

CHAPTER 412

TAXATION

SENATE BILL 10-212

BY SENATOR(S) Cadman, Shaffer B., Penry, Tapia, Romer, Boyd, Brophy, Harvey, Hodge, King K., Kopp, Lundberg, Mitchell, Renfroe, Schultheis, Steadman, White;
also REPRESENTATIVE(S) Weissmann, Court, Gerou, Kerr J., Labuda, Pommer, Summers, Swalm, Carroll T.

AN ACT**CONCERNING THE REPEAL OF MECHANISMS TO REFUND EXCESS STATE REVENUES.**

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

SECTION 1. Repeal. 24-75-216, 26-2-1005 (2) (h), (6), and (7), 38-13-102 (7) (a) (VIII), 38-13-109.7 (2), 39-21-108 (6), 39-21-113 (12) (b), 39-22-104 (3) (h), (4) (l), (4) (1.5), (4) (m) (III), (4) (m) (IV), (4) (m) (V), and (4) (m) (VI), 39-22-119 (1.5), (5), (6), (7), (8), and (9), 39-22-124, 39-22-125, 39-22-126, 39-22-127, 39-22-304 (2) (g), 39-22-523, 39-22-527, 39-22-528, 39-22-627 (7), 39-26-105 (1) (e), 39-26-106 (3), 39-26-501, 39-26-502, 39-26-601, 39-26-602, 42-3-304 (23), 42-3-305 as amended by House Bills 10-1101 and 10-1172, and 43-4-205 (6.5) (d), Colorado Revised Statutes, are repealed.

SECTION 2. 35-75-201 (2), Colorado Revised Statutes, is amended to read:

35-75-201. Legislative declaration - purpose of part. (2) The general assembly further finds, determines, and declares that the public purpose served by the ~~tax credits~~, grants, loans and loan guarantees, and equity investments authorized by this part 2 ~~and by sections 39-22-527 and 39-22-528, C.R.S.~~, preponderates over any individual interests incidentally served thereby.

SECTION 3. 35-75-202 (7), Colorado Revised Statutes, is amended to read:

35-75-202. Definitions. As used in this part 2, unless the context otherwise requires:

(7) "Participant" means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of article 22 of title 39, C.R.S., that ~~purchases tax~~

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

~~credits from, or contributes cash funds to the board.~~

SECTION 4. 35-75-204 (1), the introductory portion to 35-75-204 (2), and 35-75-204 (2) (c), (3), (4) (a), (4) (c), and (5), Colorado Revised Statutes, are amended to read:

35-75-204. Duties of board - agriculture value-added grants, loans and loan guarantees, and equity investments. (1) The board has the power to make grants, loans and loan guarantees, and equity investments to any person, including eligible agricultural value-added cooperatives, as defined in section 35-75-202 (4), ~~and to offer tax credits to such cooperatives pursuant to section 39-22-527, C.R.S., for new or ongoing agricultural projects and research that add value to Colorado agricultural products and aid the economy of rural Colorado communities. Subject to the annual dollar limitations stated in sections 39-22-527 and 39-22-528, C.R.S.,~~ The board also has the power to fund market promotion activities of the department pursuant to section 35-75-205 (2) (f). ~~and to offer tax credits to participants and to agricultural businesses other than eligible agricultural value-added cooperatives so long as such agricultural businesses are located solely in Colorado and comply with the criteria established by the board pursuant to subsection (2) of this section, add value to agricultural products, and aid the economy of a rural community.~~

(2) The board shall employ the following criteria in determining whether to award an agriculture value-added grant, loan, OR loan guarantee: ~~or tax credit:~~

(c) The contemplated schedule and phasing of the project, whether on an annual or multi-year basis, shall be such as to give the project a reasonable chance of success within three years at a constant or declining rate of support from the board in the form of grants OR loans ~~or tax credits~~; or a combination thereof; and

(3) The board may reject any application for grants, loans and loan guarantees, OR equity investments ~~or tax credits~~ pursuant to this part 2.

(4) (a) The board shall require a feasibility study of a member's rural agricultural business project concept to be performed before awarding a grant OR loan. ~~or tax credit:~~

(c) Upon a determination by the board that the project concept may be operated profitably, the board may provide for legal assistance to set up the project. Such legal assistance shall include, but not be limited to, providing advice and assistance on the form of business entity ~~the availability of tax credits~~, and other assistance for which the member may qualify as well as helping the member apply for such assistance.

