

CHAPTER 326

TAXATION

HOUSE BILL 01-1081

BY REPRESENTATIVE(S) King, Tapia, Fairbank, Fritz, Garcia, Jameson, and Lee;
also SENATOR(S) Reeves, Hagedorn, Fitz-Gerald, Matsunaka, Phillips, and Taylor.

AN ACT

CONCERNING THE STATE SALES AND USE TAX ON TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND DEVELOPMENT, AND, IN CONNECTION THEREWITH, CREATING A REFUND OF STATE SALES AND USE TAX PAID IN CONNECTION WITH THE SALE, PURCHASE, STORAGE, USE, OR CONSUMPTION OF TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND DEVELOPMENT IN YEARS IN WHICH THE STATE HAS EXCESS REVENUES PURSUANT TO SECTION (20) (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION.

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

SECTION 1. Article 26 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 6
SALES AND USE TAX REFUND FOR
TANGIBLE PERSONAL PROPERTY
USED FOR RESEARCH AND DEVELOPMENT**

39-26-601. Definitions. AS USED IN THIS PART 6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "QUALIFIED TAXPAYER" MEANS A NATURAL PERSON, A C CORPORATION, AS DEFINED IN SECTION 39-22-103 (2.5), A PARTNERSHIP, AS DEFINED IN SECTION 39-22-103 (5.6), A LIMITED LIABILITY COMPANY THAT IS NOT A C CORPORATION, AN S CORPORATION, AS DEFINED IN SECTION 39-22-103 (10.5), OR A SOLE PROPRIETORSHIP THAT PURCHASES, STORES, USES, OR CONSUMES TANGIBLE PERSONAL PROPERTY, INCLUDING MACHINERY, AS DEFINED IN SECTION 39-26-114 (11) (c) (I), THAT IS OR WILL BE USED IN COLORADO DIRECTLY AND PREDOMINANTLY FOR RESEARCH AND DEVELOPMENT OR IN A COMBINED ACTIVITY OF RESEARCH AND DEVELOPMENT AND MANUFACTURING THAT IS EXEMPT PURSUANT TO SECTION

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

39-26-114 (11).

(2) (a) "RESEARCH AND DEVELOPMENT" MEANS QUALIFIED RESEARCH AS DEFINED IN 26 U.S.C. SEC. 41 (d) OR RESEARCH THAT HAS ONE OF THE FOLLOWING AS ITS ULTIMATE GOAL:

(I) BASIC RESEARCH IN A SCIENTIFIC OR TECHNICAL FIELD OF ENDEAVOR, INCLUDING, BUT NOT LIMITED TO, AEROSPACE, AGRICULTURE, HEALTH SCIENCES, BIOSCIENCES, PHARMACEUTICALS, COMPUTER TECHNOLOGY, ELECTRONICS, OR ENVIRONMENTAL TECHNOLOGY;

(II) ADVANCING KNOWLEDGE OR TECHNOLOGY IN A SCIENTIFIC OR TECHNICAL FIELD OF ENDEAVOR, INCLUDING, BUT NOT LIMITED TO, AEROSPACE, AGRICULTURE, HEALTH SCIENCES, BIOSCIENCES, PHARMACEUTICALS, COMPUTER TECHNOLOGY, ELECTRONICS, OR ENVIRONMENTAL TECHNOLOGY; OR

(III) THE TESTING OR INSPECTION OF MATERIALS OR PRODUCTS USED FOR QUALITY CONTROL BY ANY QUALIFIED TAXPAYER ENGAGED IN, AND ONLY TO THE EXTENT RELATED TO, QUALIFIED RESEARCH AS DEFINED IN 26 U.S.C. SEC. 41 (d) OR IN SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (a).

(b) "RESEARCH AND DEVELOPMENT" DOES NOT INCLUDE MARKET RESEARCH, EFFICIENCY SURVEYS, CONSUMER SURVEYS, ADVERTISING AND PROMOTIONS, MANAGEMENT STUDIES, OR RESEARCH IN CONNECTION WITH LITERARY, HISTORICAL, SOCIAL SCIENCE, PSYCHOLOGICAL, OR OTHER NONTECHNOLOGICAL ACTIVITIES.

