

CHAPTER 159

FINANCIAL INSTITUTIONS

HOUSE BILL 09-1053

BY REPRESENTATIVE(S) Balmer, Priola, Summers;
also SENATOR(S) Romer.

AN ACT

CONCERNING THE REGULATION OF FINANCIAL INSTITUTIONS UNDER THE AUTHORITY OF THE BANKINGBOARD, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Repeal. Article 37.5 of title 11, Colorado Revised Statutes, is repealed.

SECTION 2. 11-10.5-107 (4), Colorado Revised Statutes, is amended to read:

11-10.5-107. Eligible collateral - uninsured public deposits. (4) (a) The banking board shall by rule ~~and regulation~~ establish criteria and procedures for reducing or removing any uninsured public funds deposited in an eligible public depository if said depository fails to comply with the capital OR SAFETY AND SOUNDNESS standards established by the banking board.

(b) The banking board shall require an eligible public depository to increase, substitute, add to, or modify the amount or type of eligible collateral held to secure any uninsured public funds so that ~~such~~ THE collateral is adequate to fully protect ~~such~~ THE public funds if the capital OR FINANCIAL CONDITION of the eligible public depository fails to comply with the capital OR SAFETY AND SOUNDNESS standards established by the banking board. The banking board shall establish such procedures as may be necessary to ensure that all collateral held pursuant to an action taken under this paragraph (b) is characterized by the highest degree of marketability and liquidity so that, in the event of default, all public deposits may be promptly and fully repaid.

SECTION 3. 11-102-103 (2) (b), Colorado Revised Statutes, is amended to read:

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

11-102-103. Banking board - repeal. (2) (b) There shall be one member who during his or her tenure is, and shall remain, ~~the~~ AN executive officer of ~~an industrial bank~~ A BUSINESS LICENSED PURSUANT TO ARTICLE 52 OF TITLE 12, C.R.S.

SECTION 4. Part 8 of article 103 of title 11, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

11-103-810. Preapproved shelf charter. THE BOARD MAY PREAPPROVE A SHELF CHARTER FOR A NEW BANK TO QUALIFIED INDIVIDUALS, CONTINGENT UPON THE NEW BANK COMPLETING ALL SPECIFIED REQUIREMENTS AND PURCHASING THE ASSETS AND ASSUMING THE LIABILITIES OF A BANK IN RECEIVERSHIP AS THE FEDERAL DEPOSIT INSURANCE CORPORATION MAY DETERMINE, IF THE PROPOSED BANK HAS ITS PRINCIPAL PLACE OF BUSINESS IN COLORADO AND HAS ASSETS AND LIABILITIES HELD IN RECEIVERSHIP BY THE FEDERAL DEPOSIT INSURANCE CORPORATION. THE SHELF CHARTER MAY BE PREAPPROVED AND SUMMARILY ISSUED WITHOUT PUBLICATION OF A NOTICE, WITHOUT THE HOLDING OF A PUBLIC HEARING, AND WITHOUT COMPLYING WITH ALL OF THE OTHER PROVISIONS AND PROCEDURES SPECIFIED IN THIS CODE. UPON FEDERAL DEPOSIT INSURANCE CORPORATION APPROVAL OF THE PURCHASE AND ASSUMPTION BY THE NEW BANK, THE FINAL CHARTER APPROVAL MAY BE GRANTED, TOGETHER WITH FINAL APPROVAL OF DEPOSIT INSURANCE BY THE FEDERAL DEPOSIT INSURANCE CORPORATION. IF THE BID IS NOT ACCEPTED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE CHARTER REMAINS ON THE SHELF FOR UP TO EIGHTEEN MONTHS. DURING THAT TIME, THE CHARTER MAY BE USED FOR OTHER BIDS.

SECTION 5. 11-102-104 (6), Colorado Revised Statutes, is amended to read:

11-102-104. Powers and duties of banking board. (6) The banking board has the power to affirm, modify, reverse, vacate, or stay the enforcement of any order or ruling made by a hearing officer acting pursuant to section 11-102-201 or the commissioner acting pursuant to authority delegated by the banking board. ~~or section 11-37.5-112:~~

SECTION 6. 11-101-401 (10) and (43), Colorado Revised Statutes, are amended to read:

11-101-401. Definitions. As used in this code, unless the context otherwise requires:

(10) "Branch" means any branch bank, branch office, branch agency, additional office, or branch place of business of a financial institution located in this state at which deposits are received, ~~or~~ checks are paid, or money is lent. ~~or trust powers are exercised:~~

(43) "Lessor" means a bank, as defined in subsection (5) of this section, or subsidiary thereof, ~~including any company operating pursuant to section 11-105-501, or any other person or persons renting or maintaining~~ THAT RENTS OR MAINTAINS safe deposit facilities. "Lessor" does not include ~~any~~ A financial ~~institutions~~ INSTITUTION regulated by article 30, 46, 108, or 109 of this title or a credit union chartered under the laws of the United States.

