

CHAPTER 228

TAXATION

HOUSE BILL 11-1265

BY REPRESENTATIVE(S) Stephens, Waller, Becker, Conti, DelGrosso, Ferrandino, Fields, Gardner B., Hullinghorst, Kagan, Kerr A., Kerr J., Labuda, Nikkel, Pabon, Priola, Schafer S., Summers, Todd, Vaad, Barker, Beezley, Brown, Hamner, Kefalas, Scott, Swerdfeger;
also SENATOR(S) Johnston, Aguilar, Cadman, Grantham, Jahn, King K., King S., Kopp, Lambert, Steadman, Williams S.

AN ACT

CONCERNING THE FILING OF CLAIMS FOR REFUNDS OF SALES OR USE TAX, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It has long been the intent of the general assembly to subject claims for refunds of state sales and use tax to a three-year statute of limitations; and

(b) Vendors should be allowed, but not compelled, to file claims for refunds for sales and use tax on behalf of their customers.

(2) Therefore, it is the intent of the general assembly to clarify that the three-year statute of limitations and the ability of vendors to file claims for refunds on behalf of their customers shall apply to taxpayers.

SECTION 2. 39-21-118 (2), Colorado Revised Statutes, is amended, and the said 39-21-118 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

39-21-118. Criminal penalties. (2) Any person required, OR ANY PERSON WHO PURPORTS TO BE REQUIRED, under any title administered by the department to collect, account for, or pay over any tax, who willfully fails to collect or truthfully account for or pay over such tax, INCLUDING, BUT NOT LIMITED TO, WILLFULLY MAKING A MATERIALLY FALSE STATEMENT IN CONNECTION WITH AN APPLICATION

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

FOR A REFUND OF ANY TAX FOR THE PURPOSE OF FALSELY OBTAINING A REFUND OF SUCH TAX, in addition to other penalties provided by law, is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, C.R.S., or shall be punished by a fine of not more than one hundred thousand dollars, or five hundred thousand dollars in the case of a corporation, or by both such fine and imprisonment, together with the costs of prosecution.

(2.5) ANY PERSON WHO THROUGH GROSS NEGLIGENCE OR RECKLESSNESS MAKES A MATERIALLY FALSE STATEMENT IN APPLYING FOR A REFUND PURSUANT TO SECTION 39-26-703 OR ANY OTHER PERSON WHO MAKES A FALSE STATEMENT IN CONNECTION WITH AN APPLICATION FOR A REFUND IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS, OR BY IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN NINETY DAYS, OR BY BOTH SUCH FINE AND IMPRISONMENT.

SECTION 3. 39-26-703 (1), (2), and (3), Colorado Revised Statutes, are amended, and the said 39-26-703 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

39-26-703. Disputes and refunds. (1) Should a dispute arise between the purchaser and seller as to whether or not any sale, service, or commodity is exempt from taxation pursuant to this part 7, nevertheless the seller shall collect and the purchaser shall pay the tax, and the seller shall thereupon issue to the purchaser a receipt or certificate, on forms prescribed by the executive director of the department of revenue, showing the names of the seller and the purchaser, the items purchased, the date, price, and amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the executive director for a refund of the taxes, and it is then the duty of the executive director to determine the question of exemption. The purchaser may request a hearing pursuant to section 39-21-103, and the final determination of the executive director may be appealed to the district court pursuant to section 39-21-105 SHOWING THE TAX PAID.

(2) (a) ~~A refund shall be made, or a credit allowed, for the tax so paid under dispute by any purchaser who has an exemption as provided in this part 7. Such refund shall be made by the executive director of the department of revenue after compliance with the following conditions precedent: Applications for refund shall be made within sixty days after the purchase of the goods whereon an exemption is claimed, shall be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller, and shall be made upon such forms as shall be prescribed and furnished by the executive director, which forms shall contain such information as the executive director prescribes.~~

(b) ~~Upon receipt of an application, the executive director of the department of revenue shall examine the same with due speed and shall give notice to the applicant by order in writing of the executive director's decision. Aggrieved applicants, within thirty days after the decision is mailed to them, may petition the executive director for a hearing on the claim in the manner provided in section 39-21-103 and may appeal to the district courts in the manner provided in section 39-21-105. The right of any person to a refund under this part 7 ARTICLE shall not be assignable, and, except as provided in paragraph (d) PARAGRAPH (c) of this subsection (2) AND~~

SUBSECTION (2.5) OF THIS SECTION, such application for refund shall be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale. ~~Any applicant for refund under the provisions of this section, or any other person, who willfully makes any false statement in connection with an application for a refund of any taxes shall be punished as provided by section 39-21-118.~~

(c) A refund shall be made or a credit allowed by the executive director of the department of revenue to any person entitled to an exemption where the person establishes: That a tax was paid by another on a purchase made on behalf of such person or that a tax was paid by an independent contractor on or before July 1, 1979, on tangible personal property incorporated into realty for the sole use, benefit, and ownership of any person entitled to an exemption; that a refund has not been granted to the person making the purchase; and that the person entitled to exemption paid or reimbursed the purchaser for such tax. No such refund shall be made or credit allowed in an amount greater than the tax paid less the expense allowance on the purchase retained by the vendor pursuant to section 39-26-105 (1). ~~No assessment shall be made of validly issued refunds made under the rules governing this paragraph (c) in effect on June 7, 1979.~~

(c.5) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL MAKE A REFUND OR ALLOW A CREDIT TO ANY PERSON WHO ESTABLISHES THAT HE OR SHE HAS OVERPAID THE TAX DUE PURSUANT TO THIS ARTICLE. NO SUCH REFUND SHALL BE MADE OR CREDIT ALLOWED IN AN AMOUNT GREATER THAN THE TAX PAID LESS THE EXPENSE ALLOWANCE ON THE PURCHASE RETAINED BY THE VENDOR PURSUANT TO SECTION 39-26-105 (1).