(5) The board may provide or facilitate grants, loans or loan guarantees, OR equity investments ~~or tax credits~~ for any person who meets the criteria set forth in this part 2 or established by the board under paragraph (d) of subsection (2.5) of this section, including, but not limited to, loans from the United States department of agriculture rural development program, subject to availability. Such financial assistance shall only be provided to feasible project concepts, and the amount of such financial assistance shall be the least amount necessary to cause the project to occur, as determined by the board. The board may structure the financial assistance

in a way that causes the project to occur and also provides for a compensatory return on investment or loan payment to the board, based upon the risk of the project concept.

SECTION 5. 35-75-205 (1), Colorado Revised Statutes, is amended to read:

35-75-205. Grants, loans and loan guarantees, and equity investments - agriculture value-added cash fund - created - repeal. (1) ~~The moneys derived from purchases of tax credits from the board by participants in accordance with section 39-22-528, C.R.S., and~~ Moneys received by the board from public or private gifts, grants, or donations or from any other source shall be forwarded to the state treasurer and shall be credited to the agriculture value-added cash fund, which fund is hereby created. Moneys in the fund are continuously appropriated to the board and shall be used for the purpose of preparing criteria and reviewing applications as provided in section 35-75-204 and for financial or technical assistance to agricultural projects, project concepts, and research as approved by the board. All interest earned on the investment of moneys in the fund shall be credited to the fund. The board may provide or facilitate ~~tax credits,~~ grants, loans and loan guarantees, and equity investments for agricultural projects, project concepts, or research; except that such ~~tax credits,~~ grants, loans and loan guarantees, and equity investments shall be limited to two million dollars per project. ~~Tax credits,~~ Grants, loans and loan guarantees, and equity investments may only be provided to feasible projects and for an amount that is the least amount necessary to cause the project to occur, as determined by the board. The board may structure the grants, loans and loan guarantees, and equity investments in a way that facilitates the project and also provides for a compensatory return on investment or loan payment to the board based on the risk of the project. Any moneys credited to the agriculture value-added cash fund and unexpended at the end of any given fiscal year shall remain in the fund and shall not revert to the general fund or any other fund.

SECTION 6. 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 39-21-104.5 ~~or 39-22-124 (10)~~ within thirty days after the mailing of such determination.

SECTION 7. 39-22-104 (4) (m) (I), Colorado Revised Statutes, is amended to read:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions - repeal. (4) There shall be subtracted from federal taxable income:

(m) (I) ~~Subject to the provisions of subparagraph (III) of this paragraph (m),~~ For any income tax year commencing on or after January 1, 2001, for any individual who claims the basic standard deduction allowed under section 63 (c) (2) of the internal revenue code on the individual's federal return and, therefore, cannot claim an itemized deduction for charitable contributions pursuant to section 170 of the internal revenue code, an amount equal to the amount of any deduction based upon the aggregate amount of charitable contributions in excess of five hundred dollars that the individual could have claimed pursuant to section 170 of the internal

revenue code if the individual had not claimed the basic standard deduction.

SECTION 8. 39-22-119 (2) and (3), Colorado Revised Statutes, are amended to read:

39-22-119. Expenses related to child care - credits against state tax. (2) If the credits allowed under ~~subsections (1), (1.5), and (5)~~ SUBSECTION (1) of this section exceed the income taxes due on the resident individual's income, the amount of the credits not used to offset income taxes shall not be carried forward as tax credits against the resident individual's subsequent years' income tax liability and shall be refunded to the individual.

(3) The child care expenses credits allowed under ~~subsections (1), (1.5), and (5)~~ SUBSECTION (1) of this section shall not be allowed to a resident individual who is receiving child care assistance from the state department of human services except to the extent of the taxpayer's unreimbursed out-of-pocket expenses that result in a federal credit for child care expenses.

SECTION 9. 39-22-524 (10), Colorado Revised Statutes, is amended to read:

39-22-524. Tax credit for individuals contributing matching funds for individual development accounts - repeal. (10) This section is repealed, effective ~~April 15, 2011~~ JULY 1, 2010.

