

CHAPTER 7

TAXATION

HOUSE BILL 10-1191

BY REPRESENTATIVE(S) Pommer, Benefield, Frangas, Hullinghorst, Judd, Kagan, Labuda, Levy, Merrifield, Middleton, Schafer S., Todd, Tyler, Court;
also SENATOR(S) Heath.

AN ACT

CONCERNING THE NARROWING OF THE EXISTING EXEMPTION FROM THE STATE SALES AND USE TAXES FOR FOOD, AND, IN CONNECTION THEREWITH, SUBJECTING CANDY AND SOFT DRINKS TO THE STATE SALES AND USE TAXES, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 39-26-707, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-26-707. Food, meals, and beverages - definitions.
(1.5) (a) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION, ON AND AFTER MAY 1, 2010, SALES OF CANDY AND SOFT DRINKS SHALL BE SUBJECT TO STATE SALES TAXATION.

(b) FOR THE PURPOSES OF THIS SUBSECTION (1.5):

(I) "CANDY" MEANS A PREPARATION OF SUGAR, HONEY, OR OTHER NATURAL OR ARTIFICIAL SWEETENERS IN COMBINATION WITH CHOCOLATE, FRUIT, NUTS, OR OTHER INGREDIENTS OR FLAVORINGS IN THE FORM OF BARS, DROPS, OR PIECES. "CANDY" SHALL NOT INCLUDE ANY PREPARATION CONTAINING FLOUR AND SHALL REQUIRE NO REFRIGERATION.

(II) "SOFT DRINKS" MEANS NONALCOHOLIC BEVERAGES THAT CONTAIN NATURAL OR ARTIFICIAL SWEETENERS. "SOFT DRINKS" DO NOT INCLUDE BEVERAGES THAT CONTAIN MILK OR MILK PRODUCTS, SOY, RICE, OR SIMILAR MILK SUBSTITUTES, OR GREATER THAN FIFTY PERCENT OF VEGETABLE OR FRUIT JUICE BY VOLUME.

SECTION 2. 39-26-707 (2) (d), Colorado Revised Statutes, is amended, and the

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

said 39-26-707 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

39-26-707. Food, meals, and beverages - definitions. (2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(d) (I) Effective January 1, 1980, the storage, use, or consumption of food as defined in section 39-26-102 (4.5); EXCEPT THAT, ON AND AFTER MAY 1, 2010, THE STORAGE, USE, OR CONSUMPTION OF CANDY AND SOFT DRINKS SHALL BE SUBJECT TO STATE USE TAXATION.

(II) FOR THE PURPOSES OF THIS PARAGRAPH (d):

(A) "CANDY" MEANS A PREPARATION OF SUGAR, HONEY, OR OTHER NATURAL OR ARTIFICIAL SWEETENERS IN COMBINATION WITH CHOCOLATE, FRUIT, NUTS, OR OTHER INGREDIENTS OR FLAVORINGS IN THE FORM OF BARS, DROPS, OR PIECES. "CANDY" SHALL NOT INCLUDE ANY PREPARATION CONTAINING FLOUR AND SHALL REQUIRE NO REFRIGERATION.

(B) "SOFT DRINKS" MEANS NONALCOHOLIC BEVERAGES THAT CONTAIN NATURAL OR ARTIFICIAL SWEETENERS. "SOFT DRINKS" DO NOT INCLUDE BEVERAGES THAT CONTAIN MILK OR MILK PRODUCTS, SOY, RICE, OR SIMILAR MILK SUBSTITUTES, OR GREATER THAN FIFTY PERCENT OF VEGETABLE OR FRUIT JUICE BY VOLUME.

