

## CHAPTER 371

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**TAXATION**

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**HOUSE BILL 09-1035**

BY REPRESENTATIVE(S) Riesberg, Fischer, Gerou, Ryden, Schafer S., Vigil, Frangas, Kefalas, Todd;  
also SENATOR(S) Heath, Groff, Newell, Williams.

**AN ACT**

**CONCERNING SALES AND USE TAX REFUNDS FOR CERTAIN COLORADO-BASED TECHNOLOGY COMPANIES.**

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

**SECTION 1.** Part 4 of article 26 of title 39, Colorado Revised Statutes, is amended to read:

**PART 4****SALES AND USE TAX REFUND FOR BIOTECHNOLOGY,  
CLEAN TECHNOLOGY, AND MEDICAL DEVICES**

**39-26-401. Definitions.** As used in this part 4, unless the context otherwise requires:

(1) "Biotechnology" means:

(a) The application of technologies to produce or modify products, to develop microorganisms for specific uses, to identify targets for small pharmaceutical development, or to transform biological systems into useful processes or products; and

(b) The potential endpoints of the resulting products, processes, microorganisms, or targets are for improving human or animal health care outcomes.

(2) "CLEAN TECHNOLOGY" MEANS:

(a) RENEWABLE ENERGY GENERATION TECHNOLOGIES, INCLUDING BUT NOT LIMITED TO SOLAR, WIND, BIOFUEL, AND GEOTHERMAL ENERGY GENERATION

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

TECHNOLOGIES;

(b) PRODUCTS AND TECHNOLOGIES USED IN RENEWABLE ENERGY DEVELOPMENT AND GENERATION ON A COMMERCIAL SCALE;

(c) PRODUCTS AND TECHNOLOGIES THAT ENHANCE THE EFFICIENT STORAGE, DISTRIBUTION, AND CONSUMPTION OF ENERGY; AND

(d) PRODUCTS AND TECHNOLOGIES THAT MITIGATE HUMAN IMPACT ON THE ENVIRONMENT, INCLUDING BUT NOT LIMITED TO PRODUCTS AND TECHNOLOGIES THAT FACILITATE THE MANAGEMENT OF GREENHOUSE GASES, WATER, AND WASTE.

(3) "MEDICAL DEVICE" MEANS A THERAPEUTIC OR DIAGNOSTIC MACHINE OR TOOL USED TO IMPROVE HUMAN OR ANIMAL HEALTH.

~~(2)~~ (4) "Qualified BIOTECHNOLOGY taxpayer" means 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 to be used in Colorado directly and predominately in research and development of biotechnology.

(5) "QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER" MEANS 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 EMPLOYS FIFTY OR FEWER FULL-TIME EMPLOYEES IN COLORADO, WHICH TAXPAYER PURCHASES, STORES, USES, OR CONSUMES TANGIBLE PERSONAL PROPERTY TO BE USED IN COLORADO DIRECTLY AND PREDOMINATELY IN RESEARCH AND DEVELOPMENT OF CLEAN TECHNOLOGY OR MEDICAL DEVICES.

~~(3)~~ (6) "Research and development" means qualified research as defined by 26 U.S.C. sec. 41 (d) (1).

~~(4)~~ (7) "Tangible personal property" includes capital equipment, instruments, apparatus, and supplies used in laboratories, including, but not limited to, microscopes, machines, glassware, chemical reagents, computers, computer software, and technical books and manuals.

**39-26-402. Refund of state sales and use tax for biotechnology - application requirements and procedures.** (1) For the calendar year commencing January 1, 1999, and for each calendar year thereafter, each qualified BIOTECHNOLOGY taxpayer shall be allowed to claim a refund of all state sales and use tax paid by the qualified BIOTECHNOLOGY taxpayer, pursuant to parts 1 and 2 of this article, on the sale, storage, use, or consumption of tangible personal property to be used in Colorado directly and predominately in research and development of biotechnology during that calendar year.

(2) To claim the refund allowed by subsection (1) of this section, a qualified BIOTECHNOLOGY 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 calendar year following the calendar 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 BIOTECHNOLOGY taxpayer in the immediately preceding calendar year. 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 BIOTECHNOLOGY taxpayer agrees to furnish records of all such expenditures to the department of revenue upon request. No refund shall be allowed if the qualified BIOTECHNOLOGY taxpayer has not complied with this subsection (2).

**39-26-403. Refund of state sales and use tax for clean technology and medical devices - application requirements and procedures - repeal.** (1) FOR THE CALENDAR YEAR COMMENCING JANUARY 1, 2009, AND FOR EACH CALENDAR YEAR THEREAFTER, EACH QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER SHALL BE ALLOWED TO CLAIM A REFUND OF ALL STATE SALES AND USE TAX PAID BY THE QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER, PURSUANT TO PARTS 1 AND 2 OF THIS ARTICLE, ON THE SALE, STORAGE, USE, OR CONSUMPTION OF TANGIBLE PERSONAL PROPERTY TO BE USED IN COLORADO DIRECTLY AND PREDOMINATELY IN RESEARCH AND DEVELOPMENT OF CLEAN TECHNOLOGY OR MEDICAL DEVICES DURING THAT CALENDAR YEAR.