SECTION 10. 39-26-105 (1) (a), Colorado Revised Statutes, is amended to read:

39-26-105. Vendor liable for tax - repeal. (1) (a) Except as provided in ~~paragraphs (d) and (e)~~ PARAGRAPH (d) of this subsection (1), every retailer, also in this part 1 called "vendor", shall, irrespective of the provisions of section 39-26-106, be liable and responsible for the payment of an amount equivalent to three percent of all sales made prior to January 1, 2001, and two and ninety one-hundredths percent of all sales made on or after January 1, 2001, by the vendor of commodities or services as specified in section 39-26-104 and shall, before the twentieth day of each month, make a return to the executive director of the department of revenue for the preceding calendar month and remit an amount equivalent to said percentage on such sales to said executive director, less three and one-third percent of the sum so remitted for sales occurring prior to July 1, 2003, or on or after July 1, 2005, and less two and one-third percent of the sum so remitted for sales occurring on or after July 1, 2003, but before July 1, 2005, to cover the vendor's expense in the collection and remittance of said tax; but, if any vendor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the executive director, the vendor shall not be allowed to retain any amounts to cover such vendor's expense in collecting and remitting said tax, and an amount equivalent to the said percentage, plus the amount of any local vendor expense that may be allowed by the local government to the vendor, shall be remitted to the executive director by any such delinquent vendor. Such returns of the taxpayer or the taxpayer's duly authorized agent shall contain such information and be made in such manner and upon such forms as the executive director shall prescribe. Any local vendor expense remitted to the executive director shall be deposited to the state general fund.

SECTION 11. 39-26-106 (1) (a) (I), Colorado Revised Statutes, is amended to read:

39-26-106. Schedule of sales tax. (1) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), ~~and in subsection (3) of this section,~~ there is imposed upon all sales of commodities and services specified in section 39-26-104 a tax at the rate of three percent of the amount of the sale, to be computed in accordance with schedules or systems approved by the executive director of the department of revenue. Said schedules or systems shall be designed so that no such tax is charged on any sale of seventeen cents or less.

SECTION 12. 42-3-304 (2), the introductory portions to 42-3-304 (9) and (10) (a), and 42-3-304 (10) (b), (10) (c), (11), (14), and (17) (a), Colorado Revised Statutes, are amended to read:

42-3-304. Registration fees - passenger and passenger-mile taxes - clean screen fund. (2) With respect to passenger-carrying motor vehicles, the weight used in computing annual registration fees shall be that weight published by the manufacturer in approved manuals, and, in case of a dispute over the weight of such vehicle, the actual weight determined by weighing such vehicle on a certified scale, as provided in section 35-14-122 (6), C.R.S., shall be conclusive. With respect to all other vehicles, the weight used in computing annual registration fees shall be the empty weight, determined by weighing such vehicle on a certified scale or in the case of registration fees imposed pursuant to ~~section 42-3-305 (5)~~ SECTION 42-3-306 (5), the declared gross vehicle weight of the vehicle declared by the owner at the time of registration.

(9) In addition to the registration fees imposed by ~~section 42-3-305 (4) (a)~~ SECTION 42-3-306 (4) (a), the following additional registration fee shall be imposed on such vehicles:

(10) (a) In addition to the registration fees imposed by ~~section 42-3-305 (5) (a) and (13)~~ SECTION 42-3-306 (5) (a) AND (13), for motor vehicles described in ~~section 42-3-305 (5) (a) and (13)~~ SECTION 42-3-306 (5) (a) AND (13), the following additional registration fee shall be imposed:

(b) In addition to the registration fees imposed by ~~section 42-3-305 (5) (b), (5) (c), or (12) (b)~~ SECTION 42-3-306 (5) (b), (5) (c), OR (12) (b), an additional registration fee of ten dollars shall be assessed.

(c) The department shall adopt rules that allow a vehicle owner or a vehicle owner's agent to apply for apportioned registration for a vehicle that is used in interstate commerce and that qualifies for the registration fees provided in ~~section 42-3-305 (5)~~ SECTION 42-3-306 (5). In establishing the amount of such apportioned registration, such rules shall take into account the length of time such item may be operated in Colorado or the number of miles such item may be driven in Colorado. The apportioned registration, if based upon the length of time such item may be operated in Colorado, shall be valid for a period of between two and eleven months. Such rules shall also allow for extensions of apportioned registration periods. During such rule-making, the department shall confer with its authorized agents regarding enhanced communications with the authorized agents and the

coordination of enforcement efforts.

(11) The additional fees collected pursuant to ~~section 42-3-305 (2) (b) (II)~~ SECTION 42-3-306 (2) (b) (II) and subsection (9) of this section and paragraphs (a) and (b) of subsection (10) of this section shall be transmitted to the state treasurer, who shall credit the same to the highway users tax fund to be allocated pursuant to section 43-4-205 (6) (b), C.R.S.

(14) (a) The owner or operator of mobile machinery or self-propelled construction equipment having an empty weight not in excess of sixteen thousand pounds that the owner or operator desires to operate over the public highways of this state shall register such vehicle under ~~section 42-3-305 (5) (a)~~ SECTION 42-3-306 (5) (a).