SECTION 7. 11-105-404 (1)(c), Colorado Revised Statutes, is amended to read:

11-105-404. Pledge of assets. (1) A state bank may pledge its assets to:

(c) Secure deposits ~~when~~ IF:

(I) The depositor is required to obtain such security by the laws of the United States, by the terms of any interstate compact, by the laws of any state, or by the order of a court of competent jurisdiction; OR

(II) THE STATE BANK SECURES THE DEPOSIT WITH A LETTER OF CREDIT ISSUED OR CONFIRMED BY A FEDERAL HOME LOAN BANK; OR

SECTION 8. 11-105-501 (1), Colorado Revised Statutes, is amended to read:

11-105-501. Safe deposit boxes - leasing and subsidiary company.

(1) Subject to such rules as the banking board may prescribe, a bank ~~company, other person or persons defined as a lessor in this part 5,~~ may maintain and lease safe deposit boxes and may accept property for safekeeping if, except in the case of night depositories, it issues a receipt therefor.

SECTION 9. 11-105-505, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-105-505. Adverse claims to safe deposit box. (3) THE LESSOR OF A SAFE DEPOSIT BOX SHALL NOT BE DEEMED TO BE IN POSSESSION OR CONTROL OF THE CONTENTS THEREOF FOR THE PURPOSES OF SECTION 13-54.5-103, C.R.S., OR ANY OTHER STATUTE OR RULE PERTAINING TO WRITS OF GARNISHMENT.

SECTION 10. Repeal. 39-21-102 (3), Colorado Revised Statutes, is repealed as follows:

39-21-102. Scope. (3) ~~The provisions of this article apply to the fees imposed by section 11-37.5-403, C.R.S., and assessed by section 11-37.5-405, C.R.S., but only to the extent that the provisions of this article are not inconsistent with the provisions of part 4 of article 37.5 of title 11, C.R.S. With the exception of section 39-21-115, any reference in this article to "tax" or "taxes" shall include any tax or fee imposed under sections 11-37.5-403 and 11-37.5-405, C.R.S.~~

SECTION 11. 39-21-103 (1), Colorado Revised Statutes, is amended to read:

39-21-103. Hearings. (1) As soon as practicable after any tax return or the return showing the value of oil and gas is filed pursuant to articles 22 to 29 of this title, article 60 of title 34, or article 3 of title 42, C.R.S., ~~or the return showing the tax or fee imposed pursuant to sections 11-37.5-403 and 11-37.5-405, C.R.S., is filed,~~ the executive director of the department of revenue shall examine it and shall determine the correct amount of tax. If the tax found due is greater than the amount theretofore assessed or paid, a notice of deficiency shall be mailed to the taxpayer by first-class mail as set forth in section 39-21-105.5.

SECTION 12. 39-21-106 (1), Colorado Revised Statutes, is amended to read:

39-21-106. Compromise. (1) The executive director ~~of the department of revenue~~ or his or her delegate may compromise any civil or criminal case arising under any tax or the charge on oil and gas production imposed by articles 22 to 29 of this title, ~~or article 60 of title 34, or article 3 of title 42, or part 4 of article 37.5 of title 11~~; C.R.S., prior to reference to the department of law for prosecution or defense; and the attorney general or his or her delegate shall, upon the written direction of the executive director, compromise any such case after reference to the department of law for prosecution or defense.

SECTION 13. 39-21-107 (1), Colorado Revised Statutes, is amended to read:

39-21-107. Limitations. (1) Except as provided in this section and unless such time is extended by waiver, the amount of any tax or of any charge on oil and gas production imposed pursuant to articles 24 to 29 of this title or article 3 of title 42, ~~or part 4 of article 37.5 of title 11~~; C.R.S., and the penalty and interest applicable thereto, shall be assessed within three years after the return was filed, whether or not such return was filed on or after the date prescribed, and no assessment shall be made or credit taken and no notice of lien shall be filed, nor distraint warrant issued, nor suit for collection instituted, nor any other action to collect the same commenced after the expiration of such period; except that a written proposed adjustment of the tax liability by the department issued prior to the expiration of such period shall extend the limitation of this subsection (1) for one year after a final determination or assessment is made. No lien shall continue after the three-year period provided for in this subsection (1), except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, and except for taxes on which written notice of any proposed adjustment of the tax liability has been sent to the taxpayer during such three-year period, in which case the lien shall continue for one year only after the expiration of such period or after the issuance of a final determination or assessment based on the proposed adjustment issued prior to the expiration of the three-year period. This subsection (1) shall not apply to income tax or to any tax imposed under article 23.5 of this title.