(2) TO CLAIM THE REFUND ALLOWED BY SUBSECTION (1) OF THIS SECTION, A QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER SHALL SUBMIT A REFUND APPLICATION TO THE DEPARTMENT OF REVENUE ON A FORM PROVIDED BY THE DEPARTMENT. THE APPLICATION SHALL BE SUBMITTED NO EARLIER THAN JANUARY 1 AND NO LATER THAN APRIL 1 OF THE CALENDAR YEAR FOLLOWING THE CALENDAR 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 CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER IN THE IMMEDIATELY PRECEDING CALENDAR YEAR. 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, A STATEMENT THAT THE QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER AGREES TO FURNISH RECORDS OF ALL SUCH EXPENDITURES TO THE DEPARTMENT OF REVENUE UPON REQUEST, AND THE NUMBER OF PERSONS WHO ARE EMPLOYED ON A FULL-TIME BASIS BY THE QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER. THE REFUND SHALL NOT BE ALLOWED IF THE QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER HAS NOT COMPLIED WITH THIS SUBSECTION (2).

(3) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION:

(a) A SALES AND USE TAX REFUND DESCRIBED IN SUBSECTION (1) OF THIS SECTION SHALL NOT EXCEED FIFTY THOUSAND DOLLARS FOR A QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER IN A CALENDAR YEAR.

(b) IF THE REVENUE ESTIMATE PREPARED BY THE STAFF OF THE LEGISLATIVE COUNCIL IN DECEMBER 2009 AND EACH DECEMBER THEREAFTER INDICATES THAT

THE AMOUNT OF THE TOTAL GENERAL FUND REVENUES FOR A PARTICULAR FISCAL YEAR WILL NOT BE SUFFICIENT TO MAINTAIN THE LIMIT ON APPROPRIATIONS SPECIFIED IN SECTION 24-75-201.1 (1), C.R.S., THEN THE REFUND AUTHORIZED IN SUBSECTION (1) OF THIS SECTION SHALL NOT BE ALLOWED FOR THE NEXT CALENDAR YEAR FOLLOWING THE YEAR IN WHICH THE ESTIMATE IS PREPARED. A QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER WHO WOULD HAVE BEEN ELIGIBLE TO CLAIM A REFUND PURSUANT TO THIS SECTION IN A CALENDAR YEAR IN WHICH THE REFUND WAS NOT ALLOWED MAY CLAIM SAID REFUND IN THE NEXT CALENDAR YEAR IN WHICH THE REVENUE ESTIMATE ALLOWS THE REFUND. THE DEPARTMENT OF REVENUE SHALL, THROUGH ITS WEB SITE, SPECIFY ON OR BEFORE JANUARY 1, 2010, AND ON OR BEFORE EACH JANUARY 1 THEREAFTER, WHETHER THE REFUND AUTHORIZED IN SUBSECTION (1) OF THIS SECTION SHALL BE ALLOWED FOR A GIVEN CALENDAR YEAR.

(4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2014.

**SECTION 2.** 39-26-403 (3) (b), Colorado Revised Statutes, as enacted by Section 1 of House Bill 09-1035, is amended to read:

(3) Notwithstanding the provisions of subsection (1) of this section:

(b) If the revenue estimate prepared by the staff of the legislative council in December 2009 and each December thereafter indicates that the amount of the total general fund revenues for a particular fiscal year will not be sufficient to ~~maintain the limit on appropriations specified in section 24-75-201.1 (1), C.R.S.~~ INCREASE THE TOTAL STATE GENERAL FUND APPROPRIATIONS BY SIX PERCENT OVER SUCH APPROPRIATIONS FOR THE PREVIOUS FISCAL YEAR, then the refund authorized in subsection (1) of this section shall not be allowed for the next calendar year following the year in which the estimate is prepared. A qualified clean technology or medical device taxpayer who would have been eligible to claim a refund pursuant to this section in a calendar year in which the refund was not allowed may claim said refund in the next calendar year in which the revenue estimate allows the refund. The department of revenue shall, through its web site, specify on or before January 1, 2010, and on or before each January 1 thereafter, whether the refund authorized in subsection (1) of this section shall be allowed for a given calendar year.

**SECTION 3. Act subject to petition - effective date - applicability.**

(1) Except as otherwise provided in subsection (3) of this section, 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.

(2) This act shall apply to sales and use taxes paid on or after January 1, 2009.

(3) Section 2 of this act shall take effect only if Senate Bill 09-228 is enacted and becomes law.

Approved: June 1, 2009