39-26-602. Fiscal years commencing on or after July 1, 2002 - temporary refund of state sales and use tax paid for tangible personal property used for research and development to refund state revenues exceeding TABOR limit - application requirements and procedures - legislative declaration. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT PROVIDING A REFUND OF STATE SALES AND USE TAX PAID IN CONNECTION WITH THE SALE, PURCHASE, STORAGE, USE, OR CONSUMPTION OF TANGIBLE PERSONAL PROPERTY, INCLUDING MACHINERY AS DEFINED IN SECTION 39-26-114 (11) (c) (I), USED IN COLORADO DIRECTLY AND PREDOMINANTLY FOR RESEARCH AND DEVELOPMENT OR IN A COMBINED ACTIVITY OF RESEARCH AND DEVELOPMENT AND MANUFACTURING THAT IS EXEMPT PURSUANT TO SECTION 39-26-114(11) IS A REASONABLE METHOD OF REFUNDING A PORTION OF THE EXCESS STATE REVENUES REQUIRED TO BE REFUNDED IN ACCORDANCE WITH SECTION 20 (7) (d) OF ARTICLE X OF THE STATE CONSTITUTION.

(2) (a) SUBJECT TO THE PROVISIONS OF SUBSECTION (6) OF THIS SECTION, FOR THE STATE FISCAL YEAR COMMENCING ON JULY 1, 2002, IF, BASED ON THE FINANCIAL REPORT PREPARED BY THE CONTROLLER IN ACCORDANCE WITH SECTION 24-77-106.5, C.R.S., THE CONTROLLER CERTIFIES THAT THE AMOUNT OF STATE REVENUES FOR SAID STATE FISCAL YEAR EXCEEDS THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION FOR SAID STATE FISCAL YEAR AND THE VOTERS STATEWIDE EITHER HAVE NOT AUTHORIZED THE STATE TO RETAIN AND SPEND ALL OF THE EXCESS STATE REVENUES FOR THAT STATE FISCAL YEAR OR HAVE AUTHORIZED THE STATE TO RETAIN AND SPEND ONLY A PORTION OF THE EXCESS STATE REVENUES FOR THAT STATE FISCAL YEAR, EACH QUALIFIED TAXPAYER SHALL BE ALLOWED TO CLAIM A REFUND IN AN AMOUNT EQUAL

TO FIFTY PERCENT OF ALL STATE SALES AND USE TAX PAID BY THE QUALIFIED TAXPAYER PURSUANT TO PARTS 1 AND 2 OF THIS ARTICLE DURING THAT STATE FISCAL YEAR ON THE SALE, PURCHASE, STORAGE, USE, OR CONSUMPTION OF TANGIBLE PERSONAL PROPERTY, INCLUDING MACHINERY AS DEFINED IN SECTION 39-26-114 (11) (c) (I), THAT IS OR WILL BE USED IN COLORADO DIRECTLY AND PREDOMINANTLY FOR RESEARCH AND DEVELOPMENT OR IN A COMBINED ACTIVITY OF RESEARCH AND DEVELOPMENT AND MANUFACTURING THAT IS EXEMPT PURSUANT TO SECTION 39-26-114 (11).

(b) SUBJECT TO THE PROVISIONS OF SUBSECTION (6) OF THIS SECTION, FOR STATE FISCAL YEARS COMMENCING ON OR AFTER JULY 1, 2003, IF, BASED ON THE FINANCIAL REPORT PREPARED BY THE CONTROLLER IN ACCORDANCE WITH SECTION 24-77-106.5, C.R.S., THE CONTROLLER CERTIFIES THAT THE AMOUNT OF STATE REVENUES FOR SAID STATE FISCAL YEAR EXCEEDS THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION FOR SAID STATE FISCAL YEAR AND THE VOTERS STATEWIDE EITHER HAVE NOT AUTHORIZED THE STATE TO RETAIN AND SPEND ALL OF THE EXCESS STATE REVENUES FOR THAT STATE FISCAL YEAR OR HAVE AUTHORIZED THE STATE TO RETAIN AND SPEND ONLY A PORTION OF THE EXCESS STATE REVENUES FOR THAT STATE FISCAL YEAR, EACH QUALIFIED TAXPAYER SHALL BE ALLOWED TO CLAIM A REFUND IN AN AMOUNT EQUAL TO ALL STATE SALES AND USE TAX PAID BY THE QUALIFIED TAXPAYER PURSUANT TO PARTS 1 AND 2 OF THIS ARTICLE DURING THAT STATE FISCAL YEAR ON THE SALE, PURCHASE, STORAGE, USE, OR CONSUMPTION OF TANGIBLE PERSONAL PROPERTY, INCLUDING MACHINERY AS DEFINED IN SECTION 39-26-114 (11) (c) (I), THAT IS OR WILL BE USED IN COLORADO DIRECTLY AND PREDOMINANTLY FOR RESEARCH AND DEVELOPMENT OR IN A COMBINED ACTIVITY OF RESEARCH AND DEVELOPMENT AND MANUFACTURING THAT IS EXEMPT PURSUANT TO SECTION 39-26-114 (11).