SECTION 14. 39-21-108 (1) (a) and (3) (a) (I) (A), Colorado Revised Statutes, are amended to read:

39-21-108. Refunds. (1) (a) In the case of income tax imposed by article 22 of this title, the taxpayer must file any claim for refund or credit for any year not later than the period provided for filing a claim for refund of federal income tax plus one year. However, any extensions of the period by agreement between the taxpayer and the federal taxing authorities shall extend the period established in this section by the same amount of time. The department shall not pay any refund for which the claim is filed later than the period provided for the payment of a refund of federal income tax plus one year. However, no refund or credit of income tax shall be made to any taxpayer who fails to file a return pursuant to section 39-22-601 within four years from the date the return was required to be filed. Except in the case of failure to file a return or the filing of a false or fraudulent return with intent to evade tax and otherwise notwithstanding any provision of law, the statute of limitations relating to claims for refund or credit for any year shall not expire prior to the expiration of the time within which a deficiency for such year could be assessed. In the case of the charge on oil and gas production imposed by article 60 of title 34,

C.R.S., and the passenger-mile tax imposed by article 3 of title 42, C.R.S., or the severance tax imposed by article 29 of this title, or any tax, ~~or fee imposed by part 4 of article 37.5 of title 11, C.R.S.~~, the taxpayer shall file any claim for refund or credit for any period not later than three years after the date of payment. Claims for refund of other taxes covered by this article shall be made within the time limits expressly provided for the specific taxes involved. Except as provided in section 39-21-105, no suit for refund may be commenced. This subsection (1) shall not apply to sales and use taxes.

(3) (a) (I) (A) Whenever it is established that any taxpayer has, for any period open under the statutes, overpaid a tax covered by articles 22 and 26 to 29 of this title, article 60 of title 34, C.R.S., and article 3 of title 42, ~~or part 4 of article 37.5 of title 11, C.R.S.~~, and that there is an unpaid balance of tax and interest accrued, according to the records of the executive director, owing by such taxpayer for any other period or that there is an amount required to be repaid to the unemployment compensation fund pursuant to section 8-81-101 (4), C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or which has been reduced to judgment by the division of employment and training in the department of labor and employment, or that there is any unpaid child support debt as set forth in section 14-14-104, C.R.S., or child support arrearages that are the subject of enforcement services provided pursuant to section 26-13-106, C.R.S., as certified by the department of human services, or that there are any unpaid obligations owing to the state as set forth in section 26-2-133, C.R.S., for overpayment of public assistance or medical assistance benefits, the amount of which has been determined to be owing as a result of final agency determination or judicial decision or which has been reduced to judgment, as certified by the department of human services, or that there is any unpaid loan or other obligation due to a state-supported institution of higher education as set forth in section 23-5-115, C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or which has been reduced to judgment, as certified by the appropriate institution, or that there is any unpaid loan due to the student loan division of the department of higher education as set forth in section 23-3.1-104 (1) (p), C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or which has been reduced to judgment, as certified by the division, or there is any unpaid loan due to the collegeinvest division of the department of higher education as set forth in section 23-3.1-206, C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or which has been reduced to judgment, or that there is any outstanding judicial fine, fee, cost, or surcharge as set forth in section 16-11-101.8, C.R.S., or judicial restitution as set forth in section 16-18.5-106.8, C.R.S., the amount of which has been determined to be owing as a result of a final judicial department determination or certified by the judicial department as a judgment owed the state or a victim, or that there is any unpaid debt owing to the state or any agency thereof by such taxpayer, and which is found to be owing as a result of a final agency determination or the amount of which has been reduced to judgment and as certified by the controller, or that the taxpayer is a qualified individual identified pursuant to section 39-22-120 (10) or 39-22-2003 (9), so much of the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance or unpaid debt shall be credited first to the unpaid balance of tax and interest accrued and then to the unpaid debt, and any excess of the overpayment shall be refunded.

If the taxpayer elects to designate his or her refund as a credit against a subsequent year's tax liability, the amount allowed to be so credited shall be reduced first by the unpaid balance of tax and interest accrued and then by the unpaid debt. If the taxpayer filed a joint return, the executive director shall notify the taxpayer's spouse that the portion of the overpayment that is generated by the spouse's income shall be refunded upon receipt of a request detailing said amount. As used in this section, unless the context otherwise requires, "agency" includes state-supported institutions of higher education.