(b) The owner or operator of mobile machinery or self-propelled construction equipment with an empty weight exceeding sixteen thousand pounds that such owner or operator desires to operate over the public highways of this state shall register such vehicle under ~~section 42-3-305 (5) (b)~~ SECTION 42-3-306 (5) (b).

(17) (a) At the time of registration of such vehicle, the owner of a truck subject to registration under ~~section 42-3-305 (5)~~ SECTION 42-3-306 (5) having a weight in excess of four thousand five hundred pounds, but not in excess of ten thousand pounds, including mounted equipment other than that of a recreational type, shall present to the authorized agent a copy of the manufacturer's statement or certificate of origin that specifies the shipping weight of such vehicle, or if such documentation is not available, a certified scale ticket showing the weight of such vehicle.

SECTION 13. 42-3-306 (1), Colorado Revised Statutes, is amended to read:

42-3-306. Registration fees - passenger and passenger-mile taxes - fee schedule. (1) This section shall apply in any fiscal year in which the legislative council does not certify to the executive director of the department that, based on the annual March revenue forecast from the legislative council, there will be sufficient excess state revenue to fund the fee reductions enacted by House Bill 00-1227, enacted at the second regular session of the sixty-second general assembly BEGINNING ON OR AFTER JULY 1, 2010.

SECTION 14. 42-3-307 (1), Colorado Revised Statutes, is amended to read:

42-3-307. Enforcement powers of department. (1) The department may administer and enforce sections 42-3-304 ~~42-3-305~~, and 42-3-306, including the right to inspect and audit the books, records, and documents of an owner or operator of a vehicle operated upon the public highways who is required to pay any registration fee or tax imposed, and the executive director of the department may promulgate such reasonable rules as the director deems necessary or suitable for such administration and enforcement.

SECTION 15. 42-3-308 (1) (a), Colorado Revised Statutes, is amended to read:

42-3-308. Taxpayer statements - payment of tax - estimates - penalties - deposits - delinquency proceedings. (1) (a) Every owner or operator of a motor

vehicle operated on a public highway of this state and required to pay the passenger-mile tax imposed by sections 42-3-304 ~~42-3-305~~, and 42-3-306 shall, on or before the twenty-fifth day of each month, file with the department, on forms prescribed by the department and the public utilities commission, a statement, subject to the penalties for perjury in the second degree, showing the name and address of the owner of the motor vehicle, total miles traveled, and total number of passengers carried in this state during the preceding month and such other information as required by the department and the commission and shall compute and pay such tax; except that the executive director of the department may authorize the filing of statements and the payment of tax for periods in excess of one month but not to exceed a period of twelve months.

SECTION 16. 42-3-309 (1), Colorado Revised Statutes, is amended to read:

42-3-309. Permit to be secured - records kept - penalties. (1) Every owner or operator of a motor vehicle operated over any public highway of this state who is required to pay the passenger-mile tax imposed by sections 42-3-304 ~~42-3-305~~, and 42-3-306 shall apply to the department and secure a passenger-mile tax permit and shall keep and maintain true and correct records of the operations of such motor vehicles, including the number of miles operated and the number of passengers carried, in such form as to reflect the actual activity of all such motor vehicles and as may be prescribed by the department and the public utilities commission. Such owner or operator shall preserve all such records for a period of four years. The passenger-mile tax permit shall remain effective until the owner advises the department of a change in ownership or a discontinuance of business or until such owner has failed to file tax reports and pay any applicable passenger-mile tax for four successive tax periods.

SECTION 17. 42-4-304 (18), Colorado Revised Statutes, is amended to read:

42-4-304. Definitions relating to automobile inspection and readjustment program. As used in sections 42-4-301 to 42-4-316, unless the context otherwise requires:

(18) "Motor vehicle", as applicable to the AIR program, includes only a motor vehicle that is operated with four wheels or more on the ground, self-propelled by a spark-ignited engine burning gasoline, gasoline blends, gaseous fuel, blends of liquid gasoline and gaseous fuels, alcohol, alcohol blends, or other similar fuels, having a personal property classification of A, B, or C pursuant to section 42-3-106, and for which registration in this state is required for operation on the public roads and highways or which motor vehicle is owned or operated or both by a nonresident who meets the requirements set forth in section 42-4-310 (1) (c). "Motor vehicle" does not include kit vehicles; vehicles registered pursuant to section 42-3-219 ~~42-3-305 (4)~~, or 42-3-306 (4); vehicles registered pursuant to section 42-12-102 that are of model year 1975 or earlier or that have two-stroke cycle engines manufactured prior to 1980; or vehicles registered as street rods pursuant to section 42-3-201.