(3) TO CLAIM THE REFUND ALLOWED BY SUBSECTION (2) OF THIS SECTION, A QUALIFIED TAXPAYER SHALL SUBMIT A REFUND APPLICATION TO THE DEPARTMENT OF REVENUE ON A FORM PROVIDED BY THE DEPARTMENT. SUCH APPLICATION SHALL BE SUBMITTED NO EARLIER THAN JANUARY 1 AND NO LATER THAN APRIL 1 OF THE STATE FISCAL YEAR IMMEDIATELY FOLLOWING THE STATE FISCAL YEAR FOR WHICH THE REFUND IS CLAIMED. THE APPLICATION SHALL BE ACCOMPANIED BY PROOF OF PAYMENT OF STATE SALES AND USE TAXES PAID BY THE QUALIFIED TAXPAYER IN THE IMMEDIATELY PRECEDING STATE FISCAL YEAR ON THE SALE, PURCHASE, STORAGE, USE, OR CONSUMPTION OF TANGIBLE PERSONAL PROPERTY, INCLUDING MACHINERY AS DEFINED IN SECTION 39-26-114 (11) (c) (I), THAT IS OR WILL BE USED IN COLORADO DIRECTLY AND PREDOMINANTLY FOR RESEARCH AND DEVELOPMENT OR IN A COMBINED ACTIVITY OF RESEARCH AND DEVELOPMENT AND MANUFACTURING THAT IS EXEMPT PURSUANT TO SECTION 39-26-114 (11). THE APPLICATION SHALL ALSO INCLUDE ANY ADDITIONAL INFORMATION THAT THE DEPARTMENT OF REVENUE MAY REQUIRE BY RULE, WHICH MAY INCLUDE, WITHOUT LIMITATION, A DETAILED LIST OF ALL EXPENDITURES THAT SUPPORT A CLAIM FOR A REFUND, THE NAME AND ADDRESSES OF AN INDIVIDUAL WHO MAINTAINS RECORDS OF SUCH EXPENDITURES, AND A STATEMENT THAT THE QUALIFIED TAXPAYER AGREES TO FURNISH RECORDS OF ALL SUCH EXPENDITURES TO THE DEPARTMENT UPON REQUEST. NO REFUND SHALL BE ALLOWED IF THE QUALIFIED TAXPAYER HAS NOT COMPLIED WITH THE PROVISIONS OF THIS SUBSECTION (3).

(4) ANY REFUND ALLOWED PURSUANT TO THIS SECTION FOR ANY GIVEN STATE

FISCAL YEAR SHALL BE PUBLISHED IN RULES PROMULGATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(5) IF ONE OR MORE BALLOT QUESTIONS ARE SUBMITTED TO THE VOTERS AT A STATEWIDE ELECTION TO BE HELD IN NOVEMBER OF ANY CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 2003, THAT SEEK AUTHORIZATION FOR THE STATE TO RETAIN AND SPEND ALL OR ANY PORTION OF THE AMOUNT OF EXCESS STATE REVENUES FOR THE STATE FISCAL YEAR ENDING DURING SAID CALENDAR YEAR, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL NOT DETERMINE WHETHER THE REFUND AUTHORIZED BY SUBSECTION (2) OF THIS SECTION SHALL BE ALLOWED AND SHALL NOT PROMULGATE RULES CONTAINING THE AMOUNT OF SAID REFUND UNTIL THE IMPACT OF THE RESULTS OF SAID ELECTION ON THE AMOUNT OF EXCESS STATE REVENUES TO BE REFUNDED IS ASCERTAINED.

(6) (a) IF, BASED ON THE FINANCIAL REPORT PREPARED BY THE CONTROLLER IN ACCORDANCE WITH SECTION 24-77-106.5, C.R.S., THE CONTROLLER CERTIFIES THAT THE AMOUNT OF STATE REVENUES FOR THE STATE FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2002, EXCEEDS THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION FOR THAT STATE FISCAL YEAR BY LESS THAN THREE HUNDRED FIFTY-EIGHT MILLION FOUR HUNDRED THOUSAND DOLLARS, AS ADJUSTED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (6), THEN THE REFUND AUTHORIZED BY SUBSECTION (2) OF THIS SECTION SHALL NOT BE ALLOWED IN THE STATE FISCAL YEAR IMMEDIATELY FOLLOWING SAID STATE FISCAL YEAR.