SECTION 15. 39-21-112 (1), Colorado Revised Statutes, is amended to read:

39-21-112. Duties and powers of executive director. (1) It is the duty of the executive director ~~of the department of revenue~~ to administer the provisions of this article, and he or she has the power to adopt, amend, or rescind such rules ~~and regulations~~ not inconsistent with the provisions of this article, ~~and~~ articles 22 to 29 of this title, and article 3 of title 42, ~~or part 4 of article 37.5 of title 11~~, C.R.S., and, subject to other provisions of law relating to the promulgation of ~~regulations~~ RULES, to appoint, pursuant to section 13 of article XII of the state constitution, such persons, to make such expenditures, to require such reports, to make such investigations, and to take such other action as he or she deems necessary or suitable to that end. The executive director shall determine his or her own organization and methods of procedure in accordance with the provisions of this article. For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any taxpayer, the executive director has the power to examine or cause to be examined by any employee, agent, or representative designated by him or her for that purpose any books, papers, records, or memoranda bearing upon the matters required to be included in the return. In the exercise of rule-making authority as to article 29 of this title, as granted by the general assembly pursuant to this subsection (1), the executive director, in interpreting section 39-29-107.5 (1) (c), shall not have authority to reduce the amount of any approved contributions not previously credited by applying the amount of any additional percentage previously allowed pursuant to said section. In the exercise of rule-making authority as to article 29 of this title, as granted by the general assembly pursuant to this subsection (1), the executive director may not readopt any rule, or portion thereof, disapproved on or after July 1, 1982, by the general assembly pursuant to section 24-4-103 (8) (d), C.R.S., without the approval of the general assembly.

SECTION 16. 39-21-113 (1) (a), Colorado Revised Statutes, is amended to read:

39-21-113. Reports and returns - repeal. (1) (a) It is the duty of every person, firm, or corporation liable to the state of Colorado for any tax or any charge on oil and gas production imposed pursuant to articles 23.5 to 29 of this title or article 3 of title 42, ~~or part 4 of article 37.5 of title 11~~, C.R.S., to keep and preserve for a period of three years such books, accounts, and records as may be necessary to determine the amount of liability.

SECTION 17. Repeal. 39-21-115 (4), Colorado Revised Statutes, is repealed as follows:

39-21-115. Reciprocity with other states for collection of taxes provided.

(4) For the purposes of this section, taxes do not include any tax or fee imposed under part 4 of article 37.5 of title 11, C.R.S.

SECTION 18. 39-21-119 (1) (a), Colorado Revised Statutes, is amended to read:

39-21-119. Filing with executive director - when deemed to have been made.

(1) (a) Any report, claim, tax return, statement, or other document required or authorized under articles 22, 26, 28, and 29 of this title and article 3 of title 42, ~~or part 4 of article 37.5 of title 11, C.R.S.~~, to be filed with or any payment made to the executive director ~~of the department of revenue~~ that is transmitted through the United States mail shall be deemed filed with and received by the executive director on the date shown by the cancellation mark stamped on the envelope or other wrapper containing the document required to be filed.

SECTION 19. 39-21-120 (1), Colorado Revised Statutes, is amended to read:

39-21-120. Signature and filing alternatives for tax returns. (1) For the purposes of any returns or other documents made, filed, signed, subscribed, verified, transmitted, received, or stored pursuant to ~~any provision of~~ articles 22 to 31 of this title, ~~and~~ articles 46 and 47 of title 12, article 60 of title 34, and article 3 of title 42, ~~or part 4 of article 37.5 of title 11, C.R.S.~~, the executive director may prescribe voluntary alternative methods for the making, filing, signing, subscribing, verifying, transmitting, receiving, or storing of returns or other documents pursuant to the statutory provisions of this article and other articles referenced in this article. The executive director shall adopt rules ~~and regulations~~ as may be appropriate to define and implement acceptable alternatives for each article within the scope of this section.

SECTION 20. Appropriation - adjustments to the 2009 long bill. For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2009, to the department of regulatory agencies, division of banking, are decreased by fifty-five thousand seven hundred twenty-eight dollars (\$55,728) cash funds and 0.5 FTE. Said sum shall be from the division of banking cash fund created in section 11-102-307 (1), Colorado Revised Statutes.

SECTION 21. Act subject to petition - 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, (August 5, 2009, if adjournment sine die is on May 6, 2009); 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: April 22, 2009