SECTION 18. 42-4-401 (5), Colorado Revised Statutes, is amended to read:

42-4-401. Definitions. As used in this part 4, unless the context otherwise

requires:

(5) "Diesel powered motor vehicle" or "diesel vehicle" as applicable to opacity inspections, includes only a motor vehicle with four wheels or more on the ground, powered by an internal combustion, compression ignition, diesel fueled engine, and also includes any motor vehicle having a personal property classification of A, B, or C, pursuant to section 42-3-106, as specified on its vehicle registration, and for which registration in this state is required for operation on the public roads and highways. "Diesel vehicle" does not include the following: Vehicles registered pursuant to section 42-3-219 ~~42-3-305 (4)~~, or 42-3-306 (4), or off-the-road diesel powered vehicles or heavy construction equipment.

SECTION 19. 42-4-1407.5 (3) (a) and (3) (b), Colorado Revised Statutes, are amended to read:

42-4-1407.5. Splash guards - when required. (3) This section does not apply to:

(a) Passenger-carrying motor vehicles registered pursuant to ~~section 42-3-305 (2)~~ SECTION 42-3-306 (2);

(b) Trucks and truck tractors registered pursuant to ~~section 42-3-305 (4) or (5)~~ SECTION 42-3-306 (4) OR (5) having an empty weight of ten thousand pounds or less;

SECTION 20. 42-7-510 (1), Colorado Revised Statutes, is amended to read:

42-7-510. Insurance or bond required. (1) Every owner of a truck that is subject to the registration fee imposed pursuant to ~~section 42-3-305 (5) (b) or (7) or~~ SECTION 42-3-306 (5) (b) or (7) and that is not subject to regulation by the public utilities commission under article 10, 11, 13, or 16 of title 40, C.R.S., before operating or permitting the operation of such vehicle upon any public highway in this state shall have in each such vehicle a motor vehicle liability insurance policy or a certificate evidencing such policy issued by an insurance carrier or insurer authorized to do business in Colorado, or a copy of a valid certificate of self-insurance issued pursuant to section 10-4-624, C.R.S., or a surety bond issued by a company authorized to do a surety business in Colorado in the sum of fifty thousand dollars for damages to property of others; the sum of one hundred thousand dollars for damages for or on account of bodily injury or death of one person as a result of any one accident; and, subject to such limit as to one person, the sum of three hundred thousand dollars for or on account of bodily injury to or death of all persons as a result of any one accident.

SECTION 21. 42-8-105 (1), Colorado Revised Statutes, is amended to read:

42-8-105. Clearance of motor vehicles at port of entry weigh stations. (1) Every owner or operator of a motor vehicle that is subject to payment of registration fees under the provisions of ~~section 42-3-305 (5) (b) or~~ SECTION 42-3-306 (5) (b) and every owner or operator of a motor vehicle or combination of vehicles having a manufacturer's gross vehicle weight rating or gross combination weight rating of twenty-six thousand one pounds or more shall secure a valid clearance from an office of the department of revenue, from an officer of the

Colorado state patrol, or from a port of entry weigh station before operating such vehicle or combination of vehicles or causing such vehicle or combination of vehicles to be operated on the public highways of this state, but an owner or operator shall be deemed to have complied with the provisions of this subsection (1) if the owner or operator secures a valid clearance from the first port of entry weigh station located within five road miles of the route that the owner or operator would normally follow from the point of departure to the point of destination. An owner or operator shall not be required to seek out a port of entry weigh station not located on the route such owner or operator is following if the owner or operator secures a special revocable permit from the department of revenue in accordance with the provisions of subsection (4) of this section. A vehicle with a seating capacity of fourteen or more passengers registered under the provisions of section 42-3-304 (13) ~~42-3-305 (2) (c) (I)~~, or 42-3-306 (2) (c) (I) shall not be required to secure a valid clearance pursuant to this section.

SECTION 22. 43-4-205 (5.5) (c), Colorado Revised Statutes, is amended to read:

43-4-205. Allocation of fund. (5.5) The following highway users tax fund revenues shall be allocated and expended in accordance with the formula specified in subsection (5) of this section:

(c) Revenues from driver's license fees, motor vehicle title and registration fees, and motorist insurance identification fees that are credited to the fund pursuant to sections 42-2-132 (4) (b), 42-3-304 (18) (d) (I), ~~42-3-305 (6), (7), and (8) (c)~~, and 42-3-306 (6) and (7), C.R.S.;

SECTION 23. Specified effective date. This act shall take effect July 1, 2010.

SECTION 24. 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: June 10, 2010