

CHAPTER 49

TAXATION

HOUSE BILL 03-1066

BY REPRESENTATIVE(S) Larson, Garcia, Merrifield, Rose, Weddig, and Williams S.;
also SENATOR(S) Teck.

AN ACT

**CONCERNING FRIVOLOUS REQUESTS FOR HEARINGS BEFORE THE EXECUTIVE DIRECTOR OF THE
DEPARTMENT OF REVENUE.**

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

SECTION 1. 39-21-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-21-103. Hearings. (3.5) IF THE EXECUTIVE DIRECTOR DETERMINES THAT A REQUEST FOR A HEARING RELATED TO THE TAX SET FORTH IN PART 1 OF ARTICLE 22 OF THIS TITLE IS A FRIVOLOUS SUBMISSION AND REJECTS THE REQUEST PURSUANT TO SECTION 39-21-104.5, THE TAXPAYER SHALL NOT BE ENTITLED TO A HEARING BEFORE THE EXECUTIVE DIRECTOR AND THE PROVISIONS OF SECTION 39-21-104.5 SHALL APPLY.

SECTION 2. 39-21-104, Colorado Revised Statutes, is amended to read:

39-21-104. Rejection of claims. (1) Upon rejection, in whole or in part, of a claim for refund filed by a taxpayer, with respect to any tax set forth in section 39-21-103 (1), the executive director of the department of revenue shall send a notice of rejection to the taxpayer in writing by first-class mail as set forth in section 39-21-105.5; and, within thirty days from the mailing thereof, the taxpayer may request a hearing or file a brief with the executive director, except where the claim is for refund of a deficiency in taxes assessed after hearing or determination on written brief had under the provisions of section 39-21-103. Thereafter, both the taxpayer and the executive director shall proceed as provided in section 39-21-103 with respect to the hearing or determination on written brief. Upon reaching a decision upon the claim for refund after hearing had thereon or consideration of the written brief, the executive director shall send to the taxpayer, by first-class mail as

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

set forth in section 39-21-105.5, notice of final determination of claim for refund, stating therein the grounds for allowance or rejection in whole or in part. This section shall not prevent a taxpayer from suing for a refund in the district court within the time provided by law whether or not the taxpayer requests a hearing or presents a written brief.

(2) IF THE EXECUTIVE DIRECTOR DETERMINES THAT A REQUEST FOR A HEARING RELATED TO THE TAX SET FORTH IN PART 1 OF ARTICLE 22 OF THIS TITLE IS A FRIVOLOUS SUBMISSION AND REJECTS THE REQUEST PURSUANT TO SECTION 39-21-104.5, THE TAXPAYER SHALL NOT BE ENTITLED TO A HEARING BEFORE THE EXECUTIVE DIRECTOR AND THE PROVISIONS OF SECTION 39-21-104.5 SHALL APPLY.

SECTION 3. Part 1 of article 21 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-21-104.5. Frivolous submissions. (1) AS USED IN THIS PART 1, UNLESS THE CONTEXT OTHERWISE REQUIRES, "FRIVOLOUS SUBMISSION" MEANS A REQUEST FOR A HEARING RELATED TO THE TAX SET FORTH IN PART 1 OF ARTICLE 22 OF THIS TITLE MADE PURSUANT TO SECTION 39-21-103 OR 39-21-104 THAT IS BASED ON A POSITION THAT WAS PREVIOUSLY REJECTED IN A PUBLISHED OPINION BY A COLORADO OR FEDERAL COURT.

(2) IF THE EXECUTIVE DIRECTOR DETERMINES THAT A REQUEST FOR A HEARING MADE PURSUANT TO SECTION 39-21-103 OR 39-21-104 IS A FRIVOLOUS SUBMISSION, THE EXECUTIVE DIRECTOR MAY REJECT THE REQUEST. IF THE EXECUTIVE DIRECTOR DOES NOT REJECT THE REQUEST, THE PROVISIONS OF SECTION 39-21-103 OR 39-21-104 SHALL APPLY.

(3) IF THE EXECUTIVE DIRECTOR REJECTS A TAXPAYER'S REQUEST FOR A HEARING:

(a) THE EXECUTIVE DIRECTOR SHALL NOTIFY THE TAXPAYER IN WRITING WITHIN A REASONABLE TIME AFTER RECEIVING THE TAXPAYER'S REQUEST THAT THE TAXPAYER'S REQUEST HAS BEEN REJECTED; AND

(b) THE EXECUTIVE DIRECTOR SHALL MAKE A FINAL DETERMINATION WITHIN A REASONABLE TIME AFTER RECEIVING THE TAXPAYER'S REQUEST FOR A HEARING AND SHALL SEND THE TAXPAYER A NOTICE OF FINAL DETERMINATION ACCOMPANIED BY A NOTICE AND DEMAND FOR PAYMENT BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5.

(4) A TAXPAYER MAY APPEAL THE FINAL DETERMINATION OF THE EXECUTIVE DIRECTOR IN ACCORDANCE WITH THE PROVISIONS OF SECTION 39-21-105.

(5) UNLESS AN APPEAL IS TAKEN AS PROVIDED IN SECTION 39-21-105, THE TAX, TOGETHER WITH INTEREST THEREON AND PENALTIES, IF ANY, SHALL BE PAID WITHIN THIRTY DAYS AFTER MAILING OF THE NOTICE AND DEMAND FOR PAYMENT BY THE EXECUTIVE DIRECTOR.

SECTION 4. 39-21-105 (1), Colorado Revised Statutes, is amended to read:

39-21-105. Appeals. (1) The taxpayer may appeal the final determination of the

executive director issued pursuant to ~~section 39-21-103, 39-21-104, or 39-22-124~~
(10) SECTION 39-21-103, 39-21-104, 39-21-104.5, OR 39-22-124 (10) within thirty
days after the mailing of such determination.

SECTION 5. 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: March 20, 2003