(d) An application for refund under paragraph (c) of this subsection (2) shall be made within three years after the date of purchase and shall be made on forms prescribed and furnished by the executive director of the department of revenue, which form shall contain, in addition to the foregoing information, such pertinent data as the executive director prescribes.

(d.5) Upon receipt of the application and proof of the matters contained therein, the executive director OF THE DEPARTMENT OF REVENUE shall give notice to the applicant by order in writing of the executive director's decision. Aggrieved applicants, within thirty days after such decision is mailed to them, may petition the executive director for a hearing on the claim in the manner provided in section 39-21-103 and may appeal to the district courts in the manner provided in section 39-21-105. ~~Any applicant for refund under the provisions of this paragraph (d), or any other person, who makes any false statement in connection with an application for refund of any taxes is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.~~

(e) ~~Claims for tax moneys paid in error or by mistake may be processed for refund in accordance with departmental rules under paragraph (c) of this subsection (2); except that~~ The proceeds of any claim for refund shall first be applied by the department of revenue to any tax deficiencies or liabilities existing against the claimant before allowance of the claim by the department; and further except that, if such excess payment of tax moneys in any period is discovered as a result of audit

by the department and deficiencies are discovered and assessed against the taxpayer as a result of the audit, the excess moneys shall be first applied against any deficiencies outstanding to the date of the assessment but shall not be applied to any future tax liabilities.

(2.5) (a) WITHIN THREE YEARS AFTER THE DUE DATE OF THE RETURN SHOWING THE OVERPAYMENT OR ONE YEAR AFTER THE DATE OF OVERPAYMENT, WHICHEVER IS LATER, A VENDOR SHALL FILE ANY CLAIM FOR REFUND WITH THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. THE EXECUTIVE DIRECTOR SHALL PROMPTLY EXAMINE SUCH CLAIM AND SHALL MAKE A REFUND OR ALLOW A CREDIT TO ANY VENDOR WHO ESTABLISHES THAT SUCH VENDOR OVERPAID THE TAX DUE PURSUANT TO THIS ARTICLE.

(b) (I) A VENDOR MAY CLAIM A REFUND ON BEHALF OF ANY PURCHASER OF THE VENDOR IF:

(A) THE PURCHASER COULD TIMELY FILE A CLAIM FOR A REFUND ON HIS OR HER OWN BEHALF; AND

(B) THE VENDOR ESTABLISHES TO THE SATISFACTION OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE THAT THE AMOUNT CLAIMED, INCLUDING ANY INTEREST PAYABLE PURSUANT TO SECTION 39-21-110, HAS BEEN OR WILL ACTUALLY BE PAID BY THE VENDOR TO THE PURCHASER.

(II) NOTHING IN THIS PARAGRAPH (b) SHALL PROHIBIT A VENDOR FROM TAKING A CREDIT THAT THE VENDOR BELIEVES TO BE DUE ON A SUBSEQUENT PERIOD RETURN FOR AN OVERPAYMENT OR FOR TAX COLLECTED IN ERROR AND SUBSEQUENTLY REFUNDED TO A PURCHASER; EXCEPT THAT SUCH CREDIT SHALL BE SUBJECT TO AUDIT AND SHALL NOT BEAR ANY INTEREST PURSUANT TO SECTION 39-21-110.

(c) NO VENDOR SHALL BE COMPELLED BY ANY PARTY TO FILE A REFUND CLAIM PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2.5). IT SHALL BE A COMPLETE DEFENSE TO ANY CLAIM BY A PURCHASER AGAINST A VENDOR FOR TAX COLLECTED IN ERROR THAT THE VENDOR HAS PAID THE TAX OVER TO THE DEPARTMENT OF REVENUE. ANY ACTION BY A PURCHASER FOR TAX COLLECTED BY A VENDOR IN ERROR THAT HAS BEEN REMITTED TO THE DEPARTMENT MUST BE MADE PURSUANT TO SUBSECTION (2) OF THIS SECTION AND SECTION 39-21-108.

(3) If any person is convicted under the provisions of ~~this section~~ SECTION 39-21-118, the convictions shall be prima facie evidence that all refunds received by the person during the current year were obtained unlawfully, and the executive director of the department of revenue is empowered to bring appropriate action for recovery of such refunds. A brief summary statement of the above mentioned penalties shall be printed on each form application for refund.

SECTION 4. 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, for the fiscal year beginning July 1, 2011, the sum of nineteen thousand seven hundred one dollars (\$19,701) and 0.5 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 5. Applicability. This act shall apply to all claims for refunds of sales or use tax filed with the department of revenue before, on, or after the effective date of this act.

SECTION 6. 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: May 27, 2011