(b) (I) NO LATER THAN OCTOBER 1 OF ANY GIVEN CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 2003, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL ANNUALLY ADJUST THE DOLLAR AMOUNT SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (6) TO REFLECT THE RATE OF GROWTH OF COLORADO PERSONAL INCOME FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH SUCH ADJUSTMENT IS MADE; EXCEPT THAT, IN CALENDAR YEAR 2003, THE EXECUTIVE DIRECTOR SHALL ADJUST SAID DOLLAR AMOUNT TO REFLECT THE RATE OF GROWTH OF COLORADO PERSONAL INCOME FOR CALENDAR YEARS 2001 AND 2002. FOR PURPOSES OF THIS SUBPARAGRAPH (I), "THE RATE OF GROWTH OF COLORADO PERSONAL INCOME" MEANS THE PERCENTAGE CHANGE BETWEEN THE MOST RECENT PUBLISHED ANNUAL ESTIMATE OF TOTAL PERSONAL INCOME FOR COLORADO, AS DEFINED AND OFFICIALLY REPORTED BY THE BUREAU OF ECONOMIC ANALYSIS IN THE UNITED STATES DEPARTMENT OF COMMERCE FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH THE ADJUSTMENT IS MADE AND THE MOST RECENT PUBLISHED ANNUAL ESTIMATE OF TOTAL PERSONAL INCOME FOR COLORADO, AS DEFINED AND OFFICIALLY REPORTED BY THE BUREAU OF ECONOMIC ANALYSIS IN THE UNITED STATES DEPARTMENT OF COMMERCE FOR THE CALENDAR YEAR PRIOR TO THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH THE ADJUSTMENT IS MADE.

(II) UPON CALCULATING THE ADJUSTMENT OF SAID DOLLAR AMOUNT IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL NOTIFY IN WRITING THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL CREATED PURSUANT TO SECTION 2-3-301 (1), C.R.S., OF THE ADJUSTED DOLLAR AMOUNT AND THE BASIS FOR

THE ADJUSTMENT. SUCH WRITTEN NOTIFICATION SHALL BE GIVEN WITHIN FIVE WORKING DAYS AFTER SUCH CALCULATION IS COMPLETED, BUT SUCH WRITTEN NOTIFICATION SHALL BE GIVEN NO LATER THAN OCTOBER 1 OF THE CALENDAR YEAR.

(III) IT IS THE FUNCTION OF THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL TO REVIEW AND APPROVE OR DISAPPROVE SUCH ADJUSTMENT OF SAID DOLLAR AMOUNT WITHIN TWENTY DAYS AFTER RECEIPT OF SUCH WRITTEN NOTIFICATION FROM THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. ANY ADJUSTMENT THAT IS NOT APPROVED OR DISAPPROVED BY THE EXECUTIVE COMMITTEE WITHIN SAID TWENTY DAYS SHALL BE AUTOMATICALLY APPROVED; EXCEPT THAT, IF WITHIN SAID TWENTY DAYS THE EXECUTIVE COMMITTEE SCHEDULES A HEARING ON SUCH ADJUSTMENT, SUCH AUTOMATIC APPROVAL SHALL NOT OCCUR UNLESS THE EXECUTIVE COMMITTEE DOES NOT APPROVE OR DISAPPROVE SUCH ADJUSTMENT AT THE CONCLUSION OF SUCH HEARING. ANY HEARING CONDUCTED BY THE EXECUTIVE COMMITTEE PURSUANT TO THIS SUBPARAGRAPH (III) SHALL BE CONCLUDED NO LATER THAN TWENTY-FIVE DAYS AFTER RECEIPT OF SUCH WRITTEN NOTIFICATION FROM THE EXECUTIVE DIRECTOR.

(IV) (A) IF THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL DISAPPROVES ANY ADJUSTMENT OF SAID DOLLAR AMOUNT CALCULATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE PURSUANT TO THIS PARAGRAPH (b), THE EXECUTIVE COMMITTEE SHALL SPECIFY SUCH ADJUSTED DOLLAR AMOUNT TO BE UTILIZED BY THE EXECUTIVE DIRECTOR. ANY ADJUSTED DOLLAR AMOUNT SPECIFIED BY THE EXECUTIVE COMMITTEE PURSUANT TO THIS SUB-SUBPARAGRAPH (A) SHALL BE CALCULATED IN ACCORDANCE WITH THE PROVISIONS OF THIS PARAGRAPH (b).

(B) FOR THE PURPOSE OF DETERMINING WHETHER THE REFUND AUTHORIZED BY SUBSECTION (2) OF THIS SECTION IS TO BE ALLOWED FOR ANY GIVEN STATE FISCAL YEAR, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL NOT UTILIZE ANY ADJUSTED DOLLAR AMOUNT THAT HAS NOT BEEN APPROVED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (b) OR OTHERWISE SPECIFIED PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (IV).

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: June 6, 2001