(3) THE DEPARTMENT OF REVENUE MAY PROMULGATE RULES, IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., TO PROVIDE A MEANS BY WHICH A PERSON WHO SELLS CANDY OR SOFT DRINKS AT RETAIL MAY, IF NECESSARY, REASONABLY ESTIMATE THE AMOUNT OF SALES TAXES DUE ON SUCH CANDY AND SOFT DRINKS. FOR ANY RETURN MADE PRIOR TO AUGUST 1, 2010, A PERSON WHO SELLS CANDY OR SOFT DRINKS AT RETAIL SHALL NOT BE LIABLE FOR ANY INTEREST OR OTHER PENALTY IMPOSED AS A RESULT OF AN ERROR MADE IN CONNECTION WITH THE ELIMINATION OF THE EXEMPTION FROM STATE SALES TAX FOR SALES OF CANDY AND SOFT DRINKS, AS DEFINED IN PARAGRAPH (b) OF SUBSECTION (1.5) OF THIS SECTION, BY HOUSE BILL 10-1191, ENACTED IN 2010.

SECTION 3. 39-26-714 (2) and (3), Colorado Revised Statutes, are amended, and the said 39-26-714 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

39-26-714. Vending machines - definitions. (2) On and after January 1, 2000, all sales and purchases of food, as defined in section 39-26-102 (4.5), by or through vending machines shall be exempt from taxation under the provisions of part 1 of this article; EXCEPT THAT, ON AND AFTER MAY 1, 2010, SALES AND PURCHASES OF CANDY AND SOFT DRINKS BY OR THROUGH VENDING MACHINES SHALL BE SUBJECT TO STATE SALES TAXATION. ABSENT AN EXPRESS PROVISION IN THE CONTRACT TO THE CONTRARY, ANY VENDING MACHINE CONTRACT THAT REFERENCES THE PRICE AT WHICH PRODUCTS SHALL BE SOLD FROM A VENDING MACHINE SHALL BE INTERPRETED TO INCLUDE ANY APPLICABLE SALES TAX AS AN ADDITION TO THE REFERENCED PRICE.

(3) On and after January 1, 2000, the storage, use, or consumption of food, as

defined in section 39-26-102 (4.5), purchased by or through vending machines shall be exempt from taxation under the provisions of part 2 of this article; EXCEPT THAT, ON AND AFTER MAY 1, 2010, THE STORAGE, USE, OR CONSUMPTION OF CANDY AND SOFT DRINKS PURCHASED BY OR THROUGH VENDING MACHINES SHALL BE SUBJECT TO STATE USE TAXATION.

(4) FOR THE PURPOSES OF THIS SECTION:

(a) "CANDY" MEANS A PREPARATION OF SUGAR, HONEY, OR OTHER NATURAL OR ARTIFICIAL SWEETENERS IN COMBINATION WITH CHOCOLATE, FRUIT, NUTS, OR OTHER INGREDIENTS OR FLAVORINGS IN THE FORM OF BARS, DROPS, OR PIECES. "CANDY" SHALL NOT INCLUDE ANY PREPARATION CONTAINING FLOUR AND SHALL REQUIRE NO REFRIGERATION.

(b) "SOFT DRINKS" MEANS NONALCOHOLIC BEVERAGES THAT CONTAIN NATURAL OR ARTIFICIAL SWEETENERS. "SOFT DRINKS" DO NOT INCLUDE BEVERAGES THAT CONTAIN MILK OR MILK PRODUCTS, SOY, RICE, OR SIMILAR MILK SUBSTITUTES, OR GREATER THAN FIFTY PERCENT OF VEGETABLE OR FRUIT JUICE BY VOLUME.

(5) THE DEPARTMENT OF REVENUE SHALL PROMULGATE RULES, IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., TO PROVIDE A MEANS BY WHICH A PERSON WHO SELLS CANDY OR SOFT DRINKS PURCHASED BY AND THROUGH VENDING MACHINES MAY, IF NECESSARY, REASONABLY ESTIMATE THE AMOUNT OF SALES TAXES DUE ON SUCH CANDY AND SOFT DRINKS. FOR ANY RETURN MADE PRIOR TO AUGUST 1, 2010, A PERSON WHO SELLS CANDY OR SOFT DRINKS AT RETAIL SHALL NOT BE LIABLE FOR ANY INTEREST OR OTHER PENALTY IMPOSED AS A RESULT OF AN ERROR MADE IN CONNECTION WITH THE ELIMINATION OF THE EXEMPTION FROM STATE SALES TAX FOR SALES OF CANDY AND SOFT DRINKS, AS DEFINED IN SUBSECTION (4) OF THIS SECTION, BY HOUSE BILL 10-1191, ENACTED IN 2010.

