) The lessor OR SELLER OF SUCH FARM EQUIPMENT shall obtain a signed affidavit from the lessee, ~~or~~ renter, OR PURCHASER affirming that the farm equipment will be used primarily and directly in a farm operation.

(b) For purposes of this subsection (20):

(II) "Farm equipment" 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. ON AND AFTER JULY 1, 2000, "FARM EQUIPMENT" ALSO INCLUDES, REGARDLESS OF PURCHASE PRICE, PARTS THAT ARE USED IN THE REPAIR OR MAINTENANCE OF THE FARMEQUIPMENT DESCRIBED IN THIS SUBPARAGRAPH (II), ALL SHIPPING PALLETS OR AIDS PAID FOR BY A FARM OPERATION, AND AIRCRAFT DESIGNED OR ADAPTED TO UNDERTAKE AGRICULTURAL APPLICATIONS. "Farm equipment" does not include:

SECTION 4. The introductory portion to 39-26-203 (1) (hh) (II), Colorado Revised Statutes, is amended to read:

39-26-203. Exemptions - definitions. (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):

(II) "Farm equipment" 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. EFFECTIVE JULY 1, 2000, "FARM EQUIPMENT" ALSO INCLUDES, REGARDLESS OF PURCHASE PRICE, PARTS THAT ARE USED IN THE REPAIR OR MAINTENANCE OF THE FARMEQUIPMENT DESCRIBED IN THIS SUBPARAGRAPH (II), ALL SHIPPING PALLETS OR AIDS PAID FOR BY A FARM OPERATION, AND AIRCRAFT DESIGNED OR ADAPTED TO UNDERTAKE AGRICULTURAL APPLICATIONS. "Farm equipment" does not include:

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., 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., the exemption for vending machine sales of food set forth in section 39-26-114 (7.5), C.R.S., the exemption for occasional sales by a charitable organization set forth in section 39-26-114 (18), C.R.S., the

exemption for sales and purchases of farm equipment and farm equipment under lease or contract specified in section 39-26-114 (20), C.R.S., and the exemption for sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-114 (22), 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., occasional sales by a charitable organization as provided in section 39-26-114 (18), C.R.S., 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., or sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-114 (22), 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 an 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., 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., or exemption of sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-114 (22), 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., 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., occasional sales by a charitable organization as described in section 39-26-114 (18), C.R.S., sales and purchases of farm equipment and farm equipment under lease or contract as described in section 39-26-114 (20), C.R.S., and sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-114 (22), 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. 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 UPON ALL SALES AND PURCHASES OF PARTS USED IN THE REPAIR OR MAINTENANCE OF FARM EQUIPMENT, ALL SHIPPING PALLETS OR AIDS PAID FOR BY A FARM OPERATION, AND AIRCRAFT DESIGNED OR ADAPTED TO UNDERTAKE AGRICULTURAL APPLICATIONS, NOTWITHSTANDING THE REMOVAL OF SUCH ITEMS FROM THE STATE SALES TAX BASE PURSUANT TO HOUSE BILL 00-1162, ENACTED AT THE SECOND 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 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 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 vending machine sales of food as described in section 39-26-114 (7.5), C.R.S., or sales or purchases of farm equipment or farm equipment under lease or contract, PARTS USED IN THE REPAIR OR MAINTENANCE OF FARM EQUIPMENT, ALL SHIPPING PALLETS OR AIDS PAID FOR BY A FARM OPERATION, AND AIRCRAFT DESIGNED OR ADAPTED TO UNDERTAKE AGRICULTURAL APPLICATIONS, as provided in section 39-26-114 (20), C.R.S., or sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-114 (22), 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. 39-26-123 (2) (a) (I), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUB-SUBPARAGRAPH to read:

(A.7) COMMENCING AUGUST 1, 2000, THE ALLOCATION OF RECEIPTS UNDER SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I) TO THE HIGHWAY USERS TAX FUND SHALL BE INCREASED BY FIFTEEN ONE-THOUSANDTHS OF A PERCENTAGE POINT, AND THE ALLOCATION TO THE GENERAL FUND SHALL BE DECREASED BY FIFTEEN ONE-THOUSANDTHS OF A PERCENTAGE POINT, PURSUANT TO HOUSE BILL 00-1162, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL

ASSEMBLY. THE MODIFICATIONS TO THE ALLOCATION OF RECEIPTS MADE PURSUANT TO THIS SUB-SUBPARAGRAPH (A.7) SHALL BE IN ADDITION TO ANY OTHER MODIFICATIONS TO THE ALLOCATION OF SUCH RECEIPTS MADE BY LAW.

SECTION 8. Effective date - applicability. This act shall take effect July 1, 2000, and shall apply to all sales and purchases, storage, use, or consumption that occurs on or after said date.

SECTION 9. 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 16, 2000