SECTION 4. Part 1 of article 21 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-21-122. Revenue impact of 2010 tax legislation - tracking by department.

THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1191, ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

SECTION 5. Part 1 of article 26 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-26-127. Legislation modifying the state sales tax base - no impact on local government sales tax bases - no expansion of local authority to levy sales tax.

(1) NOTWITHSTANDING THE PROVISIONS OF SECTION 29-2-105 (1) (d), C.R.S., ANY PROVISION OF TITLE 32, C.R.S., OR ANY OTHER PROVISION OF LAW, THE LEVYING OF SALES TAX ON, EXEMPTION FROM SALES TAX FOR, OR LOCAL OPTION TO LEVY SALES TAX ON OR PROVIDE AN EXEMPTION FROM SALES TAX FOR ANY TANGIBLE PERSONAL PROPERTY OR SERVICES UNDER THE SALES TAX ORDINANCE OR RESOLUTION OF ANY COUNTY, MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL

GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE SHALL NOT BE AFFECTED IN ANY WAY BY THE ELIMINATION, SUSPENSION, OR MODIFICATION OF ANY SALES TAX EXEMPTION OR ANY OTHER LEGISLATIVE MODIFICATION OF THE STATE SALES TAX BASE RESULTING FROM THE ENACTMENT OF ANY OF THE FOLLOWING BILLS:

(a) HOUSE BILL 10-1191, ENACTED IN 2010.

(2) THIS SECTION DOES NOT CREATE OR EXPAND, AND SHALL NOT BE CONSTRUED TO CREATE OR EXPAND, ANY AUTHORITY OF ANY COUNTY, MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE TO LEVY SALES TAX.

SECTION 6. Part 2 of article 26 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-26-212. Legislation modifying the state use tax base - no impact on local government use tax bases - no expansion of local authority to levy use tax.

(1) NOTWITHSTANDING THE PROVISIONS OF SECTION 29-2-105 (1) (d), C.R.S., ANY PROVISION OF TITLE 32, C.R.S., OR ANY OTHER PROVISION OF LAW, THE LEVYING OF USE TAX ON, EXEMPTION FROM USE TAX FOR, OR LOCAL OPTION TO LEVY USE TAX ON OR PROVIDE AN EXEMPTION FROM USE TAX FOR ANY TANGIBLE PERSONAL PROPERTY OR SERVICES UNDER THE USE TAX ORDINANCE OR RESOLUTION OF ANY COUNTY, MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE SHALL NOT BE AFFECTED IN ANY WAY BY THE ELIMINATION, SUSPENSION, OR MODIFICATION OF ANY USE TAX EXEMPTION OR ANY OTHER LEGISLATIVE MODIFICATION OF THE STATE USE TAX BASE RESULTING FROM THE ENACTMENT OF ANY OF THE FOLLOWING BILLS:

(a) HOUSE BILL 10-1191, ENACTED IN 2010.

(2) THIS SECTION DOES NOT CREATE OR EXPAND, AND SHALL NOT BE CONSTRUED TO CREATE OR EXPAND, ANY AUTHORITY OF ANY COUNTY, MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE TO LEVY USE TAX.

SECTION 7. Part 1 of article 75 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-75-113. 2010 bills to increase state revenue - prohibition on hiring of new state employees. NO MONEYS DERIVED FROM THE INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE BILL 10-1191, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE PURPOSE OF FUNDING ADDITIONAL FULL-TIME EQUIVALENT STATE EMPLOYEES.

SECTION 8. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of revenue, for allocation to the taxation business group, taxation and compliance division, for the fiscal year beginning July 1, 2009, the sum of ninety-four thousand three hundred twenty-two dollars (\$94,322) and 0.9 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 9. 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: February 24, 2010